



THOMAS B. GETZ
Direct Dial: 603.230.4403
Email: thomas.getz@mclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

November 1, 2019

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: Docket No. 2019-03, Antrim Level LLC
Petition for Declaratory Ruling
Motion to Strike**

Dear Ms. Monroe:

Enclosed for filing please find an original and one copy of Antrim Level LLC's Motion to Strike in the above-captioned proceeding. A copy of the enclosed filing has also been sent electronically to the service list.

Please call me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Thomas B. Getz". The signature is stylized, with the first name "Thomas" written in a cursive-like script and the last name "Getz" in a more blocky, stylized font.

Thomas B. Getz

TBG:slb

cc: Service List

McLane Middleton, Professional Association
Manchester, Concord, Portsmouth, NH | Woburn, Boston, MA

McLane.com

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**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2019-03

ANTRIM LEVEL LLC

**Petition for Declaratory Ruling or, in the Alternative,
Motion for Expedited Approval of Change in Ownership Structure**

Motion to Strike

Antrim Level LLC (“Antrim Level”), by and through its attorneys, McLane Middleton, Professional Association, respectfully requests that the Site Evaluation Committee (“SEC” or “Committee”) strike the filings made by Richard Block and Shelley Nelkens (“Antrim Residents”) on October 29, 2019, which they purport to be testimony. As explained below, the filings made by the Antrim Residents are not testimony but argument, and they address issues beyond the scope of this proceeding, which have already been addressed in a separate proceeding.¹

1. Mr. Block states that the purpose of his pre-filed testimony is to provide the Committee with information demonstrating that Antrim Level has not continuously complied with the conditions of its Certificate of Site and Facility and is consequently in violation of its financing agreement with Citicorp North America, Inc. (“Citicorp”). Mr. Block bases his arguments on a problem Antrim Level had with the temporary lighting of its turbines, which has been resolved as explained below.

2. Ms. Nelkens makes arguments similar to Mr. Block. She recounts events in September concerning the problems with Antrim Level’s temporary lighting and opines that Citicorp has an obligation not to provide financing to Antrim Level.

¹ See Antrim Level’s October 21, 2019 *Motion for Clarification and/or Objection in Anticipation of Irrelevant Discovery and Testimony* (“Motion for Clarification”), which anticipated the nature and focus of these filings.

3. As for the arguments about the temporary lighting, on September 17, 2019, certain Antrim residents, including Mr. Block and Ms. Nelkens, filed a request for enforcement and penalties, which was considered in Docket No. 2015-02. On October 4, 2019, after an investigation of the issues, the SEC Administrator reported, among other things, that Antrim Level had removed the temporary turbine lights and installed permanent lights. Pursuant to authority provided under RSA 162-H:12, Site 301.17(d), and Site 302.01, she determined that Antrim Level “acted appropriately and in accordance with the terms and conditions of the Certificate in responding to the complaint regarding the temporary lighting malfunction. Accordingly, no enforcement action is recommended or required.” *SEC Administrator Response to Request for Enforcement and Penalties*, Docket No. 2015-02, p. 3 (October 4, 2019).

4. As for the arguments about the contractual relationship between Antrim Level and Citicorp, Mr. Block and Ms. Nelkens go particularly far afield in their apparent effort to prevent the Project from achieving commercial operation. It is somewhat murky as to whether they are appealing to the SEC or Citicorp for assistance in their eleventh-hour effort but in either case their appeal is misplaced.

5. Underlying Mr. Block’s testimony/argument is the mistaken presumption that in the October 22, 2019 *Report of Prehearing Conference and Procedural Schedule and Order* the SEC reopened the record to consider Antrim Level’s financial, managerial and technical capability and that he and Ms. Nelkens may therefore continue to pursue their claims about temporary lighting in this docket. However, as set out in Antrim Level’s Motion for Clarification, the proper scope of this proceeding is limited to a single aspect of financial capability. If the SEC determines that approval of the tax equity financing is required, the only issue before the SEC is whether the manner in which such tax equity financing is structured and

obtained affects Antrim Level's financial capability to operate and maintain the Antrim Wind Project, which it most assuredly does not.

6. In addition to being irrelevant and beyond the scope of this proceeding, the Antrim Residents' filings do not qualify as testimony inasmuch as they are not expert witnesses providing opinions about the manner in which tax equity financing should be structured and obtained, nor are they providing eyewitness accounts regarding tax equity financing. As noted in Docket No. DSF 91-130, *Re Public Service Company of New Hampshire*, Order No. 20,739, p. 48 (February 2, 1993), in an SEC proceeding, most testimony "will be expert testimony or exhibits based on the expertise of the witness sponsoring the exhibits" and "the problems associated with drawing inferences from eyewitness accounts of past behavior are virtually nonexistent in these types of proceedings." While Mr. Block may have been permitted to file testimony in a prior proceeding based on expertise relative to aesthetics, that does not perforce qualify him to testify in this proceeding.

7. In conclusion, the Antrim Residents' filings should be stricken both as matters of relevance and form. First, their claims about temporary lighting have nothing to do with and are not relevant to the SEC's consideration of the manner in which Antrim Level structures and obtains its tax equity financing, or whether it equates to a change in ownership structure. Second, the filings do not constitute testimony but instead represent arguments about what the Antrim Residents would like the SEC to do, which arguments, if relevant, should be made either as opening or closing statements during hearing as the Presiding Officer determines appropriate.

WHEREFORE, Antrim Level respectfully requests that the Presiding Officer:

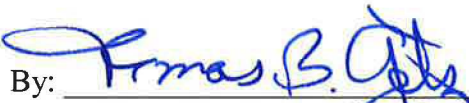
- A. Strike the pre-filed testimony of the Antrim Residents, and
- B. Grant such further relief as deemed appropriate.

Respectfully submitted,

Antrim Level LLC
By Its Attorneys,

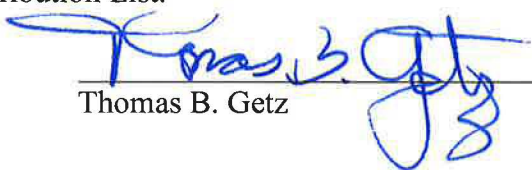
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: November 1, 2019

By: 
Barry Needleman, Bar No. 9446
Thomas B. Getz, Bar No. 923
11 South Main Street, Suite 500
Concord, NH 03301
(603) 226-0400
barry.needleman@mclane.com
thomas.getz@mclane.com

Certificate of Service

I hereby certify that on the 1st of November, 2019, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


Thomas B. Getz