

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2019-03

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

October 18, 2019

ORDER ON PETITIONS TO INTERVENE

I. Background

On March 17, 2017, the Site Evaluation Committee (Committee) approved the application filed by Antrim Wind Energy LLC (AWE) and issued an Order and Certificate of Site and Facility with Conditions (Certificate) to site, construct, and operate nine Siemens SWT-3.2-113 direct drive turbines each with a nameplate generating capacity of 3.2 MW and a total nameplate capacity of 28.8 MW (Project). The Certificate is not transferable to any other person or entity without prior approval of the Committee. The Certificate contains a condition that requires AWE to notify and seek approval of the Committee for any change in ownership structure. *See* Certificate, Docket No. 2015-02, at 3. At the time the Certificate was issued, AWE was wholly-owned by Walden Green Energy, LLC through two subsidiary entities. On February 15, 2019, in Docket No. 2018-03, the Committee approved the transfer of ownership interests in AWE from Walden Green Energy, LLC to Antrim Level, LLC (Antrim Level).

On September 17, 2019, Antrim Level filed a petition for declaratory ruling requesting that the Committee rule that the proposed tax equity financing between Antrim Level and Citicorp North America, Inc. (Citi) does not require the Committee's approval. Antrim Level owns 100% of the membership interests in AWE. Antrim Level is a subsidiary of TransAlta Holdings U.S., Inc. (TransAlta U.S.), and TransAlta U.S. is a subsidiary of TransAlta. In order to implement the tax equity

financing for the Project, TransAlta U.S. will form a new entity, Bobcat Equity Holdings, LLC (Bobcat Equity) that will be wholly-owned by TransAlta. Bobcat Equity will form a new wholly owned entity, Bobcat Holdco, LLC (Bobcat Holdco). TransAlta will contribute 100% of the membership interests in Antrim Level to Bobcat Equity. Thereafter, Citi will make its capital contribution to Bobcat Holdco. Bobcat Equity will contribute 100% of the membership interests in Antrim Level to Bobcat Holdco. Bobcat Holdco will issue or will have issued passive non-controlling Class A membership interests to Citi and will convert Bobcat Equity's existing membership interests to Class B membership interests. Citi and Bobcat Equity will enter into an amended and restated operating agreement for Bobcat Holdco. This will allow Citi to receive a substantial portion of the federal tax benefits available to renewable energy projects. Antrim Level argues that the proposed transfer constitutes a tax equity investment that does not require the Committee's approval. In the alternative, Antrim Level requests that if the Committee determines that the transaction constitutes a transfer of ownership or ownership structure, that the Committee approve such transfer.

On September 20, 2019, Senior Assistant Attorney General K. Allen Brooks was appointed to serve as Counsel for the Public. On September 23, 2019, pursuant to RSA 162-H:4-a, an Order was issued appointing a three-member Subcommittee. On September 25, 2019, an Order and Notice of Prehearing Conference and Petitions to Intervene was issued. Among other things, the Order established the deadline for submitting motions to intervene as October 4, 2019.

The following parties filed motions to intervene with the Subcommittee:

1. Town of Antrim Board of Selectmen (Town);
2. Richard Block; and
3. Shelley Nelkens.

On October 10, 2019, the Petitioner objected to the motions filed by Mr. Block and Ms. Nelkens.

II. Intervention

A. Standard for Intervention

The New Hampshire Administrative Procedure Act provides that an administrative agency shall grant petitions for intervention if:

- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
- (b) The petition states facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of the law; and
- (c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. *See RSA 541-A:32, I.*

The statute permits the presiding officer to allow intervention "at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." *RSA 541-A:32, II.* The Committee's rules contain similar provisions. *See Site 202.11(b)-(c).*

Site 202.11(c) also provides that the presiding officer shall grant one or more late-filed petitions to intervene upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

The presiding officer is authorized to place limits on an intervenor's participation in the proceeding. *See RSA 541-A:32, III; and Site 202.11(d).* The presiding officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the purposes of the proceeding so long as the

limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention.

B. Motions to Intervene

1. Antrim Board of Selectmen

The Town has entered into an operating agreement with AWE. The Town asserts that the Project provides important economic benefits to the Town and seeks intervention to ensure that AWE will continue to comply with the agreement and to ensure that due consideration is afforded to the interests of the Town.

As a condition of the Certificate, AWE is required to comply with the terms and conditions of an agreement between AWE and the Town titled: “Agreement Between Town of Antrim New Hampshire and Antrim Wind Energy LLC, Developer/Owner of the Antrim Wind Power Project” dated March 8, 2012, and as amended on January 16, 2018. The Town has a specific and particularized interest in ensuring that AWE continues to comply with the agreement. The Town also has an interest in determining that the resulting ownership or ownership structure will have the technical and managerial capacity to ensure continuing compliance. The Town’s motion to intervene in this proceeding is granted without limitation.

2. Antrim Residents

Richard Block resides in Antrim and owns approximately 242 acres of real estate near the Project. He argues that he should be allowed to intervene because the Project may affect the value of his property, may have a negative effect on views from his property, and may subject him to increased noise.

Shelley Nelkens also filed a request to intervene in this docket. Ms. Nelkens is a resident of Antrim. She seeks intervention to ensure that the Project will not have a negative impact on the natural environment of the Town. She also states that she is concerned about noise from the Project.

Antrim Level objects to the requests to intervene filed by Mr. Block and Ms. Nelkens, and argues that the interests asserted by Mr. Block and Ms. Nelkens will not be impacted by this very narrow proceeding. The impact of the Project on property values, aesthetics, and noise were previously addressed in Docket No. 2015-02. Antrim Level argues that Mr. Block and Ms. Nelkens failed to specify an interest that may be impacted because of the proposed financing and that their interests in this proceeding are no different from the public at large. Mr. Block and Ms. Nelkens can submit public comments of their concerns to the Subcommittee for its consideration.

In this docket, the Subcommittee will decide whether: (i) the proposed financing requires the approval of the Subcommittee; and (ii) if the approval is required, whether to approve the transaction. While deciding whether to approve the proposed transaction, the Subcommittee will consider whether the proposed owner has adequate financial, managerial, and technical capabilities to assure that the conditions of the Certificate are continuously met. *See* RSA 162-H:16, IV (a); *see also* Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC, Docket No. 2010-03 (Feb. 8, 2011); Decision and Order Approving Transfer, Newington Energy, LLC and North American Energy Alliance, LLC, Docket No. 2008-01 (Apr. 18, 2008). The financial, managerial, and technical ability of the resulting ownership or ownership structure to ensure continuous compliance with the conditions of the Certificate may affect the rights of Mr. Block and Ms. Nelkens.

Considering that they raise similar, if not identical, interests and concerns, in order to avoid duplicative arguments, Mr. Block and Ms. Nelkens will be allowed to intervene but their participation will be limited in order to promote the efficient and orderly conduct of the proceeding. Mr. Block and

Ms. Nelkens shall for all purposes be combined as a single party in this proceeding. They will be referred to as the Antrim Residents. The Antrim Residents shall designate a single person from the group, or an attorney, for the purpose of filing motions and objections, making and responding to discovery requests, designating and filing witness testimony and all other matters pertaining to this docket. Filings made by individual members of the Antrim Residents will be rejected or considered as public comment.

All parties are reminded that this proceeding is limited in scope. This proceeding is not a rehearing on the Certificate and will not address the impact of the Project on property values, aesthetics, and noise. The limited purpose of this hearing is to determine whether the proposed transaction requires approval of the Subcommittee and, if so, whether the transferees have adequate financial, managerial, and technical capabilities to assure that the conditions of the Certificate are continuously met.

III. Orders

The motion to intervene filed by the Town of Antrim is granted without limitation.

The motions to intervene filed by Richard Block and Shelly Nelkens are granted in part, subject to the limitations set-forth above.

SO ORDERED this eighteenth day of October, 2019.


Kathryn M. Bailey, Presiding Officer
Site Evaluation Committee