

**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 22, 2019

**REPORT OF PREHEARING CONFERENCE AND
PROCEDURAL SCHEDULE AND ORDER**

On September 25, 2019, the Site Evaluation Committee (Committee) issued an Order and Notice scheduling a prehearing conference on October 18, 2019. The Presiding Officer designated the Administrator for the Committee, Pamela Monroe, and Counsel for the Committee Michael Iacopino, to serve as the hearing officers. This memorandum serves as a Report of Prehearing Conference pursuant to RSA 541-A:31, V(d).

Participants

The following parties were present for the prehearing conference: Thomas B. Getz and Barry Needleman of McLane Middleton representing Antrim Level LLC (Petitioner); Susan S. Geiger of Orr & Reno, representing Citigroup Global Markets, Inc. and Citicorp North America, Inc. (Citi); Senior Assistant Attorney General K. Allen Brooks as Counsel for the Public; Selectmen John Robertson and Mike Genest representing the Town of Antrim Selectboard (Town); and Intervenors Shelly Nelkens and Richard Block (Antrim Residents).

General Discussion

The parties were advised of the purpose of a prehearing conference and it proceeded in accordance with the Prehearing Conference Agenda issued by the Administrator.

The Petition, in the first instance, seeks a declaratory ruling that the Petitioner and Citi may undertake the proposed tax equity financing plan without further approval from the Committee.¹ If the Subcommittee determines that approval is required, the Petitioner and Citi request that the Committee approve the proposed tax equity financing plan.

If the Committee determines that the proposed tax equity financing plan is a change in ownership structure requiring approval, the Committee will consider whether the change affects the determination that the Petitioner has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate. *See* RSA 162-H:16, IV (a).

The Antrim Residents assert that evidence pertaining to the operation of lighting required by the Federal Aviation Administration (FAA) is relevant to the Committee's decision in this docket. The Petitioner, Citi, and the Town disagree that evidence pertaining to FAA required lighting is relevant and assert that it should not be admitted in this proceeding. All parties were advised that issues concerning the admissibility of evidence would be determined by the Presiding Officer. In the absence of a prehearing order, the parties were advised to be prepared to present all evidence that they believe is relevant. The discovery process will include all evidence and testimony to be presented. Ultimately, the Presiding Officer will decide on admissibility of evidence and if admissible, the Subcommittee will determine the weight provided to each piece of evidence.

¹ On September 23, 2019, the Vice-Chair of the Site Evaluation Committee appointed a three-member Subcommittee to sit in this docket. The terms Committee and Subcommittee are used interchangeably in this Report. Pursuant to RSA 162-H:4-a, 1, the Subcommittee assumes the role of the Committee and shall be considered the Committee with all of its associated powers and duties.

There is also a dispute between the Antrim Residents and the Town over whether newspaper articles are admissible as evidence. Ultimately, that determination will be made by the Presiding Officer at the hearing. The Antrim Residents were advised that if they intended to call a journalist, or any other witness, that they must provide prefiled direct testimony. All the parties were reminded that the formal rules of evidence do not apply in administrative proceedings. *See* RSA 541-A:33. The parties should review RSA 541-A:33 in its entirety prior to the adjudicative hearing.

The Petitioners requested an expedited hearing schedule, with a hearing date of no later than November 1, 2019. The Administrator noted that the Subcommittee members are available on November 12, but are not available the week of November 4. The Administrator stated that she would talk to the Presiding Officer about the possibility of scheduling the hearing date no later than November 1.

Procedural Schedule

Despite disagreements regarding the admissibility of evidence and scope of the determination to be made by the Subcommittee, the Parties agreed to the following procedural schedule:

1. The Petitioner and Citi shall immediately make a complete copy of all exhibits, including the equity capital contribution agreement (including all attachments, exhibits, addenda, schedules, and annexes) available pursuant to the terms of a Non-Disclosure Agreement to be signed by the Antrim Residents at the offices of McLane Middleton, the Site Evaluation Committee, or at the Antrim Town Hall during normal Town Hall hours.
2. The Petitioner and Citi shall make their witnesses available for questions from the other parties by telephone on Thursday, October 24, 2019. The Petitioner shall make the arrangements for the call and inform the Antrim Residents, all other parties, and the Administrator, of those arrangements. The call will not be recorded.

3. On or before October 29, 2019, the Antrim Residents, the Town, and Counsel for the Public shall disclose all exhibits and prefiled testimony to the Petitioner. All prefiled testimony and exhibits shall also be filed electronically with the Administrator.

4. The Petitioner and Citi stated that they did not wish to undertake discovery of the information, exhibits, or testimony provided by the Antrim Residents or the other parties.

5. A hearing notice will be issued, scheduling the date and time for the final adjudicative hearing in this matter. It is likely that once the evidentiary portion of the hearing is concluded, the Subcommittee will move immediately to deliberations.

6. There will not be a final prehearing conference. To the extent that any of the parties have questions about the adjudicative hearing those questions should be addressed to the Administrator. The parties shall not contact any member of the Subcommittee directly.

SO ORDERED, this twenty-second day of October, 2019.

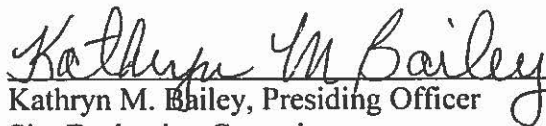


Pamela G. Monroe, Administrator

Order on Recommendation

The foregoing Report of Prehearing Conference is approved and adopted. The Procedural Schedule is adopted as a Procedural Order.

SO ORDERED, this twenty-second day of October, 2019.



Kathryn M. Bailey, Presiding Officer
Site Evaluation Committee