

**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**

November 7, 2019

**ORDER ON MOTION FOR CLARIFICATION AND/OR
OBJECTION IN ANTICIPATION OF IRRELEVANT DISCOVERY AND TESTIMONY**

This Order denies a motion filed by Antrim Level LLC for Clarification and/or Objection in Anticipation of Irrelevant Discovery and Testimony.

I. Background

On September 17, 2019, Antrim Level filed a petition for declaratory ruling requesting that the Site Evaluation Committee (Committee) rule that a tax equity financing arrangement between Antrim Level and Citicorp North America, Inc. (Citi) does not require the Committee's approval. In the alternative, the Petitioner requests that the Committee approve a corporate restructuring in support of the tax equity financing arrangement.

On October 21, 2019, Antrim Level filed a Motion for Clarification and/or Objection in Anticipation of Irrelevant Discovery and Testimony. No objections were filed.

II. Position of the Petitioner

Antrim Level requests that the Subcommittee clarify the Order on Petitions to Intervene issued on October 18, 2019, and find that the Intervenors may only address Antrim Level's financial capability to operate the Project in compliance with the Certificate. Antrim Level argues that in Docket No. 2018-03 (Joint Petition of Walden Green Energy Northeast Wind LLC, Walden Antrim LLC and Antrim Level LLC for Approval of the Transfer of Membership

Interests in Antrim Wind Energy LLC) the Subcommittee determined that Antrim Level has the technical and managerial capability to operate the Project in compliance with the Certificate. Antrim Level argues that the proposed transfer/financing will not affect that determination and there is no need to relitigate the issue previously addressed by the Subcommittee. Antrim Level requests that the Subcommittee limit its proceeding and the Intervenors' participation to a single issue of whether the Petitioner will have the financial capability to operate the Project in compliance with the Certificate if the tax equity financing arrangement and corporate restructuring is approved.

III. Analysis


Antrim Level requests that the Subcommittee issue a declaratory ruling that the proposed transaction does not constitute a transfer of ownership or corporate restructuring that requires approval from the Subcommittee. Alternatively, Antrim Level requests that the Subcommittee approve the restructuring to support the tax equity financing. Both the primary and the alternative relief sought by Antrim Level are scheduled to be addressed in a single adjudicative hearing. As a procedural matter, the Subcommittee will conduct the evidentiary portion of the hearing and will then deliberate the merits of the Petition. If the Subcommittee considers the alternative relief sought, then it must consider the financial, managerial, and technical capabilities of the resulting owner 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). "Ongoing environmental compliance and the safe operation of the facility are of the utmost concern to the Committee and the State of New

Hampshire.” See Decision and Order Approving Transfer, Newington Energy, LLC and North American Energy Alliance, LLC, Docket No. 2008-01 (April 18, 2008).

At this point in the proceeding, it is unclear whether the proposed transaction will affect Antrim Level’s managerial and technical ability to operate the Project in compliance with the Certificate. The Subcommittee cannot limit the testimony and evidence of the parties at this juncture, simply because Antrim Level argues that the transaction will not have an effect. The parties should be allowed to introduce, and the Subcommittee may consider, relevant evidence and testimony that corroborates or contravenes the Petitioner’s position. Such evidence will be limited to how the financing may affect the technical and managerial ability of Antrim Level to assure compliance with the Certificate if the financing is approved. Antrim Level’s Motion is denied.

Nothing in this order should be construed to limit the ability of any party to make appropriate objections during the adjudicative hearing.

SO ORDERED this seventh day of November, 2019.



Kathryn M. Bailey, Presiding Officer
Site Evaluation Committee