

STATE OF NEW HAMPSHIRE SITE EVALUATION COMMITTEE

RE: Antrim Level, LLC Petition for Declaratory Ruling or,)
In the Alternative, Motion for Expedited Approval of Change)
in Ownership or Ownership Structure)

PRE-FILED DIRECT TESTIMONY OF RICHARD BLOCK

Q: Please state your name and address.

A: Richard Block, 63 Loveren Mill Road, Antrim, New Hampshire 03440.

Q: What are your qualifications to speak to the application presently before the Site Evaluation Committee?

A: I have lived in Antrim since 1988. My property consists of a house and farm on 242 south-sloping acres on the south side of Windsor Mountain, directly across Route 9 from, and in full view of, the Tuttle Hill ridge, less than a mile from the wind turbine site. At least five of the wind turbines dominate the view from my living and dining rooms' picture windows. I have been actively involved in the issue of the Antrim Wind project since it was first proposed to the Antrim Planning Board on April 2nd, 2009.

Q: Have you previously testified before the Site Evaluation Committee?

A: Yes. I have served as an approved Intervenor and spokesperson for consolidated Intervenor groups in every docket before the SEC involving the proposal and development of the Antrim Wind project. I submitted written and oral testimony in all of the above-mentioned dockets, conducted cross-examinations of witnesses and experts, and responded to questioning from AWE and their attorneys.

Q: What is the purpose of this pre-filed testimony?

A: The purpose of this testimony is to provide the Site Evaluation Committee (“SEC”) with information demonstrating that Antrim Level, LLC (“Antrim Level”) has failed to continuously comply with conditions specified in its Certificate of Site and Facility with Conditions of March 17th, 2017 (“Certificate”). This situation, besides violating the terms of the Certificate rendering it potentially null and void, is in direct violation of conditions specified by Citicorp North America, Inc. (“CNAI”) necessary to be met for them to approve and commit to a tax equity investment in this project to protect their stockholders’ investment.

Q: Can you give an example of Antrim Level’s failure to comply with the conditions of the Certificate?

A: Yes. The Certificate clearly states that one of the conditions of its issuance is the compliance with the regulations set forth by the Federal Aviation Administration (“FAA”):

Further Ordered that, this Certificate is conditioned upon compliance with all conditions of the Determinations of No Hazard to Air Navigation issued by the Federal Aviation Administration which are appended hereto as Appendix IV;

[p.4, *ORDER AND CERTIFICATE OF SITE AND FACILITY WITH CONDITIONS*, March 17, 2017]

For a period of 3½ months or more, Antrim Level was not in compliance with the regulations set forth in the FAA’s “Determinations of No Hazard to Air Navigation”. (see Exhibit A)

Q: What specific FAA regulations did Antrim Level fail to observe.

A: Exhibit A is the notice issued by the FAA for Turbine #1. Virtually identical notices were likewise issued for each of the remaining eight turbines. The highlighted text on Page 2 of this exhibit outlines the requirements for hazard warning lighting of the project during the construction phase. It is to be noted that the FAA specifically requires temporary

lighting to be installed and operating on “all turbines... *once they reach a height of 200 feet or greater...*” The notice continues to specify that “An FAA Type L-810 *steady red light* fixture shall be used to light the structure during the construction phase.” This picture was taken on June 5th, 2019 at Gregg Lake in Antrim:



The turbines here are obviously at or over 200 feet in height at that point in their construction. The FAA regulations cited above and found in Antrim Level’s Certificate mandates that, by that time, temporary lighting should have been installed and operating on every turbine. The fact is, that no lights were in operation on any turbine then, nor had any lights appeared on any turbine yet by June 24th when blades were beginning to be installed:



By the beginning of August, all turbines had reached their full height and blades had been installed, yet there still were no temporary lights in operation on any turbine:



In fact, no lighting whatsoever was visible from any turbine until the first week in September, over three months after the construction had reached the 200-foot level, and at

that time, a single flashing light appeared on Turbine #7 only, not the steady red lights that were specified to be on every turbine.

Q: Was this breach of the Certificate brought to Antrim Level's attention?

A: Yes. At a meeting of the Antrim Board of Selectmen ("BOS") on September 9th, 2019 attended by several representatives of Antrim Level, Shelley Nelkens questioned why the turbines were not properly lit. Antrim Level stated that all temporary lighting was installed and properly operating on all nine turbines. When it was suggested to them that they go out and look at the project after the meeting, they did and promptly filed Notices to Airmen ("NOTAMs") for four "malfunctioning" lights with the FAA that same evening, followed shortly with the filing of a fifth NOTAM for another "malfunctioning" light. After several more weeks of lighting appearing and disappearing, the permanent, synchronized flashing lighting was finally in operation on seven turbines.

Q: Was this breach of the Certificate brought to the attention of the SEC?

A: On September 10th, 2019, the day after the BOS meeting, Shelley Nelkens phoned Pamela Monroe, the SEC Administrator, and informed her of the lighting situation. At that time, Ms. Monroe stated that she would drive to Antrim that evening after dark and assess the turbine lighting for herself. When she failed to call Ms. Nelkens the following morning with her eyewitness report, Ms. Nelkens phoned her and was told by Ms. Monroe that she had not gone to Antrim and would not be able to for at least a week.

Q: How did Antrim Level respond to the SEC?

A: On September 11th, 2019, Jean-François Latour, on behalf of TransAlta Corporation ("TA") and Antrim Level, wrote to Ms. Monroe declaring that four out of the nine temporary lights were indeed not working. (see Exhibit B) While there *is* truth in this statement, the fact is, at that time, only Turbine #7 had ever been lit with Turbine #8 showing sporadic lighting. This non-lighting had been constantly and nightly witnessed by many Antrim

residents, particularly those of us whose homes have a view of the turbines, and by editor/reporter Michael Pon of the *Stone Bridge Post* who wrote his eyewitness account after traveling around the project environs to observe (see Exhibits B and F in Prefiled Testimony of Shelley Nelkens).

Q: Did Antrim residents respond to the SEC?

A: Yes, on September 17th, 2019, five Antrim residents submitted a letter to Ms. Monroe outlining our concerns that no immediate action had been taken by the SEC to look into this matter. (see Exhibit C) We felt that this three-month breach of the Certificate was an extremely serious precedent which must be promptly addressed.

Q: Was there a response from the SEC?

A: Finally, on October 4th, 2019, almost a month after Ms. Nelkens first pointed out the lighting omission, Ms. Monroe issued a response to the Antrim residents' letter of September 17th. (see Exhibit D) In that letter, she concludes that "Pursuant to the terms and conditions of the Certificate, AWE installed the required temporary lights..." and that "AWE 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." The problem with this response is twofold: first of all, the SEC Administrator is not empowered to adjudicate compliance with a Certificate. That is the responsibility of the Committee itself. Secondly, Ms. Monroe completely misses the point of the Antrim resident's letter: our concern was not for the way lights were being installed in September and October, but rather that there had been no lighting whatsoever for months after construction began, creating the possibility for a serious accident. In her "decision", Ms. Monroe omits, misinterprets, or ignores the fact that the installation of the temporary lights by AWE took place *almost four months* after they were required to do so. This does *not* equate to compliance with the terms and conditions of the Certificate and certainly not a continuous meeting of those terms and conditions. If a motorist is pulled over for speeding, he cannot claim innocence since at the time he stopped for the officer he was no longer speeding. Had Ms. Monroe

traveled to Antrim when she said she would, she would have seen firsthand the lack of lighting on the turbines. By the time her letter had been written, Antrim Level had scrambled to get lights operational. Antrim Level was clearly in violation of the specific terms of their Certificate from early June to late September. No amount of repairing or replacing lights four months later can change that fact. The only way to negate that violation is to ignore the fact that it happened and sweep it under the rug, pretending that there never was a violation.

Q: What is the significance of this violation in general?

A: A Certificate of Site and Facility is issued by the SEC with specific conditions listed. In each of those conditions, it is plainly stated “this Certificate is conditioned upon compliance with...”, and the specific conditions are identified. The intent is that *each and every condition* specified in the document must be continuously met in order for the Certificate to remain valid and in effect. Any violation of *any part* of the conditions specified in the Certificate constitutes a violation of the Certificate as a whole and nullifies its validity. A Certificate cannot be selectively enforced and remain legally binding. Otherwise the question can be raised, what other conditions within the Certificate will be permissible to be overlooked or violated in the future without penalty? This is a precedent that cannot stand if the SEC is to maintain its integrity.

Q: What is the significance of this violation to this docket and specifically to Citicorp North America?

A: The *Report of Prehearing Conference and Procedural Schedule and Order* (2019-03_2019-10-22_report_phc_proc_order.pdf) states that the SEC will deliberate “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.” Likewise, the potential financial agreement between CNAI and Antrim Level specifies that it is also conditioned on Antrim Level following proper management and operational practices. When evaluating an applicant, it is erroneous to separate financial, managerial, and technical capabilities. In

every instance in the SEC regulations and guidelines all three are listed together and thus all three must always be demonstrated — and demonstrated continuously.

Q: What does Antrim Level's violation of the FAA conditions signify?

A: It can be seen in the minutes of the Antrim BOS meeting and Antrim Level's letter of September 11th, that they have not been truthful in regards to the number of lights which were operating during the construction phase. In spite of Antrim Level's statement that temporary lighting had been installed, many area residents had observed that there was a failure to install or operate lighting on the project until it was pointed out by citizens, over three months after it should have been operational. If this failure was due to Antrim Level's desire to save money or work, then it calls into question their managerial capability; in what other areas will they cut corners and risk serious safety violations? If the lack of temporary lighting was due to a misunderstanding or ignorance of the FAA regulations they specifically have been directed to follow, it calls into question their technical capability; of what other aspects of the project are they ignorant or what other conditions do they not understand? If Antrim Level is not capable of following and executing clearly communicated regulations and conditions, then neither the SEC nor CNAI should be participating in a contractual arrangement with them.

Q: Does this conclude your testimony?

A: Yes, it does.



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 2601 Meacham Boulevard
 Fort Worth, TX 76193

EXHIBIT A

Aeronautical Study No.
 2014-WTE-5439-OE

Issued Date: 03/31/2015

Drew Kenworthy
 Antrim Wind Energy, LLC
 155 Fleet Street
 Portsmouth, NH 03801

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Wind Turbine AWE 1
 Location: Hillsborough, NH
 Latitude: 43-04-03.41N NAD 83
 Longitude: 72-00-28.14W
 Heights: 1431 feet site elevation (SE)
 489 feet above ground level (AGL)
 1920 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would not be a hazard to air navigation provided the following condition(s) is(are) met:

As a condition to this Determination, the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, white paint/synchronized red lights - Chapters 4,12&13(Turbines).

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

See attachment for additional condition(s) or information.

Any height exceeding 489 feet above ground level (1920 feet above mean sea level), will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

This determination expires on 10/01/2016 unless:

- EXHIBIT A**
- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
 - (b) extended, revised, or terminated by the issuing office.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is subject to review if an interested party files a petition that is received by the FAA on or before April 30, 2015. In the event a petition for review is filed, it must contain a full statement of the basis upon which it is made and be submitted to the Manager, Airspace Regulations & ATC Procedures Group, Federal Aviation Administration, 800 Independence Ave, SW, Room 423, Washington, DC 20591.

This determination becomes final on May 10, 2015 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review. For any questions regarding your petition, please contact Airspace Regulations & ATC Procedures Group via telephone -- 202-267-8783 - or facsimile 202-267-9328.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

Obstruction marking and lighting recommendations for wind turbine farms are based on the scheme for the entire project. ANY change to the height, location or number of turbines within this project will require a reanalysis of the marking and lighting recommendation for the entire project. In particular, the removal of previously planned or built turbines/turbine locations from the project will often result in a change in the marking/lighting recommendation for other turbines within the project. It is the proponent's responsibility to contact the FAA to discuss the process for developing a revised obstruction marking and lighting plan should this occur.

In order to ensure proper conspicuity of turbines at night during construction, all turbines should be lit with temporary lighting once they reach a height of 200 feet or greater until such time the permanent lighting configuration is turned on. As the height of the structure continues to increase, the temporary lighting should be relocated to the uppermost part of the structure. The temporary lighting may be turned off for periods when they would interfere with construction personnel. If practical, permanent obstruction lights should be installed and operated at each level as construction progresses. An FAA Type L-810 steady red light fixture shall be used to light the structure during the construction phase. If power is not available, turbines shall be lit with self-contained, solar powered LED steady red light fixture that meets the photometric requirements of an FAA Type L-810 lighting system. The lights should be positioned to ensure that a pilot has an unobstructed view of at least one light at each level. The use of a NOTAM (D) to not light turbines within a project until the entire project has been completed is prohibited.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures. The study disclosed that the described structure would have no substantial adverse effect on air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

This determination cancels and supersedes prior determinations issued for this structure.

If we can be of further assistance, please contact Cindy Whitten, at (816) 329-2528. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2014-WTE-5439-OE.

Signature Control No: 231063057-247681023

(DNH -WT)

Sheri Edgett-Baron
Manager, Obstruction Evaluation Group

Attachment(s)
Additional Information
Map(s)

EXHIBIT B

Monroe, Pamela

From: Jean-Francois Latour <JeanFrancois_Latour@transalta.com>
Sent: Wednesday, September 11, 2019 3:05 PM
To: Monroe, Pamela
Cc: Jack Kenworthy; Jeff Nelson
Subject: Antrim Wind – 09-09-19 Selectmen meeting summary

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Dear Ms. Pamela Monroe,

Apologies for the delayed response as I was travelling and just got back in the office.

TransAlta attended the Antrim Selectman meeting as well Monday night, including the construction manager Jeff Nelson and myself representing the operations. Ms. Shelley Nelkens raised a concern that she believed some of the aviation lights appeared to not be working. TransAlta committed to check the lights Monday evening and did so. It came to our attention that four (4) of the nine (9) temporary lights were not working. The construction team filed a NOTAM's (Notice to Airman) with the Federal Aviation Authority to notify them of an "outage of 30 minutes or greater." We will have this NOTAM in place until the issue is fixed with the four (4) temporary lights. The actions that have been undertaken are in compliance with the FAA requirements and industry practices as recommended by an aerial obstruction consultant.

I want to emphasize that TransAlta is committed to the safe operation of all of its facilities and, in parallel with our internal Environment, Health & Safety audits, welcomes any concerns submitted by local residents to ensure our sites are operating safely everyday.

Our contractor has planned to be on site Monday, September 16, to inspect and replace these (4) lights as needed to ensure proper functioning going forward. The temporary construction lights will remain in place until the commissioning of the permanent lights and associated Aircraft Detection Lightning System later this year. TransAlta plans to advise the Antrim township when the complete and permanent lightning system, including the ADLS, will be installed and fully commissioned. We want to make sure that the local residents are aware once we reach that milestone that the ADLS lights would only be turned on when there is an aircraft in the vicinity.

During the Monday meeting, we also provided an update to the Selectman that we are delaying our COD until the ADLS can be installed and commissioned to be in compliance with our certificate. As well, we provided them a heads up of the NHSEC's request for Antrim Wind to file a motion with respect to our tax equity structure.

Please do not hesitate to contact us if you have any additional questions.

Jeff L.

Jean-François Latour, B. Sc., ASA | Specialist, environment | Wind & Solar Operations
TRANSALTA CORPORATION

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EXHIBIT C

September 17, 2019

VIA ELECTRONIC AND FIRST CLASS MAIL

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

**Re: NH Site Evaluation Committee Docket No. 2015-02 – Antrim Wind LLC
Response to FAA Lighting -- September 11, 2019**

Dear Ms. Monroe:

The undersigned, each a party to the above referenced matter, are writing in response to Antrim Wind LLC's ("AWE") September 11, 2019 post-certificate submission pertaining to the Federal Aviation Administration ("FAA") lighting.

As you are aware, AWE's Certificate requires that all regulations specified by the FAA in its Circular 7460-1L, in Chapter 13: Marking and Lighting Wind Turbines, and Chapter 14: Aircraft Detection Lighting System ("ADLS") be followed.

While AWE acknowledges in its submission that not all lights were in operation, in fact, almost all of the towers have been unlit since early June when they stood at approximately one-half of their final height. FAA regulations require all turbines be lit with a temporary "steady-burning red light...once they reach a height of 200 feet (61 m) or greater."

Antrim resident, Shelley Nelkens, was prompted to raise her concern over lighting before the Antrim Selectboard after *months* had passed with the turbines unlit. Further, she and others confirmed prior to the meeting that no notices had been filed by AWE with the FAA indicating lighting outages.

We cannot overstate the seriousness of this oversight especially given the number of general aviation pilots who frequently fly in the area of the project.

In his September 11th letter to the SEC, Mr. Latour offers TransAlta's commitment to safety. If TransAlta believed in its own words, the lighting would have been operational and readily apparent to Antrim residents since early June. Instead, it took a complaint by a resident, months after the fact, before action was taken. Mr. Latour's partial remedy for the violation was the filing of NOTAMs (Notices to Airmen) in spite of the fact that the FAA regulations included in the Certificate specifically prohibit the use of a NOTAM in place of the temporary lighting "until the entire project has been completed."

EXHIBIT C

Mr. Latour's letter assured the SEC that AWE's contractor would be on site to inspect and repair the "malfunctioning" lights on Monday, September 16th, however, as of 10:30 pm that evening, eight (8) turbines still remain without lighting and the ninth has a non-compliant fixture.

Further, the SEC also bears responsibility for failing to confirm on-going compliance with the Certificate. We are very concerned that when this issue was raised to the Administrator on September 11th, action was not immediate. On the contrary, Ms. Monroe informed us that she would not be able to confirm the lighting situation for another week.

The delays in dealing with the required Hazard Lighting of the nine 489-foot turbines as obstructions to navigation are, and have been of very serious potential and immediate risk and liability, and AWE's failure to comply is completely unacceptable and negligent. It is thus respectfully requested that the SEC take steps to enforce and appropriately penalize AWE for the failure to meet the conditions specifically outlined in the Certificate.

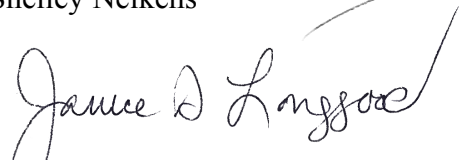
Respectfully submitted,



Richard Block



Shelley Nelkens



Janice D. Longgood



Annie Law



Robert Cleland

Cc: Michael Iacopino, Counsel for the Site Evaluation Committee
Justin C. Richardson, Counsel for the Town of Antrim
Antrim Board of Selectmen

EXHIBIT D
State of New Hampshire
Site Evaluation Committee



Robert R. Scott
Vice-Chair

www.nhsec.nh.gov
21 South Fruit St., Suite 10
Concord, New Hampshire
03301-2429
Telephone (603) 271-2435
Fax (603) 271-4033

October 4, 2019

VIA E-MAIL AND FIRST-CLASS MAIL

Richard Block
63 Loveren Mill Rd.
Antrim, NH 03440

Janice D. Longgood
156 Salmon Brook Road
Antrim, NH 03440

Annie Law and Robert Cleland
43 Farmstead Road
Antrim, NH 03440

Shelley Nelkens

**Re: Site Evaluation Committee Docket No. 2015-02 – Antrim Wind Energy, LLC
Response to Request for Enforcement and Penalties**

Dear Meses. Nelkens, Longgood, and Law; and Messrs. Block and Cleland:

On March 17, 2017, the Site Evaluation Committee (Committee) issued an Order and Certificate of Site and Facility with Conditions (Certificate) to Antrim Wind Energy, LLC (AWE) to site, construct and operate 9 Siemens direct drive wind turbines. On September 17, 2019, the Committee received the subject correspondence signed by Richard Block, Shelley Nelkens, Janice D. Longgood, Annie Law, and Robert Cleland (Intervenors). The Intervenors state that AWE violated the Certificate by failing to ensure operation of temporary lights and that the filing of a Notice to Airmen (NOTAM) did not cure the violation. The Intervenors rely on a condition in the Certificate requiring AWE to comply with all conditions of Determinations of No Hazard to Air Navigation (Determinations) issued by the Federal Aviation Administration (FAA) and incorporated as Appendix IV to the Certificate. The Intervenors assert that the Determinations prohibit the use of a NOTAM in place of the temporary lighting “until the entire project has been completed,” and request that the Committee enforce the Certificate and “appropriately penalize” AWE for failing to comply with the Certificate.

EXHIBIT D

Background

On September 10, 2019, the Administrator received a call from a member of the public stating that the previous evening she raised a concern at a Town of Antrim Selectboard meeting that the temporary lighting installed on the Antrim Wind Energy Project (AWE) was not operating. Shortly after receiving the complaint, the Administrator sent an e-mail to representatives of AWE requesting information on the status of the temporary lighting. On September 11, 2019, the Committee received an e-mail from TransAlta Corporation, parent company of AWE, advising the Committee of the steps that AWE was undertaking to investigate and respond to the complaint. Specifically, AWE confirmed that as of September 9, 2019, four of the nine temporary lights were not working and that NOTAMs were filed with the FAA notifying of an “outage of 30 minutes or greater,” and that a contractor would be on-site to inspect and assess the temporary lighting on September 16. On September 17, the Committee received the Intervenor’s correspondence referenced above.

On September 24, 2019, AWE filed a response to the Intervenor’s submittal, asserting that the temporary lighting was installed, but was not operational, when the site inspection was conducted on September 9; that NOTAMs were filed with the FAA; and that a plan was put in place to have the lights inspected/repaired/replaced as appropriate. *See* Attachment A. The correspondence outlined a series of steps that AWE was taking to replace the malfunctioning temporary lights with new temporary lights and a plan to install and commission permanent lights that will be part of the Aircraft Detection Lighting System (ADLS). AWE noted that turbines 2, 5, and 8, are not required to have permanent lighting pursuant to the Determinations. AWE stated that it recognizes and is aware that a NOTAM cannot be used in place of temporary lighting during the construction period. AWE also represented that it will conduct nightly inspections and will continue this practice until the ADLS is installed and commissioned.

On October 2, AWE sent a status update to the Committee outlining the steps that it had taken since September 24, and among other things, noted that permanent lights have been installed and are all now operational on turbines 1, 3, 4, 6, 7, and 9. *See* Attachment B. AWE also reiterated that it will continue nightly inspections of the aerial obstruction lighting until such time as the ADLS is installed and commissioned.

Analysis

On September 25, the Administrator spoke with Bill Kieffer of the FAA to discuss the complaint, AWE’s response, and the federal requirements. The Certificate, at page 4 and Appendix IV, requires AWE to comply with the Determinations issued by the FAA. The Determinations state:

In order to ensure proper conspicuity of turbines at night during construction, all turbines should be lit with temporary lighting once they reach a height of 200 feet or greater until such time the permanent lighting configuration is turned on. . . The use of a NOTAM (D) to not light turbines within a project until the entire project has been completed is prohibited. . . .

EXHIBIT D

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

AWE filed the NOTAMs as required by the Determinations and did not rely on NOTAMs instead of installing the required temporary lighting during construction of the Project. Pursuant to the terms and conditions of the Certificate, AWE installed the required temporary lights, promptly contacted the FAA, and filed NOTAMs once it discovered that some of the temporary lights were not functioning properly. The temporary lights have been replaced with permanent lights on turbines 1, 3, 4, 6, 7, and 9. In accordance with Appendix IV, turbines 2, 5, and 8, are not required to have permanent lighting. AWE 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.

AWE shall continue nightly inspections of the aerial obstruction lighting until such time as the ADLS is installed, commissioned, and operational.

Sincerely,



Pamela G. Monroe
Administrator

Ec: Donna Hanson, Antrim Town Administrator
Justin Richardson, Upton & Hatfield
Jeff Nelson, TransAlta
Jean-Francois Latour, TransAlta



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September 24, 2019

New Hampshire Site Evaluation Committee
Attention: Pamela G. Monroe, Administrator
21 South Fruit St., Suite #10
Concord, NH 03301

**Re: Antrim Wind Energy LLC (AWE) – Status update on the aerial obstruction
lightning**

Dear Ms. Monroe:

This status update follows up on our September 11, 2019 letter. As you know, on Monday, September 9, 2019, AWE completed a site inspection and reported four (4) non-operational aerial obstruction lights to the FAA under a Notices to Airmen (NOTAM¹) for turbines 3, 4, 5 and 6. Following this inspection, a plan was put in place to have the lights inspected/repaired/replaced as appropriate.

On Monday, September 16th AWE's contractor was on site to inspect the temporary lights that were not functioning, and which had been previously reported to the FAA under a NOTAM. The contractor inspected and tested the lights, which were working at the time of the inspection. However, on the evening of Monday, September 16th AWE inspected the lights again after dusk and the four lights, which were originally in question, were not working as well as one additional light (turbines 3, 4, 5, 6 and 8). AWE promptly contacted the FAA to file the appropriate NOTAM.

On Thursday, September 19th the temporary light for turbine 4 was replaced with a new temporary light, which is currently operational. On Friday, September 20th the permanent light for turbine 6 was commissioned, which will be part of the Aircraft Detection Lighting System ("ADSL"). The permanent light for turbine 3 will be commissioned by Friday, September 27th. The temporary lights for turbines 5 and 8, however, are not operating properly, although NOTAMs have been

¹ A NOTAM is a FAA approved method to communicate a lighting outage of more than 30 minutes. AWE recognizes and is aware that a NOTAM cannot be used instead of temporary lightning. At no time was a NOTAM requested by AWE or issued by the FAA to avoid utilizing temporary lighting during the construction period; temporary lights were installed as described above. However, in the case of outages of the temporary or permanent lights, the FAA Marking & Lighting Conditions for AWE clearly requires that any light outages shall be reported to the FAA: "Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number." Therefore, the use of the NOTAM for the current situation is not in violation of any requirements of the Certificate and is a requirement of the FAA to ensure public safety.



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filed with the FAA as required. To resolve this issue, AWE has addressed permanent lighting as discussed below.

The permanent lights for turbines 6 and 7 are currently operating and the permanent lights for turbines 1, 3, 4 and 9 will be commissioned by Friday, September 27th. Once the permanent lights for turbines 1, 3, 4 and 9 are confirmed to be operating, all remaining temporary lighting will be removed from the respective turbine. Pursuant to the Determinations of No Hazard issued to AWE turbines 2, 5 and 8 are not required by the FAA to have permanent lighting.

To the extent necessary, AWE will diligently notify the FAA, as required, for any applicable NOTAM. In addition, AWE will continue completing nightly inspections of the aerial obstruction lighting until the time when the ADLS is installed and commissioned later this year (before COD) and the Town of Antrim will be notified once we reach that milestone. At that time, the permanent lights will operate when aircraft are detected, and the system will be monitored 24/7 by TransAlta's Wind Control Center. In the meantime, the aerial obstruction lights will remain on all night independently of the presence or absence of nearby aerial traffic and will operate in a synchronized manner as required by the FAA Determination of No Hazard.

If you wish to proceed with a visit to assess the situation at the site, our team remains available to coordinate such visit at your convenience.

We wish to reiterate that TransAlta is committed to the safe operation of all of its facilities including AWE.

I would be happy to discuss further or answer any other questions you have.

Yours truly,

TRANSALTA CORPORATION

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October 2, 2019

New Hampshire Site Evaluation Committee
Attention: Pamela G. Monroe, Administrator
21 South Fruit St., Suite #10
Concord, NH 03301

Re: Antrim Wind Energy LLC (AWE) – Status update on the aerial obstruction lighting

Dear Ms. Monroe:

All permanent lights at AWE are now operational and the temporary lights are no longer required. As committed to in our September 24, 2019 update, turbines 6 and 7 now have permanent lights installed and are operational. On September 24th, the permanent lights on turbines 4 and 9 were placed into service. During the next nightly inspection, it was confirmed that the lights on turbines 4 and 9 were operating. On September 25th, the permanent lights on turbines 1 and 3 were placed into service and their operation was confirmed during the next nightly inspection.

During the inspection on the night of the 25th, it was determined, however, that the light on turbine 9 was not working properly. A NOTAM was promptly filed with the FAA for turbine 9. Upon further investigation, it was determined that the light on turbine 9 was defective. The delivery of a replacement light was expedited and installed on October 1st. The permanent light on turbine 9 is now fully operational. Pursuant to the Determinations of No Hazard issued to AWE, turbines 2, 5 and 8 are not required by the FAA to have permanent lighting.

AWE will continue nightly inspections of the aerial obstruction lighting until the time when the Aircraft Detection Lighting System (ADLS) is installed and commissioned later this year (before commercial operation). The Town of Antrim will be notified when the ADLS is commissioned and operating. At that time, the permanent lights will operate only when aircraft are detected by the ADLS, and this system will be monitored 24/7 by TransAlta's Wind Control Center. In the meantime, the aerial obstruction lights currently on the turbines will remain on all night independently of the presence or absence of nearby aerial traffic and will operate in a synchronized manner as required by the FAA Determination of No Hazard.

We wish to reiterate that TransAlta is committed to the safe operation of all of its facilities including AWE. If you wish to visit the site to assess the situation, our team remains available to coordinate such visit at your convenience. I would be happy to discuss further or answer any other questions you have.

Yours truly,

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