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October 29, 2021

Ms. Dianne Martin  
Chairwoman  
New Hampshire Site Evaluation Committee  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

**Re: SEC Docket No. 2021-02  
Investigation of Complaints Regarding Antrim Wind Energy Facility  
Response Regarding SEC Review of Charge 1**

Dear Chairwoman Martin:

On October 18, 2021, Lisa Linowes and Lori Lerner (“L&L”) filed “comments in response to the Docket 2021-02 Subcommittee’s (“Subcommittee”) recommendation on its Charge 1.” Pursuant to an order issued April 2, 2021, Charge 1 required the Subcommittee to:

Review the law, administrative rules, the Facility’s Certificate, and all other relevant filings related to noise limits and sound measurement methodology. Forward a written recommendation regarding the appropriate methodologies for measurement and analysis of sound, and procedures for validating noise complaints to the full Committee by April 23, 2021. [The deadline was extended by a subsequent order.]

The Subcommittee concluded in its August 23, 2021 recommendation to the Site Evaluation Committee (“SEC”) that under the plain language of Site 301.18 (e) it was acceptable for Antrim Wind to use one-hour averaging in conducting post-construction noise compliance monitoring. Specifically, the Subcommittee found that, for purposes of determining compliance with the standards set forth in Site 301.14, sound emissions shall be measured using LAeq over the time period required by the relevant American National Standards Institute (“ANSI”) standard, which is at least five minutes, or such longer period as may be reasonably determined by the professional conducting the study.

L&L oppose the Subcommittee’s recommendation. Among other things, L&L “insist” that because they participated in the Docket No. 2014-04 rulemaking the SEC should accept their

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interpretation of the rules and reject the Subcommittee's. L&L's position is wholly without merit. Their involvement as stakeholders in that rulemaking process entitles them to no special deference or consideration. To the contrary, of chief importance to the SEC's review is that the Subcommittee set forth a thorough analysis of the rules and the opposing arguments, ultimately finding that Antrim Wind had complied with the rules.

Nevertheless, L&L attempt to undermine the Subcommittee's recommendation based on the Subcommittee's addition of paragraph 78, urging the SEC to consider initiating a rulemaking to establish a definitive time limit over which LAeq is to be measured. L&L's reference to, and characterization of, the Subcommittee's deliberations as to whether to recommend that the SEC conduct a rulemaking concerns an issue beyond the scope of Charge 1. The Subcommittee clearly, and undeniably, did two separate things in its written recommendation with respect to Charge 1, which is what is relevant. First, it found that Antrim Wind followed the rules in conducting its post-construction noise monitoring and, second, it urged the SEC to consider a rulemaking to establish a definitive time limit for determining compliance. The recommendation to consider a rulemaking does not impact, in any way, the Subcommittee's determination that Antrim Wind had complied with the SEC's rules.

L&L also renew allegations made by Ms. Lerner in comments she filed with the SEC on September 21, 2021, and to which Antrim Wind responded separately on October 25, 2021. In brief, they wildly speculate as to the intent of Antrim Wind's predecessor in interest and the state of mind of Mr. O'Neal.

Ms. Lerner filed yet another letter on October 26, 2021, essentially making the claim that the Antrim Wind Application in Docket No. 2015-02 was somehow deficient. There are a number of flaws in the author's claim. First, the SEC issued an Order Accepting Application on December 1, 2015, determining that Antrim Wind had provided all the information required by RSA 162-H and the SEC rules. Second, in its March 17, 2017 Decision and Order Granting Application for Certificate of Site and Facility, the SEC found at p. 153 that "the Sound Assessment report prepared by Mr. O'Neal was prepared in accordance with professional standards and our administrative rules." Third, the record in Docket 2015-02 closed long ago, motions for rehearing were filed and denied, and the SEC decision was upheld on appeal to the New Hampshire Supreme Court. The arguments presented by Ms. Lerner are therefore both

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unfounded and untimely. Fourth, Ms. Lerner's colleague, Ms. Linowes, both submitted testimony and cross-examined Mr. O'Neal at length in Docket 2015-02 about his testimony and the Sound Level Assessment Report. Fifth, with respect to the requirements of Site 301.18 (a), (b), (c), or (d), which relate to pre-construction sound background monitoring and predictive sound modeling, the Lerner letter fails to identify any specific shortcoming or misrepresentation on Antrim Wind's part.

Finally, L&L, once again, seek a "more formal proceeding." For more than a year, Ms. Linowes has attempted to turn this enforcement proceeding under RSA 162-H:12 into an adjudicative proceeding under RSA 541-A. The SEC clearly ruled in its May 14, 2021 Order Denying Motion for Rehearing that its consideration of Antrim Wind's post-construction sound monitoring studies was not a contested case requiring an adjudicative hearing under RSA 541-A. Accordingly, at such time that the SEC reschedules the public meeting that had been set for September 23, 2021, it is not required to employ any of the measures set forth in RSA 541-A:31. Rather, all that it is required to do, consistent with the requirements of RSA 91-A:2, is to provide appropriate notice and make its meeting open to the public. It is entirely within the SEC's discretion to deliberate with respect to the Subcommittee's recommendation based on the written submissions it has before it.

Antrim Wind is certainly prepared to answer any questions that the SEC may have but the inquiry into the interpretation of the rules needs to come to an end. How many times can L&L, et al. make the same arguments? How many times must Antrim Wind spend time and money responding to those same arguments? How many times must Antrim Wind demonstrate that it has properly interpreted and applied the SEC's rules?

In closing, Antrim Wind respectfully asks that the SEC adopt the Subcommittee's recommendation with respect to Charge 1 and finally put this issue to rest. If you have any questions, please do not hesitate to contact me.

Sincerely,



Barry Needleman

cc: Service List