

Brunswick, ME

December 11, 2023

Greenville, ME

Boston, MA

Hon. Daniel C Goldner, Chairman

Northampton, MA

NH Site Evaluation Committee

Alexandria, NH

21 S. Fruit St, Suite 10

Bretton Woods, NH

Concord, N.H. 03301

Blairstown, NJ

Haverstraw, NY

Dear Mr. Goldner:

New York, NY

The Appalachian Mountain Club (AMC) submits the following comments on SEC docket 2021-02 concerning investigation into complaints about the operation of the Antrim wind power facility. While the AMC submitted comments at the initiation of this docket about our expectations for the investigation, we regret that staffing changes have limited our ability to participate more fully.

Bethlehem, PA

As you are aware, AMC negotiated a settlement agreement (SA) with the original applicant Antrim Wind Energy requiring the installation and use of a radar-activated Aircraft Detection Lighting System (ADLS) to minimize the visual impact of nighttime lighting on the surrounding area. The SA was incorporated into the Order and Certificate of Site and Facility of March 17, 2017, with the statement that “This system will only activate the nighttime FAA obstruction lights in the event that there is an aircraft flying at low altitude at night in close proximity to the Project, *which will almost eliminate this nighttime light source.*” [Emphasis added.] This statement is based on a nearly identical statement in the Visual Assessment included in the project application. On the basis of the SA, the requirement for the Applicant to conduct a visual impact assessment of nighttime lighting was waived.

We note that neither the Applicant nor the SEC raised any objections or concerns to the inclusion of this statement in the Order, indicating that they shared this expectation for the performance of the ADLS. This expectation is clearly expressed throughout the project hearing record, as was well summarized in the exhibit submitted to this docket by Lisa Linowes dated February 3, 2023.

We are disappointed that the SEC subcommittee completely dismissed the ongoing complaints from local residents about the inadequate performance of the ADLS and decided to take no action on these complaints. The idea that the certificate only requires the installation of the system, but does not require it to meet any particular level of performance, is ludicrous. This argument was strongly contradicted early in the proceedings by the letter from Counsel for the Public Allan Brooks dated May 21, 2021. Despite this, the Subcommittee concluded that “Because there is no specific requirement for how often the system can be illuminated, the Subcommittee concludes



a 20-30% illumination period (as indicated by the facility's data) is 'functional.'" (Administrator's Report of October 11, 2023). This is also ludicrous - clearly a performance whereby the ADLS lights are on nearly every night for an average of over 20% of the time does not come close to meeting the claims made for system performance in both the application and the certificate. According to the SEC's reasoning, (expressed again in the letter from Subcommittee Counsel Mr. Turner of November 20, 2023), because of the lack of an objective performance standard, even if the lights were on 90% of the time there would be nothing that could be done.

We are also disappointed that the Subcommittee undertook no independent attempt to develop relevant information. The so-called investigation consisted of little more than accepting progress reports and data from the project owner. The following investigations were recommended to the Subcommittee by AMC in our letter of April 21, 2021:

- How many of the light-on periods were triggered by actual aircraft in the vicinity, and how many were false positives?
- How does the performance of the system at this facility compare with the performance of similar systems at other facilities?

However, no investigations were undertaken, thus the question of whether there is a particular problem at this facility, or whether this is the best that can be expected from this technology, remains unanswered. This is unfortunate, as it limits the ability of the SEC to make informed decisions about this technology if it is proposed on future projects.

We fully agree with and support the conclusion of Counsel for the Public Mr. Brooks, as set forth in his letter of October 6, 2023, that "The SEC should, therefore, find that the facility does not meet the requirements of the current Certificate." To take the position of Mr. Turner (as stated in his letter of November 20) that it would be problematic to inject a subjective element into enforcement decisions would set a dangerous precedent. Subjective decisions are an inherent part of permitting and compliance decisions. These range whether an adverse impact is "unreasonable" to whether a police officer will ticket a car going 12 miles over the speed limit but not one going seven miles over. This is why these decisions are made by humans and not computer algorithms. While the line between compliance and non-compliance may be not be exact, the performance of the Antrim ADLS is so far below the line of what was promised in the application that it should not be a difficult decision.

We therefore conclude that the Antrim wind facility is in violation of the terms of its Certificate, and that additional action should be required. We see little value in conducting a nighttime visual impact assessment at this point, but believe that additional mitigation (perhaps in the form of protection of other scenic resources in the vicinity of the project) should be required. Ideally such mitigation should provide relief to those



most directly affected by the underperformance of the ADLS, though we have no suggestions as to what form that might take.

We thank you for the opportunity to submit these comments.

Sincerely,

David Publicover
Senior Staff Scientist/Assistant Director of Research
Appalachian Mountain Club

Cc: Counsel for the Public Allan Brooks