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January 18, 2024

Mr. Daniel C. Goldner
Chairman
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: Docket No. 2021-02
Investigation of Complaints Regarding Antrim Wind, LLC Operations
Objection to Unauthorized Motion for Rehearing**

Dear Chairman Goldner:

Enclosed please find Antrim Wind Energy, LLC's objection to the unauthorized motion for rehearing filed by Lisa Linowes dated January 10, 2024, challenging the Site Evaluation Committee's determination at its December 11, 2023 Public Meeting that Antrim Wind LLC is not in violation of its Certificate.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Thomas B. Getz". The signature is fluid and cursive, with a large, sweeping initial "T" and "G".

Thomas B. Getz

Cc: Service List (Electronically)

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2021-02

**INVESTIGATION OF COMPLAINTS REGARDING
ANTRIM WIND ENERGY, LLC OPERATIONS**

OBJECTION TO UNAUTHORIZED MOTION FOR REHEARING

Antrim Wind Energy, LLC (“Antrim”), by and through its attorneys, McLane Middleton, Professional Association, hereby objects to the latest motion for rehearing, dated January 10, 2024, filed by Lisa Linowes on behalf of herself, Barbara Berwick, Janice Longgood, Lori Lerner, and Dr. Fred Ward, asking the Site Evaluation Committee (“SEC” or “Committee”) to reconsider its determination at its December 11, 2023 Public Meeting, pursuant to RSA 162-H:12, that Antrim was not in violation of any term or condition of its Certificate.¹ For the reasons set forth below, Antrim requests that the SEC dismiss the motion for rehearing because it is an unauthorized pleading or, alternatively, deny the motion because it fails to demonstrate good cause for rehearing.

I. BACKGROUND

1. On September 1, 2023, the Subcommittee formed by the SEC’s April 2, 2021 Order Appointing Subcommittee held a Public Meeting at which it concluded that there was no basis for enforcement action against Antrim with respect to fifteen operational complaints, six of which concerned sound (primarily reflecting communications from Ms. Berwick and Ms. Longgood) and nine of which concerned lighting (comprising communications or comments solely from Mr. Block, who is not a party to the latest motion for rehearing). The Subcommittee’s Final Recommendation to the Site Evaluation Committee Concerning Antrim

¹ Ms. Linowes certified that she served the motion for rehearing on the current service list but none of Antrim’s representatives on the distribution e-mail address list were served. A copy of the pleading was received from the SEC Administrator on January 11, 2024.

Wind Complaints (“Final Recommendation”) was conveyed to the SEC in the Administrator’s Report of October 11, 2023.

2. On December 11, 2023, the SEC held a duly-noticed Public Meeting regarding the Subcommittee’s Final Recommendation consistent with RSA 91-A:2, which requires a public meeting when a quorum of the membership of a public body convenes for the purpose of discussing or acting upon matters over which it has supervision, control, jurisdiction, or advisory power. The Public Meeting was not an adjudicative hearing, nor was an adjudicative hearing required for the Committee to take action on the Subcommittee’s Recommendation.

3. The SEC, following the process set forth in RSA 162-H:12, accepted the Subcommittee’s recommendation and determined to take no enforcement action with respect to the fifteen operational complaints. The SEC’s determination was memorialized in its minutes and posted to the SEC website.

4. Ms. Linowes relies on Site 202.29 of the SEC’s procedural rules as the basis for rehearing. She also contends that the SEC acted unlawfully and unreasonably by acting on Ms. Longgood’s May 1, 2023 complaint without further investigation and by accepting nighttime lighting impacts that allegedly exceed levels approved under Antrim’s Certificate.

II. AUTHORITY FOR REHEARING

5. Set forth below are the statutory provisions relevant to determining whether the latest motion for rehearing is an authorized pleading.

RSA 162-H:11 provides: “*Decisions* made pursuant to this chapter shall be reviewable in accordance with RSA 541.” (Emphasis supplied.)

RSA 541:3 provides: “Within 30 days after any order or *decision* has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion. (Emphasis supplied.)

RSA 541-A:1, IV provides: “‘Contested case’ means a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency *after notice and an opportunity for hearing.*” (Emphasis supplied.)

RSA 541-A:1, XI provides: “‘Order’ means the whole or part of an agency’s final disposition of a matter, other than a rule, but *does not include an agency’s decision to initiate, postpone, investigate or process any matter, or to issue a complaint or citation.*” (Emphasis supplied.)

RSA 541-A:35 provides: “A final *decision* or order adverse to a party *in a contested case* shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed promptly to each party and to a party's recognized representative.” (Emphasis supplied.)

III. DISCUSSION

6. Preliminarily, as noted above, Ms. Linowes relies on Site 202.29 as the basis for the motion for rehearing, which in turn refers to RSA Chapter 541. While a motion for rehearing is authorized in the context of an adjudicative proceeding pursuant to RSA 162-H:11, such a pleading is not authorized to challenge a non-adjudicative administrative action pursuant to RSA 162-H:12. As explained below, the SEC took a non-adjudicative administrative action when it determined that Antrim is not in violation of its Certificate. Therefore, a motion for rehearing is not authorized.

7. The SEC recognized the distinction between adjudicative and non-adjudicative or administrative functions in its Order Denying Motion for Rehearing Filed by Lisa Linowes, Barbara Berwick and Janice Longgood, issued May 14, 2021, in Docket No. 2015-02, the predecessor to this docket. There the SEC concluded that it was taking a non-adjudicative administrative action, which “did not rise to the level of a contested case requiring the opening of an adjudicative hearing.” Order Denying Motion for Rehearing p. 9. Because Site 202.29

applies only to adjudicative proceedings under PART Site 202, and not administrative actions, it does not constitute authority for this latest pleading.²

8. As for any statutory authority for the latest pleading, there is none. In accordance with RSA 162-H:11 and RSA 541:3, a motion for rehearing to the SEC is authorized after the SEC issues an order or makes a decision. Pursuant to RSA 541-A:35 and 541-A:1, IV, such a decision occurs in a contested case, which means a proceeding in which there is notice and an opportunity for hearing, which is not what happened here.

9. RSA 162-H:12, I and Site 302.01 clearly provide that the opportunity for a hearing in an enforcement matter only arises after the SEC has determined that a term or condition of a Certificate has been violated. Specifically, RSA 162-H:12, Enforcement, I, since amended but applicable to this proceeding,³ states:

Whenever the committee, or the administrator as designee, determines that any term or condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the person holding the certificate of the specific violation and order the person to immediately terminate the violation. If, 15 days after receipt of the order, the person has failed or neglected to terminate the violation, the committee may suspend the person's certificate. Except for emergencies, ***prior to any suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing.*** (Emphasis supplied.)

10. The Subcommittee and the SEC have conducted themselves in accordance with the first sentence of RSA 162-H:12, I in that they have investigated the complaints against Antrim through a non-adjudicative process and, accordingly, made the administrative determination that Antrim was not in violation of its Certificate. The process set forth by the Legislature clearly contemplates that an adjudicative process with notice and the opportunity for

² In addition to the motion for rehearing that was denied on May 14, 2021 in Docket No. 2015-02, on July 22, 2023, Ms. Linowes et al. moved to rehear the Chairman's June 23, 2023 Second Order Regarding Subcommittee Charge, which he denied on August 4, 2023.

³ RSA 162-H:12 was amended, effective October 7, 2023, to transfer monitoring and enforcement authority in the first instance to the Department of Energy ("DOE"), except for proceedings opened prior to the effective date. See, RSA 162-H:24 Transition.

a hearing does not occur in an enforcement matter until the stage that the SEC is considering suspension of a Certificate, which is not the case here.

11. Finally, RSA 541-A:1, XI provides that an agency's order, or final disposition of a matter, "does not include an agency's decision to initiate, postpone, investigate or process any matter, or to issue a complaint or citation." The SEC's enforcement process under RSA 162-H:12 is effectively a two-step process that employs a non-adjudicative or administrative first step where the SEC makes a determination whether there has been a violation of a Certificate. Only when a violation has been determined and the certificate holder fails to terminate the violation does the second step, i.e., an adjudicative process commence. Therefore, because the SEC is not conducting an adjudicative process, a motion for rehearing is not authorized.

IV. STANDARD FOR REHEARING

12. The purpose of rehearing "is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision." *Dumais v. State Pers. Comm'n*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A rehearing may be granted when the Committee finds "good reason" or "good cause" has been demonstrated. *O'Loughlin v. New Hampshire Pers. Comm'n*, 117 N.H. 999, 1004 (1977); *Appeal of Gas Service, Inc.*, 121 N.H. 797, 801 (1981). "A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome." *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (Sept. 8, 2015).

V. DISCUSSION

13. As for the substance of the motion for rehearing, it focuses first on Ms. Longgood's April 29, 2023 communication that was included in a collection of comments filed with respect to the SEC's May 15, 2023 Public Meeting regarding the HMMH, Inc. sound study report. Ms. Longgood stated that she was responding to the HMMH report, said that she did not

refuse testing on her property, contended that the testing areas used by HMMH were not representative, and asserted that she continued to experience loud disruptive noise intermittently.

14. The Subcommittee's Final Recommendation pointed out, among other things, that Ms. Longgood's email lacked specifics on dates and times and provided no data or other basis to determine a violation. The motion for rehearing argues that the SEC erred by not investigating Ms. Longgood's complaint further. Ms. Longgood, however, clearly began her email by indicating that she was responding to the HMMH report and she only stated in the most general way in closing that she continued to intermittently experience loud noise.

15. The motion for rehearing fails to demonstrate good cause for the SEC to grant rehearing of its determination that Antrim has not violated its Certificate. In the first place, Ms. Longgood's email does not rise to the level of a complaint that provides a basis for further investigation but appears to be more a reiteration of prior sound complaints that the Subcommittee and the Committee fully and properly considered. Furthermore, the motion for rehearing merely restates other arguments about the method for reporting complaints, the rules applicable to sound complaints and the HMMH report. The SEC has not overlooked or mistakenly conceived anything; hence, the request for a different outcome should be denied.

16. With respect to the argument that Antrim exceeded the lighting levels approved in its Certificate, the motion for rehearing similarly fails to demonstrate good cause for rehearing. It contends that the question of compliance is tied to the intent of the SEC when it issued the Certificate and it opines on what the Committee members understood at the time. As has been pointed out on numerous prior occasions, however, the SEC did not, as acknowledged in the Subcommittee's Final Recommendation, establish "any metrics for how often the lights may illuminate." See Final Recommendation at p. 7. In the absence of such metrics, the SEC reasonably determined, on the basis of the Subcommittee's investigation and the facts collected,

that Antrim was not in violation of its Certificate. Ms. Linowes et al. cannot now, nearly seven years after the fact, re-litigate the issuance of Antrim's Certificate.

VI. CONCLUSION


17. In summary, this latest motion for rehearing is procedurally deficient because there is no statutory authority for a motion for rehearing of the SEC's non-adjudicative determination that Antrim is not in violation of its Certificate. At the same time, the motion for rehearing is substantively deficient because the SEC did not overlook or mistakenly conceive anything.

WHEREFORE, Antrim Wind Energy, LLC respectfully requests that the SEC:

- A. Dismiss the Motion for Rehearing or, in the alternative, deny it; and
- B. Grant such further relief as is deemed just and appropriate.

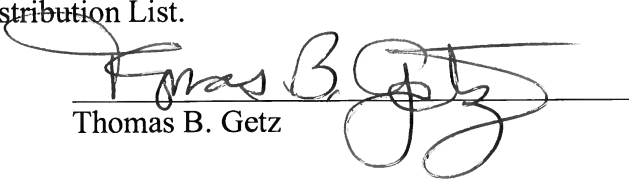
Respectfully submitted,
ANTRIM WIND ENERGY, LLC
By Its Attorneys,
McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: January 18, 2024

By: 
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Certificate of Service

I hereby certify that on the 18th of January, 2024, an electronic copy of the foregoing Objection was served upon the SEC Distribution List.



Thomas B. Getz