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July 31, 2023

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 Motion for Rehearing**

Dear Chairman Goldner:

Enclosed please find Antrim Wind Energy LLC's objection to the motion for rehearing filed by Lisa Linowes *et al.* on July 24, 2023, challenging the Second Order Regarding Subcommittee Charge, issued June 23, 2023.

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 stylized with a large, sweeping initial "T" and a long, horizontal flourish extending to the right.

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 MOTION FOR REHEARING

Antrim Wind Energy, LLC (“Antrim”), by and through its attorneys, McLane Middleton, Professional Association, hereby objects to the motion for rehearing, dated July 22, 2023,¹ filed by Lisa Linowes,² asking the Site Evaluation Committee (“SEC” or “Committee”) to reconsider the Second Order Regarding Subcommittee Charge, dated June 23, 2023 (“Order”). 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.

BACKGROUND

1. On May 31, 2023, the Subcommittee, formed by the SEC’s April 2, 2021 Order Appointing Subcommittee, submitted its recommendation regarding the disposition of outstanding complaints (“Recommendation”). Among other things, the Subcommittee recognized fifteen noise complaints from five individuals and recommended that the SEC deny “all noise complaints filed through 2021 and undertake no enforcement action on any of them.” Recommendation, p. 8.

¹ The motion for rehearing includes a certification that it was served on July 22, 2023, but it was circulated by the Administrator on July 24, 2023.

² The motion for rehearing refers to Barbara Berwick, Richard Block, Lori Lerner, Lisa Linowes, Janice Longgood, Erin Morrison, NH WindWatch, Brenda Shaefer, Mark Shaefer, and Dr Fred Ward as “Parties” to the filing. Only Ms. Berwick, Mr. Block, Ms. Longgood, and Ms. Morison appear to have filed complaints that are the subject of the SEC’s investigation.

2. On June 7, 2023, the SEC held a duly-noticed Public Meeting 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. At the Public Meeting, consistent with the process set forth in RSA 162-H:12, a majority of the Committee voted to accept the Subcommittee's recommendation and determined to take no further action with respect to the fifteen identified noise complaints.

3. On June 23, 2023, SEC Chairman Goldner issued the Second Order Regarding Subcommittee Charge, reporting the Committee's decision to accept the Subcommittee's recommendation. Chairman Goldner also charged the Subcommittee with (1) reviewing all operational complaints through June 7, 2023, for which a specific disposition had not been recommended, and (2) recommending proposed rules concerning the complaint and investigative process.³

4. Ms. Linowes references Site 202.29 of the SEC's procedural rules as the basis for rehearing. She also contends that the SEC acted unlawfully and unreasonably "when it accepted the HMMH [Harris Miller Miller & Harrison, Inc.] Report" and "effectively authorized a waiver" of various rules. Motion for Rehearing, p.4.

STANDARD

5. The purpose of rehearing pursuant to RSA Chapter 541 "is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision." *Dumais*

³ Pursuant to House Bill 281, which has been passed by the Legislature, enrolled, and is awaiting action by the Governor, authority and responsibility for issuing rules regarding monitoring and enforcement will be transferred to the Department of Energy 60 days after enacted.

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).

DISCUSSION

6. As noted above, Ms. Linowes references Site 202.29 as the basis for the motion for rehearing, which in turn references RSA Chapter 541. While a motion for rehearing is appropriate in the context of an adjudicative proceeding pursuant to RSA 162-H:11, it is not appropriate in an administrative setting. The SEC recognized the distinction between adjudicative and 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 an 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.

7. RSA 541-A:1, IV defines a contested case as “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.” RSA 162-H:12, I clearly provides 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. 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.

8. Furthermore, RSA 541:3 provides that a motion for rehearing may be filed within 30 days after any “order or decision” has been made. At the same time, RSA 541-A:35 refers to a final decision or order as being in a contested case, which, as noted above, means a proceeding in which legal rights are determine after notice and an opportunity for hearing. Reading these provisions together it follows that a motion for rehearing may be filed in an adjudicative proceeding but not in this instance, where the SEC is properly exercising its enforcement authority as a non-adjudicative or administrative function. In other words, Chairman Goldner’s Second Order Regarding Subcommittee Charge is not an order or decision pursuant to RSA 541-A:35 because it was not adverse to a party in a contested case, *i.e.*, an adjudicative proceeding. Therefore, it is not an order or decision that is subject to rehearing under RSA 541:3.

9. As for the substance of the motion for rehearing, it proceeds from the mistaken premise that the consultant engaged by the Subcommittee, *viz.* HMMH, improperly conducted a complaint validation study. As explained by the Subcommittee, however, only two complainants responded to the Subcommittee’s efforts to gain access to the complainants’ property and those two complainants would only grant access subject to certain conditions. Recommendation, p.6. Rather than dismiss the complaints for a lack of cooperation, however, it appears that the Subcommittee instead authorized HMMH to conduct monitoring at five different locations over multiple different time periods in order to ascertain for its own purposes whether Antrim was

violating its Certificate. After processing and filtering data in accordance with ANSI standards, HMMH found no violations of the applicable noise limits. Recommendation, p.5.

10. With respect to the argument that the SEC effectively authorized waivers without following Site 302.05, the motion for rehearing again proceeds from the mistaken premise that HMMH improperly conducted a complaint validation study. As noted above, the complainants failed to cooperate with the Subcommittee, which could have resulted in a recommendation to dismiss the complaints. Nevertheless, it appears that the Subcommittee, on its own accord, undertook to determine whether Antrim was violating the noise limits, applying recognized professional standards as described by HMMH in its April 6, 2023 Compliance Monitoring Report. Inasmuch as the noise monitoring program conducted by HMMH was an entirely discretionary measure taken by the Subcommittee, it was not necessary to waive any rule.

CONCLUSION

11. In summary, the motion for rehearing is deficient in form because the SEC's investigation of complaints has not reached the stage of an adjudicative hearing and it is deficient in substance because the SEC did not overlook or mistakenly conceive anything. As to procedure, the SEC is at the preliminary investigatory stage, which involves a determination, as an administrative matter, whether Antrim has violated a term or condition of its Certificate. Accordingly, a motion for rehearing is premature and may not be used to challenge the SEC's determination set forth in its Second Order Regarding Subcommittee Charge. As to substance, the HMMH Compliance Report showed consistent compliance by Antrim with applicable noise standards, which led the Subcommittee and, in turn, the Committee to conclude that Antrim is not violating any term or condition of its Certificate. Therefore, there is no basis for further action by the Committee.

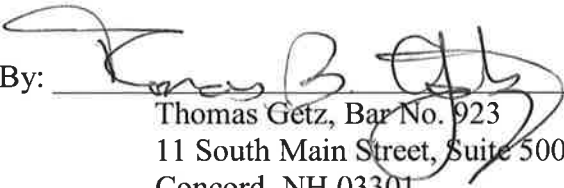
WHEREFORE, Antrim Wind Energy, LLC respectfully requests that the SEC:

- 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: July 31, 2023

By: 
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Certificate of Service

I hereby certify that on the 31st of July, 2023, an electronic copy of the foregoing Objection was served upon the SEC Distribution List.


Thomas B. Getz