

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

Docket No. 2021-02

Investigation of Complaints  
Regarding Antrim Wind LLC Operations

August 4, 2023

**ORDER DENYING MOTION FOR REHEARING**

A group of individuals and an organization (together, Movants), filed a “Motion for Rehearing June 23, 2023 Order” (Motion) in this docket.<sup>1</sup> Movants argue that certain actions taken by the Site Evaluation Committee on June 7, 2023 were unlawful or unreasonable. Because the June 23, 2023 Order was not an order of the Committee, but rather an order from the chairperson of the Committee, I deny the Motion.

**I. RELEVANT PROCEDURAL HISTORY**

In Spring of 2019, the Site Evaluation Committee (Committee) granted a Certificate of Site and Facility (Certificate) for the construction, operation, and ultimate decommissioning of a wind energy facility in Antrim, NH (Facility).<sup>2</sup> This Facility began commercial operations in December 2019 and, since that time, the Committee has received multiple complaints concerning the Facility’s operations.<sup>3</sup>

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<sup>1</sup> Specifically, the Movants are: Barbara Berwick, Richard Block, Lori Lerner, Lisa Linowes, Janice Longgood, Erin Morrison, NHWindWatch, Brenda Shaefer, Mark Shaefer, and Dr. Fred Ward. The Movants motion is available at Docket Page 2021-01, accessible [here](#).

<sup>2</sup> The Order and Certificate of Site and Facility with Conditions is available in Site Evaluation Committee Docket 2015-02 and accessible here: [https://www.nhsec.nh.gov/projects/2015-02/orders-notices/2015-02\\_2017-03-17\\_order\\_cert.pdf](https://www.nhsec.nh.gov/projects/2015-02/orders-notices/2015-02_2017-03-17_order_cert.pdf).

<sup>3</sup> See generally, this docket, Site Evaluation Committee Docket No. 2021-02.

In Spring of 2021, the then-chairperson of the Committee, Dianne Martin, appointed a subcommittee (Subcommittee) to investigate these complaints.<sup>4</sup> The chairperson took this action under her authority in RSA162-H:4-a.<sup>5</sup>

Since its appointment, the Subcommittee has investigated and made disposition recommendations on multiple operational complaints concerning the Facility. At a public meeting in July 2021, the Committee accepted the Subcommittee's recommendation concerning the Facility's Aircraft Detection Lighting System.<sup>6</sup> And, at a public meeting in June 2023, the Committee accepted a subsequent Subcommittee recommendation on fifteen noise complaints.<sup>7</sup>

At this June public meeting, the Committee also voted to charge the Subcommittee with additional tasks.<sup>8</sup> Consistent with this vote of the full Site Evaluation Committee and, under my authority my authority as chairperson, I issued a Second Order Regarding Subcommittee Charge (Second Order).<sup>9</sup> The movants subsequently filed a motion seeking rehearing of this Second Order.<sup>10</sup> The Certificate holder filed an objection to the motion shortly thereafter.<sup>11</sup>

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<sup>4</sup> Docket Tab 1, accessible here: [https://www.nhsec.nh.gov/projects/2021-02/orders\\_notices/2021-02\\_2021-04-02\\_order\\_appoint\\_subcommittee.pdf](https://www.nhsec.nh.gov/projects/2021-02/orders_notices/2021-02_2021-04-02_order_appoint_subcommittee.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> Meeting minutes for the July 21, 2021 Public Meeting of the Site Evaluation Committee are accessible here: <https://www.nhsec.nh.gov/sites/g/files/ehbemt531/files/inline-documents/sonh/minutes-public-meeting-072121.pdf>. Specifically, the Committee voted to accept the Subcommittee's recommendation that it (1) find no violation of the Certificate with regard to the a specific complaint, and (2) undertake no enforcement action on that complaint.

<sup>7</sup> Meeting minutes for the June 7, 2023 Public Meeting of the Site Evaluation Committee are accessible here: [https://www.nhsec.nh.gov/sites/g/files/ehbemt531/files/inline-documents/sonh/2021-02\\_minutes\\_6-7-2023.pdf](https://www.nhsec.nh.gov/sites/g/files/ehbemt531/files/inline-documents/sonh/2021-02_minutes_6-7-2023.pdf). Specifically, the Committee voted to accept the Subcommittee's report concerning fifteen noise complaints and to take no further action regarding these complaints.

<sup>8</sup> *Id.*

<sup>9</sup> Docket Tab 69, accessible here: [https://www.nhsec.nh.gov/projects/2021-02/documents/2021-02\\_sec\\_full\\_order\\_6-28-2023.pdf](https://www.nhsec.nh.gov/projects/2021-02/documents/2021-02_sec_full_order_6-28-2023.pdf).

<sup>10</sup> Docket Tab 2021-02 accessible here: [https://www.nhsec.nh.gov/projects/2021-02/documents/2021-02\\_motion\\_rehearing\\_berwick\\_7-24-2023.pdf](https://www.nhsec.nh.gov/projects/2021-02/documents/2021-02_motion_rehearing_berwick_7-24-2023.pdf)

<sup>11</sup> Docket Tab 2021-02, accessible here: [https://www.nhsec.nh.gov/projects/2021-02/documents/2021-02\\_objection\\_rehearing\\_7-31-2023\\_.pdf](https://www.nhsec.nh.gov/projects/2021-02/documents/2021-02_objection_rehearing_7-31-2023_.pdf)

## II. LEGAL STANDARD

Under RSA 162-H:11 and RSA Chapter 541 any order or decision made under RSA Chapter 162-H may be the subject of a motion for rehearing and subsequent appeal to the New Hampshire Supreme Court.

A motion for rehearing may be made by “any party to the action or proceeding before the [Site Evaluation Committee], or any person directly affected thereby.”<sup>12</sup> The motion for rehearing must specify “all grounds for rehearing, and the [Site Evaluation Committee] may grant such rehearing if, in its opinion, good reason for the rehearing is stated in the motion.”<sup>13</sup> Any such motion for rehearing “shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.”<sup>14</sup>

The overarching purpose of a motion for rehearing is “to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invite reconsideration upon the record to which that decision rested.”<sup>15</sup> Rehearing may be granted for “good reason.”<sup>16</sup> But a motion for rehearing must be denied where no “good reason” or “good cause” has been demonstrated.<sup>17</sup>

## III. ANALYSIS

The Movants seek to challenge the Committee’s acceptance of the Subcommittee’s investigative recommendation and the Committee’s decision to take no further action regarding fifteen noise complaints against the Facility. These actions

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<sup>12</sup> RSA 541:3.

<sup>13</sup> *Id.*

<sup>14</sup> RSA 541:4.

<sup>15</sup> *Dumais v. State of New Hampshire Pers. Comm.*, 118 N.H. 309, 311 (1978) (internal quotations omitted).

<sup>16</sup> *See* RSA 541:3.

<sup>17</sup> *See O’Loughlin v. NH Pers. Comm.*, 117 N.H. 999, 1004 (1977); *see also In re Gas Service, Inc.*, 121 N.H. 797, 801 (1981).

were taking by the Committee at its public meeting on June 7, 2023. These decisions were recorded in the minutes of that public meeting. The Movants provide multiple arguments why the Committee's actions were in error and should be reconsidered.

The Movants also characterize my order as the order through which the Committee took the actions complained of.<sup>18</sup> The Movants' argument appears to be that, because my order mentions the June 7 actions of the Committee, my order is an action of the Committee. If so, it would logically follow that a motion for rehearing of my order permits the rehearing or reconsideration of the Committee's June 7 actions.

The movants misunderstand my order. I issued my order under my authority, as chairperson, as authorized by RSA 162-H:4-a. This statutory provision provides that the chairperson of the Committee may form subcommittees and charge (i.e., direct) a subcommittee to exercise certain authorities or perform certain duties of the Committee.<sup>19</sup>

In this docket, the Subcommittee is exercising the authority of the Committee by undertaking certain investigative duties. This directive to investigate is a lawful charge to the Subcommittee from the chairperson of the Committee. It was first assigned to the Subcommittee by then-Chairperson Martin in her April 2021 Order Appointing Subcommittee (Appointing Order).<sup>20</sup> The Subcommittee's charge was clarified by Chairperson Martin in her May 2021 Order Regarding Subcommittee Charge (First Order).<sup>21</sup> Finally, the Subcommittee's charge was further refined by me,

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<sup>18</sup> Motion for Rehearing at 1.

<sup>19</sup> RSA 162-H:4-a, I.

<sup>20</sup> Footnote 4, above.

<sup>21</sup> Docket Tab 14, accessible here: [https://www.nhsec.nh.gov/projects/2021-02/orders\\_notices/2021-02\\_2021-05-20\\_order\\_subcommittee\\_charge.pdf](https://www.nhsec.nh.gov/projects/2021-02/orders_notices/2021-02_2021-05-20_order_subcommittee_charge.pdf).

the new chairperson, in my June 2023 Second Order Regarding Subcommittee Charge (Second Order).<sup>22</sup>

The Second Order is not an order of the full Site Evaluation Committee. Rather, it is an order of the chairperson. The legal effect of this order is to clarify the role of and further direct the Subcommittee. The orders of the chairperson (the Appointing Order, First Order, and Second Order) are the authorizing documents that empower and limit the ability of the Subcommittee to exercise the authority of the Committee and perform certain Committee duties. Though these orders delegate certain Committee authority and authorize certain Committee functions to be undertaken by the Subcommittee, these are not orders of the Committee.

These chairperson orders do not finalize actions of the full Site Evaluation Committee. Movants are mistaken to the extent they argue my Second Order was an order through which the full Committee acted. My Second Order did not adopt the Subcommittee's investigative recommendations regarding the fifteen noise complaints. Nor did my Second Order formalize the decision to take no further action on these complaints. These actions of the Committee were taken during the Committee's June 7 public meeting.<sup>23</sup> The official, permanent record of these actions are the Committee's meeting minutes.<sup>24</sup>

While my Second Order does refer to the actions of the full Committee, these references are provided as background information and to help orient the reader. The

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<sup>22</sup> Footnote 9, above.

<sup>23</sup> Footnote 7, above.

<sup>24</sup> See RSA 91-A:2, II. (Meeting minutes for all public meetings must record the final actions taken by a public body and are treated as permanent records of that public body). Additionally, I highlight that this is the same process that was followed in July 2021 regarding an operational complaint about the Facility's Aircraft Detection Lighting System. The Subcommittee provided a recommendation and the Committee acted upon that recommendation in a public meeting. This Committee action was recorded in the Committee's meeting minutes.

only decisions my Second Order contains are the decisions associated with further tasking the Subcommittee.

Movants do not challenge the decisions I made tasking the Subcommittee. Instead, their Motion focuses exclusively on the Committee's actions undertaken on June 7.<sup>25</sup> In my capacity as chairperson of the Committee, I cannot speak for the full Committee absent a Committee vote. If a motion for rehearing of these June 7 actions was filed, I lack authority to rule on such a motion alone. I do note, however, that the actions of the full Committee complained of were on June 7, 2023 and no motion for rehearing of these actions was filed within thirty days of June 7, 2023. Here, I limit this order to the current motion and the claimed errors in my Second Order.

Because the Movants seek rehearing of my Second Order, but focus exclusively on the Committee's actions on June 7, the Movants fail to establish good reason or good cause to grant their motion. Accordingly, I **DENY** the Movants' request for rehearing.

SO ORDERED, this fourth day of August, 2023.



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Daniel C. Goldner  
Chairman, Site Evaluation Committee

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<sup>25</sup> See Motion for Rehearing at 4. (Movants seek rehearing because the Committee acted unlawfully and unreasonably when it accepted a sound study report and effectively authorized a waiver of administrative rules).