

THE STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

Docket No. 2021-02

INVESTIGATION OF COMPLAINTS REGARDING  
ANTRIM WIND ENERGY FACILITY

**BARBARA BERWICK, LORI LERNER, LISA LINOWES, JANICE LONGGOOD, AND  
DR. FRED WARD MOTION FOR LEAVE TO REPLY AND REPLY TO ANTRIM  
WIND ENERGY, LLC'S OBJECTION TO MOTION FOR REHEARING**

Barbara Berwick, Lori Lerner, Lisa Linowes, Janice Longgood, and Dr. Fred Ward (“Parties”) respectfully request leave to reply to Antrim Wind Energy, LLC’s (“Antrim Wind”) January 18, 2024 Objection (“Objection”) to the Parties’ Motion for Rehearing. As explained below, Antrim Wind has misapplied the law governing the rehearing request, misrepresented the facts regarding a prior order issued by the Site Evaluation Committee (“SEC” or “Committee”), and failed to fully describe the basis for the rehearing.

**I. ANTRIM WIND OBJECTION MISAPPLIES THE LAW AND MISREPRESENTS THE RECORD RELATING TO THE MAY 14, 2021 SEC ORDER ON REHEARINGS**

1. RSA 162-H:11 states that “decisions made *pursuant to this chapter* shall be reviewable in accordance with RSA 541.” (Emphasis added.) The statute does not say that only decisions reached in adjudicative appeals are subject to RSA 541. The rules of statutory construction prohibit adding words to a statute that the legislature did not see fit to include. Antrim Wind’s claim that motions for rehearing are only authorized in the context of an adjudicative proceeding pursuant to RSA 162-H:11 is a distinction manufactured by Antrim Wind that is not supported in statute.

2. The Parties are not seeking an adjudicative hearing, and since there is no adjudicative proceeding before the Committee on this matter, the Parties could not be seeking an adjudication appeal. Site 202.29(a) makes clear that RSA 541 is the governing statute and sections (b) through (e) of the rule are supplemental to RSA 541. The Parties' reference to Site 202.29 was not intended to confuse but merely to present a comprehensive listing of the law. It should have been obvious by the language contained in the Parties' motion that RSA 541:3, provides the statutory authority for requesting a rehearing. (RSA 541:3 stating: "Within 30 days after any order or decision has been made by the commission, ...any person directly affected thereby, may apply for a rehearing.")

3. Antrim Wind misstated the record regarding the Committee's May 14, 2021 order<sup>1</sup> under Docket 2015-02. (Objection at 7) Contrary to Antrim Wind's claim, there is no language within the May 14, 2021 order that suggests motions for rehearing are limited only to cases involving adjudicative proceedings. In fact, the order clearly articulates two separate circumstances where motions for rehearing are appropriate. The first involves orders or decisions during proceedings before the Committee. The second involves orders or decisions where a person or persons might be directly affected. (SEC Order May 14, 2021 at p. 4) The current motion for rehearing by the Parties clearly falls within the latter category.<sup>2</sup> Antrim Wind's reference to the May 14, 2021 order stating "did not rise to the level of a contested case requiring

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<sup>1</sup> Order Denying Motion for Rehearing, May 14, 2021. [https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02\\_2021-05-14\\_order\\_denying\\_rehearing.pdf](https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02_2021-05-14_order_denying_rehearing.pdf)

<sup>2</sup> Antrim Wind's footnote 2 is irrelevant to this matter. For the record, the motion for rehearing filed on July 22, 2023 was not denied on the merits but for being untimely despite being filed within thirty days of an SEC written order.

the opening of an adjudicative hearing” was taken out of context and bears no relevance to the Parties’ pending motion.<sup>3</sup> (Objection at 7)

4. Antrim Wind’s repeated claim that the Committee’s decision on December 11, 2023 was administrative pursuant to RSA 162-H:12 and not subject to RSA 541:3 is belied by the record. At the time when the neighbors filed complaints over excess turbine noise and lighting, RSA 162-H:4 authorized the SEC to, among other things, “ensure that the terms and conditions of [a] certificate are met.” (The statute has since been amended.) When the SEC appointed a subcommittee in April 2021, the SEC specifically tasked the subcommittee with “reviewing and investigating complaints . . . to ensure the terms and conditions of the Certificate are being met.” The Parties’ motion for rehearing challenges the SEC’s final determination that the conditions of the Certificate are being met. In that regard, the subcommittee was specifically carrying out an act contemplated by the statute on behalf of the SEC, and the SEC, in adopting the subcommittee’s recommendations, was making a decision as to whether those terms and conditions were met, as contemplated in the statute. RSA 541 does not define what constitutes a “decision,” but here the SEC took a vote as a body in a public meeting to adopt certain conclusions. Antrim Wind’s Objection cites provisions of RSA 541-A that prescribe what must be in an order following an adjudicative procedure, however they somehow preclude or modify the review specifically contemplated in RSA 162-H:11. (Objection at 5, 8, and 9)

## **II. ANTRIM WIND MISSTATES THE BASIS FOR THE MOTION FOR REHEARING**

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<sup>3</sup> In the motion for rehearing filed in 2021, the movants were seeking to open a separate adjudicative proceeding to allow for the full vetting of issues surrounding noise complaints and the proper interpretation of SEC Site 301.18. The fact pattern in that case was very different from the pending motion for rehearing. Antrim Wind’s reference to the 2021 order is misplaced. The SEC did not agree to an adjudicative proceeding but instead ordered the subcommittee be convened to assess the intent of the SEC noise rule and to evaluate the validity of the complaints.

## NOISE

5. Movants Berwick and Longgood suffer non-speculative, particularized harm by the SEC's decision that is not generally applicable to the public at large. Barbara Berwick resides at 72 Reed Carr Road in Antrim, New Hampshire. Ms. Berwick is an abutter to the Antrim Wind Energy Project. The three nearest turbines to the Berwick property, T1, T2, and T3 are line-of-sight and respectively approximately 3670, 3800, and 5000 feet from the Berwick home. Ms. Berwick has filed reports of loud noise with the SEC related to the Antrim Wind turbines since December 28, 2019. Janice Longgood resides at 156 Salmon Brook Road in Antrim. Ms. Longgood is an abutter to the Antrim Wind Energy Project at just 3600 feet from turbine T5 and within the line of sight of multiple other turbines. Ms. Longgood has filed reports of loud noise with the SEC related to the Antrim Wind turbines since January 27, 2020.

6. Antrim Wind argues that Ms. Longgood's May 1, 2023 noise complaint<sup>4</sup> "lacked specifics on dates and times and provided no data or other basis to determine a violation." (Objection at 14) However, the subcommittee accepted Ms. Longgood's complaint as valid and at no time concluded that her complaint was inadequate. (TR September 1, 2023 p. 31-32). The claim of inadequacy was inserted into the Administrator's Report outside of the subcommittee's view. (Administrator Report at 19 )

7. In fact, the entirety of the Administrator Report at paragraph 19 invents a narrative with conclusions that are not reflective of the subcommittee's action on the Longgood complaint. For example, paragraph 19 inserts a general claim by HMMH regarding noise propagation that was not referenced by the subcommittee during its September 1, 2023 meeting

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<sup>4</sup> Docket No. 2021-02 Summary of Investigation, August 31, 2023. [https://www.nhsec.nh.gov/projects/2021-02/documents/2021-02\\_summary\\_investigation\\_8-31-2023.pdf](https://www.nhsec.nh.gov/projects/2021-02/documents/2021-02_summary_investigation_8-31-2023.pdf)

nor was that claim by HMMH made in the context of the Longgood complaint. Remarkably, it is the Administrator Report, and not the actions of the subcommittee that forces an outcome that the Parties find untenable i.e., that Ms. Longgood’s complaint, and for that matter, all future noise complaints can be dismissed as being covered by the HMMH report. HMMH representative Menge’s tepid opinion (“*I think the difference in sound would be very small*”) regarding the location where HMMH took measurements and those locations governed by Site 301.14(f)(2)(a) (“between the nearest building... and the closest turbine”) is not based on any facts in this docket or in Docket No. 2015-02. The record shows that the subcommittee deemed the Longgood complaint valid, and then took no action to investigate noise levels at her property pursuant to Site 301.14(f)(2)(a) and 301.18(i).<sup>5</sup> For the reasons cited herein and in the Parties’ motion, the SEC erred in accepting that the Antrim Wind turbines are operating in compliance with the certificate at Ms. Longgood’s property.

#### ADLS AND NIGHTTIME LIGHTING

Antrim Wind’s comments regarding the ADLS and nighttime lighting repeat the same statements they made at the December 11, 2023 meeting without acknowledging the record. The record clearly shows the following:

8. Antrim Wind did not provide the information necessary for the SEC to conduct a thorough review of the impacts of nighttime lighting under Docket 2015-02. There are no witness testimonies, no exhibits related to nighttime lighting, and no cross-examinations or informed deliberations that investigated the level of lighting that could result in an unreasonable adverse effect.

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<sup>5</sup> The Parties note that the subcommittee ignored the requirements of Site 301.14(f)(2)(a) and 301.18(i).

9. Attorney Needleman affirmed before the SEC that “the use of a radar activated system will essentially eliminate the impact [of lighting].” (Dockey 2015-02 Objection to Joint Motion for Rehearing at p. 24, April 24, 2017)

10. Attorney Turner affirmed for the SEC on December 11, 2023, that the subcommittee narrowly reviewed the lighting issue (“whether the facility is complying with the terms of its Certificate”) and that the subcommittee did not investigate the record under Docket 2015-02. (TR December 11, 2023 p. 81) It is the SEC’s obligation to fully assess compliance and not rely on the narrow perspective adopted by the subcommittee.

11. Ms. Berwick and Ms. Longgood, as abutters to the Antrim Wind turbines, suffer excess lighting from the turbines that was not contemplated when the facility was certificated. They, and others joined in requesting a rehearing on the lighting issue under Docket 2015-02 and were assured by the SEC and Mr. Needleman on behalf of Antrim Wind, that the turbines would only be illuminated when aircraft were in close proximity to the turbines and only for short periods of time. The subcommittee’s recommendation that a 20 to 30% “on average” nightly illumination is an acceptable threshold does not conform to the SEC’s finding that the facility will not produce an unreasonable adverse effect on aesthetics provided the turbines are lit only when aircraft are nearby. The Committee’s action in accepting this operating condition nearly seven years after the permit was issued and without a full vetting of the facts is unilateral, arbitrary, an abuse of discretion and contrary to RSA 162H and leaves Ms. Berwick, Ms. Longgood and other neighbors to the Antrim Wind turbines to suffer excess lighting in violation of the SEC record under Docket 2015-02.

### III. CONCLUSION

12. In summary, Antrim Wind's Objection is without merit. It fails on the law, and it fails on the facts. The discrepancies between the Administrator Report and the subcommittee's actions at its September 1, 2023 are also deeply concerning. Pursuant to RSA 541:3, Ms. Berwick and Ms. Longgood suffer non-speculative, particularized harms by the SEC's acceptance of the Administrator Report that are not generally applicable to the public at large.

WHEREFORE, the Parties respectfully request that the SEC:

- A. Take action to convene a hearing to address the motion before it; and
- B. Grant such further relief as is deemed just and appropriate.

Respectfully submitted,

/s/ Barbara Berwick  
Janice Longgood  
Lori Lerner  
Dr. Fred Ward  
Lisa Linowes

Date: January 28, 2024

**Certificate of Service**

I hereby certify that on the 28th of January, 2024, an electronic copy of the foregoing Reply was served upon the SEC Distribution List.



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