



BARRY NEEDLEMAN
Direct Dial: 603.230.4407
Email: barry.needleman@mcclane.com
Admitted in NH, MA and ME
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

February 1, 2023

Mr. Andrew E. Biemer
Administrator
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 Energy Facility
Written Comments for February 3, 2023 Public Meeting**

Dear Administrator Biemer:

As Antrim Wind Energy LLC (“Antrim”) understands the Subcommittee’s intentions for its public meeting on February 3, 2023, the public is invited to speak for a maximum of five minutes on the two agenda items below.

1. The operation of the ADLS system in 2021.
2. Determination of procedures the Subcommittee should use to decide recommended dispositions of *all complaints* [sound & lighting] submitted re Docket 2021-02 through December 31, 2021.

The Subcommittee also invited written comments in advance of the public meeting. Antrim intends to speak at the public meeting and offers the following written comments.

I. ADLS system in 2021

A. Background

1. Rep. Vose’s complaint from May 6, 2021, alleging that Antrim had violated its Certificate (Attachment A), was resolved at the Subcommittee’s May 21, 2021 public meeting, by deciding that there was no violation (Attachment B). The Subcommittee forwarded its recommendation to the SEC by a letter of May 24, 2021(Attachment C). The SEC approved the recommendation at its July 21, 2021 public meeting (Attachment D).

2. Mr. Block submitted a letter on July 20, 2021, (Attachment E), which was brought up at the SEC's July 21, 2021 Public Meeting. He essentially alleged that Antrim violated its Certificate because its lights were on 42% of the nighttime hours in June of 2021. Mr. Block ignored the Subcommittee's prior determination that Antrim's maintenance and upgrade work did not violate its Certificate (Attachment C). The SEC's minutes indicated that Mr. Block's letter would be addressed by the Subcommittee (Attachment D).

B. Material Provided to Subcommittee

TransAlta provided updated lighting information on August 27, September 7, and October 5, 2021 (Attachments F, G & H).

The Subcommittee issued information requests on December 6, 2021, (Attachment I) and Antrim provided responses related to lighting issues on January 31, 2022 (Attachment J, which does not include more voluminous backup material).

C. Summary of Key Data Responses

From June through December, the average monthly nighttime period in which the lights were on decreased from 47% to 20%. (Attachment J, DR 5 (a))

Antrim complies with its Certificate and the SEC's Decision and Order. (Attachment J, DR 5 (e))

II. Procedures to decide complaints

A. Background

The Subcommittee has two tasks remaining from the April 2, 2021 Order Appointing Subcommittee (Attachment K).

Charge 2: Review and investigate complaints filed through December 31, 2021, regarding Facility operations to ensure the terms and conditions of the Certificate are being met.

Charge 3: Make recommendations to the full Committee regarding the disposition of such complaints.

The Subcommittee submitted four quarterly reports subsequent to making its recommendation on Charge 1 to the Subcommittee on August 23, 2021, which are dated September 2, 2021, January 14, 2022, May 20, 2022, and August 31, 2022 (Attachments L, M, N, & O).

Among other things, the Subcommittee noted in its quarterly reports that it would conduct a site visit, hire a sound consultant who would conduct field surveys and prepare a report, issue written information requests, hold an organizational public meeting, and hold a public meeting to decide recommended disposition of the complaints.

The Subcommittee issued information requests to Antrim Wind on December 6, 2021 (Attachment I) covering sound and lighting issues. Antrim Wind provided responses to the sound requests on January 21, 2022, (Attachment P, which does not include more voluminous backup material) and to the lighting requests on January 31, 2022 (Attachment J).

B. Lighting

As a substantive matter, the Subcommittee has before it sufficient information to make a determination that Antrim has not violated its Certificate based on (1) the information submitted by Antrim Wind in 2021, and (2) Antrim Wind's January 31, 2022 responses to the Subcommittee's information requests.

As a procedural matter, similar to its treatment of Rep. Vose's complaint at the Subcommittee's May 21, 2021 public meeting, no further process is required. The Subcommittee's procedures, moreover, are legally sufficient from investigative and administrative perspectives, and consistent with RSA 162-H:12 (Attachment Q) as discussed below, to recommend that the SEC dismiss Mr. Block's complaint.

C. Sound

The Subcommittee's August 31, 2022 quarterly report (Attachment O) states: "The Complainants have not provided access to their properties for the Subcommittee's independent expert, HMMH, to conduct sound measurements." The complainants' failure to cooperate is itself a sufficient basis for dismissing their complaints.

The complainants' lack of cooperation aside, the Subcommittee will presumably have sufficient information upon issuance of the consultant's report to make a recommendation to the SEC. Depending on the consultants' conclusion, the Subcommittee should be in a position to determine either (1) that Antrim has not violated its Certificate, and the complaints should therefore be dismissed, or (2) that the SEC should follow the requirements of RSA 162-H:12 and notify Antrim of a violation, following which the statutory framework would be followed. (See Attachment Q.)

Once the consultant submits its report, of course, the Subcommittee will need to convene another public meeting to make a decision as to its recommendation. Pursuant to RSA 162-H:12, the Subcommittee's decision is an administrative one and is not adjudicative. It could make a determination based on the consultant's report, without further written or oral comments from any parties. At the same time, the Subcommittee may, but is not required to, employ the procedures for that public meeting as the ones used today, that is, invite written comments in advance and allow parties five minutes to speak.

III. Conclusion

The Subcommittee's charge from the SEC extends only to complaints made by December 31, 2021. At this point, it appears that there is the single lighting complaint from Mr. Block on July 30, 2021, that must be considered and, based on the docket entries in SEC 2015-02, it appears that there are 15 sound complaints (made at various times between January 7, 2020, and March 19, 2021) from five individuals that must be considered.

With respect to the complaints, the Subcommittee is exercising time-limited administrative authority under RSA 162-H:4, I (d) that has been delegated by the SEC, and which does not entail adjudicative procedures. RSA 162-H:12 clearly provides that the SEC in the first instance only makes a "preliminary determination" of a violation, or, in this case, the Subcommittee makes a recommendation to the SEC as to whether a violation has occurred.

Accordingly, in the context of enforcement under the statute, a contested case with adjudicative procedures does not commence until the SEC notifies a certificate holder of the violation and the certificate holder has failed to terminate it. At that point, the SEC must give written notice and provide the opportunity for a prompt hearing, in order to adjudicate whether to suspend the Certificate.

Finally, as to Mr. Block's lighting complaint, we urge the Subcommittee to decide today to recommend that the SEC dismiss it. As for the sound complaints, we urge the Subcommittee to publish the consultant's report as soon as it is available and schedule a public meeting as soon as possible thereafter.

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

Sincerely,



Barry Needleman

cc: John-Mark Turner
Subcommittee Counsel
Mark Dell'Orfano
NH Dept. of Justice