

January 29, 2021

Dianne Martin, Chairperson  
New Hampshire Site Evaluation Committee  
21 South Fruit Street, Suite 10  
Concord, NH 03301

Dear Chairperson Martin:

As you are aware, Senate Bills 245, 99, and 281 enacted in 2014 were intended to increase the public's trust in, and accessibility to the Site Evaluation Committee process. RSA 162-H was subsequently changed to include the addition of two public members, the creation of an administrator position, and the establishment of guidelines for adopting protective wind energy siting rules.

The Antrim Wind Energy facility was the first project to be certificated, constructed, and commissioned under the new law and, as such, accords the public and its representatives the opportunity to now observe the legislative changes in practice. What we have learned is troubling. Based on conversations with our constituents and information in the public record, it appears the SEC process has become more bureaucratic, and the public further marginalized since these bills became law.

Case in point, in response to a 2018 complaint challenging a decision of the Committee's Administrator over permit compliance at the Antrim Wind facility, the Committee ruled that "[a]s a matter of procedure, seeking rehearing of a decision by the Administrator is not proper under the Committee's statutes and rules."<sup>1</sup>

The practical application of this action is that decisions of the Administrator can be made unilaterally, without a hearing, public deliberation, or apparent opportunity for appeal.<sup>2</sup> We believe this is unprecedented in the State of New Hampshire and contrary to the legislative intent of SB 245.

When the Administrator took similar unilateral decisions in 2020, Representative Vose and Senators Ward and Giuda documented their concerns for you in an April 17, 2020 letter.<sup>3</sup> Your June 15<sup>th</sup> response mainly recounted procedural matters, *but ignored the very substance of the concerns raised*. It was not until the Committee's July 29, 2020 meeting before the public could be heard on any of disputed matters.

A follow-up meeting was noticed for November 23, however no effort was made to inform the Antrim Wind service list. Consequently, numerous interested parties who attended in July, including the Antrim Selectboard, did not attend in November. The only public members to speak were Thomas Getz, attorney for Antrim Wind, Jean Francois-Latour of TransAlta Corporation who owns Antrim Wind, and Cavanaugh Tocci, the firm hired by the Committee to review the Antrim Wind winter sound monitoring report. Surely you must have wondered why a public that was so anxious to be heard just a few months before had now gone silent?<sup>4</sup>

---

<sup>1</sup> See: [https://www.nhsec.nh.gov/projects/2015-02/orders-notices/2015-02\\_2018-03-27\\_order\\_jt\\_mtn.pdf](https://www.nhsec.nh.gov/projects/2015-02/orders-notices/2015-02_2018-03-27_order_jt_mtn.pdf) at 2-3

<sup>2</sup> Appeals of administrator actions directly to the courts are likely to trigger the doctrine of exhaustion of remedies.

<sup>3</sup> See: [https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02\\_2020-04-17\\_ltr\\_chair\\_constituent\\_concerns.pdf](https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02_2020-04-17_ltr_chair_constituent_concerns.pdf). Also see minor corrections to the letter here: [https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02\\_2020-04-17\\_ltr\\_corrections\\_chair\\_constituent\\_concerns.pdf](https://www.nhsec.nh.gov/projects/2015-02/post-certificate-filings/2015-02_2020-04-17_ltr_corrections_chair_constituent_concerns.pdf)

<sup>4</sup> There were two items on the November 23rd agenda pertaining to turbine noise monitoring. The Committee acted on one of these agenda items pertaining to Antrim Wind's winter monitoring. The second issue was deferred to a later date due to time constraints. Since these issues involve the legal interpretation of the Committee's rules on wind turbine noise monitoring and compliance, the Committee's decision on November 23 directly relates to both agenda items.

By virtue of the Committee's 2018 ruling, significant authority has been delegated to the Administrator to operate outside of public view on matters pertaining to permit compliance while the Committee effectively isolated itself from having to get involved. Given the complexity of most energy facility applications, compliance challenges raised by project owners, host communities, and/or the public are sure to occur across all SEC dockets. Antrim Wind is just one example. This poses a serious question regarding the delegable powers of the Committee which the legislature will be reviewing during this session.

Regarding the November 23<sup>rd</sup> meeting, we are not interested in debating notification rules. We trust that the minimum requirements were met. Nonetheless, the Committee took a decision at the meeting after having heard from only one-side of a disputed matter. This is astonishing, and frankly inexcusable. Every effort should have been made to ensure the public was notified and heard, particularly during this period of Covid-19 lockdowns.

We understand the Committee is without an Administrator, but the position was vacated months before the November meeting. There was plenty of time to establish alternative procedures.

Given the general unfairness of the situation, it is our hope that the Committee will take the reasonable step of calling another meeting and voting to reconsider its actions of November 23<sup>rd</sup>. The record on the Committee's website for Antrim Wind shows that the public has waited patiently for nearly a year to present its case to the Committee or at a technical session. Unfortunately, the alternative is an appeal which will surely be costly, drawn-out, and likely to create uncertainty for all parties.

Thank you for your attention to this serious matter. We look forward to a positive and timely response.

Respectfully,



Senator Jeb Bradley, Senate District 3



Senator Bob Giuda, Senate District 2



Senator Ruth Ward, Senate District 8



Representative Michael Vose, Rockingham – District 9