

***DRAFT MINUTES***

**SITE EVALUATION COMMITTEE PUBLIC MEETING**

**March 25, 2021**

The following Committee members were present as confirmed through roll-call:

Chairwoman Dianne Martin;  
Vice-Chairman Robert Scott;  
Commissioner Kate Bailey;  
Commissioner Victoria Sheehan;  
Director Wilfred Arvelo, as designee for Commissioner Taylor Caswell;  
Michael York as designee for Commissioner Sarah L. Stewart;  
Susan Duprey, Esq., Public Member;  
George Kassas, Public Member;  
Thomas Eaton, Alternate Public Member;  
Robert Baines, Alternate Public Member; and  
Lisa Noe, Alternate Public Member.

Also present:

J.D. Lavalley, Assistant Attorney General;  
Michael Iacopino, retained counsel for post-certificate matters involving Antrim Wind, LLC.; and  
Corrine Lemay, Public Utilities Commission.

Chairwoman Martin called the meeting to order. Chairwoman Martin found that, due to the State of Emergency declared by the Governor as a result of the COVID-19 Pandemic, and in accordance with the Governor's Emergency Order #12, pursuant to Executive Order 2020-04, the Committee was authorized to meet electronically. She confirmed the Committee was utilizing WebEx for the electronic meeting; all members of the Committee had the ability to communicate contemporaneously during the meeting using this platform; and the public had access to contemporaneously listen and, if necessary, to participate.

The following public meeting agenda items were addressed:

**1. Updates on administrative matters and pending legislation related to the Site Evaluation Committee.**

Proposed Legislation & Fiscal Matters:

Chairwoman Martin provided a legislative update, including House Bill 624.

Chairwoman Martin updated the Committee regarding a recent fiscal committee request for \$95,345, which was approved by the Committee as well as the Governor & Executive Council. Chairwoman Martin informed the Committee that this fiscal item was necessary to pay the remaining costs of the

Committee's administrator position, which is now vacant, and to cover estimated costs for the remainder of the current State fiscal year as no filing fees have been received since FY19. General discussion amongst members regarding Committee funding structure ensued.

Communication from Legislators:

Chairwoman Martin further updated the Committee regarding receipt of the letter from legislators that had been provided to the Committee and requested input regarding a written response.

Mr. Arvelo moved that the Committee write a letter response to the legislators. Second: Mr. Baines. Upon discussion, Mr. Arvelo restated his motion to clarify Commissioner Scott will facilitate the Committee's written response to the concerns raised by the legislators and also include the Committee's funding concerns. Upon restatement, the motion was again seconded by Mr. Baines. Roll Call Vote: Unanimous. **MOTION PASSED.**

Handling Complaints without an Administrator

Chairwoman Martin noted that the handling of noise complaints had previously been designated to the Administrator as part of the Certificate and Decision related to the Antrim Wind, LLC project. She noted that, without an Administrator, the designation is no longer effective and the Committee needs to review how to handle complaints associated with Antrim Wind, LLC going forward. Upon discussion, legal counsel for the Committee will review whether an amendment to the issued certificate is required.

The Committee further discussed formation of a subcommittee to which complaints regarding the Antrim Wind facility will be referred.

Commissioner Sheehan moved to have the Chairwoman establish a subcommittee of three to deal specifically with complaints associated with the Antrim Wind project and that the Chairwoman would also engage any additional consultant support as necessary to provide the technical expertise to evaluate these complaints and that the Committee move forward immediately given the Committee's charge of being responsive to the public. Second: Director Arvelo.

Upon discussion, Commissioner Sheehan clarified her motion regarding evaluation of the noise complaints similar to the delegation of the administrator. The intent was that the subcommittee would return to the full Committee recommendations regarding enforcement.

Commissioner Sheehan rephrased her motion:

Moved to request the Chairwoman to establish a subcommittee of 3; the Chairwoman will hire experts to assist the subcommittee in their evaluation of any noise complaints that pertain to the Antrim Wind project. For each complaint, the subcommittee will assess and evaluate the merits of the complaint and make a recommendation to the full SEC for final vote and determination.

Upon further discussion, Commission Sheehan and Director Arvelo withdrew the motion. **MOTION WITHDRAWN.**

Commissioner Sheehan made a revised motion as follows: Moved to request the Chairperson establish a subcommittee of three. Further, the Chair will hire experts and additional consultant support to assist the subcommittee in their evaluation of any noise complaints that pertain to the Antrim Wind project. The cost of any consultants or technical experts will be paid for by the certificate holder and that for each complaint the subcommittee will make a recommendation to the full SEC for their ultimate determination of a finding and any necessary action. Second: Ms. Duprey. Roll Call Vote: Unanimous. **MOTION PASSED.**

The Committee then discussed whether field sound studies will be conducted for every noise complaint referred to the subcommittee.

Commissioner Bailey moved, in accordance with administrative rule Site 302.05, to waive administrative rule Site 301.18(i), in order to allow the subcommittee – in the absence of an administrator – to determine whether a field sound survey is warranted to validate each noise complaint. Second: Mr. Baines. Roll Call Vote: Unanimous. **MOTION PASSED.**

Ms. Duprey then raised studying the noise standard that is applicable to wind energy projects. Ms. Duprey offered concerns regarding application of the Committee's administrative regulations. She also offered that having industry pay the costs of experts is standard operating procedures across multiple governmental bodies such as planning boards, zoning boards, and other municipal entities. Such an arrangement avoids government incurring the expense of investigations necessary to fully review an application but does not create an inappropriate relationship between an applicant and an unaffiliated expert.

The Committee then continued discussion on the applicable noise standards and sound measurement methodologies that must be determined to investigate noise complaints.

Ms. Duprey moved that the Chairwoman either utilize the subcommittee previously recommended or appoint a separate subcommittee to make the initial determination on how the Committee's administrative regulations should be interpreted as applying to sound measurements for wind projects and, after investigating the rules, the subcommittee shall forward a recommendation to the full Committee; the committee will then make a final determination as to what method will be used to measure sound. Any subcommittee investigation of noise complaints will occur after such determination by the full Committee. Second: Director Arvelo. Roll Call Vote: Unanimous. **MOTION PASSED.**

## **2. Public Comment**

**Mr. Fred Ward** appeared before the Committee to provide public comment regarding the Nyquist Frequency and its importance for proper sound measurements.

**Ms. Lori Lerner** appeared before the Committee to provide public comment regarding Committee communication and transparency. Ms. Lerner further commented that noise limits applicable wind energy facilities are "shall not exceed" regulations and no averaging of sound measurement data should be permitted. Ms. Lerner complained that the Aircraft Detection Lighting System (ADLS) installed at the Antrim Wind facility is still not in operation and alleged the facility is in violation of the Committee's issued certificate. Lastly, Ms. Lerner requested the Committee reverse the actions it took at its previous public meeting and re-open Docket No. 2015-02.

**Ms. Nancy Watson** appeared before the Committee to provide public comment regarding the Committee's oversight and enforcement related to wind energy projects. Ms. Watson expressed concern regarding post-construction monitoring for compliance as well as the Committee's efforts in ensuring public participation and transparency in enforcement.

**Ms. Lisa Linowes** appeared before the Committee to provide public comment regarding the sound study methodology. Ms. Linowes expressed concern that the Committee is applying different methodology to post-construction sound monitoring and noise complaint validation (field sound surveys). She said it should be the same methodology. She also expressed concern that acceptance of the sound study means the methodology was accepted. Ms. Linowes noted previously provided testimony related to the project

that the noise standard was 40 decibels and this limit was not to be exceeded. She stated that the standard of 40 decibels averaged over 1 hour does not make sense. Ms. Linowes also expressed concern about prior direction given to the public about the need to challenge the administrator's decisions by filing a declaratory ruling with a \$10,000 filing fee. She asked the Committee to clarify if there are other avenues. The Chairwoman asked Ms. Linowes if she was still seeking the raw data related to the sound study performed by Antrim Wind. Ms. Linowes confirmed that she was. The Chairwoman also asked Ms. Linowes to clarify if she was saying the same standard in the administrative rules should apply to sound surveys for complaints and post-certificate noise compliance monitoring. She confirmed that is her position. The only distinction, according to Ms. Linowes, is related to meteorology requirements.

**Ms. Barbara Berwick** appeared before the Committee to provide public comment. She stated that she has only filed one noise complaint approximately a year to a year and a half ago, around January or so. She had a meeting with Mr. Tocci and the Committee's then-Administrator, where she was asked to report to them when there was noisy conditions. So she reported that information as requested. She did not file those as complaints. She expressed concern about being informed of proceedings. She also expressed that the administrative rules were clear for sound studies and no one ever challenged the rules. She questioned the difference in number of hours of studies done and resulting data between pre-construction and post-construction periods. She clarified that she never said Antrim Wind could not monitor on her property; rather, she refused to allow monitoring on her property with the protocols Antrim Wind was using. Committee member Duprey asked Ms. Berwick to clarify her comments about the Committee changing the law. In response, Ms. Berwick stated she understood the Committee's acceptance of the report and granting the waiver wasn't following the guidelines established by the Committee and that was changing the law. Ms. Duprey clarified that the Committee has not decided on the sound measurement methodology and that is why the Committee will appoint a subcommittee. The Chairwoman asked Ms. Berwick if she could provide the date of her complaint so that the subcommittee has the information it needs to review the complaint. Ms. Berwick did not have the date available but said she would look and see if she has the original complaint. She sent it to the selectmen and the Committee's then-Administrator. She said it was last winter. She confirmed it was not the night Mr. Rand was on her property conducting measurements.

**Ms. Janice Longgood** appeared before the Committee to provide public comment. She is an abutter to the project. She has filed a formal noise complaint. When the Committee's then-Administrator came out to her property, she was not in agreement with the averaging measurement methodology that was proposed to be used, so she denied access to her property after that time. She expressed concerns about

Committee communication and compliance monitoring. She stated that four turbines had lights flashing the night before for quite a period of time. She also expressed concern about how loud the turbines are, stating that the project can sound like a jet engine.

**Mr. Richard Block** appeared before the Committee to provide public comment. He is a resident of Antrim and has served as a designated spokesperson. He expressed concern that noise limits are regularly exceeded and lights flash almost all night, every night. He also expressed concerns about notice of Committee meetings.

**Mr. Joe Wilkes** appeared before the Committee to provide public comment. He is a resident of Bridgewater. He has monitored the progress related to the Antrim Wind project. He expressed concern that the Committee decisions are biased toward the project and not the residents nearby. He referred to the sound specifications and rules and said there is no reason to think the intent was to average measurements of sound.

**Mr. Tom Getz** appeared before the Committee to provide public comment on behalf of Antrim Wind. He indicated that Antrim Wind is prepared to provide a hard drive to individuals with the data in the form it exists. He stated that it is Antrim Wind's position on the motion for rehearing that Ms. Linowes and others have failed to carry the burden for rehearing. He expressed that the November 23, 2020 meeting was properly and legally noticed. He stated that post-certificate filings are distinct from adjudicative matters and a determination as to whether a violation has occurred has to happen before an adjudicative matter is commenced. He referenced the administrative rules for sound for measurements and reports. According to Mr. Getz, it is Antrim Wind's position that it is the report that provides the basis for a determination. Mr. Getz also expressed that the Committee's administrative rules do not contain a "not to exceed" standard. He asked the Committee to accept the recommendation of Mr. Tocci and determine that the Certificate has not been violated.

### **3. a. Request for Access to Sound Study Data**

The Chairwoman noted that Antrim Wind agreed to provide the raw data in the form it exists. The Committee then discussed how it should be provided.

Director Arvelo moved that the raw data be made available to residents of Antrim and, in particular, Ms. Linowes, upon request. Second: Susan Duprey. Discussion: Vice-chair Scott suggested amending the motion to require Antrim Wind to include information to the requestor as to how the data is formatted.

Director Arvelo amended his motion consistent with Vice-chair Scott's suggestion. Second: Ms. Duprey. Discussion: Mr. Kassas questioned who they should make the request to. Mr. Kassas said there is no reason to have the Committee in the middle of it. After that discussion, the Mr. Arvelo withdrew the motion. **MOTION WITHDRAWN.**

Director Arvelo made an amended motion to grant Ms. Linowes' motion for the raw data and to direct Antrim Wind to provide the raw data directly to Ms. Linowes and any other members of the public who request it and that the raw data shall be on a hard drive and accompanied by information explaining how the data is organized. Second: Ms. Duprey. Discussion: None. Roll Call Vote: Unanimous. **MOTION PASSED.**

### **3. b. Motion for Rehearing**

Commissioner Bailey began the discussion by saying the notice was technically correct, but, after hearing public comment, she was concerned by the lack of direct notice. Director Arvelo agreed. Commissioner Sheehan suggested the Committee send a notice to all closed docket service lists and to let those on the service lists know that they can migrate to the new public meeting service list. She clarified that such notice should go to those lists associated with the prior Antrim Wind dockets rather than all of the Committee's closed dockets. Ms. Duprey indicated that the Seacoast Reliability construction monitoring reports go to the service list utilized in the project application docket. Chairwoman Martin noted Commissioner Sheehan's suggestion will ensure all interested persons on the prior closed docket service lists will be able to be on the public meeting service list Mr. York suggested posting meeting notices by town clerks or at local libraries. Ms. Duprey suggested putting everyone on the public meeting service list and letting people opt-out rather than having them opt-in. Commissioner Sheehan suggested including all closed docket service lists. Chairwoman Martin stated that is what will occur for public meetings going forward.

Discussion on the motion for rehearing: Commissioner Bailey asked for a summary of the arguments. Attorney Iacopino summarized the movants' arguments. Commissioner Bailey asked if the order of January 5<sup>th</sup> approved the methodology or just accepted the report without approving it. Attorney Iacopino said that the Order did not expressly approve the methodology. Chairwoman Martin asked whether the Committee is required to formally accept a report or if it can just be filed. Attorney Iacopino noted the Committee lacks an administrator in all Committee dockets; there is no administrator to review filings. But, Attorney Iacopino further noted there is no requirement in the Antrim Wind certificate that a post-certificate report be formally accepted, it is only required that reports be filed. Vice-chair Scott stated that

the subcommittee will be reviewing the methodology and for that reason sound measurement methodology should be considered addressed. Director Arvelo asked whether there was a set standard regarding averaging or not-to-exceed and how the Committee can make decisions without one. The Chairwoman noted that there are rules, but that there are different interpretations of the rules. She also noted Ms. Duprey's motion provides that the subcommittee consider this issue as its first point of action. Attorney Iacopino described caselaw filed by Ms. Linowes and indicated that the Committee has to consider that and decide this question. Commissioner Bailey noted that the Committee has not made a determination as to the standard or rule and so the rehearing request as to that issue should be denied.

Director Arvelo moved to deny the request for rehearing on the basis that the Committee met the requirements of RSA 91-A and that the Acentech report was not approved, it was just accepted into the Committee's files so there is no violation by the Committee warranting rehearing. Second: Mr. Baines.

Discussion: Commissioner Bailey asked how hard it would be to have another hearing on the waiver. She agrees the notice was legally adequate, but it wasn't received. Commissioner Scott asked whether a hearing is required or even expected for a waiver of our rules. Attorney Lavallee provided that the Committee has two different waiver provisions one for waiving procedural rules during adjudicative proceedings and another for waiving substantive rules. The rule waiver at issue did not require an adjudicative proceeding.

Attorney Lavallee also noted the Committee's rules allow for an adjustment of the post-construction monitoring schedule, so a waiver is technically not required. Attorney Iacopino clarified that the adjustment of schedule is permitted but adjustment to a monitoring location requires a waiver, which was what was decided. The Chairwoman asked if the prior order required the facility to come back to the Committee before implementing. Attorney Iacopino clarified that the facility did not have to come back to the Committee but if that if the property owner permitted access to the location that was subject to the waiver, the waiver would not apply. Commissioner Bailey indicated she reconsidered her opinion because the first waiver waived a location requirement so long as the landowner prohibited access; Commissioner Bailey provided she didn't feel the Committee needed more public input on that. Commissioner Bailey stated the second waiver deferred spring 2020 sound monitoring to spring 2021 and this is not an adjudicative decision, so the Committee can deny the motion for rehearing.

Mr. Baines withdrew his second and Director Arvelo withdrew his motion. **MOTION WITHDRAWN.**

Director Arvelo moved to deny the request for rehearing based upon the Committee's discussion. Second: Mr. Baines. Roll Call: Unanimous. **MOTION PASSED.**

Ms. Duprey was excused.

**3. c. & d. Noise Complaints and Complaint Validation Sound Measurement Report**

Attorney Iacopino summarized the agenda items and said given that the Committee was establishing a subcommittee to review the Complaints, it could also have this related report considered by them as part of that review. Chairwoman Martin agreed it could be referred to the subcommittee to review.

Mr. Baines made a motion to refer that to the subcommittee. Second: Mr. Eaton. Roll Call: Unanimous.

**MOTION PASSED.**

**4. Committee Discussion of Process for Handling Complaints.**

Covered in the earlier discussion.

**5. Other Business: Date for next meeting.** The Committee requested a doodle poll be done.

Commissioner Scott suggested that the Committee will need to meet again by July for its annual meeting regarding fees. Commissioner Sheehan suggested meeting in two months to be briefed by the subcommittee related to its progress. The Chairwoman said she would do a doodle poll for two months out and would schedule one sooner at the call of the chair if something more urgent arises. The Chairwoman also noted that minutes would be done for the meeting to comply with the RSA 91-A timeframes and that the recording would be made available on the website as well.

Motion to Adjourn: Mr. Baines. Second: Director Arvelo. Roll call: Unanimous. **MOTION PASSED.**

The meeting was adjourned.