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October 21, 2019

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: Docket No. 2019-03, Antrim Level LLC
Petition for Declaratory Ruling
Motion for Clarification**

Dear Ms. Monroe:

Enclosed for filing please find an original and one copy of Antrim Level LLC's Motion for Clarification and/or Objection in Anticipation of Irrelevant Discovery and Testimony in the above-captioned proceeding. A copy of the enclosed filing has also been sent electronically to the service list.

Please call me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Thomas B. Getz". The signature is stylized and cursive.

Thomas B. Getz

TBG:slb

cc: Service List

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2019-03

ANTRIM LEVEL LLC

**Petition for Declaratory Ruling or, in the Alternative,
Motion for Expedited Approval of Change in Ownership Structure**

**Motion for Clarification and/or
Objection in Anticipation of Irrelevant Discovery and Testimony**

Antrim Level LLC (“Antrim Level”), by and through its attorneys, McLane Middleton, Professional Association, respectfully requests that the Site Evaluation Committee (“SEC” or “Committee”) clarify its October 18, 2019 Order on Petitions to Intervene (“Intervention Order”) as it relates to the proper scope of the above-captioned proceeding. As became clear during the prehearing conference on October 18, 2019, Mr. Block and Ms. Nelkens (“Antrim Residents”) mistakenly interpret the Intervention Order to encompass financial, managerial and technical capability generally and issues related to turbine lighting specifically. Antrim Level contends that the proper scope of this proceeding is limited to a single aspect of financial capability, i.e., the manner in which Antrim Level effects the tax equity financing previously considered by the SEC when it determined that Antrim Level has the financial capability to construct, operate and maintain the Project.

1. In this proceeding, the Intervention Order closes by stating:

All parties are reminded that this proceeding is limited in scope. This proceeding is not a rehearing on the Certificate and will not address the impact of the Project on property values, aesthetics, and noise. The limited purpose of this hearing is to determine whether the proposed transaction requires approval of the Subcommittee and, if so, whether the transferees have adequate financial, managerial, and technical capabilities to assure that the conditions of the Certificate are continuously met. *Order on Petitions to Intervene*, Docket No. 2019-03, 6. (Emphasis supplied.)

2. The Intervention Order echoes the last paragraph of the Order on Petitions to Intervene in SEC Docket No. 2018-03, (September 25, 2018) *Joint Petition of Walden Green Energy Northeast Wind LLC, Walden Antrim LLC and Antrim Level LLC for Approval of the Transfer of Membership Interests in Antrim Wind Energy LLC* (“Transfer Proceeding”), which states:

All parties are reminded that this proceeding is limited in scope. This proceeding is not a rehearing on the Certificate. The limited purpose of this proceeding is to determine whether the proposed transferee has adequate financial, managerial, and technical capability to assure continuing compliance with the Certificate. *Order on Petitions to Intervene*, Docket No. 2018-03, p. 8 (September 25, 2018) (Emphasis supplied.)

3. In the Transfer Proceeding, the SEC found that “Antrim Level has adequate financial, technical, and managerial capability to construct and operate the Antrim Wind Project in continuing compliance with all of the terms and conditions of the Certificate of Site and Facility issued to Antrim Wind Energy.” *Decision and Order Approving Transfer of Ownership Interests in Antrim Wind Energy, LLC*, p. 15 (February 15, 2019). Nothing in this proceeding calls into question or reopens for consideration the SEC’s affirmative findings as to Antrim Level’s financial, managerial and technical capability, which findings are final as a matter of law.

4. The Antrim Residents nonetheless latch onto the final sentence of the Intervention Order as indicating that they may raise any issue related to Antrim Level’s financial, managerial and technical capability. In particular, they expressed their intent to pursue here the same issues that they have already pursued with respect to the temporary lighting of the wind turbines during construction, which have already been considered in SEC Docket No. 2015-02.

5. On September 17, 2019, certain Antrim residents, including Mr. Block and Ms. Nelkens, filed a request for enforcement and penalties. However, after an investigation of the

issues, the SEC Administrator reported that the temporary turbine lights were replaced with permanent lights, and she concluded that Antrim Level “acted appropriately and in accordance with the terms and conditions of the Certificate in responding to the complaint regarding the temporary lighting malfunction. Accordingly, no enforcement action is recommended or required.” *SEC Administrator Response to Request for Enforcement and Penalties*, Docket No. 2015-02, p. 3 (October 4, 2019). In light of the foregoing, Mr. Block and Ms. Nelkens should not be permitted to reopen the turbine lighting issue. Moreover, any new alleged enforcement issue should not be considered here but in Docket No. 2015-02.

6. As noted above, the clause in the Intervention Order in this proceeding, on which the Antrim Residents mistakenly rely, mirrors language from the Order on Petitions to Intervene in the Transfer Proceeding, which properly concerned the overall financial, managerial and technical capability of Antrim Level to construct, operate and maintain the Antrim Wind Project. Antrim Level, however, believes that the last clause of the Intervention Order is properly interpreted to mean that if SEC approval of the proposed transaction is required, the SEC will consider whether the manner in which the tax equity financing will be structured and obtained will affect Antrim Level’s financial capability to continuously meet the conditions of the Certificate.

7. In summary, the sole issue before the SEC concerns Antrim Level’s tax equity financing and involves two questions. First, does Antrim Level require SEC approval to close its tax equity financing from Citicorp? Second, if SEC approval is required, does such tax equity financing affect Antrim Level’s financial capability to operate and maintain the Antrim Wind Project? Neither of these questions pertains to managerial and technical capability, nor do they pertain to the lighting of the Antrim Wind Project turbines. Accordingly, in the event that the

Antrim Residents raise other issues they would not be relevant to this proceeding and Antrim Level will object to any discovery, testimony or other evidence concerning such issues.

8. Antrim Level therefore asks that the Presiding Officer make clear that the Antrim Residents may only pursue discovery, file testimony, cross-examine witnesses, and otherwise address issues in this proceeding directly related to Antrim Level's proposed tax equity financing from Citicorp.

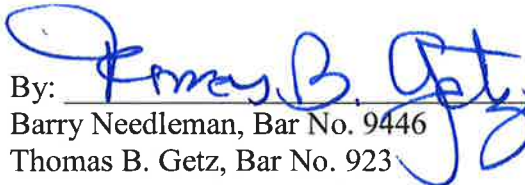
WHEREFORE, the Applicants respectfully request that the Presiding Officer:

- A. Clarify the scope of this proceeding and
- B. Grant such further relief as deemed appropriate.

Respectfully submitted,

Antrim Level LLC
By Its Attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

By: 

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Dated: October 21, 2019

Certificate of Service

I hereby certify that on the 21st of October, 2019, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.


Thomas B. Getz