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April 22, 2021

Ms. Dianne Martin
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: SEC Docket No. 2021-01
Petition for Jurisdiction over
Proposed Solar Energy Facility in Milford, NH**

Dear Chairwoman Martin:

On behalf of Milford Spartan Solar, LLC please find enclosed for filing in the above captioned matter a copy of an Objection to the Motion to Amend the Petition for Jurisdiction. A copy of the enclosed filing has also been sent electronically to all persons listed on the Committee's official Service List for this docket.

Please let me know if you have any questions regarding this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Needleman", written in a cursive style.

Barry Needleman

BN:rs3

Enclosure

cc: Service List

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

Docket No. 2021-01

**PETITION FOR JURISDICTION OVER
PROPOSED SOLAR ENERGY FACILITY IN MILFORD, NH**

**MILFORD SPARTAN SOLAR, LLC'S OBJECTION TO
MOTION TO AMEND PETITION FOR JURISDICTION**

Milford Spartan Solar, LLC (“Spartan Solar”) by and through its attorneys, McLane Middleton, Professional Association, submits this Objection to Suzanne Fournier’s¹ Motion to Amend Petition for Jurisdiction filed on April 12, 2021. In support of its Objection, Spartan Solar asserts the following:

I. Background

1. In this proceeding, Ms. Fournier has thus far filed four pleadings with the New Hampshire Site Evaluation Committee (“SEC”), comprising 190 pages, urging the SEC to take jurisdiction of the 16 MW Spartan Solar project. She repeats again in these pleadings the same few themes, consisting largely of complaints against the Town of Milford (“Town” or “Milford”), the New Hampshire Department of Environmental Services (“DES”), and the New Hampshire Fish & Game Department (“NHF&G”).²

2. On April 9, 2021, Ms. Fournier filed an Objection to Spartan Solar’s Motion to Dismiss (the “Objection”). On April 12, 2021, she filed a Motion to Amend the December 3,

¹ Ms. Fournier holds the Trade Name of Brox Environmental Citizens, which is on file with the New Hampshire Secretary of State’s Office. The organization does not have a website or listing of its members and simply appears to reflect the individual views and opinions of Ms. Fournier.

² Many of these themes also formed the basis for her opposition to the Chinook Solar, LLC project, located in Fitzwilliam, approximately thirty miles west of Milford.

2020 Petition for Jurisdiction (the “Motion”). The Motion incorporated her Objection by reference. *See Motion* at p. 2.

3. Neither of these filings provide any further substantive basis for Ms. Fournier’s request that the SEC assert its discretionary jurisdiction over Spartan Solar’s proposed project in Milford. Ms. Fournier’s filings also continue glossing over the fact that Spartan Solar has not yet filed a formal application either at the Town or at any administrative agency. Those applications will, as required by law, contain an abundance of information.³ Therefore, her argument that as of today there is an absence of information that necessitates SEC review is nonsensical. If the SEC adopted this logic, the SEC would be compelled to review every local project in New Hampshire before an applicant filed local and State permit applications.

II. Ms. Fournier has failed to prove that the SEC must take jurisdiction.

A. The Town has the capability to review the proposed project.

4. The Town has repeatedly stated that it has the means and the desire to review this project. Moreover, the project will be located only in Milford. It will not affect any other surrounding towns and no other towns have sought involvement in the permitting process.⁴ This lack of engagement by surrounding communities demonstrates that this project is not a matter of regional importance. It is a matter of local concern and should be subject solely to local review and approval.

³ As noted previously, *see Milford Spartan Solar, LLC’s Motion to Dismiss*, at 1 (March 26, 2021), Spartan Solar has nonetheless already shared a great deal of information with the Town, all of which is publicly available.

⁴ Ms. Fournier sought support for her petition from surrounding Towns. None of these Towns joined her petition or sought to intervene in the SEC docket. For example, Ms. Fournier attended the March 2020 Wilton Select Board meeting and requested the Town sign on to the petition to have the SEC assert jurisdiction. The Select Board rejected her request and Selectman Fish stated he did not think it was in Wilton’s “best interest to interfere with what goes on in the Town of Milford.” *See Minutes at <https://www.wiltonnh.gov/common/pages/DisplayFile.aspx?itemId=16578892>*.

5. Ms. Fournier claims that various aspects of the Milford Zoning Ordinance (the “Ordinance”) are deficient and consequently, the project will not be properly reviewed. In each instance, she is wrong.

6. She first suggests that because the Town’s Ordinance does not limit the installation of solar arrays in a way she deems prudent, the Ordinance is somehow inadequate to ensure sufficient project review. *See Motion* at ¶31. Specifically, she criticizes the failure of the ordinance to define “appropriate location” for a solar facility. *See Motion* at ¶27. This criticism, however, fails to account for the fact that the Ordinance defines appropriate location based on zoning districts. While Ms. Fournier may not agree with this method for defining appropriate location, it is misleading to state that the Ordinance simply provides no definition.

7. Second, Ms. Fournier argues, based on citations to an outdated version of the Ordinance, that it does not require consideration of environmental issues. *See Objection* at ¶12 and 17. In fact, the Ordinance in effect today specifically includes consideration of “the environment” and “environmental sustainability” in the Purpose Section 7.11.2. Moreover, the Town’s actions to date have made it clear that the environment and consideration of the specifics of this site will be an important aspects of project review.⁵ Moreover, the ordinance expressly requires that projects requiring an Alteration of Terrain (“AoT”) obtain that permit from DES (*see* Section 7.11.6(A)(4)), and any such permit be incorporated by reference into the final permit issued by the Town.

⁵ For example, the Milford Conservation Commission engaged FB Environmental to prepare a Natural Resources Inventory, thus indicating that the Town is plainly focused on understanding and assessing environmental issues. Ms. Fournier cites the report and a statement therein calling an abutting resource to the proposed project site “an ecological gem” as a reason why the SEC should assert jurisdiction. *Motion* at ¶11. Ms. Fournier’s argument is misplaced because that statement has no relevance to the question of whether the SEC should assert jurisdiction. The inquiry here does not focus on the qualities of the site but whether the Town (in conjunction with State environmental regulators) can and will adequately review the site.

8. Third, throughout the Objection and the Amendment, Ms. Fournier suggests that absent SEC review, the public will not be entitled to receive information regarding the project's finances. Her presumption that in an SEC proceeding such information is publicly available is not consistent with past SEC practice. The SEC routinely makes this type of confidential business information subject to a protective order and only available for review if a party signs a confidentiality agreement. More importantly, a major component of financial review is meant to assure projects will not be half-built and then abandoned, or left standing after their useful life. That will not occur here - the Ordinance includes a decommissioning and removal section (Section 7.11.7), which addresses any concern that Spartan Solar might start constructing the project and be unable to finish. The Ordinance already requires that an abandoned system "be removed and the site restored within 6 months of abandonment." Finally, the lease with the Town requires decommissioning security

9. Additionally, in evaluating whether or not the purpose section requires the SEC to assert jurisdiction, the SEC has historically considered whether such review is necessary to avoid undue delay in the construction of needed facilities. While Ms. Fournier suggests that the SEC process provides for a fixed timeframe that will ensure construction can take place prior to the target in-service date, this assertion does not accurately reflect the potential timelines. *See Motion* at ¶39. The "fixed timeframe" does not take into account that the fixed timeframe for the SEC process is longer than the timeline for site plan review and special use permit review or the significant cost and additional work for preparation of an SEC application. All of this additional work would take place before the 15-month⁶ SEC review period ever commenced (which the

⁶ The statutory review period is 12 months. RSA 162-H:7. In addition, the SEC has up to 60 days to determine if an application is complete before that 12-month clock commences. RSA 162-H:7, VI. Finally, at least 30 days before submitting the application, Spartan Solar would have to have a public information session in Milford. RSA 162-

SEC has also extended on a project-by-project basis occasionally). Regardless, the issue is irrelevant since neither Spartan Solar nor the Town believe that local review would result in “undue delay” and even Ms. Fournier has not made such an assertion. Therefore, SEC review likely creates rather than avoids such delay.

B. The SEC is not a plenary appellate forum for Ms. Fournier to pursue grievances regarding past and separate actions of State agencies and municipal bodies.

10. While Ms. Fournier may disagree with actions taken by State agencies and local government bodies, that does not mean that the Town is incapable of performing a thorough review of the proposed project. It is not the role of the SEC to step in and assert jurisdiction simply to adjudicate outcomes disputed by individual members of the public.

11. Ms. Fournier suggests that SEC involvement would somehow bolster the DES review in consultation with NHF&G. That is simply not the case. Projects subject to SEC jurisdiction are still required to submit permit applications to the relevant State agencies. Those State agencies are responsible for assessing the project and issuing permits. The SEC relies heavily on that process in conducting its own review and making its own findings pursuant to RSA 162-H.

12. Ms. Fournier asserts “all the review by...NHDES and NHF&G cannot compensate for the agencies’ poor judgment with regard to issues of T&E wildlife.” *Motion* at ¶37; *see also Objection* at ¶51. While Ms. Fournier may be critical of DES and NHF&G, her opinion does not provide a basis for the SEC to assert jurisdiction. The SEC does not serve as a body to address an individual’s concerns with how State agencies conduct their business.

H:10. Project applicants do not normally hold that information session until they have essentially completed work on their SEC application.

13. Ms. Fournier also cites a New Hampshire Supreme Court decision in support of her argument that DES and NHF&G lack the ability to ensure the protection of threatened and endangered wildlife. *Motion* at ¶37. Her reliance on that decision is misplaced. The case related to an Alteration of Terrain (“AoT”) permit DES issued to conduct gravel operations on property adjacent to the property proposed for this project. The Court ruled that DES applied the wrong legal standard when reviewing the AoT permit application. Specifically, DES applied a minimization standard rather than “no adverse impact.” Appeal of Fournier, No. 2018-0617, 2019 WL 6040519, at *4 (N.H. Nov. 14, 2019).

14. Ms. Fournier claims this decision “reflects poorly on the Town’s ability to act correctly.” *Objection* at ¶27. In fact, the decision has nothing to do with the Town’s review. It focused on the DES and did not, as Ms. Fournier asserts, admonish the agency for allowing ‘minimized’ harm to occur to T&E. *Motion* at ¶37. Rather, the Court simply determined that the agency applied the wrong standard in the review process and remanded the case. Ultimately, the case is irrelevant to the question of whether the SEC should assert jurisdiction here since (1) it does not bear in any way on the Town’s work or Ordinance; and (2) DES, in consultation with NHF&G, will review the proposed project whether that review is conducted at the Town level or the SEC.

15. In addition to raising concerns regarding the professional conduct of two State agencies, Ms. Fournier also seeks to use the SEC as a venue to publicly reprimand the Town’s various governmental bodies for activities contrary to Ms. Fournier’s desires. For example, she raises concerns regarding the purportedly outdated Master Plan because it was last updated in December 2016. *See Motion* at ¶18. This issue also has no bearing on the jurisdiction question. Rather, this is purely a matter of local concern.

16. Likewise, again focusing on purely local issues, Ms. Fournier attempts to revisit the history surrounding the passage of Warrant Article 32, regarding the terms of the Lease Agreement. *See Motion* at ¶17. While Ms. Fournier may not have agreed with the Warrant Article and the Town boards' support for the Lease was not unanimous, the Town's voters passed the Warrant Article.

17. Finally, Ms. Fournier insinuates that a member of the Planning Board improperly participated in Board discussions regarding the use of the proposed project property. *See Motion* at ¶30. Ms. Fournier's assertion that the Planning Board member should recuse himself is not supported by Ms. Fournier's own arguments. Ms. Fournier states that the Planning Board member sold his interests in 2017, which is before Spartan Solar considered development at the site. Ms. Fournier does not present any information to indicate a way the Planning Board member would benefit if the project were developed, and thus no basis for the assertion that he should recuse himself. Setting aside the merits of this argument, or lack thereof, it is not the place of the SEC to adjudicate disputes regarding the fairness of local planning board actions.

C. Debate in the Town about the project cannot form the basis for the SEC's assertion of jurisdiction.

18. Ms. Fournier alleges that because there has been some disagreement at times among the Town's various bodies about aspects of the project, that somehow suggests the Town is incapable of evaluating the project. *See Objection* at ¶15. This argument is inherently flawed because it improperly equates past robust debate with an inability to adequately review the project once an application is submitted. The SEC is not a local referee and it most certainly has never been in the business of preempting local control on a discretionary basis because there is some disagreement in a Town about aspects of a proposed project.

III. Conclusion

As described in Spartan Solar's Motion to Dismiss the Petition for Jurisdiction, Ms. Fournier has failed to demonstrate that the Project requires a certificate to carry out the purposes set forth in RSA 162-H:1. The Motion does not remedy this critical defect. Rather than offer cogent arguments for why the SEC should ignore the express desire of Milford to handle the permitting of this project, Ms. Fournier asks the SEC to act as an appellate body to address her disjointed list of personal grievances about past governmental actions. None of the information provided in the Motion demonstrates that the SEC should assert its discretionary jurisdiction over the Project. Therefore, both the Motion and the underlying Petition should be denied.

WHEREFORE, Milford Spartan Solar, LLC respectfully requests that the New Hampshire Site Evaluation Committee:

- A. Deny the Motion to Amend the Petition for Jurisdiction;
- B. Dismiss the Petition for Jurisdiction with prejudice; and
- C. Grant such other and further relief as is deemed just and appropriate.

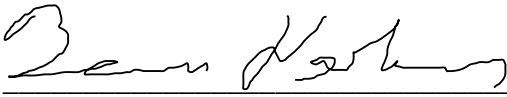
Respectfully Submitted,

MILFORD SPARTAN SOLAR, LLC

By its attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

Dated: April 22, 2021

By:  _____

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Certificate of Service

I hereby certify that on the 22nd day of April, 2021, a copy of the foregoing Objection to Motion to Amend was submitted electronically to the New Hampshire Site Evaluation Committee and sent to the following entity included on the Docket Service List:

Brox Environmental Citizens
c/o Suzanne Fournier, Coordinator
9 Woodward Drive
Milford, NH 03055-3122
broxEnvironCitizens2@comcast.net

A handwritten signature in black ink, appearing to read "Barry Needleman", written over a horizontal line.

Barry Needleman