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October 25, 2021

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

Mr. Jonathan A. Evans
Presiding Officer
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: SEC Docket No. 2021-02
Investigation of Complaints Regarding Antrim Wind Energy Facility
Response to Allegations**

Dear Chairwoman Martin and Presiding Officer Evans:

On September 21, 2021, Lori Lerner filed with the Site Evaluation Committee (“SEC”) another letter (captioned “Evolution of Sound Complaints”), which challenges the Subcommittee’s August 23, 2021 Recommendation to the SEC regarding the proper methodology for measuring and analyzing wind turbine sound. In addition to exhuming arguments that the Subcommittee has already rejected, Ms. Lerner resorts to baseless allegations of dishonest behavior.

In particular, Ms. Lerner alleges:

A thorough review of Antrim Wind’s Sound Level Assessment, filed with their Application in 2016, **fails to disclose** the use of one-hour averaging in determining the predictive sound levels. (Emphasis in original.)¹

¹ The SEC approved the transfer of ownership of the Antrim Wind facility to Antrim Level LLC, a subsidiary of TransAlta Corporation (“TransAlta”), in SEC Docket No. 2018-03, pursuant to an Order and Decision issued February 15, 2019. TransAlta had no role in the Application that was the subject of SEC Docket No. 2015-02

Was the hourly averaging of the predictive sound modeling done intentionally to deceive the SEC, in an effort to meet the compliance requirement needed for the Site and Certificate permit to be granted? (Emphasis in the original.)

Antrim Wind's Application contains a material misrepresentation of the facility's ability to meet the SEC Sound Standard, through the use of a one-hour averaging, resulting in post-construction sound levels higher than permitted (and guaranteed by AWE) to meet compliance and significant impacts to those living within proximity to the facility.

Some might excuse Ms. Lerner's accusations as the passion of a *pro se* activist but, regrettably, this letter crosses the line from zealous advocacy to malicious attack. Among other things, she wrongly accuses Antrim Wind of failure to disclose, intentional deception, and material misrepresentation with respect to the preconstruction sound study methodology used, pursuant to Site 301.18, as part of the Antrim Wind Application for a Certificate of Site and Facility that was filed on October 2, 2015 (more than six years ago), and approved on March 17, 2017.²

Ms. Lerner begins with the dramatic charge that: "The most recent SEC Subcommittee Public Meeting (August 18th) revealed an astonishing admission, through statement of Antrim Wind's attorney Barry Needleman, Antrim Wind's use of one-hour averaging for the preconstruction predictive sound modeling." To support her "revelation" Ms. Lerner recounted the following exchange with Subcommittee Member Duclos.

Duclos: You stated, what's going on at least in my mind, all preconstruction monitoring was done based on one-hour averaging, right?

Atty Needleman: That is my understanding.

Duclos: Was there ever any type of comment, I didn't find it anyway, about that being the standard or not being the standard that was just what was submitted to figure out the maximum decibal (sic) of the facility, right?

Atty Needleman: Yes, I think Mr. O'Neill (sic) can probably speak more specifically to that piece.

There were no "astonishing" admissions. In fact, Antrim Wind had previously addressed the preconstruction sound study methodology in its July 1, 2021 Technical and Regulatory

² Ms. Lerner similarly accused Antrim Wind of failing to disclose information to the SEC in comments made at a hearing held by the Legislative Committee to Study Necessary Revisions to the Site Evaluation Committee on September 14, 2021.

Review of New Hampshire Methodology for Measurement and Analysis of Sound Compliance for Wind Energy Systems pursuant to Site Evaluation Committee Rules (“White Paper”). The White Paper, at p. 4, specifically pointed out that “preconstruction sound monitoring for Antrim Wind was done using one hour averaging.” In particular, it cited to the Antrim Wind Application, Attachment 9, Sound Assessment Report, Section 5.5. Furthermore, Mr. Duclos clearly referenced preconstruction monitoring, not predictive sound modeling.³

In its July 15, 2021 Proposed Recommendation to the SEC, moreover, the Subcommittee directly addressed Antrim Wind’s use of one-hour averaging in its SEC Application materials. Specifically, in discussing the comments filed by Counsel for the Public (See Proposed Recommendation at p. 20), the Subcommittee recounted Counsel for the Public’s suggestion that it was appropriate for the Subcommittee to use the same methodology in determining post-certificate compliance as was used in the application phase.⁴ Further, the Subcommittee pointed out that it “generally agrees with Counsel for the Public that an application should not be granted under one standard and then certificate compliance measured under a different standard, unless the rules are changed.” (See Proposed Recommendation at p.21.)

More importantly, Ms. Lerner’s underlying argument is exactly the same one that she and others have been making all along, i.e., that the “shall not exceed” language in Site 301.14 means that the relevant decibel metric cannot be exceeded for even 1/8 of a second. That argument was explicitly considered and rejected by the Subcommittee. What is new are the *ad hominem* attacks, which have raised the volume of the discussion and lowered the level of discourse.

Antrim Wind’s position (with which the Subcommittee has agreed) is the same as it has been all along—the SEC rules incorporate the pertinent American National Standards Institute (“ANSI”) standards, which permit one-hour averaging. Furthermore, the Subcommittee has already concluded that the plain language of the rules is the most important consideration (See Subcommittee Recommendation, p. 21) and it expressly determined that under the plain

³ The predictive sound modeling performed in SEC Docket No. 2015-02 was consistent with Site 301.18 (c) and “conducted in accordance with the standards and specifications of ISO 9613-2 1996-12-15.” See Antrim Wind Application, Attachment 9, Sound Assessment Report, Section 7.0 and Prefiled Direct Testimony of Robert D. O’Neal, pp. 5-6 (February 19, 2016).

⁴ See Counsel for the Public’s June 24, 2021 Comments, p.3.

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language of the SEC rules, and ANSI standards, one-hour averaging is acceptable for conducting post-construction noise compliance monitoring. (See Subcommittee Recommendation, p. 23.)

In conclusion, Ms. Lerner continues to mischaracterize and misrepresent record to make serious and unsubstantiated claims, but her allegations have no merit whatsoever. At the same time, she distorts the Subcommittee's thorough and reasoned determination that the SEC rules support Antrim Wind's interpretation of the sound measurement methodology, which demonstrates the facility's compliance with the sound level standards. Such tactics should not be tolerated any longer.

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

Sincerely,

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

Barry Needleman

cc: Service List

Legislative Committee to Study Necessary Revisions to the SEC