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April 21, 2011

Via Hand Delivery and Electronic Mail

NH Site Evaluation Committee
c/o Jane Murray, Secretary
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

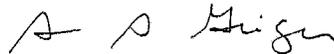
***Re: Petition for Jurisdiction Over Renewable Energy Facility
Proposed by Antrim Wind, LLC, SEC Docket No. 2011-02***

Dear Ms. Murray:

Enclosed please find an original and three copies of *Petitioner's Response to Intervention Requests*. Pursuant to our phone conversation, copies of this filing are being hand-delivered to Committee Members.

Please contact me if there are any questions about this filing. Thank you for your assistance and cooperation.

Very truly yours,



Susan S. Geiger

cc: Site Evaluation Committee Members (via hand delivery)
Service List (via electronic mail)
Spencer Garrett (via First Class Mail)

Enclosures
757165_1

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2011-02

**RE: PETITION FOR JURISDICTION OVER
RENEWABLE ENERGY FACILITY
PROPOSED BY ANTRIM WIND ENERGY LLC**

PETITIONER'S RESPONSE TO INTERVENTION REQUESTS

NOW COMES Antrim Wind Energy, LLC (“Antrim Wind” or “the Petitioner”) by and through its undersigned attorneys and respectfully responds to the Petitions to Intervene filed by April 15, 2011 in the above-captioned matter by stating as follows:

I. Procedural Background

On March 11, 2011, the Antrim Wind petitioned the New Hampshire Site Evaluation Committee (“SEC” or “Committee”) to assert jurisdiction over a renewable energy project (the “Project”) with a nameplate capacity of less than 30 megawatts proposed by the Petitioner to be constructed in the Town of Antrim (in Hillsborough County), New Hampshire.

On March 21, 2011, the SEC Chairman issued an Order and Notice of Public Meeting in the above-captioned docket and in Docket No. 2011-01, an unrelated matter involving Laidlaw Berlin BioPower, LLC (“Laidlaw”). The Order and Notice established an intervenor deadline of April 15, 2011 in the above-captioned docket. The Order and Notice states that any person interested in participating as a party in this

proceeding is required to file a Petition to Intervene pursuant to RSA N.H. Admin. Rule Site 202.11 on or before April 15, 2011.¹

II. Requests for Intervenor Status

As of the close of business on April 15, 2011, the undersigned received via electronic mail from Jane Murray, Secretary to the New Hampshire Site Evaluation Committee (“SEC”) and/or via U.S. Mail, copies of intervention requests from the following: Gordon Webber; the Town of Antrim Planning Board; Samuel E. and Michele D. Apkarian, Richard Block and Lorraine Carey Block, Robert A. Cleland, Spencer Garrett, James Hankard, Keith and Julie Klinger, Annie Law, Janice D. Longgood, Mark J. and Brenda Schaefer, and Elsa Voelcker; Mary Allen, Brian R. Beihl, Barbara Gard, and Robert L. Edwards; the Harris Center for Conservation Education, and the Audubon Society of New Hampshire. The Petitioner takes no position with respect to these requests for intervenor status. Rather, the Petitioner submits below responsive comments regarding the statements made and conclusions drawn in some of these requests.

III. Standard for Granting Intervention Petitions

The standard for granting a petition for intervention is set out in the Committee’s rules, N.H. Admin. Rule Site 202.11, and RSA 541-A:32, I. The Committee’s rules require that a person seeking to intervene must file a petition “with copies served on all

¹ In accordance with the Order and Notice, the Petitioner caused to be published both the Order and Notice itself, and a display ad in two local newspapers – the Monadnock Ledger Transcript and the Villager. Although the display ads correctly advised the public of the date, time, place and subject matter of the public meeting to be held April 22, 2011 in this docket, they incorrectly stated that the deadline for filing intervention motions is April 21, 2011 instead of the correct intervention deadline, April 15, 2011. The display ads also did not indicate the April 21, 2011 deadline for filing objections to intervention motions. The Petitioner will not object (on the basis of tardiness) to interventions filed between April 15, 2011 and April 21, 2011.

parties identified in the...notice of hearing". Site 202.11(a). Under paragraph (b) of Site 202.11, the presiding officer must grant a petition to intervene if:

- (1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's order of notice of the hearing, at least 3 days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

RSA 541-A:32, I contains virtually identical provisions.

The Petitioner recognizes that in the past the Committee has interpreted RSA 541-A:32, II as authorizing it to allow petitions for intervention that do not meet the standard under RSA 541-A:32, I if the Committee finds that the broader interests of justice support intervention and the intervention would not interfere with the orderly and prompt conduct of the proceeding. *See Order on Petition of Lisa Linowes to Intervene*, Re: Community Energy Inc. and Lempster Wind, LLC, Site Evaluation Committee Docket No. 2006-01. The Petitioner respectfully disagrees with that particular interpretation and submits that the discretionary nature of RSA 541-A:32, II is temporal rather than plenary, i.e. it is limited to late-filed intervention petitions which must otherwise meet the requirements of RSA 541-A:32, I. *See* RSA 541-A:32, II ("presiding officer may grant one or more petitions for intervention *at any time*"[emphasis added]). Under this interpretation, the first paragraph of RSA 541-A:32 sets forth the standard that is to be used to determine whether to allow an intervention, while the second paragraph sets forth the standard to be used, in conjunction with the first paragraph, in determining whether to allow a late

request for intervention. In other words, the language of RSA 541-A:32, II only comes into play if the request for intervention is late-filed. This interpretation is in fact supported by the Committee's rules which appear to limit the Presiding Officer's authority for granting intervention petitions filed pursuant to RSA 541-A:32, II to those that are "late-filed". *See* N.H. Admin. Rule Site 202.11(c). Accordingly, in order to grant requests for intervention, the Presiding Officer must always make findings that the parties seeking intervention meet all of the intervention standards under RSA 541-A:32, I (i.e. that the petitions have been filed more than 3 days prior to the hearing with copies mailed to all parties, that the petition states facts demonstrating rights, duties, privileges, or other substantially affected interests, and that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing intervention.) The Petitioner believes that the discretionary provisions of RSA 541-A:32, II should, as the Committee's rules provide, only be invoked in the event that a petition for intervention is late-filed and respectfully suggests that the Committee interpret this statutory provision in this way.

In addition, the Petitioner notes the analysis applied by the Presiding Officer in an order denying the intervention request of Jonathan Edwards in the Order on Pending Motions issued March 24, 2010 in the Laidlaw case, SEC Docket No. 2009-02. For the reasons discussed below, the Petitioner submits that such analysis should be applied to persons who have only general interests that are indistinguishable from the interests of the public at large, and that can be adequately represented by other intervenors or Counsel for the Public.

IV. Petition of Gordon Webber

Mr. Webber is the former Chair of the Board of Selectmen in Antrim, has worked on issues related to the proposed wind project in Antrim for the past two years, is “well versed in the complexities surrounding such projects and [is] keenly aware of the challenges surrounding permitting through a local process with neighbor pitted against neighbor.” *Petition of Gordon Webber* (April 14, 2011). Mr. Webber also submitted a citizen’s petition of 129 registered voters of the Town of Antrim supporting the Site Evaluation Committee’s jurisdiction over the project. As such, Mr. Webber’s citizens’ petition meets the definition of “petitioner” contained in RSA 162-H:2, XI (a), and therefore constitutes a third petitioner for jurisdiction – the other two being the Town of Antrim Board of Selectmen and Antrim Wind Energy.

During the past year, Mr. Webber sat on the Planning Board as an ex-officio member, and “was closely involved” with “a Planning Board led process to amend the zoning ordinance to accommodate wind energy facilities – which failed due to improper process despite widespread public support for the amendments.” *Id.* Regarding this apparent evidence of widespread public support, the Petitioner notes that Mr. Webber may be referencing a survey² mailed to all households in Antrim in February 2011 by the American Research Group, Inc. *See Survey Summary: Strong Support for Antrim Wind Facility*, attached hereto as Exhibit A. Over three quarters of the survey respondents indicated support for the Project and the zoning amendments, but as stated by Mr.

² The Town also administered two straw polls during March town meetings in 2010 and 2011, and the results from both polls also demonstrated overwhelming support for the project.

Webber, these respondents were never given the opportunity to vote on the proposal because a town vote never occurred. *Id.*

Importantly, Mr. Webber states that he “do[es] not consider the Antrim Planning Board capable of handling this proposed project. The board has 3 new members with no experience and 2 members with 1-year experience. . . . A project of this magnitude deserves the fair review of a more experienced and impartial board and [Mr. Webber] believes that this is precisely the reason the SEC was created.” *Id.* Mr. Webber concludes that the Project must “go through an extensive evaluation process which [he] believe[s] can not be done objectively by our current Planning Board and therefore, [he] request[s] that the New Hampshire SEC accept jurisdiction” *Id.*

Mr. Webber’s position is supported by several other filings made with the Committee. Importantly, the Town of Antrim Selectboard has submitted correspondence supporting Mr. Webber’s position. *Letter from the Town of Antrim to Chairman Burack* (April 20, 2011). In addition, Scott and Kristina Burnside state: “We believe the Town of Antrim desperately needs a third party mediator to resolve this major site plan review process. We see no other process that would be fair to the Town of Antrim’s residents and the applicant to address all the environmental, regional and engineering impacts and benefits.” *Letter of Scott & Kristina Burnside* (April 13, 2011). Stephen R. Schacht, a former Selectman and an alternate member of the Antrim Planning Board, requests that the SEC assume jurisdiction over this matter “to ensure that appropriate procedures and safe guards are in place, to ensure timely resolution of this matter, and that all tax payers in Antrim are represented fairly.” *Objection of Stephen R. Schacht to Antrim Planning Board’s Motion to Intervene* at 2 (April 12, 2011); see also *Letter from Wesley Enman to*

Chairman Burack (April 17, 2011) (“I am one of the 70+% silent majority of residents polled in favor of the project. But we need your help!”); *Letter from Joseph Koziell to Chairman Burack* (April 17, 2011) (“The State of New Hampshire is better suited to administer this project than the Town of Antrim.”)

Mr. Webber’s perspective concerning jurisdiction over the Project reflects Mr. Webber’s work with the Town, as well as the Petitioner’s dialogue with the Town since April 2009 regarding its met tower application and wind project proposal. Given Mr. Webber’s unique role, the Petitioner submits that his intervention application meets the requirements set forth in RSA 541-A:32.

V. Petition of the Antrim Planning Board

While the Petitioner takes no position regarding the intervention of the Antrim Planning Board (the “Planning Board”), the Petitioner does wish to point out that several aspects of the Planning Board’s recent actions, including its petition and attached letter, underscore the need for the SEC to assert jurisdiction over the Project to provide all parties involved with a comprehensive, fair and time-certain process.

The Petitioner has been in open communications about this Project with the Town since at least April 2009. In particular, the Petitioner has been working with the Town of Antrim since October 2010 on an ordinance amendment which would add wind energy facilities as specific uses in the ordinance, and would make such facilities allowed uses in several zoning districts, subject to major site plan review and to regulatory conditions imposed by the Planning Board.

The work to amend the zoning regulations has been hindered by procedural errors and has been unduly influenced by the actions of a vocal minority in an apparent

attempt to manipulate the Town's participatory and representative democratic decision-making processes. The Petitioner recounts the following series of events regarding the Ordinance amendment process to date:

After numerous public meetings and two public hearings throughout December, January and February, the Planning Board unanimously approved the proposed Ordinance amendments (together with some unrelated amendments). The amendments were sent to the Town Clerk to be included on the ballot vote for the Town's March town meeting. However, due to textual errors in the notice of the second public hearing related to the amendments, and a missed deadline for holding hearings, Town Counsel advised that the amendments should not be included on the town meeting ballot for March 8th. To rectify the procedural error, the Planning Board held another public hearing on March 9, 2011, again voted to approve, *inter alia*, those proposed zoning amendments applicable to wind energy facilities, and also voted to urge the Selectboard to set a special town meeting for their consideration. On March 14, 2011, the Board of Selectmen set a special town meeting for April 26, 2011 to allow Antrim voters to approve or deny the proposed amendments. However, on March 11, 2011, a new Planning Board (with two new members) was seated and on March 17, 2011 the new Board voted to rescind the prior request that the Selectmen hold a special town meeting to address the proposed zoning amendments.³ Finally, on March 21, at the urging of the new Planning Board and a few residents, the Board of Selectmen rescinded its decision to hold the April special town meeting.

³ The process by which the Planning Board made the decision to withdraw its support for the amendment is also suspect. The decision was made *without any input from the public, and without the required public notice*. In fact, even members of the Planning Board who were not at the March 17 meeting were not aware that the Board was going to reconsider the already-passed amendments. Those absent members were not permitted to provide any input on the Board's decision.

The Planning Board now states that it is continuing the ordinance amendment process which began many months ago for the purposes of developing a new regulatory scheme for wind energy facilities, and asks the SEC to postpone the jurisdictional question until it can complete that process.⁴ *Letter from the Antrim Planning Board to Chairman Burack* (April 12, 2011). However, the Petitioner wishes to clarify that the Planning Board's newly-described deliberations are distinctly different from the process in which the Petitioner actively participated – a process that involved only the addition of a use definition which would include wind energy facilities, and would make those facilities allowed uses in two zoning districts. The Petitioner also wishes to note that no public hearings have been held on “early (new) ordinance proposals” and, as such, the Petitioner has not “played a full and active part in those proceedings”. The Petitioner has stated publicly numerous times a willingness to discuss local concerns and to consider entering into an agreement with the Town to ensure reasonable regulatory oversight of the Project. To date, the Planning Board has not taken up this discussion in any public meeting or hearing. In fact, to date, the Petitioner has not been afforded any contact with the members of the new Planning Board or the supposed “ad hoc committee” responsible for making recommendations related to a new wind energy ordinance.

In recent public meetings, members of the Planning Board have stated that an “ad hoc advisory” committee should be formed to develop a report for the Planning Board, and that the Board should then develop an Ordinance. This would then require a series of public hearings, and *may or may not* result in a draft Ordinance for town vote in March 2012. Keeping in mind that ordinance changes have twice been scheduled for votes which were twice cancelled, and the uncertainty of whether any draft Ordinance would be

⁴ The Petitioner further discusses the Planning Board's proposal to draft a new Ordinance in Part VI, below.

accepted by the Town, the Petitioner believes there is a strong possibility that this “process” will leave the project without an established standard to meet and without a definitive permitting process to follow an entire year from now – a full three years after it first approached the Town in April 2009.

Furthermore, the Planning Board’s actions to date have been plagued by process concerns.⁵ The Chair of the newly elected Planning Board has stated publicly that the Board is “not capable of either completing these changes [to the Ordinance and regulations] or overseeing the [wind project] review process.” *Electronic Correspondence from Andrew Robblee to Peter Moore* (April 11, 2011), attached hereto as Exhibit B. Furthermore, the Planning Board’s request that the SEC not take jurisdiction at this time contradicts the requests and actions of the Town of Antrim’s governing body. *See Letter from the Town of Antrim to Chairman Burack* (April 20, 2011). The Petitioner finds itself at an impasse where a few Planning Board members on a divided Board are adversely influencing processes supported by the Selectmen, a vast majority of Antrim residents, and the prior Planning Board. This situation leaves the Petitioner without a clear path at the local level for a fair process or hearing. *See, e.g., Memorandum from Galen Stearns, Town Administrator, to the Planning Board* (April 4, 2011), attached hereto as Exhibit C; *Electronic Correspondence Between Galen Stearns, Town Administrator and Peter Moore, Town Planner* (April 11, 2011), attached hereto as Exhibit D; and *Objection of Stephen Schacht to Antrim Planning Board’s Motion to*

⁵ For example, at the April 7, 2011 Planning Board hearing, the Planning Board voted 4 to 3 to submit the Petition which is now before the Site Evaluation Committee. The Board did not permit an alternate, who would have voted against the Petition, to vote. *Objection of Stephen Schacht to Antrim Planning board’s Motion to Intervene* (April 12, 2011). The Town Administrator has expressed concern about this process in correspondence with the Town Planner. *Electronic Correspondence Between Galen Stearns, Town Administrator and Peter Moore, Town Planner* (April 11, 2011), attached hereto as Exhibit D

Intervene (April 12, 2011) (stating that “[a]t this time, our current planning board is unable to provide unbiased and objective consideration” to the project and that the Board “will not have the objectivity to facilitate this process”). Further, Town Counsel has opined that the Planning Board has no authority to request intervenor status in this proceeding. *Memorandum from Galen Stearns, Town Administrator to the Planning Board* (April 7, 2011), attached hereto as Exhibit E. Thus, the Planning Board’s actions to date fail to demonstrate to the Petitioner an ability to complete “a full ordinance addressing industrial wind energy” by the fall of 2011, nor do they instill confidence that such a process will be fair or complete. *Letter from Antrim Planning Board to Chairman Burack* (April 12, 2011).

VI. Requests of Mary Allen, Brian R. Beihl, Barbara S. Gard, and Robert L. Edwards, and Attached Petition Regarding Site Evaluation Jurisdiction

Although the Petitioner does not take a position with respect to the requests of Mary Allen, Brian R. Beihl, Barbara S. Gard, or Robert L. Edwards, it notes that neither Ms. Allen, Mr. Beihl, nor Mr. Edwards has alleged a substantial interest in this docket that differs from the public at large. Thus, it is questionable whether they meet the applicable intervention standard in light of the Presiding Officer’s Order in Docket No. 2009-02 (March 24, 2010) relative to Mr. Jonathan Edwards’ motion to intervene in the Laidlaw Docket. Each of these potential intervenors attached a “Petition” (the “Allen Petition”) requesting that the Site Evaluation Committee refuse jurisdiction. The claims in the Allen Petition require further discussion.

The Allen Petition first asserts that the jurisdictional question is not “ripe” and that the Committee should not now exert jurisdiction. As a preliminary matter, the Petitioner notes that there is no requirement in RSA 162-H that a complete application be

filed in connection with a jurisdictional petition. Thus, the Allen Petition's ripeness argument is without merit. The Petitioner also notes that it has properly requested that the Committee take jurisdiction over the Project. *See* RSA 162-H:2, XIII, XI. In addition, the Selectboard has asked that the Site Evaluation Committee take jurisdiction over the project, and on April 4, 2011, the Selectboard met and confirmed that the intent of its letter was to request that the Site Evaluation Committee assert jurisdiction now to clarify the appropriate permitting authority and processes. In addition, a petition signed by over 100 registered voters in Antrim has also been filed requesting that the SEC assert jurisdiction. Thus, it is clear that the Petitioner's jurisdictional position is supported by the local governing body and another statutorily prescribed petitioning category.

The Petitioner has requested that the Site Evaluation Committee take jurisdiction over this project now to provide certainty about the permitting process and standards that will be applied in that process. This project and associated met tower have been before various town tribunals since 2009, and at this juncture, certainty regarding process and next steps is necessary for the project to go forward.

The Allen Petition asserts that the Planning Board's newly-fashioned "process" for developing an Ordinance will be completed by fall 2011, or at the latest, March 2012. The Petitioner questions the Board's ability to meet these goals, which include establishing a yet-to-be defined "ad hoc advisory" steering committee and a procedure that has not been enunciated by its advocates. Waiting for this potential process to be developed and completed will unduly harm Antrim Wind. Antrim Wind has commenced some studies needed to complete an SEC application. However, if the Site Evaluation Committee does not exert jurisdiction this spring, the Petitioner expects to halt all studies

and put all work on hold until it can reach greater certainty regarding a fair and coherent process for obtaining all necessary regulatory approvals for this project. Requiring the Petitioner to prepare a complete, multi-volume SEC application containing numerous reports, studies and expert testimony without certainty regarding whether the Committee will actually take jurisdiction is unreasonable. Likewise, requiring the Petitioner, who has already been engaged openly in the Town for over two years, to wait in limbo while local advocates draft another Ordinance intended to regulate a particular project on a particular site is also unreasonable. A threshold jurisdictional finding is necessary to provide the Petitioner and all interested parties, including those who oppose the project, with a clear procedural and substantive permitting path.

Second, the Allen Petition asserts that the wind power project is an issue for local control. However, the Selectboard – the governing body of Antrim – has requested that the Site Evaluation Committee take jurisdiction, and the failed processes undertaken by the Town to attempt to amend its Ordinance demonstrate the need for the Committee to do so. In fact, the Antrim Selectmen have expressly stated to the SEC that this case is “exactly the reason that RSA 162-H:1 was established to insure that local politics do not unduly delay the process and the SEC will impartially weigh all environmental, economic and technical issues.” *Letter from the Town of Antrim to Chairman Burack* (April 20, 2011). Importantly, the Legislature saw fit to provide several avenues for the Site Evaluation Committee to take jurisdiction over a project of less than 30 megawatts. *Three* of them are present in this case – the Petitioner has asked that the SEC take jurisdiction, the Town’s governing body has done so, and a petition endorsed by 100 or more registered voters of Antrim have done the same. *See* RSA 162-H:2, XI. Thus, three

of the four statutory groups with a right to request the Site Evaluation Committee's jurisdiction have taken that step in this case. *Id.* Additionally, language in numerous letters and petitions indicate that this project will have impacts beyond the borders of Antrim. The SEC, a state body, is in a better position than local officials to review energy siting proposals for their impacts to the environment, energy supply, economy, and the public's health and welfare. The Petitioner asserts that the volunteer boards in Antrim do not have the technical expertise or procedural infrastructure to properly oversee the permitting and regulation of a project of this scope in a fair, timely and comprehensive manner.

Third, the Allen Petition threatens increased litigation should the SEC take jurisdiction over this project. To the contrary, the SEC process will remove considerable risk of litigation and will allow the focus of the permitting process to be on the rigorous analysis of the substance and details of the application, instead of procedural and jurisdictional issues. The Petitioner submits that there is a greater risk of increased, protracted litigation if the project is subjected to local processes. Underscoring this point is the fact that the project's met tower, which was before both the Antrim Planning Board and Zoning Board, is the subject of two pending lawsuits in Superior Court.

The Petitioner, the Selectboard and a citizen petition all request that the SEC take jurisdiction because there is no established and fair local process or standards for a project of the scope and magnitude sought by the Petitioner. The Site Evaluation Committee has the resources and expertise necessary to give all interested parties a fair hearing and should, given the compelling circumstances here, invoke its jurisdictional authority over the Antrim Wind project. It is precisely for the situation presented here

that the Legislature vested the Site Evaluation Committee with the ability to assert control over projects with a nameplate capacity of less than 30 megawatts. Legislative history of RSA 162-H and its predecessor statutes reveals that the intent behind statutory authority for the SEC to assert jurisdiction over facilities 30 megawatts and less was to give the Site Evaluation Committee the “flexibility” to invoke such jurisdiction in cases where a project will balance the State’s energy and environmental needs. One of the stated reasons for that flexibility is to ensure that such a project “has an opportunity to be developed in the State of New Hampshire as opposed to being somehow blocked on a local level. Those kinds of facilities are going to fall below thirty megawatts.”⁶ As the foregoing clearly demonstrates, the Legislature intended that energy facilities such as the Antrim Wind project should not be blocked at the local level (either by lack of appropriate regulatory processes or by onerous standards that cannot be reasonably, commercially met) and should be afforded the opportunity to be reviewed by the Site Evaluation Committee.

VII. Motions to Intervene of Samuel E. and Michele D. Apkarian, Richard Block and Lorraine Carey Block, Robert A. Cleland, Spencer Garrett, James Hankard, Keith and Julie Klinger, Annie Law, Janice D. Longgood, Mark J. and Brenda Schaefer, and Elsa Voelcker.

The Petitioner takes no position on the motions of Samuel E. and Michele D. Apkarian, Richard Block and Lorraine Carey Block, Robert A. Cleland, Spencer Garrett, James Hankard, Keith and Julie Klinger, Annie Law, Janice D. Longgood, Mark J. and Brenda Schaefer, and Elsa Voelcker. However, the Petitioner notes that while these

⁶ This testimony was provided to the Senate Committee on Executive Departments on HB 736 (on April 30, 1991) by Harold Turner of the Business and Industry Association, a member of the Energy Facility Siting, Licensing & Operation Study Committee created by the Legislature in 1989 to present recommendations regarding the integration of the State’s two siting laws (former RSAs 162-F and 162-H) into a single statute. *See Senate Committee on Executive Departments, Hearing Regarding HB 736-FN* (April 30, 1991), attached hereto as Exhibit F.

motions do not state objections to the SEC's jurisdiction, they do raise issues, such as property values and turbine noise, about which the Committee has specific experience and knowledge.⁷

In the event that the Presiding Officer decides to allow any or all of the intervention requests made by the above-named individuals, including Mary Allen, Brian R. Beihl, Barbara S. Gard, and Robert L. Edwards, as well as Samuel E. and Michele D. Apkarian, Richard Block and Loranne Carey Block, Robert A. Cleland, Spencer Garrett, James Hankard, Keith and Julie Klinger, Annie Law, Janice D. Longgood, Mark J. and Brenda Schaefer, and Elsa Voelcker, the Petitioner respectfully requests that the Committee order that their participation in these proceedings be consolidated. The Committee is expressly authorized to "compel consolidation of representation for such persons as have, in the committee's reasonable judgment, substantially identical interests." RSA 162-H:9, II. Based on the information contained in their intervention requests, it appears that all of the above-named individuals' interests are substantially identical and therefore warrant that their participation be consolidated, if intervention is granted. Moreover, given the number of intervention requests, the efficient and orderly conduct of this proceeding compels such consolidation.

Site 202.11(d) requires the Presiding Officer to impose conditions on intervenors' participation in the proceeding "if such conditions promote the efficient and orderly process of the proceeding." Such conditions include: limiting intervenor participation to designated issues; limiting intervenors' use of cross examination and other procedures; and requiring two or more intervenors to combine their presentations of evidence and

⁷ The exceptions to this generalization are that Mr. Garrett states that he "has a vested interest in seeing Antrim's Planning Board have the opportunity to thoroughly examine this issue over the next year" and that Mr. Hankard alludes to the Town of Antrim's zoning authority.

argument, cross-examination and other participation in the proceeding. *See Site* 202.11(d)(1)-(3). RSA 541-A:32, III contains similar provisions. In the event that the Presiding Officer grants the individual intervention requests and consolidates the intervenors' participation, the Petitioner respectfully urges that such participation be limited to the issues designated in the intervention requests, that cross examination, presentation of evidence and argument, and participation in technical sessions be conducted by only one individual on behalf of the consolidated intervenors and that data requests (if any) be limited to the designated issues of interest and be propounded to the Petitioner all together in one set.

VIII. Petitions of the Harris Center for Conservation Education and the Audubon Society of New Hampshire

Both the Harris Center for Conservation New Hampshire ("Harris Center") and the Audubon Society of New Hampshire ("Audubon Society") request intervenor status but do not appear to take a position on whether the Site Evaluation Committee should assert jurisdiction over the project. The Petitioner takes no position regarding these intervention requests, but does make the following comments regarding the statements in the motions to intervene.

The Petitioner has reached out to the Harris Center and the Audubon Society multiple times regarding the project plans, and has solicited feedback from both organizations. To date, neither organization has responded by disclosing specific information, concerns, or questions regarding the project.

The properties at issue are not pristine wilderness. The Tuttle Hill ridge is located less than half a mile from a 150 foot wide transmission corridor and less than three quarters of a mile from New Hampshire's Route 9. Almost the entire north slope of

Tuttle Hill was very heavily logged in recent years and over 200 acres were clear cut on Willard Mountain last year.

The properties directly impacted by the Project are privately held and the owners have not expressed an interest in conservation-only measures. In fact, as properties located in Antrim's Rural Conservation District, there are many potential permitted uses of the land, including, but not limited to, 3-acre residential subdivisions, public utilities, and public and private schools. *Town of Antrim Zoning Ordinance Art. IX.*

Understanding the importance of conservation in the region, the Petitioner has been working with the landowners to develop a plan that places areas within and proximate to the project under permanent conservation easements. The Petitioner invites the Harris Center and the Audubon Society to provide the Petitioner with specific information related to their questions and concerns as this process unfolds.

IX. Additional Intervention Issues

The Petitioner believes it is important that all intervenors and members of the public wishing to participate via public comment understand the distinction between being an intervenor and having the right to provide comments or information. The Petitioner also believes it is important that all potential intervenors understand the role that Public Counsel plays in the proceeding, as a spokesperson and resource for members of the public, as well as the opportunity members of the public have to be placed on the docket's mailing list to receive copies of information related to the proceeding. Finally, the Petitioner believes that it is important that potential intervenors be aware of the opportunity they have to express their views and submit information to the Committee.

Accordingly, the Petitioner respectfully requests that the Presiding Officer inform all interested persons and parties of the foregoing.

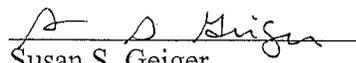
The Petitioner respectfully asks the Presiding Officer to impress upon all parties who are granted intervention that they have the responsibility of insuring that all committee orders, rules, statutes and processes are followed. This includes adhering to the *ex parte* laws, meeting the deadlines established by the Committee, being accurate and truthful in all filings, and sending copies of all filings to the service list. If the Presiding Officer does not make all the parties aware of these responsibilities and that they will be enforced, the Petitioner fears that the prompt and orderly conduct of this proceeding will be impaired.

Wherefore, for the reasons stated above, the Petitioner respectfully requests that the Presiding Officer:

- A. Order that the participation of similarly situated individuals in this proceeding be consolidated and conditioned as indicated above; and
- B. Take such additional action as may be appropriate.

Respectfully submitted,

Antrim Wind Energy, LLC
By Its Attorneys


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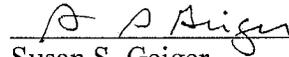

Rachel Aslin Goldwasser
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Dated: April 21, 2011

Certificate of Service

I hereby certify that, on the date written below, I caused Petitioner's Response to Intervention Requests to be sent by electronic mail or U.S. mail, postage prepaid, to the service list in Docket No. 2011-02.

4/21/11
Date


Susan S. Geiger

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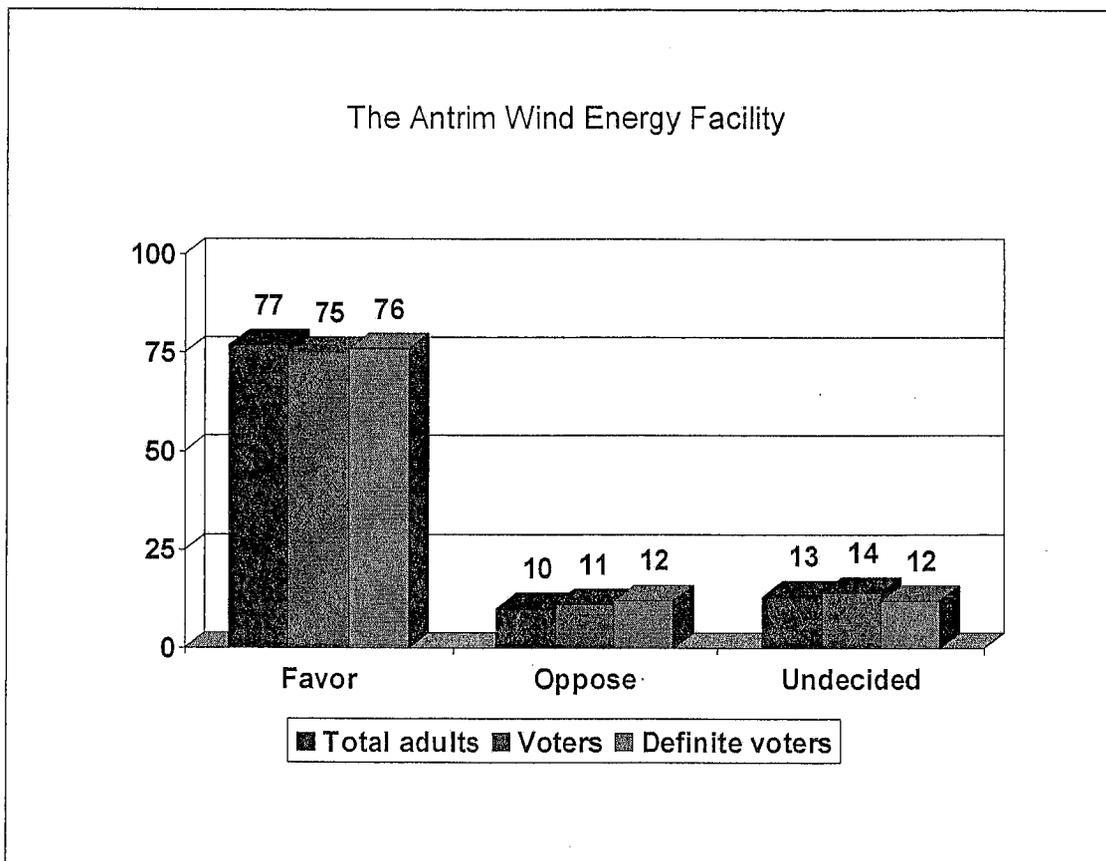
EXHIBIT A



Survey Summary

Strong Support for Antrim Wind Facility and Changing Zoning Ordinances to Allow Wind Energy Facility

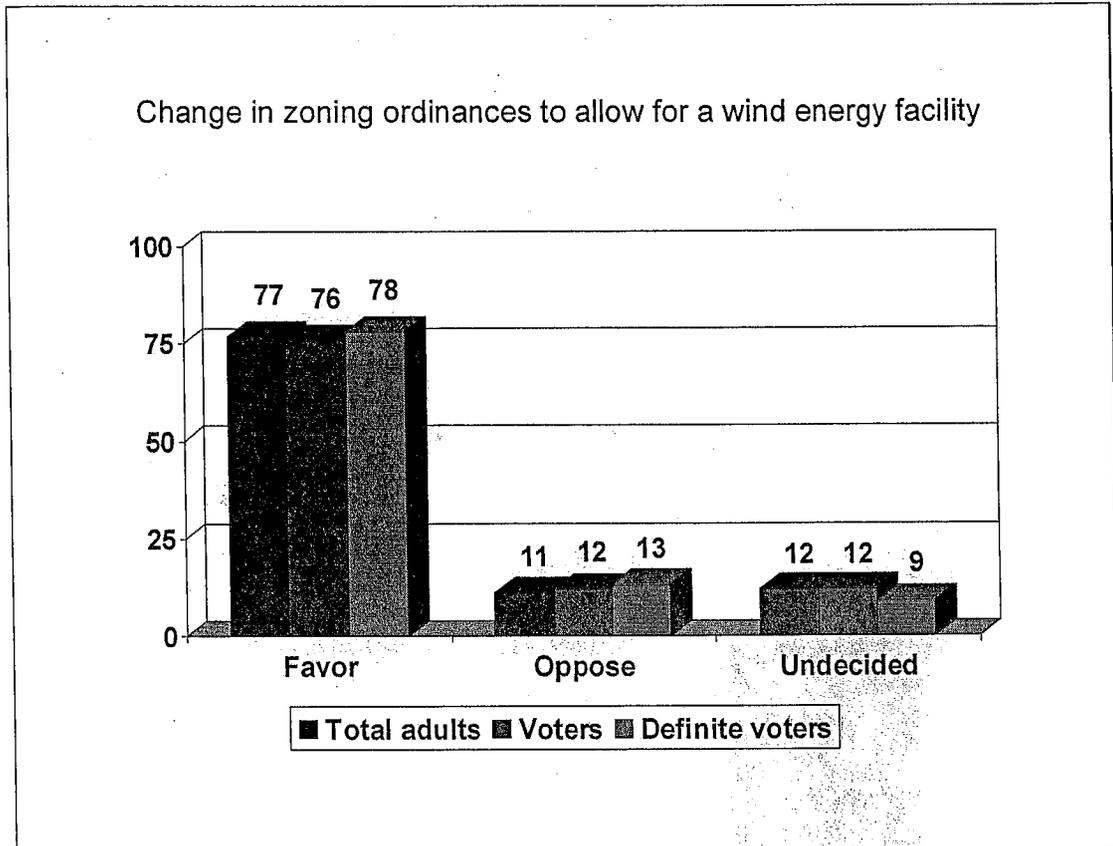
Overall, 77% of Antrim residents say they favor the proposed wind energy facility in Antrim, 10% oppose the facility, and 13% are undecided.



Among registered voters in Antrim, 75% favor the wind energy facility, 11% oppose it, and 14% are undecided. Among those saying they will definitely vote on March 8, 76% favor the wind energy facility, 12% oppose it, and 12% are undecided.

Change in Zoning Ordinances to Allow Wind Energy Facility

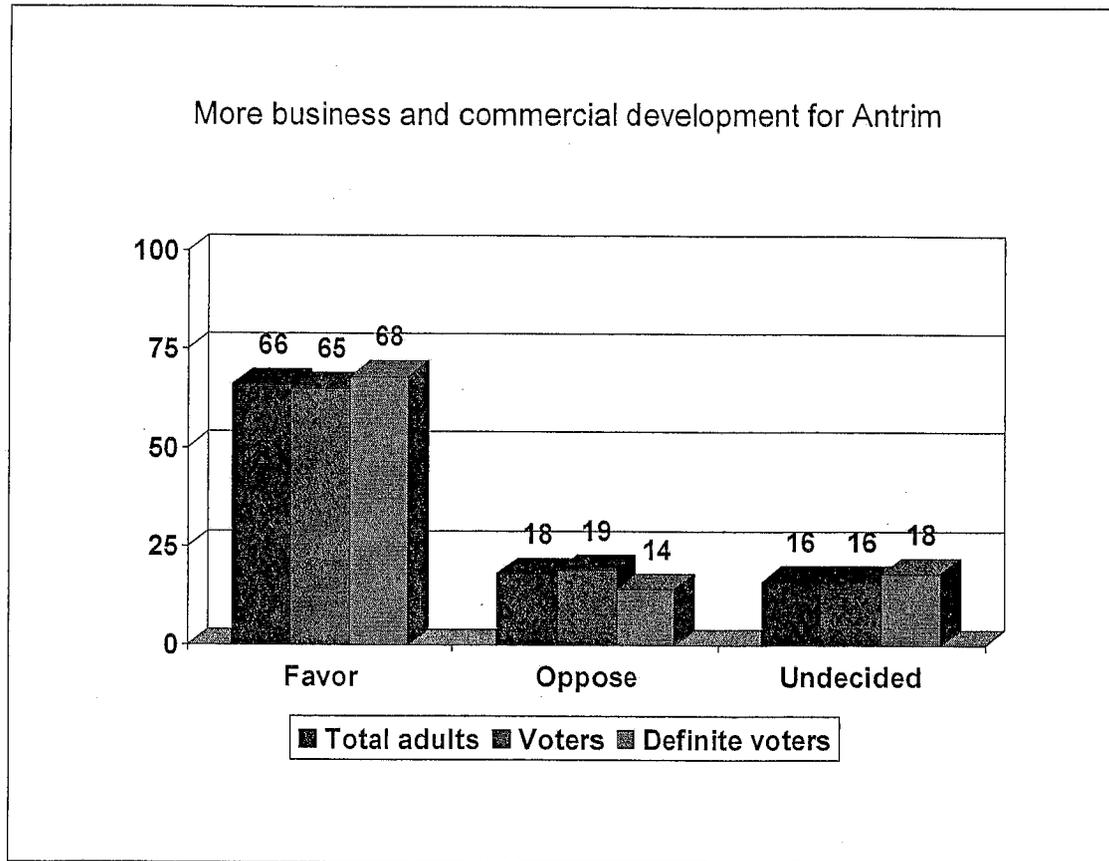
When asked if they favor or oppose changing the zoning ordinances by town vote to allow for wind energy facilities in Antrim, 77% of all residents save they favor changes in the zoning ordinances, 11% oppose, and 12% are undecided.



Among registered voters in Antrim, 76% favor the change in zoning ordinances, 12% oppose, and 12% are undecided. Among those saying they will definitely vote on March 8, 78% favor changing the zoning ordinances, 13% oppose, and 9% are undecided.

More Business and Commercial Development for Antrim

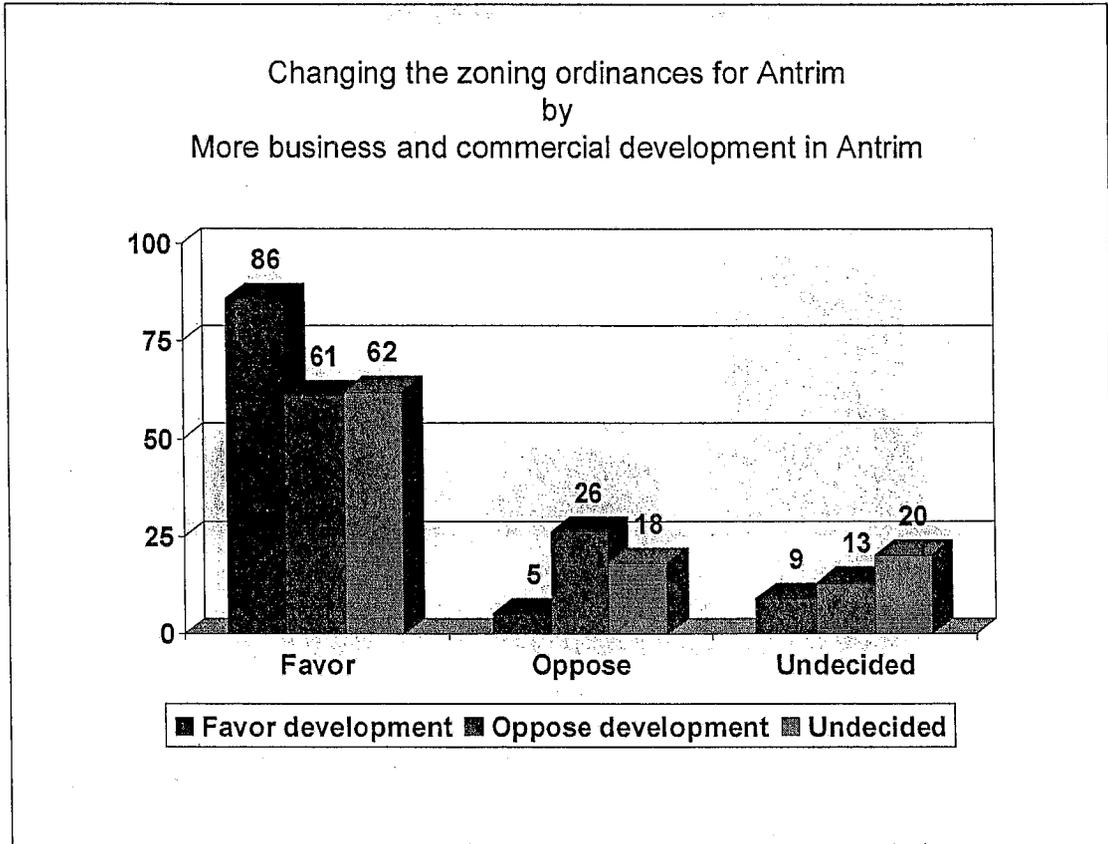
When asked if they favor or oppose more business and commercial development for Antrim, 66% of all residents say they favor more business and commercial development for Antrim, 18% say they oppose more business and commercial development, and 16% are undecided.



Among registered voters in Antrim, 65% favor more business and commercial development, 19% oppose, and 16% are undecided. Among those saying they will definitely vote on March 8, 2011, 68% favor more business and commercial development, 14% oppose, and 18% are undecided.

Support for Changing the Zoning Ordinances by More Business and Commercial Development

Majorities of Antrim residents favor changing the zoning ordinances in Antrim to allow a wind energy facility irrespective of their opinions on more business and commercial development for Antrim. A total of 61% of those saying they oppose more business and commercial development for Antrim favor changing the zoning ordinances in Antrim to allow a wind energy facility.



Among those saying they favor more business and commercial development for Antrim (representing 66% of all residents), 86% favor changing the zoning ordinances in Antrim to allow a wind energy facility, 5% oppose changing the zoning ordinances, and 9% are undecided.

Among those saying they oppose more business and commercial development (representing 18% of all residents), 61% favor changing the zoning ordinances in Antrim to allow a wind energy facility, 26% oppose changing the zoning ordinances, and 13% are undecided.

Among those undecided about more business and commercial development for Antrim (representing 14% of all residents), 62% favor changing the zoning ordinances to allow a wind energy facility, 18% oppose changing the zoning ordinances, and 20% are undecided.

Survey Methodology

The American Research Group, Inc. was commissioned by Eolian Renewable Energy to conduct an independent and impartial survey of Antrim residents concerning the proposed Antrim Wind Energy Facility. A mail survey was used to reach all mailing households in Antrim and to allow residents the opportunity to make extensive comments about the proposed wind facility.

These results are based on 618 completed mail and Internet surveys among households in Antrim, New Hampshire conducted February 4, 2011 through February 28, 2011. The 618 completed surveys represent 70% of households contacted. The theoretical margin of error for this sample is plus or minus 2.2 percentage points, 95% of the time, on questions that are evenly split.

Among the 618 respondents, 94% are registered to vote in Antrim and 74% say they definitely plan to vote in the Antrim town vote on March 8, 2011.

EXHIBIT B

Peter Moore

From: Andrew Robblee [robbleetree@gmail.com]
Sent: Monday, April 11, 2011 8:07 PM
To: antrimplan@tds.net
Cc: mpinello mctelecom.com; Charles Levesque; David Dubois; Diane Chauncey; Galen Stearns; Jesse Lazar; John Robertson; Michael Genest; Scott Burnside; Stephen Schacht
Subject: Signing SEC Letter

4.11.11

Peter,

As we discussed today, I will be in at 8 am Tuesday morning to sign the letter to the SEC. Hopefully all changes will be made by then. It is with reluctance that I sign this letter, however if that is the will of the board then so be it. I am concerned that the board does not know the difference between an ordinance and a regulation. The fact that no reference is made to regulation changes and only ordinance changes reinforces that we are not capable of either completing these changes or overseeing the review process. It is my belief that this letter will only reinforce the SEC's need to take jurisdiction. Furthermore please note that I am aware that this e-mail will be recorded in the meeting minutes of April 7, 2011 and that my opinion and this e-mail will be public. I will see you in the morning to sign. Thank you for your work.

Andrew Robblee

Chairman, Antrim Planning Board

4/14/2011

EXHIBIT C

66 Main Street, PO Box 517, Antrim, NH
03440
(603)588-6785
antrimbiz@tds.net

Town of Antrim

Memo

To: Planning Board
From: Galen A. Stearns, Town Administrator
Date: April 4, 2011
Re: SEC hearing

There have been e-mails and statements from individual Planning Board members concerning the SEC hearing scheduled for April 22, 2011 on the petitions for the Committee to take jurisdiction of the Antrim Wind Energy project if/when an application is submitted. The Board of Selectmen will accept and consider input from the Planning Board as determined by the majority of the Planning Board, not individual members. The Selectmen, as the governing body that can represent the Town and speak on it's behalf, will accept, consider and take under advisement input from all boards and citizens.

The Board of Selectmen (BOS) are scheduled to meet April 4th and April 18th, this issue is not an agenda item for the BOS April 4th meeting, if the Planning Board at their next meeting determine that the Board would like the BOS to consider specific items dealing with this issue, please detail these in a memo from the Planning Board Chairman to the Board of Selectmen. If requested and the BOS determines a meeting is warranted, they will change their April 18th meeting to Monday, April 11.

EXHIBIT D

Peter Moore

From: Galen Stearns [antrimbiz@tds.net]
Sent: Monday, April 11, 2011 11:09 AM
To: antrimplan@tds.net
Cc: 'Andrew Robblee'; 'Michael Genest'; 'John Robertson'; 'Eric Tenney'
Subject: RE: Draft Letter for Submission to SEC - For your review and comment

Peter,

Just a couple of comments on the letter:

1) The Planning Board does NOT have "exclusive jurisdiction" on planning matters, I refer you to RSA 675:3 ("Any proposed zoning ordinance, as submitted by a planning board or any amendment to an existing zoning ordinance as proposed by a planning board, board of selectmen...") which shows both the planning board and the board of selectmen having jurisdiction over zoning amendments.

2) You state "Many hearings have been held on early ordinance proposals this year resulting in testimony from hundreds of people in Antrim." which implies that somewhere between 200 and 999 separate and distinct individual people gave testimony to the planning board when in actuality there were probably 25 to 50 individuals who spoke hundreds of times on the same subject.

3) As I understand the proceedings of last Thursdays PB meeting the alternates were not allowed to vote on the this issue but according to the PB bylaws section 7.9 they can vote on administrative and procedural matters.

4) The Board of Selectmen will challenge and oppose a request from the Planning Board to the SEC to have intervenor status granted.

Galen

From: Peter Moore [mailto:antrimplan@tds.net]
Sent: Friday, April 08, 2011 3:23 PM
To: 'Andrew Robblee'; 'Charlie Levesque'; 'David DuBois'; 'Diane Chauncey'; 'Galen Stearns'; Jesse Lazar; 'John Robertson'; 'Martha Pinello'; 'Michael Genest'; 'Peter Moore'; Scott Burnside; Stephen Schacht
Subject: Draft Letter for Submission to SEC - For your review and comment

Planning Board members,

Per last evening's meeting, attached you will find the draft letter that has been drawn-up for submission to the SEC, to accompany the *Petition For Intervention By Antrim Planning Board*. Please review the letter at your earliest opportunity and let me know if you approve of it, and/or have any specific change suggestions. We would like to get this sent by Tuesday, Wednesday latest.

Also, please copy Andrew at: robbleetree@gmail.com

Note, I have included a copy of the above mentioned *Petition for Intervention* for your information, should you not have a copy on hand.

Thank you for your attention to this. Enjoy the weekend.

4/14/2011

EXHIBIT E

Memo

To: Planning Board
From: Galen A. Stearns, Town Administrator 
Date: April 7, 2011
Re: Petition for Intervention by Planning Board

A petition has been drafted requesting that the Antrim Planning Board be granted intervenor status by the SEC in the Antrim Wind Energy, LLC project, I have asked Town Counsel, Attorney Bart Mayer if the Planning Board has legal standing to request intervenor status and his response was "**the planning board has no such authority, and may not be an intervenor**". The Board of Selectmen as the governing body will speak on behalf of the Town.

EXHIBIT F

Date April 30, 1991

The Senate Committee on Executive Departments

held its hearing in Room 101 Legislative Office Building, Concord, N.H.

House

Bill No. 736-FN Title: An act relative to energy facility siting, licensing and operation.

Members of committee present: Senators Currier, John King, Wayne King, Colantuono, Pressly and Fraser

Those appearing in favor: (See Attached)

Name and Address Representing

Those appearing in opposition: (See Attached)

Name and Address Representing

Report of Committee:

Ought to pass _____ Interim Study _____

Ought to pass w/amendment X _____ Continued Hearing _____

Inexpedient to legislate _____ Postponed Hearing _____

Reporting Out: Senator Wayne King

Time: 10:14 a.m.
Date: April 30, 1991
Room: 101 LOB

The Senate Committee on Executive Departments held a hearing on the following:

HB 736-FN -- AN ACT RELATIVE TO ENERGY FACILITY SITING, LICENSING AND
OPERATION.

COMMITTEE MEMBERS PRESENT:

Senator David Currier, Chairman
Senator John King, Vice Chairman
Senator Wayne King
Senator Thomas Colantuono
Senator Barbara Pressly
Senator Leo Fraser

Senator Wayne King opened the hearing by calling upon the sponsor of the bill.

Rep. Beverly Rodeschin: Senator Dupont is tied up with another hearing and he is in full support of this bill. I would also like to have Commissioner Ellsworth, Director Osgood and Michael Cannata, Jr. sit with me on this.

Just to go back a little bit, in November of 1988, there was a report of the State Electric Energy Needs Planning Committee. From there came a recommendation of a study committee on energy facility siting which Senator King served on. Out of this was a recommendation for the bill that is before you now, HB 736. It has been amended in the House from its original version. It incorporates the provisions of RSA 162-F into RSA 162-H. It clarifies the type of facilities over which the Site Evaluation Committee has jurisdiction. It provides a Site Evaluation Committee with an opportunity to weigh decision making. It increases the opportunities for local government and the public to participate in a facility siting process. Adds the Director of the Governor's Energy Office to the Site Evaluation Committee. It reduces the decision making time to ten months for generating facilities and nine months for energy facilities. It requires the Attorney General's Office to be notified immediately upon receipt of an application for a proposed facility.

We put an amendment in the House version to address a concern of Senator Colantuono and we fully support that and hope that you will support that amendment. That is to give petitioners an opportunity of a facility under a thirty megawatts and for the Site Evaluation Committee to take jurisdiction on there. I think it meets all the criteria of Senator Colantuono. We omitted a couple of sections when we passed it and we request this Committee to insert that. That is on page three and it is under (a) Electric Generating Station. If you go all the way down to "request" and just add the words, "and the committee agrees." On the following page on top, after the word "request" add "and the committee agrees." The reason for that request is so it will be

doesn't really look at the small power producer facilities of private companies with respect to disclosure of ownership, the bill requires, for example, corporations to provide lists of officers and share holders. If you look at the private corporations publicly traded or private companies that have large lists of share holders, often times that information is confidential. It's going to be very hard to disclose who all your share holders are and it's going to be a pretty long list. And finally with respect to that, the financial information that we have to provide at the time that we go to the committee isn't defined. I think that with a private company that is going to be sensitive and I think there should be some specific criteria that we will have to meet in submitting our application. Those are the comments that we have.

Dom D'Ambruoso: (Northern Utilities) We worked with the people over in Science and Technology and support the bill as amended as it has come to you this morning. The amendment presented by Rep. Rodeschin is also an acceptable change. We work basically on definitional sections just to be clear about what gas facilities were covered by the energy bill. We are supporting it as it is and we would be happy to work with the subcommittee and we will keep track of its activities throughout the rest of the process.

Kenneth Colburn: (BIA) We are testifying in full support of the original language of the bill and have some reservations relative to the amended version although a couple of those have been addressed already by Rep. Rodeschin's suggestions this morning. In as much as I am not yet an expert on energy matters in general, I have brought an expert informant, Harold Turner, with me to make some additional comments. Mr. Turner is President of the H.L. Turner Group and Chairman of the Energy Affairs Committee of the BIA. He also served on the original study committee for this bill.

Harold Turner: We are certainly in full support of House Bill 736. I think the study committee in putting together these recommendations really did an excellent job of looking at all interests within the state both public, private, business and otherwise. I think it goes a long way in making New Hampshire a leader when it comes to siting energy facilities within its boundaries. One of the provisions that we made within the original recommendations in the original bill allowed for flexibility for the site committee of less than thirty megawatts. We had many debates within the study committee as to what the threshold should be. Should it be fifty. Should it be thirty, twenty, zero. We were able to reach a compromise in concert with the state's LEEPA laws that thirty megawatts as being a reasonable cut off point. However, we also want to give the siting committee flexibility below thirty megawatts to invoke their jurisdiction. We also gave the applicant the ability to petition the committee or jurisdiction on a project that was less than thirty megawatts.

In amending the original bill, we have opened up the process to greater public involvement. I have no problem with that extension of public involvement to have a petition process on a local level. However, in doing so, we have also eliminated the ability of the applicant themselves to petition the committee because we have required two or more categories of petitioners to be before the committee before the committee can sit and judge as to whether that project below thirty megawatts should be reviewed by the committee. I don't know if that was intentional, but right now that is how the wording is.

Clearly the study committee did not intend that the applicants themselves be left out of the process the ability to petition to the study committee to have jurisdiction.

We felt that by and large the process is well served by the recommendations made to both streamline the process and expand public hearing. If someone was serious about trying to do a major facility at one time or another in the State of New Hampshire, that there was a good due process, that we wouldn't overly burden the applicant. We wouldn't overly burden our Public Utilities Commission or the top environmental services. So I think that as you deliberate in the subcommittee the fact that the applicant no longer has the ability to petition this siting committee for jurisdiction needs to be revisited. I think the intent, as far as our original study committee, is that it was an option that they had. As we base this in law, it would be best for that applicant to have that same provision to do that rather than having to make the siting committee aware of that desire or some other fashion. I think we're sort of missing the point if we do that.

Senator Barbara Pressly, D. 12: ..(changed tape).. have the time or the interest to take up what I'm hearing more and more today about the multifunctional aspects where a facility will do many more things than they have in the past?

Harold Turner: I think, to a large extent, one of the advantages of having a state siting committee that has by its make up those people in the state responsible for both electrical energy or energy in general, as well as environmental oversight of the state control this process. This is, in fact, who makes up this study committee. You have the Commissioner of the DES and all its department heads as well as the Public Utilities Commission and the Governor's Energy Office involved in looking at a project and trying to allow for that full knowledge base to take hold. Hopefully, this will balance both energy needs and environmental needs in the state. In the context where a project has a benefit in both categories make sure that it has an opportunity to be developed in the State of New Hampshire as opposed to being somehow blocked on a local level. Those kinds of facilities are going to fall below thirty megawatts. Most people would agree ..?.. the timing and the effort of those people in the State of New Hampshire who are responsible for those things.

Senator Thomas Colantuono, D. 14: Under the existing language right now, do you agree that a petitioner can still petition and if the committee wishes can take jurisdiction under a thirty megawatt plan?

Harold Turner: The language states, "in any other facility with two or more petitioned categories." As soon as you require two or more, that automatically means that the applicant for the project themselves can't, as a sole petitioner, ask the siting committee to take it on if it is less than thirty megawatts.

Senator Thomas Colantuono, D. 14: But then it also says, "or which the committee determines should require a certificate." So, if the petitioner convinces the committee just on their own petition that they should go through the process, then it will under the existing language. Is that correct?