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July 31, 2012

Ms. Jane Murray, Secretary  
New Hampshire Site Evaluation Committee  
New Hampshire Department of Environmental Services  
P.O. Box 95  
29 Hazen Drive  
Concord, NH 03302-0095

Re: Docket No. 2012-001 Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility for a Renewable Energy Facility

Dear Murray:

Enclosed please find for filing electronically in this matter the written testimony of the following witnesses testifying on behalf of the Audubon Society of New Hampshire, together with the attachments referenced therein:

1. Frances Von Mertens
2. Paul Nickerson
3. Carol Foss
4. Phil Brown

The original and nine copies this testimony will be hand-delivered to your office for filing later today if time permits and otherwise early tomorrow morning.

Very truly yours,



David M. Howe

Cc: Service List

Enc.

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
SITE EVALUATION COMMITTEE  
DOCKET NO. 2012-01  
APPLICATION OF ANTRIM WIND ENERGY, LLC  
FOR A CERTIFICATE OF SITE AND FACILITY  
PRE-FILED DIRECT TESTIMONY OF PAUL R. NICKERSON  
ON BEHALF OF THE  
AUDUBON SOCIETY OF NEW HAMPSHIRE**

**July 31, 2012**

**Q. Please state your name and address.**

A. Paul R. Nickerson, 7 Sparhawk Drive, Londonderry, NH, 03053

**Q. Are you currently employed, and, if so, what position do you hold?**

A. I retired from the U. S. Fish and Wildlife Service in 2004, and remain in retirement. I am currently serving as a member of the Board of Trustees of the Audubon Society of New Hampshire.

**Q. Please summarize your educational background and professional experience.**

A. I have a BS in Wildlife Management from the University of Maine, Orono (1966), and an MS in Forestry from the University of New Hampshire (1970). I worked for the U. S. Fish and Wildlife service from September, 1970 until January, 2004. I was involved in documenting and evaluating the impacts of contaminants early in my career, then I worked with eagles, particularly bald eagles. I coordinated national surveys for nesting bald eagles in 1973-74, and planned and helped carry out the first bald eagle egg transplant from Minnesota to Maine in an effort to improve productivity of the Maine population which was suffering the effects of DDT contamination.

In 1975, I became the coordinator of the Service's Endangered Species program in the Northeast region, an area extending from Maine to Virginia. In that role, I oversaw all aspects of Endangered Species including; listing, recovery, and consultation with federal and state partners. I wrote proposed and final rules to list species, oversaw preparation of recovery plans designed to improve species status, negotiated agreements for management with state partners and worked with other Federal agencies to assess the effects of their projects on Endangered and Threatened species. I oversaw the recovery of the peregrine falcon in the east, which contributed to its removal from the federal Endangered Species list. I also worked to recover Bald Eagles in MA, PA, NJ, and NY by arranging for transport of Bald Eagles from several Canadian provinces to those states for release. Populations increased in all three states and are now thriving.

**Q. Are you familiar with the project that is the subject of this application?**

A. Yes, I am.

**Q. What is the purpose of your testimony?**

A. The purpose of my testimony is to provide information about Federal laws that protect Bald and Golden eagles and other raptors.

**Q. What Federal laws protect Bald and Golden Eagles and other raptors?**

A. Eagles are protected by the Bald and Golden Protection Act and the Migratory Bird Treaty Act (MBTA), and all other raptors are protected by MBTA.

**Q. What is prohibited pursuant to the MBTA?**

A. It is unlawful to pursue, hunt, take, attempt to take, capture or kill, possess, sell, offer to sell, barter, or purchase all migratory birds listed as part of the international treaty. This list includes eagles and other raptors.

**Q. What is the penalty for violating the MBTA?**

A. A violation is considered a misdemeanor, and subject to a fine up to \$500.00, jail time up to six months, or both.

**Q. What acts are prohibited under the Bald and Golden Eagle Protection Act (BGEPA)?**

A. The BGEPA prohibits anyone without a permit from “taking” eagles, parts or nests. “Take” is defined as pursue, shoot, shoot at, poison, wound, kill, trap, collect, molest, or disturb. Disturb is further defined as meaning, “to agitate or bother a bald or golden eagle to the degree that causes or is likely to cause, based on best scientific information available, (1) injury to an eagle, (2) a decrease in productivity based on normal breeding, feeding and sheltering behavior.”

**Q. What is the penalty for take under BGEPA?**

A. A violation can result in a fine of \$100,000.00, imprisonment for one year, or both for a first offense. Penalties increase substantially for additional offenses, and a second violation of the act is a felony.

**Q. Are regulations in place that implement the provisions of the BGEPA by allowing for unintended take under certain circumstances?**

A. Permits may be issued to take eagles incidentally as a consequence of an otherwise lawful activity, however, such take is strictly allocated, and only under certain conditions. Permits must also be compatible with preservation of both species. The Fish and Wildlife Service is not issuing permits for unintended take of Golden Eagles east of the 100th meridian.

**Q. Why are no unintended take permits being issued for Golden Eagles east of the 100<sup>th</sup> meridian?**

A. No take permits will be issued for Golden Eagles east of the 100th meridian unless needed to alleviate a specific safety concern. Currently, there is insufficient data on mortality rates to justify issuance of such permits.

**Q. What would be the penalty for causing mortality to a Golden Eagle east of the 100<sup>th</sup> meridian?**

**A. Violation could result in a fine of up to \$100,000.**