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August 1, 2012

Via U.S. and Electronic Mail

Ms. Jane Murray, Secretary
New Hampshire Site Evaluation Committee
N.H. Department of Environmental Services
29 Hazen Drive
Concord, NH 03302-0095

***Re: Docket 2012-01 - Application of Antrim Wind Energy, LLC
for a Certificate of Site and Facility for a Renewable Energy Facility***

Dear Ms. Murray:

Enclosed for filing with the New Hampshire Site Evaluation Committee in the above-captioned matter please find an original and 9 copies of Applicant's Objection to Industrial Wind Action Group's Motion to Compel Antrim Wind LLC to Respond to Technical Session Data Requests. Please contact me if there are any questions about this filing. Thank you.

Very truly yours,


Susan S. Geiger

Enclosures

cc: Service List, excluding Committee Members
Clark A. Craig, Jr. (by first class mail)

907532_1

THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

Docket No. 2012-01

Re: Antrim Wind Energy, LLC

**APPLICANT'S OBJECTION TO
INDUSTRIAL WIND ACTION GROUP'S
MOTION TO COMPEL ANTRIM WIND LLC TO RESPOND TO
TECHNICAL SESSION DATA REQUESTS**

NOW COMES Antrim Wind Energy, LLC ("AWE" or "the Applicant"), by and through its undersigned attorneys, and objects to the Motion to Compel Technical Session Data Requests ("Motion to Compel") filed by Industrial Wind Action Group ("IWAG") by stating as follows:

1. In its Motion to Compel, IWAG requests that the Site Evaluation Committee ("the Committee") compel the Applicant to deliver information requested in Technical Session Data Requests TS 1-3, 1-9, 1-15, 1-16, 1-17, 1-18, 1-25 and 1-48. AWE objects to these requests.

2. The Committee applies a three-step analysis to determine whether information is exempt from public disclosure pursuant to the Right-to-Know law, RSA 91-A:5, IV. First, the Committee will determine "whether there is a privacy interest at stake that would be invaded by the disclosure." *Lamy v. New Hampshire Public Commission*, 152 N.H. 106, 109 (2005). Second, the Committee considers whether there is a public interest in disclosure. *Id.* "Disclosure of the requested information should inform the public about the conduct and activities of their government." *Id.* Third, if there is a public interest in disclosure, that interest is balanced against "the government

interest in nondisclosure and the individual's privacy interest in nondisclosure.” *Id.* This analysis applies to the data requests sought by IWAG to determine that responses should not be compelled.

3. Finally, with respect to all of the technical session data requests included herein, AWE incorporates by reference its request that if the Committee deems it appropriate for parties in addition to Counsel for the Public to have access to this sensitive confidential information, it issue a protective order containing provisions similar to those contained in the Order Granting Applicant’s Motion for Protective Order/Confidential Treatment issued in SEC Docket No. 2006-01, *Re: Community Energy, Inc. and Lempster Wind, L.L.C.*, (Oct. 17, 2006), with the additional limitations referenced in the Motion for Protective Order. *Motion for Protective Order* at 4-5.

TS 1-3

4. TS 1-3 seeks a copy of the option agreement that would permit the Applicant to purchase the land upon which the substation approval is to be sited. IWAG claims that the option agreement is relevant because AWE seeks subdivision for the land upon which the substation is to be sited. *Motion to Compel* at 2. TS 1-3 is also the subject of *Applicant’s Unassented-To Motion for Protective Order and Confidential Treatment* (July 12, 2012) (“Motion for Protective Order”). As noted in its brief regarding authority of the Site Evaluation Committee to create a subdivided lot, PSNH policy requires that it own the land on which the interconnection yard is located, and the option agreement merely permits the sale of that property.

5. The Applicant has a privacy interest in the option agreement because it is competitive business information. In addition, there is no public interest in the option

agreement because the Committee need not rely on the information to support a finding of financial capability. *Motion for Protective Order* at 3. Finally, any option agreement sought by IWAG (e.g., the agreements regarding sale of the subdivision parcel) is wholly unrelated to the Committee's determination of whether it has subdivision authority under RSA 162-H. It is further irrelevant to the Committee's determination of whether the subdivision is appropriate; it would not even be required for subdivision approval by the Antrim Planning Board. In addition, the Applicant has provided, as Exhibit A to this Objection, its Notice of Option which is a public document filed with the Hillsborough County Register of Deeds. Nevertheless, AWE is prepared to provide this information to Counsel for the Public alone, as the Committee has required for certain financial information in the Groton Project. *See Application of Groton Wind, LLC*, SEC Docket No. 2010-01, Order on Pending Motions and Further Procedural Order (Dec. 14, 2010) at 2.

TS 1-9

6. TS 1-9 seeks a spread sheet or similar data aggregation explaining the statement that "Antrim Wind has spent over \$1.85 million to-date on development activities with over 45% being spent in New Hampshire on services such as professional services, surveying, legal, and project impact analysis." IWAG claims that a spreadsheet must be provided because it justifies an assertion set for in the AWE Application.

7. This request is the subject of AWE's Motion for Protective Order. For the same reasons set forth in that motion, the Applicant has a privacy interest in this information and there is no public interest in disclosure because the Committee need not rely on the information to support a finding of financial capability. *Motion for Protective*

Order at 3. AWE does not object to production of this information to Counsel for the Public, subject to a protective order, and in accordance with the Committee's decision in *Application of Groton Wind, LLC*, SEC Docket No. 2010-01, Order on Pending Motions and Further Procedural Order (Dec. 14, 2010) at 2.

TS 1-15 and TS 1-16

8. TS 1-15 and TS 1-16 seek the price for Renewable Energy Certificates ("REC") and the price of power under a power purchase agreement that would be necessary to make the proposed project financially viable. In its motion, IWAG claims that this information is related to "[t]he Applicant's ability to finance this project is entirely reliant on the price of the energy, renewable energy credits and any capacity awarded the project." *Motion to Compel* at 3.

9. The information sought in TS 1-15 and TS 1-16 is similar to the information sought by IWAG Data Request 15, which is the subject of IWAG's June 22 Motion to Compel. It is also similar to information sought by Counsel for the Public via its motion to compel for data request PC 12. *See Applicant's Response to Motion of Counsel for the Public to Compel* at 3 (July 5, 2012). For the same reasons submitted in the Applicant's Objection to IWAG's Motion Regarding Data Responses and the Applicant's response to Counsel for the Public's motion, these requests should be denied because information relating to the negotiation of a PPA is not discoverable. *See Public Service Company of New Hampshire*, 95 NH PUC 579, 589 (2010) (motion to compel information related to PPA negotiations denied; Public Utilities Commission could conceive of no circumstances in which such negotiation information would be deemed admissible). Similarly, production of REC pricing information for an individual supplier

would greatly impair AWE's ability to negotiate with purchasers of power and RECs. *Id.* at 587 (finding that PSNH must produce aggregate pricing and product terms, but that "disclosure of data identifying a specific supplier or facility" must not be produced). Given that this request seeks information about confidential commercial transaction negotiations, disclosure would harm not only AWE but the parties with whom it is negotiating. Thus, given that under the *Lamy* analysis, the harm of disclosure outweighs the public's interest in disclosure, the Applicant should not be compelled to provide this information.

TS 1-17

10. TS 1-17 seeks Scenario pro forma schedules. IWAG asserts that this information is related to the Project's financial viability if "certain federal subsidies are eliminated or the federal benefits reduced." *Motion to Compel* at 3. The information in TS 1-17 is the same as the information sought by IWAG Data Request 14, which is the subject of IWAG's June 22 Motion to Compel and is the same as the information sought by Counsel for the Public in its data request PC 14, which is the subject of its motion to compel. *See Applicant's Response to Motion of Counsel for the Public to Compel* at 3-4 (July 5, 2012). AWE does not object to production of this information to Counsel for the Public, subject to a protective order, and in accordance with the Committee's decision in *Application of Groton Wind, LLC*, SEC Docket No. 2010-01, Order on Pending Motions and Further Procedural Order (Dec. 14, 2010) at 2; *see Motion for Protective Order* at 2-5.

11. For the reasons set forth in AWE's Motion for Protective Order, the Applicant has a privacy interest in this information and there is no public interest in

disclosure because the Committee need not rely on the information to support a finding of financial capability. *Motion for Protective Order* at 3; *see also Objection to IWAG Motion Regarding Data Responses* at 2-4 (explaining that disclosure of this privileged and confidential information to parties other than Counsel for the Public would have a materially adverse effect on AWE and should not be required and that the information sought is not relevant to the Committee's determination regarding financial capabilities).

TS 1-18 and TS 1-25

12. TS 1-18 seeks the P90 capacity factor. IWAG asserts that the "capacity factor exceeds the production figures for all wind energy facilities operating in the Northeast including New York" and that "the P90 figure for this project will reveal the confidence the Applicant has in the project's anticipated performance and relates directly to the financial viability of the project." *Motion to Compel* at 4. TS 1-25 requests the net capacity factors running at higher cut-in speeds over the long term. IWAG asserts that mitigation measures can impact the viability of the project if mitigation is triggered, and could impact the Applicant's ability to secure financing for the project.

13. In general, capacity factor information is highly confidential, sensitive commercial and technical information which constitutes trade secrets of AWE. *See RSA 350-B:1, IV*. The Applicant has expended significant resources to develop this information and does not publicly disclose it. If the capacity factor information is disclosed to the public, including to other developers of wind energy facilities, the Applicant would be placed at a competitive disadvantage. The Applicant has expended funds for the development of this information which it considers proprietary and unique to the AWE Project. If this proprietary information is made public or made available to

AWE's competitors, AWE would suffer competitive injury given that its competitors could make use of this information without incurring the expenses that that Applicant did to develop this information. In addition, the possibility exists that other participants in the competitive New England electricity market could utilize this sensitive information to their advantage and to the disadvantage of the Applicants and other market participants. Under the balancing test set forth in *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997), the above-described interests in non-disclosure and protection of commercially competitive information and trade secrets outweigh any public interest in disclosing this information.

14. With respect to TS 1-18, providing a P90 capacity factor for the Project is irrelevant to these proceedings.¹ Contrary to IWAG's allegations, disclosing the P90 will not reveal the "confidence" the Applicant has in the financial feasibility of the Project. Financial feasibility for the project will be determined by whether the project can obtain a PPA. If it cannot obtain a PPA, then financing under the AWE's model is unlikely, independent of the outcome of any SEC permit decision. The Applicant has agreed to provide to Public Counsel and its consultant, under protective order, detailed materials related to the financing plan and the Applicant's technical, financial and managerial capability. Under the *Union Leader* test, further information need not be provided. Finally, if IWAG's position is that the capacity factor set forth in Mr. Kenworthy's testimony is incorrect, it may make its case to the Committee, based on the range of capacity factors that has already been provided.

15. With respect to TS 1-25 regarding net capacity factors ("NCF"), the Applicant objects to providing specific NCF figures that include adjustments for

¹ A P90 capacity factor is a statement of the capacity factor with a 90 percent statistical confidence.

increased cut-in speeds. The expected NCF with higher cut-in speeds, including those provided in the Avian and Bat Protection Plan, falls within the range already supplied by the Applicant, and further information is not necessary or relevant to the Site Evaluation Committee's consideration of this project.

16. Contrary to IWAG's claims, the capacity factor information is irrelevant to the Committee's decision regarding the Applicant's "financial, technical, and managerial capability" under RSA 162-H:16, IV(a). The capacity factor is not necessary for the Committee to determine AWE's "near-term prospect for project financing," and is therefore not relevant and should not be disclosed. *Re: Application of Antrim Wind Energy, LLC*, Order on Unassented-to Motion for Protective Order and Confidential Treatment (June 3, 2012) at 3-4. To the extent that capacity factor information is relevant, in his direct testimony, Jack Kenworthy has already projected an annual net capacity factor of 37.5%-40.5% for the Project. *Testimony of Jack Kenworthy*, page 10, lines 16-19. No further disclosure is required or warranted under *Lamy*.

TS 1-48

17. TS 1-48 seeks the ISO-NE Draft Feasibility Study. Notwithstanding AWE's assertions to the contrary, IWAG claims that the Applicant has the authority to share this report.

18. IWAG first asserts that the Applicant has the authority to share the content of the report. In fact, as indicated in the attached Critical Energy Infrastructure Information ("CEII) Request Form and CEII Non-Disclosure Agreement, attached hereto as Exhibit B, the Applicant is unable to produce the report to the parties in this case, and AWE "may only discuss CEII with or disclose CEII to another Recipient of the identical

CEII.” *CEII Non-Disclosure Agreement* at ¶ 2(b). The Applicant’s request for CEII from ISO-NE states explicitly and specifically that it seeks “access to reports and other information related to a System Impact Study to be completed for Antrim Wind Energy.” *Critical Energy Infrastructure Information Request Form*. Therefore, unless IWAG or some other party can establish that it has an identical CEII, AWE may not produce the draft report.

19. Furthermore, AWE sought advice from ISO-NE directly regarding whether the draft feasibility report could be produced by way of the Site Evaluation Committee process. A representative of ISO-NE responded that the draft report is for AWE’s information only and cannot be shared with anyone else until the study has been completed and a final report has been issued.

20. Finally, AWE does note that the CEII Non-Disclosure Agreement provides a process for disclosure should an administrative agency require production of a protected report, and will promptly notice ISO-NE regarding any such order as required by the agreement. *See Exhibit B* at ¶ 2(d).

WHEREFORE, the Applicant respectfully requests that the Committee:

- A. Deny IWAG’s Motion to Compel Antrim Wind LLC to Respond to Technical Session Data Requests; and
- B. Grant such further relief as deemed appropriate.

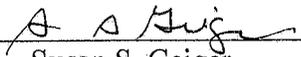
Respectfully submitted,
Antrim Wind Energy, LLC
By its Attorneys,
Orr and Reno, P.A.

By: 
Susan S. Geiger
Rachel A. Goldwasser
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550
603-223-9154
sgeiger@orr-reno.com
rgoldwasser@orr-reno.com

Dated: August 1, 2012

Certificate of Service

I hereby certify that on this 1st day of August, 2012, a copy of the foregoing Objection was sent by electronic mail or U.S. Mail, postage prepaid, to persons named on the Service List of this docket, excluding Committee Members.


Susan S. Geiger

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Doc # 2020125 Apr 23, 2012 11:51 AM
Book 8419 Page 0892 Page 1 of 2
Register of Deeds, Hillsborough County
Camela O'Connell

EMW
EOLIAN RENEWABLE
ENERGY LLC
155 FLEET ST
PORTSMOUTH, NH 03801

EXHIBIT B

NOTICE OF OPTION

NOTICE is hereby given of the following Option

- a. Holder: Antrim Wind Energy, LLC
115 Fleet Street
Portsmouth, New Hampshire 03801
- b. Owner of Parcel: Michael James Hutchins Ott
P.O. Box 160
Antrim, New Hampshire 03440
- c. Location of Parcel: Property located off Keene Road in Antrim, Hillsborough County, New Hampshire identified on Antrim Tax Map 212 as Lots 27 and 30, said land being a portion of the property acquired by Michael James Hutchins Ott by deed of John A. Eddy and Laura C. Eddy, dated June 2, 2006, and recorded in the Hillsborough County Registry of Deeds at Book 7685, Page 864.

Other terms and conditions of the Option are set forth more fully in an Option Agreement.

[The signature page follows.]

WITNESS our hands and seals as of the dates herein below written.

Deanne Chourey
Witness
DATED: 3/26, 2012

Michael James Hutchins Ott
Michael James Hutchins Ott - Seller

ANTRIM WIND ENERGY, LLC
Buyer
By: [Signature]
Name: John B. Kenworthy
Title: Executive Officer
Duly Authorized

[Signature]
Witness
DATED: 3/27, 2012

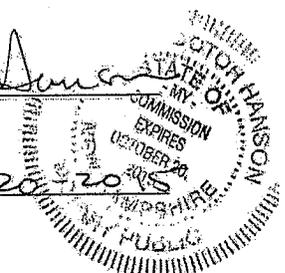
STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 26 day of March 2012 by Michael James Hutchins Ott.

Don Pugh
Notary Public/Justice of the Peace

My Commission Expires: 10-20-2015

(SEAL)



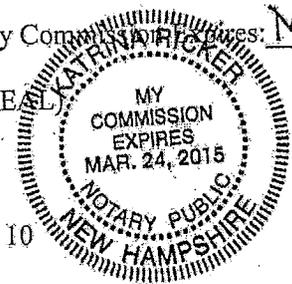
STATE OF NEW HAMPSHIRE
COUNTY OF ~~HILLSBOROUGH~~ ROCKINGHAM

The foregoing instrument was acknowledged before me this 27 day of March 2012 by JOHN B. KENWORTHY, the EXECUTIVE OFFICER of Antrim Wind Energy LLC, on behalf of the limited liability company.

Katrina Ricker
Notary Public/Justice of the Peace

My Commission Expires: March 24, 2015

(SEAL)





**CRITICAL ENERGY INFRASTRUCTURE INFORMATION ("CEII")
REQUEST FORM**

1. This form must be accompanied by an original signed Non-Disclosure Agreement, unless you are a registered employee of a Governance Participant (as indicated below) or FERC, in which case the ISO New England Information Policy applies. If you have already signed a CEII Non-Disclosure Agreement, please provide the date: _____
2. The undersigned requests the following information [describe in detail]:
Access to reports and other information related to a System Impact Study to be completed for Antrim Wind Energy LLC
3. The undersigned is:
 - employed by a Governance Participant or Market Participant and registered as a "Person" under that Participant in ISO-NE's Customer and Asset Management System
 - an employee of another independent system operator or regional transmission organization in North America
 - a state agency employee
 - a federal agency employee
 - an employee of the electricity reliability organization or regional entity
 - an employee of a transmission owner in another control area
 - a consultant of one of the entities listed above who has been retained to provide advice regarding the matter described in no. 5 below
 - other (note that ISO New England is less likely to grant the request of persons in this category)
4. Give the name of your employer and your title: Executive Officer of Antrim Wind Energy LLC
5. The undersigned represents warrants and agrees that the information is to be used solely for the following purpose [describe in detail]: Evaluating the technical and financial feasibility of interconnecting a 33 MW wind generation facility to the ISO-NE grid and informing decisions regarding future study requirements or facility upgrade requirements to accomplish the same
6. If you are a consultant, provide the name and contact information of an individual at the organization that has retained you so that we may verify your role: _____
7. If you are in the "other" category, please provide the name and contact information of an individual at ISO New England or one of the entities listed in no. 3 who may verify the legitimacy of your request: Stojan Nikolov, 413-540-4769 snikolov@iso-ne.com

I acknowledge that the foregoing is true and accurate, and agree to give ISO New England immediate notice if any of the foregoing is no longer true. I also consent to ISO New England sharing the fact that this request has been made and/or granted, and agree that ISO New England shall have no liability to me in connection with this request.

Signature: _____ Name (please print): John B. Kenworthy (Jack)

Organization: Antrim Wind Energy LLC Business Address: 155 Fleet Street, Portsmouth, NH 03801

Email: jkenworthy@eolian-energy.com Phone: (603) 570-4842

Fax: (603) 386-6743 Date: August 23, 2011

CEII NON-DISCLOSURE AGREEMENT

This CEII NON-DISCLOSURE AGREEMENT (the "Agreement") is made by the undersigned (the "Recipient") in favor of ISO NEW ENGLAND INC. ("ISO-NE"), with its primary address located at One Sullivan Road, Holyoke, MA 01040.

WHEREAS, the Recipient has requested that ISO-NE disclose to the Recipient certain information, all or a portion of which may be classified by ISO-NE as Critical Energy Infrastructure Information; and

WHEREAS, the Federal Energy Regulatory Commission has defined Critical Energy Infrastructure Information as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure";

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Recipient agrees as follows:

1. Definition of CEII. For purposes of this Agreement, "Critical Energy Infrastructure Information" or "CEII" shall mean: (i) all information designated as such by ISO-NE, whether furnished before or after the date hereof, whether oral, written or recorded/electronic, and regardless of the manner in which it is furnished; and (ii) all reports, summaries, compilations, analyses, notes or other information which contain such information.

2. Use and Protection of CEII.

(a) All CEII shall be maintained by Recipient in a secure place. Recipients may make copies of CEII, but such copies become CEII and subject to these same procedures. Recipients may make notes of CEII, which shall be treated as CEII if they contain CEII.

(b) Although a Recipient of CEII may use CEII as foundation for advice provided to his or her employer or clients, s/he may only discuss CEII with or disclose CEII to another Recipient of the identical CEII. A Recipient may check with ISO-NE to determine whether another individual is a Recipient of the identical CEII.

(c) A Recipient will not knowingly use CEII directly or indirectly for an illegal or non-legitimate purpose.

(d) In the event that the Recipient is required to disclose CEII by subpoena, law or other directive of a court, administrative agency or arbitration panel, the Recipient hereby agrees to provide ISO-NE with prompt notice of such request or requirement in order to enable ISO-NE to (i) seek an appropriate protective order or other remedy, (ii) consult with the Recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (iii) waive compliance, in whole or in part, with the terms of this Agreement. In the event that such

protective order or other remedy is not obtained, or ISO-NE waives compliance with the provisions hereof, the Recipient hereby agrees to furnish only that portion of the CEII which the Recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded such CEII.

3. Return of CEII. In the event that ISO-NE, in its sole discretion, so requests, the Recipient will promptly deliver to ISO-NE all CEII, including all copies, reproductions, summaries, compilations, analyses or extracts thereof.

4. Change in Status. If the information provided to ISO-NE in Recipient's request for CEII changes (e.g., Recipient leaves his or her employ, the consulting engagement cited in the request is terminated, Recipient's employer is no longer a Governance Participant) s/he must inform ISO-NE immediately in writing at the address first given above (Attention: Customer Support). ISO-NE may require the return of the CEII or its destruction.

5. CEII "on Loan". Information provided pursuant to this Agreement is deemed to be on loan and must be returned to ISO-NE upon request. If the Recipient is an employee of a federal or State agency, s/he must note that the information is not the property of the agency and is not subject to Freedom of Information/Public Records acts or similar statutes.

6. No Warranty. The CEII is provided "as is" with all faults. In no event shall ISO-NE be liable for the accuracy or completeness of the CEII. ISO-NE shall not have liability to the Recipient, or any other person or entity, for the Recipient's use of any CEII disclosed pursuant to this Agreement.

7. Equitable Relief; Audit. Without prejudice to the rights and remedies otherwise available to ISO-NE, ISO-NE shall be entitled to seek equitable relief by way of injunction or otherwise if the Recipient breaches or threatens to breach any of the provisions of this Agreement. ISO-NE may audit the Recipient's compliance with this Agreement.

8. Survival. The Recipient remains bound by these provisions unless ISO-NE rescinds the CEII designation.

9. No Waiver. The Recipient understands and agrees that no failure or delay by ISO-NE in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of laws principles.

11. Assignment Prohibited. Any assignment of the Recipient's rights, obligations or duties under this Agreement without ISO-NE's prior written consent shall be void.

12. Entire Agreement. This Agreement contains the entire agreement between the parties concerning the protection of the CEII, and no modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon the parties, unless approved in writing by each of them.

13. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the Recipient has executed this CEII Non-Disclosure Agreement as of the date set forth below.

Signature: _____

Name (please print): John B. Kenworthy (Jack)

Date: August 31, 2011

Organization: Antrim Wind Energy LLC

Address: 155 Fleet Street, Portsmouth, NH 03801