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August 17, 2012

Via Hand-Delivery 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 Motion of Counsel for the Public to Strike Applicant's Reply Memorandum.

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)

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

DOCKET NO. 2012-01

APPLICATION OF ANTRIM WIND ENERGY, LLC
FOR A CERTIFICATE OF SITE AND FACILITY

APPLICANT'S OBJECTION TO MOTION OF
COUNSEL FOR THE PUBLIC TO STRIKE
APPLICANT'S REPLY MEMORANDUM

NOW COMES Antrim Wind Energy, LLC ("AWE" or "the Applicant") by and through its undersigned attorneys, and respectfully submits this objection to Counsel for the Public's Motion to Strike the Applicant's Reply Memorandum regarding the Site Evaluation Committee's (the "SEC" or "Committee") authority to create a subdivided lot. In support of this Objection, the Applicant states as follows:

1. In its July 11, 2012 Supplemental Procedural Order and Request for Briefing ("Supplemental Procedural Order"), the Committee sought, by July 24, 2012, "pre-hearing legal memoranda or briefs addressing the authority of the Committee to create a subdivided lot." *Supplemental Procedural Order* at 2. On July 24, 2012, several parties, including the Applicant, filed briefs or memoranda of law regarding this subject. On August 3, 2012, ten days after those filings were made, the Applicant submitted a response to the memoranda of Counsel for the Public, the Antrim Planning Board, and the Industrial Wind Action Group.

2. On August 13, 2012, Counsel for the Public filed a Motion to Strike, stating that "[t]he Chair should strike the unsolicited reply memorandum because it is not timely in accord with the express terms of the Chair's July 11th Order." *Motion of*

Counsel for the Public to Strike Applicant's Reply Memorandum at 1 (“Motion to Strike”).

3. The Applicant's August 3, 2012 Reply Memorandum should not be stricken as it is not prohibited by the Supplemental Procedural Order or any SEC rule. The Supplemental Procedural Order required that “All such memoranda or legal briefs [regarding subdivision authority] shall be submitted by July 24, 2012.” *Supplemental Procedural Order* at 1. The Applicant filed with the Committee on July 24, 2012 its brief setting forth legal arguments supporting its case in chief. It then filed a response to the memoranda of other parties within ten days, applying by analogy New Hampshire Administrative Rule Site 202.14(f), which requires objections to written motions be filed within 10 days of the date of the motion. The Applicant's August 3, 2012 Reply Memorandum was just that – a reply – and did not develop new arguments unrelated to those already raised. The filing followed the practice in administrative proceedings of replying to responsive filings or objections of other parties, a practice that Counsel for the Public himself has followed in the instant proceeding without objection or explicit authority. *See, Reply of Counsel for the Public to Applicant's Response to Motion to Compel* (July 11, 2012) (Counsel for the Public replying to the Applicant's response to its motion). The SEC has allowed such filings, and no SEC rule forbids response or reply briefs. *Cf.* N.H. Supreme Court Rule 21(3-A) (expressly forbidding reply briefs).

4. Counsel for the public asserts that the reply memorandum is “unfair,” asserting that the Applicant had “three bites . . . at an apple from which the other parties only have 1.” *Motion to Strike* at 1. This argument lacks merit because any party could have filed a response to the memoranda submitted on July 24th. The Applicant's

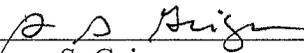
response was predictable based on prior practice before this Committee, and is therefore not unfair.

WHEREFORE, in view of the foregoing, the Applicant respectfully requests that the Committee:

- A. Deny Counsel for the Public's Motion to Strike; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

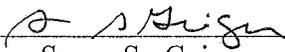
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August 17, 2012

Certificate of Service

I hereby certify that on this 17th day of August, 2012, a copy of the foregoing Reply was sent by electronic or U.S. mail, postage prepaid, to persons named on the Service List of this docket, excluding Committee Members.


Susan S. Geiger