

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

**TOWN OF ANTRIM'S MOTION FOR REHEARING  
AND/OR RECONSIDERATION**

NOW COMES the Town of Antrim, through its Board of Selectmen, and pursuant to RSA 541:3, moves the New Hampshire Site Evaluation Committee ("SEC") to rehear and/or reconsider its Decision and Order which denied Antrim Wind Energy, LLC ("AWE") a certificate of site and facility for the Antrim Wind Project ("the Project"). In support of this motion, the Town of Antrim states as follows:

1. The Antrim Board of Selectmen ("Antrim Selectmen") is the governing body of the Town of Antrim charged by with the legal duty under RSA 41:8 to "manage the prudential affairs of the town."

2. The Antrim Selectmen moved for intervention in this docket and by order dated May 18, 2012, the Town of Antrim was granted full intervenor status.

3. RSA 162-H:16, IV (b) requires the SEC to give "due consideration" to the views of municipal governing bodies in determining whether a proposed site and facility would unduly interfere with the orderly development of the region.

4. The Town of Antrim presented its views to the SEC in a post hearing brief filed January 14, 2013 and urged the SEC to issue a Certificate of Site and

Facility for the AWE project. Among the views presented in the Town's brief—and to which the SEC must give due consideration – are the following:

a. The Town of Antrim entered into an agreement with AWE (AWE-4, Appendix 17-A) for the protection of the Town's interests and to protect the orderly development of the region. The agreement contains provisions relating to noise restrictions, decommissioning and other issues relating to the protection of the public's health and safety.

b. The Town of Antrim entered into a Payment in Lieu of Taxes agreement with AWE which the Antrim Selectmen believe provides the best per MW payment of any wind farm in New Hampshire

c. Votes by Antrim citizens on two wind ordinances indicate that the citizens feel the Project is consistent with the orderly development of the region.

d. Efforts by the Antrim Conservation Commission over the past 7 years have resulted in 485 acres in the entire Town being placed in conservation. In comparison, the Project, if built, would conserve 865 acres.

e. The Antrim Selectmen believe that AWE has met its burden of proof in this docket.

5. As an active participant in these proceedings, the Town of Antrim is fully aware of the Project's physical dimensions and impacts, including the evidence presented on the Project's anticipated visual impacts on the surrounding area. The Town of Antrim's view is that AWE has met its burden of proving by a preponderance of the evidence that the Project will not have an unreasonable adverse effect upon aesthetics and therefore will not unduly

interfere with the orderly development of the region. This view – which must be given due consideration by the SEC- is based on the evidence which, among other things, shows that the Project will not be visible from approximately 95% of the locations within a 10-mile radius surrounding each turbine. To the extent that the SEC overlooked this evidence and failed to give due consideration to the Town of Antrim's views and its position that AWE had met its burden and should be granted a certificate, good reason to grant a rehearing of this matter. See *Dumais v. State of New Hampshire Personnel Comm'n*, 118 N.H. 309, 311 (1978) (purpose of rehearing is to direct attention to matters that have been overlooked or mistakenly conceived); see also RSA 541:3 (rehearing may be granted for "good reason").

6. The SEC's finding that the AWE project would have an unreasonable adverse effect on aesthetics is unreasonable because it is inconsistent with past SEC decisions that have granted certificates to ridgeline wind projects. For example, the Lempster Wind project consists of 12 wind turbines located along 2 miles of ridgeline, many of which are visible from several undeveloped ponds within Pillsbury State Park. See *Application of Lempster Wind, LLC*, SEC Docket No. 2006-01, Decision Issuing Certificate of Site and Facility With Conditions, (June 28, 2007), p. 27. The Groton Wind project has 24 wind turbines, with 19 to 24 of being visible from Loon Lake. See *Application of Groton Wind, LLC*, SEC Docket No. 2010-01, Decision Granting Certificate of Site and Facility With Conditions (May 6, 2011), p.48. And in the case of the Granite Reliable Power project (which consists of 33 turbines), the SEC granted

a certificate even though it noted that “the turbines are tall structures that will extend well beyond tree top level, but at the same time, the evidence does not support a finding that the turbines themselves are aesthetically displeasing.”

*Application of Granite Reliable Power, LLC*, SEC Docket No. 2008-04, Decision Granting Certificate of Site and Facility With Conditions (July 15, 2009), p. 43.

7. The Majority’s Decision in the Antrim Wind docket is unreasonable for its failure to follow precedent, as well as for its failure to explain why the Antrim site is any different from the ridgelines where other New Hampshire wind farms are currently operating. Unlike the Majority, the Dissenters in this case correctly “considered the precedent set by previous decisions...as well as the range of possible mitigation measures discussed by experts during the hearings on the Antrim Wind LLC Application.” Dissent of Johanna Lyons, Craig Green and Harry Stewart, p. 1. The Dissenters noted that the three other New Hampshire wind projects were discussed to various degrees during the hearings in this docket and “could have served as precedent” for the Decision. *Id.* The Dissenters observed that there are no “‘bright lines’ that can be used to objectively distinguish the actual aesthetic effects of these approved projects” from the AWE project. *Id.* The Town of Antrim agrees and respectfully urges the Majority to rehear this matter, follow precedent and grant the certificate.

8. To the extent that the SEC’s determination that the Project would have an unreasonable adverse effect upon aesthetics at Gregg Lake, the Town of Antrim submits that the attached Letter Agreement concerning compensation for perceived visual impacts to Gregg Lake constitutes good cause for a rehearing of

this matter. The Town of Antrim submits that the Letter Agreement provides full and adequate compensation for any perceived visual impacts at Gregg Lake. The SEC, therefore, should reconsider its decision to deny AWE's application.

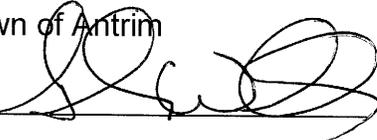
WHEREFORE, based upon the foregoing, the Town of Antrim respectfully requests that the SEC:

- A. Grant a rehearing of this matter;
- B. Issue a decision and order granting AWE a certificate of site and facility for the Antrim Wind Project; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

Town of Antrim

By:



Date: May 13, 2013

Gordon Webber  
Chairman, Antrim Board of Selectmen

Certificate of Service

I hereby certify that a copy of this Motion was sent by electronic or U.S. Mail to the Service List.





April 22<sup>nd</sup>, 2013

Town of Antrim  
c/o Board of Selectmen  
66 Main Street  
Antrim, NH 03440

**Re: Agreement on Gregg Lake Enhancement Payment**

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Dear Members of the Board of Selectmen:

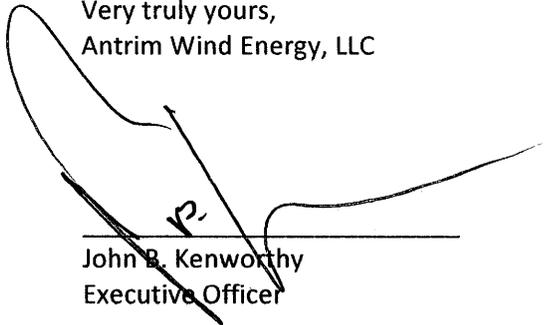
This letter sets forth the understandings and agreement between Antrim Wind Energy, LLC ("AWE") and the Town of Antrim concerning a one-time payment by AWE to the Town of Antrim as compensation for any perceived visual impacts created by the Antrim Wind Project ("Project") upon the Gregg Lake area.

As you are aware, the New Hampshire Site Evaluation Committee ("SEC") has voted to deny the Project's application for a certificate of site and facility due to the Project's anticipated aesthetic impacts. During the SEC's hearings and deliberations on the Antrim Wind Project, the Project's aesthetic impact on Gregg Lake was identified as an area of concern. Once the SEC's written order is issued, AWE intends to file a motion for rehearing along with a proposal to specifically address visual impacts, the details of which are still being developed. Part of this proposal will include a commitment by AWE to make a one-time payment of forty thousand dollars (\$40,000.00) to the Town of Antrim to be used for enhancement of the recreational activities and aesthetic experience at the Gregg Lake Recreational Area.

AWE will make the above-referenced payment to the Town of Antrim only if the Antrim Project is constructed. The payment shall be made no later than 180 days after the date the Project commences commercial operations. The ultimate use of these funds will be at the Town's sole discretion. The Town of Antrim agrees that this one-time payment of \$40,000.00 constitutes full and acceptable compensation for any perceived visual impacts to the Gregg Lake area.

If the terms of this letter are acceptable, please countersign in the space provided below.

Very truly yours,  
Antrim Wind Energy, LLC



John B. Kenworthy  
Executive Officer



Accepted and agreed.

Town of Antrim, New Hampshire

By:   
Gordon Webber, Chairman  
Antrim Board of Selectmen  
Duly Authorized

Date: May 13 2013