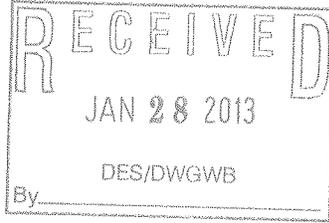




**Upton  
& Hatfield<sup>LLP</sup>**  
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Michael S. McGrath\*  
Marilyn Billings McNamara  
Lisa M. Hall  
James A. O'Shaughnessy

**Please respond to the Portsmouth office**

January 25, 2013

**Via Electronic Mail**  
Jane Murray, Secretary  
NH Site Evaluation Committee  
New Hampshire Department of Environmental  
Services  
29 Hazen Drive  
Concord, NH 03301

**Hillsborough Office**  
8 School Street  
PO Box 13  
Hillsborough, NH  
03244-0013  
603-464-5578  
1-800-672-1326  
Fax 603-464-3269

Re: Timbertop Wind, I, LLC Petition for Jurisdiction;  
Docket No. 2012-04

Dear Ms. Murray:

**Attorneys At Law**  
Douglas S. Hatfield  
Margaret-Ann Moran  
Steven J. Venezia\*

Enclosed please find:

1. *Appearance on behalf of the Boards of Selectmen for the Towns of New Ipswich and Temple;*
2. *Joint Petition to Intervene of the Boards of Selectmen for the Towns of New Ipswich and Temple.*

**North Conway Office**  
23 Seavey Street  
PO Box 2242  
North Conway, NH  
03860-2242  
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Fax 603-356-3932

I have also enclosed the email contact information for several Town Officials for the Towns of New Ipswich and Temple and request their addition to the Site Evaluation Committee's electronic Service List in this matter.

**Attorney At Law**  
Robert Upton, II

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Justin C. Richardson  
jrichardson@uptonhatfield.com

JCR/sem

Enclosure(s)

cc: Thomas B. Getz, Esq. (w/ enclosures)(via Electronic Mail)  
George Lawrence, Chairman, Board of Selectmen, New Ipswich (w/ enclosures)(via Electronic Mail)  
John Kieley, Chairman, Board of Selectmen, Temple (w/ enclosures)(via Electronic Mail)

**Portsmouth Office**  
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\*Also admitted in MA

**STATE OF NEW HAMPSHIRE**  
**SITE EVALUATION COMMITTEE**

*Timbertop Wind I, LLC Petition for Jurisdiction*

**Docket No. 2012-04**

**JOINT PETITION TO INTERVENE OF THE BOARDS OF SELECTMEN  
FOR THE TOWNS OF NEW IPSWICH AND TEMPLE**

NOW COME the Towns of New Ipswich and Temple, New Hampshire, by and through Upton & Hatfield, LLP, and jointly petition to intervene as follows:

**I. PETITION TO INTERVENE**

1. On December 21, 2012, Timbertop Wind 1, LLC submitted a Petition for Jurisdiction. Timbertop Wind 1, LLC asks this Committee to “assert jurisdiction, pursuant to RSA 162-H:2, XII, over the proposed 15 MW wind facility it seeks to construct in the towns of New Ipswich and Temple in Hillsborough County, New Hampshire.” *Petition*, Page 1.

2. The Timbertop Wind 1, LLC states that its “project has taken shape over time” but “as currently configured would comprise five 3-MW Siemens SWT turbines, two turbines planned to be located in New Ipswich and three turbines in Temple.” However, its Petition provides essentially no information concerning the design of its project, the location of its towers, its transmission lines or interconnection, its access roads, or any other facilities.

3. The Towns of New Ipswich and Temple, through their Boards of Selectmen, are charged with the duty to “manage the prudential affairs of the town and perform the duties by law prescribed” and “shall be competent in all cases.” RSA 41:8. This includes the duty to represent the Town’s interest in cases brought against it or its interests. *Moulton v. Beals*, 98

N.H. 461, 463-464 (1953) (“the selectmen would be under a duty to protect the interest of the town”).

4. Both New Ipswich and Temple have adopted zoning ordinances governing wind energy projects that are intended to allow wind energy projects to be constructed while protecting legitimate local interests. For example:

- The New Ipswich zoning ordinance “provide[s] a regulatory framework for the construction and operation of Large Wind Energy Systems (LWES) in the Town of New Ipswich, subject to reasonable restrictions”. It is intended to “allow renewable energy in a manner consistent with the vision and goals of the New Ipswich Master Plan”; to “preserve and protect the public health, safety and welfare and the character of the Town”; to “protect individual residents and the Natural Environment from any adverse conditions”; and to “ensure the compatibility of any LWES with other land uses within the Town”. *New Ipswich Zoning Ordinance*, Article XIII-2 (A).
- The Temple zoning ordinance is intended “to provide for the development and use of wind power as an alternative energy source, benefiting both the economy and the environment, while protecting public health, safety, property values, wildlife, and general welfare; preserving environmental, historic and scenic resources; controlling Sound Pressure Levels; and preventing electromagnetic interference”. *Temple Zoning Ordinance*, Article III, Section 27.

5. New Ipswich has permitted a meteorological tower for the project. Despite the willingness of local officials to consider its proposal, Timbertop Wind 1, LLC has not sought any other local approvals for its project.

6. Timbertop Wind 1, LLC's Petition requests that the Committee exercise jurisdiction and thereby preclude New Ipswich and Temple from applying their zoning ordinances to protect their land uses, public safety and the environment, and to review the adequacy of municipal fire, safety and highway services. If approved, New Ipswich and Temple would be required to participate in a costly, lengthy and uncertain legal process in order to address these and other legitimate local concerns under RSA 162-H:16, IV.

7. RSA 541-A:32 and Site 202.11 provide that the Committee, or its presiding officer, shall grant a petition for intervention 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.

8. Based on the foregoing, Timbertop Wind 1, LLC's Petition will impact the rights, duties, privileges, immunities and other substantial interests of the Towns of New Ipswich and Temple, as represented by their Select Boards. Intervention will not impair the orderly and prompt conduct of any proceedings related to Timbertop Wind 1, LLC's Petition.

## **II. STATEMENT OF POSITION**

9. New Ipswich and Temple oppose Timbertop Wind 1, LLC's *Petition for Jurisdiction*. Both New Ipswich and Temple have invested substantial time and effort to adopt zoning ordinances to fairly and properly evaluate wind energy projects, while protecting the legitimate local interests. Both ordinances were approved by Town Meeting and reflect values

of each community. Review by the Committee under RSA 162-H would impose substantial and unnecessary burdens and costs on the Towns to ensure that their legitimate local concerns are considered and addressed.

10. Timbertop Wind 1, LLC argues that the local ordinances are too stringent; or that review in two towns would result in practical difficulty. However, both zoning ordinances allow variances in cases where “literal enforcement of the provisions of the ordinance would result in an unnecessary hardship”. *See* RSA 674:33. As in any case involving a municipal boundary, Timbertop Wind 1, LLC may “petition the respective local land use boards of each such municipality to proceed with the application on a joint basis”. *See* RSA 674:53. Timbertop Wind 1, LLC has not applied for a variance; it has not applied for joint review; and it offers no explanation why it could not seek both.

11. Similarly, Timbertop Wind 1, LLC offers no explanation as to why review by the Committee is required to accomplish the purposes of RSA 162-H, as opposed to merely advantageous or convenient for its own purposes. RSA 162-H:2, XII, defines a renewable energy facility to include one which “the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1” (emphasis added). The findings and purposes of RSA 162-H:1 are as follows:

**162-H:1 Declaration of Purpose.** – The legislature recognizes that the selection of sites for energy facilities ... will have a significant impact upon the welfare of the population, the location and growth of industry, the overall economic growth of the state, the environment of the state, and the use of natural resources.

Accordingly, the legislature finds that it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire; that undue delay in the construction of needed facilities be avoided and that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and

technical issues are resolved in an integrated fashion, all to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities. (emphasis added).

12. The Legislature did not intend this Committee sit as a judge or jury as to the merits of particular zoning ordinances. A project below the 30 MW jurisdictional threshold may be reviewed by the Committee only if it determines that the project “requires” a certificate in order to accomplish the findings and purposes of RSA 162-H:1. There is no “right” to review by Committee simply because a potential applicant alleges practical difficulty or inconvenience.

13. Timbertop Wind 1, LLC offers hundreds of pages of newspaper articles and minutes of public meetings to support its Petition, in order to argue a bias that does not exist. New Ipswich and Temple disagree with Timbertop Wind 1, LLC’s assertion that they acted illegally or for any improper purpose. Their zoning ordinances are not intended to preclude wind energy development, but to ensure that a project does not adversely impact legitimate local interests in land use, orderly development, and protection of the environment. *Cf.* RSA 162-H:16, IV.

14. In any case, the newspaper articles and minutes provided by Timbertop Wind 1, LLC are simply not relevant or material to the issue to be decided by the Committee, which is whether Timbertop Wind 1, LLC’s Petition demonstrates that review by the Committee is required to accomplish the purposes of RSA 162-H:1? It has not provided any information to demonstrate review by the Committee is required to assure “an adequate and reliable supply of energy in conformance with sound environmental principles”. RSA 162-H:1. It provides no information to demonstrate that review is required for the “welfare of the population, the location

and growth of industry, the overall economic growth of the state, the environment of the state, and the use of natural resources.” RSA 162-H:1. Its project appears to be nothing more than an ordinary 15 MW wind project that is well below the 30 MW threshold set by the Legislature for review by the Committee.

15. Based on the foregoing, New Ipswich and Temple oppose Timbertop Wind 1, LLC’s Petition and request that it be dismissed, *sua sponte*, with or without prejudice. New Ipswich and Temple request leave to raise other substantive and procedural defects in the event the Committee elects to schedule Timbertop Wind 1, LLC’s Petition for consideration on the merits.

WHEREFORE the Towns of New Ipswich and Temple respectfully requests that the Site Evaluation Committee grant this Petition to Intervene, and, order *sua sponte* that Timbertop Wind 1, LLC’s Petition be dismissed, with or without prejudice.

Respectfully submitted,

**TOWNS OF NEW IPSWICH AND  
TEMPLE**, By their Counsel,

**UPTON& HATFIELD, LLP**

Dated: January 25, 2013

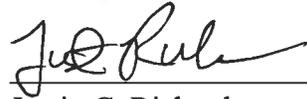


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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was this day forwarded to Thomas B. Getz, Esq., counsel for the Petitioner.

  
\_\_\_\_\_  
Justin C. Richardson