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July 17, 2015

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. 2014-05 Petition for Jurisdiction of Antrim Wind Energy, LLC

Dear Murray:

Enclosed please find for filing the original and nine copies of a memorandum of the Audubon Society of New Hampshire.

Very truly yours,

A handwritten signature in black ink that reads "David Howe". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke extending to the right.

David M. Howe

Cc: Service List

Enc.

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2014-05

Re: Petition of Antrim Wind Energy, LLC for Jurisdiction

MEMORANDUM IN SUPPORT OF DENIAL OF JURISDICTION

The Audubon Society of New Hampshire (“New Hampshire Audubon”) hereby submits this Memorandum in Support of Denial of Jurisdiction over the Renewable Energy Facility proposed by Antrim Wind Energy, LLC. New Hampshire Audubon requests that the Petition for Jurisdiction be denied.

The Petitioner seeks jurisdiction of the Site Evaluation Committee (the “Committee”) over a project of approximately 28.8 MW of wind generation in Antrim, New Hampshire. Previously, the Petitioner applied for a certificate of site and facility of 10 turbines 492 feet in height. The Committee denied the certificate on May 2, 2013. The Committee found that the project would have an unreasonable impact on aesthetics of the region. Decision and Order Denying Application for Certificate of Site and Facility dated May 2, 2013, pp. 50-51, *Petition of Antrim Wind Energy, LLC*, no. 2012-01. In particular, the Committee found that the size of the proposed turbines when imposed on the ridgeline would appear out of scale and out of context with the region. *Id.* at p. 50. The Committee noted that the turbines are far taller than the highest building in Manchester, One City Hall Plaza, which is 275 feet high. *Id.*

The Committee also found that the proposed project would have a particularly profound impact on Audubon's dePierrefeu Willard Pond Wildlife Sanctuary and Willard Pond itself and stressed the value of these resources:

In addition to the unreasonable adverse effect on the aesthetic of the region, the Facility would have a particularly profound impact on Willard Pond and the dePierrefeu Wildlife Sanctuary which is owned in fee and managed by Audubon. The Wildlife Sanctuary comprises 1,700 acres...In addition Audubon holds conservation easements on approximately 1,300 acres of land adjacent to the Wildlife Sanctuary. Willard Pond is located in the interior of the Wildlife Sanctuary. Willard Pond is a designated Great Pond....Willard Pond is approximately 100 acres and boasts an undeveloped shoreline and pristine water quality. Motorized vessels are prohibited from the Pond. Willard Pond is surrounded by forested peaks, including Bald Mountain and Goodhue Hill. Willard Pond and the Wildlife Sanctuary are popular locations that are enjoyed by numerous visitors. Environmental education programs, fishing, birding, wildlife viewing, and solitude all appear to generate visitors to the Pond and the Wildlife Sanctuary. The Pond and the Wildlife Sanctuary are part of a larger tract of conserved lands consisting of approximately 30,000 acres and known as the "super sanctuary"....Public funds have been dedicated to the dePierrefeu Wildlife Sanctuary and the surrounding conservation lands through a conservation program known as the Forest Legacy Program, [and] the federal government has invested approximately \$3.5 million to conserve the lands within and directly adjacent to the Wildlife Sanctuary....The State has invested approximately \$400,000 for similar purposes....In addition, Willard Pond and the dePierrefeu Wildlife Sanctuary sit within the "Quabbin to Cardigan Initiative", an interstate regional effort to conserve the Monadnock Highlands of north central Massachusetts and western New Hampshire

Id. at pp.51-52 (citations omitted).

The doctrine of collateral estoppel bars the relitigation of these findings. See Daigle v. City of Portsmouth, 129 N.H. 561, 570 (1987); see also In re Breau, 132 N.H. 351 (1989)(applying the doctrine of collateral estoppel to a decision of an administrative agency).

The Committee also found that the project would have a significant impact on Gregg Lake. Decision and Order Denying Application for Certificate of Site and Facility, at p. 50.

Now the Petition proposes a project consisting of nine turbines, eliminating turbine number 10 and reducing the height of turbine number 9 by 45 feet to 446 feet. The remaining eight turbines remain in the same locations as proposed in the 2012 project, and their height has

been reduced slightly from 492 feet to 489 feet. The Petitioner also offers additional conservation lands of 100 acres, a narrow ridgeline strip, and is funding another \$100,000 for conservation purchases and \$40,000 to the Town of Antrim as mitigation of visual impacts on Gregg Lake.

The changes now proposed by the Petitioner are not sufficient to warrant de novo review of the revised project. The revised project does not present material changes to the circumstances affecting the merits of the proposal. See Fisher v. City of Dover, 120 N.H. 187, 191 (1980). According to Jean Vissering, visual consultant for Counsel for the Public, the removal of one turbine and the reduction in height of another would not materially change the proposed project's impacts, in light of the substantial aesthetic impacts found by the Committee in the 2012 docket. Prefiled Testimony of Jean Vissering, p. 10. The turbines will remain visually dominant from the three major focal points within the Audubon's dePierrefeu Willard Pond Wildlife Sanctuary and from other sensitive vantage points throughout the region. Id.

The analysis of the Petitioner's visual consultant, David Raphael, is flawed because he did not use the findings of the Committee in the 2012 docket as a starting point, but rather started from scratch in his visual assessment. His analysis therefore does not take those findings into account.

The additional conserved land and money donated for conservation and mitigation do not mitigate the aesthetic impacts of the project on the region. In its order the Committee rejected conservation lands as mitigation for the project's impacts; it stated that while conservation lands would be of value to wildlife and habitat, it would not mitigate the visual impact that the project

would have on valuable viewsheds. Decision and Order Denying Application for Certificate of Site and Facility, at p. 53.

The Petitioner's project fails to be materially different from the prior project, and therefore the petition for jurisdiction should be denied.

WHEREFORE, New Hampshire Audubon respectfully requests

- A. That the Committee deny the Petition for Jurisdiction;
- B. Grant such other relief as is just and reasonable.

Respectfully Submitted.

AUDUBON SOCIETY OF NEW HAMPSHIRE

Date: July 17, 2015

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