THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

RE: Petition of Antrim Wind Energy, LLC for Jurisdiction	)	**Docket No. 2014-05**

PARTIALLY ASSENTED-TO MOTION FOR LEAVE TO FILE A LIMITED RESPONSE

Counsel for the Public respectfully requests leave to file a limited response to address issues raised in the Town of Antrim's and Antrim Wind Energy's post trial memoranda for which the Counsel for the Public previously had no chance to comment. In support of this motion, Counsel for the Public states as follows:

1. Both Antrim Wind Energy ("AWE") and the Town of Antrim ("the Town") submitted post hearing memoranda on July 17, addressing issues regarding Ms. Vissering's testimony on July 7, the final day of the trial.

2. In order to ensure the committee had the memorandum available during their deliberations, Counsel for the Public prepared a memorandum prior to the final day of the hearing. Counsel for the Public could not address these same issues raised on the second day of hearings because Ms. Vissering had not testified when the memorandum was drafted.

3. The response is limited to several discreet issues raised by AWE and the Town concerning Ms. Vissering's testimony in their post-hearing memoranda. As such, Counsel for the Public requests leave to address issues relating to the cross-examination of Ms. Vissering on the final day of the hearings. See Attached, Response to Petitioners' Memoranda in Support of Petition for Jurisdiction.

4. Audubon, the Abutting Interveners and the Non-Abutting Interveners all assented to this motion. Counsel for AWE objected, and Counsel for the Town does not assent. Counsel for the Public requested the assent of the remaining Intervenors, however, she has not received a response as of the time of this filing.

WHEREFORE, Counsel for the Public respectfully requests the Committee grant the Motion for Leave to File a Limited Response for the reasons set forth above and for such other relief as may be just and proper.

Respectfully submitted,

COUNSEL FOR THE PUBLIC
By her attorneys

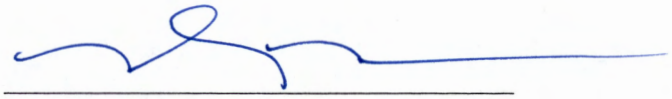
Joseph A. Foster
ATTORNEY GENERAL

Dated: July 22, 2015

Mary E. Maloney, Bar No. 1603
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
Tel. (603) 271-3679

CERTIFICATE OF SERVICE

I, Mary E. Maloney do hereby certify that on this day, I caused a true copy of the foregoing to be served upon the Parties by electronic mail.



Dated: July 22, 2015

Mary E. Maloney

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

RE: Petition of Antrim Wind Energy, LLC for Jurisdiction	)	**Docket No. 2014-05**

RESPONSE TO PETITIONERS' MEMORANDA IN SUPPORT OF PETITION FOR JURISDICTION

Counsel for the Public hereby submits this limited Response to address several issues raised in Petitioners' Antrim Wind Energy, LLC (AWE) and the Town of Antrim's (Antrim) Memoranda in Support of the Petition for Jurisdiction.

Both AWE and Antrim's post hearing pleadings criticize Counsel for the Public's expert, Jean Vissering for failing to conduct a visual assessment analysis on the new project. See, AWE Memorandum, p. 12; Antrim Memorandum, p. 8. Ms. Vissering testified that a new visual analysis was not necessary because the changes to the turbine configuration were limited to simply the removal of turbine 10 and the 45 foot reduction in height to turbine 9.

Since Ms. Vissering was already aware of the impact on turbine 10's impact on the sensitive resources area she did not need to conduct a separate visual analysis to determine the impact of this change on her original opinion. Her original opinion that the project would cause an unreasonable adverse impact on the aesthetics of the regions was not based simply on the impact of turbine 10, but the entire turbine configuration. Note should be made that both Mr. Kenworthy and Mr. Raphael testified that the change to the Seimans turbine would not change the aesthetic impacts. The Committee in the *Petition of Antrim Wind Energy, LLC*, N.H. Site Eval. Comm., no. Docket 2012-01 (Docket 2012-01) found that these turbines would remain the

tallest in the State and that they would be too tall and too imposing in the context of the setting. Docket 2012-01, Deliberations, Feb. 26, 2013, p. 37

AWE alleges that Mr. Raphael's findings based upon his new visual analysis with the new project are not in contrast to the Committee's conclusion that there would be significant qualitative impacts upon Willard Pond, Bald Mountain, Goodhue Hill and Gregg Lake, and the moderate impacts on … Robb Reservoir, Island Pond, Highland Lake, Nubanusit Pond, Black Pond, Franklin Pierce Lake, Meadow Marsh and Pitcher Mountain. AWE Memorandum, p. 12. AWE states that Raphael acknowledged that these resources are sensitive. But neither Mr. Raphael's pre-filed testimony nor his visual assessment concludes that these resources are sensitive. His visual assessment concludes that only one resource, Willard Pond was a sensitive resource and the impacts on it were moderate.

AWE further alleges that the effects of the new project configuration result in diminished or eliminated visual impacts at every one of the sensitive resources that were of concern of the last docket. *Id.* As noted, this analysis was not contained in Mr. Raphael's pre-filed testimony or visual impact analysis, and neither AWE, nor the Town of Antrim elicited this testimony from Mr. Raphael.

However, in Ms. Vissering's cross examination AWE introduced AWE Ex. 17 that purports to contain an analysis of impacts to some of these sensitive resources. Ms. Vissering was questioned about this exhibit even though, she had never seen it before; she had no information as to how it was prepared and she did not know upon what information the author relied to prepare it. Without having had the opportunity to study the document and/or review the data upon which it was based Ms. Vissering was able to identify one error in it – that being the conclusion that the project was no longer visible from Nubanusit Lake. In that case Ms

Vissering testified that the turbine rotors would still be visible. But, one cannot fairly construe Ms. Vissering's testimony as not contesting the accuracy of the exhibit, because she most assuredly did not agree with its conclusions. At best, she agreed the exhibit said what it said.

None of the parties were afforded an opportunity to analyze the exhibit. In fact the only indication as to how the chart was created is a small font under the title stating that it was based on viewshed mapping. However, as the chart is a comparison between the previous project and the current project, it is unclear which viewshed maps were used for comparison. AWE's expert, Mr. Raphael, previously testified that not only had he not done a complete analysis of the prior 10-turbine project, but that the prior analysis by Saratoga Associates was incomplete and inadequate. By failing to introduce the Exhibit during their expert's testimony, Counsel for the Public had no opportunity to determine if the conclusions about changes in project visibility were based solely on the printed maps provided during the 2012 proceedings, or if it was based on more extensive simulations Mr. Raphael did not present. It is also unclear how the chart's creator established whether the area of visibility and angle of view decreased. One would assume that with the reduction of one turbine, that would necessarily result in a reduction of the number of turbines visible, area of visibility, and angle of view. But there is no evidence presented by AWE that this diminished impact is such that it result in a change to the Committee's prior determination related to aesthetic impacts. Indeed, the chair of the subcommittee of Docket 2012-01 indicated that if it was a matter of removing one turbine that would not be enough to reduce the unreasonable impacts of the overall project. Docket 2012-01, Deliberations, Feb. 26, 2013, p. 24.

As to the claim that impacts have been eliminated, presumably AWE is also referring to Exhibit 17. Here the chart shows the project is no longer visible from Centerwood [sic] Pond,

Spoonwood Pond, Deering Reservoir, and Nubanusit Lake among other resources. However, in the Landworks' Visual Assessment, Center Pond (Scenic Resource Number 206) is shown as having visibility of 2 and 1 turbines based on Exhibits 3 and 4, respectively. Similarly, the Landworks Exhibit 3 shows that the tip of two turbines would be visible at both Spoonwood Pond and Deering Reservoir, and the tips of three turbines would be visible at Nubanusit Lake. Therefore, it would appear that this conclusion is based upon Mr. Raphael's subjective opinion that a turbine is not visible if the hub is not visible.

Nor is it accurate to say that the Committee "rejected" Ms. Vissering's recommendations in Docket 2012-01. Antrim Memorandum, p. 5. That is evident by the fact that the Committee's determination that the prior project would have an unreasonable impact on the aesthetics of the region was based upon Ms. Vissering's report and testimony. Further a review of the deliberations reveals that the Committee considered a variety of recommendations and conditions including Ms. Vissering's recommendations in lieu of outright denial of the certificate. Docket 2012-01, Deliberations, February 26, 2013, pp. 19-20, 24-25. However, the Committee was reluctant to condition approval of a certificate upon a substantial change in the turbine configuration pursuant to Ms. Vissering's recommendations because it was concerned about the financial viability of the project. *Id.* In fact, in its post trial memorandum AWE strenuously objected to a change of the turbine configuration pursuant to Ms. Vissering's recommendations as it would affect the financial viability of the project. See Docket 2012-01, Applicant Post-Hearing Brief, 45.

Based upon the evidence presented in the hearings and argument made in Counsel for the Public's Memorandum in Support of the Denial of the Petition for Jurisdiction, as well as those made herein, the Committee should decline to accept jurisdiction of this project.

WHEREFORE, Counsel for the Public respectfully requests:

A. That the Committee deny the Petition for Jurisdiction; and

B. For such other relief as is just and reasonable.

Respectfully submitted,

COUNSEL FOR THE PUBLIC
By her attorneys

Joseph A. Foster
ATTORNEY GENERAL

Dated: July 22, 2015

Mary E. Maloney, Bar No. 1603
Senior Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
Tel. (603) 271-3679

CERTIFICATE OF SERVICE

I, Mary E. Maloney do hereby certify that on this day, I caused a true copy of the foregoing to be served upon the Parties by electronic mail.

Dated: July 22, 2015

Mary E. Maloney