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November 26, 2014

Via Hand Delivery

Thomas S. Burack, Chairman
Site Evaluation Committee
N.H. Department of Environmental Services
29 Hazen Drive
Concord, NH 03302-0095

**Re: Docket No. 2014-_____: Antrim Wind Energy, LLC Petition for
Jurisdiction Over a Renewable Energy Facility**

Dear Chairman Burack:

Enclosed for filing please find an original and eighteen (18) copies of the following documents:

- 1) Appearance of Barry Needleman and Patrick H. Taylor of McLane, Graf, Raulerson and Middleton, P.A.; and
- 2) Petition for Jurisdiction Over a Renewable Energy Facility by Antrim Wind Energy, LLC.

Thank you for your consideration and assistance with this matter. Please do not hesitate to contact me should you have any questions regarding the enclosed materials.

Sincerely,

Patrick H. Taylor

PHT:slb
Enclosures

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2014 –

Re: Antrim Wind Energy, LLC

PETITION FOR JURISDICTION OVER A RENEWABLE ENERGY FACILITY
PROPOSED BY ANTRIM WIND ENERGY, LLC

NOW COMES Antrim Wind Energy, LLC (“AWE”), by and through its attorneys, McLane, Graf, Raulerson & Middleton, P.A., and petitions the New Hampshire Site Evaluation Committee (“SEC” or the “Committee”) to assert jurisdiction pursuant to RSA 162-H:2, VII(g) over a renewable energy project with a nameplate capacity of less than 30 megawatts proposed by AWE to be constructed in the Town of Antrim, New Hampshire. In support of its petition, AWE states as follows:

I. Background

1. AWE is a Delaware limited liability company formed to develop, build, own, and operate a wind energy project in Antrim, New Hampshire (the “Antrim Wind Project” or the “Project”) that has been in development since 2009. It is a wholly-owned subsidiary of Eolian Renewable Energy, LLC (“Eolian”), a Delaware limited liability company based in Portsmouth, New Hampshire dedicated to utility scale wind energy development in New England.

2. AWE first applied for a certificate of site and facility for the Antrim Wind Project in January 2012. *See* Docket 2012-01, Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility (January 31, 2012). The Antrim Wind Project, as filed, consisted of 10 turbines each with a nameplate capacity of 3 MW, for a total nameplate capacity of 30MW. The Committee issued an order denying a Certificate of Site and Facility for the Project, finding that the Project would have an unreasonable adverse effect upon aesthetics. *See* Docket No.

2012-01, Decision and Order Denying Application for Certificate of Site and Facility (May 2, 2013) at pp. 48–54. However, while the committee did not approve AWE’s original application, it did make numerous favorable findings in its Order, concluding that the Antrim Wind Project would not have an unreasonable adverse effect on wildlife or habitat,¹ the orderly development of the region, historic sites, or public health and safety. *Id.* at pp. 44-45, 57, 58, 63-65, 68-70. The Committee also concluded that the Antrim Wind Project would not have an adverse effect upon air quality, and that any potential concerns regarding water quality were addressed by three recommended permits issued by the New Hampshire Department of Environmental Services. *Id.* at 58. The Committee further noted that certain measures recommended by the aesthetics expert retained by Counsel for the Public could substantially mitigate adverse aesthetic effects of the Antrim Wind Project, but was reluctant to impose those mitigation measures as a condition of approving the Certificate due to the unknown effect of such measures upon the dynamics of the Project. *Id.* at 53-54. Critically, the Committee based its decision solely on the information before it in Docket 2012-01, and explained that its decision was “not a determination that a wind facility should never be constructed in the Town of Antrim or on the Tuttle Hill / Willard Mountain Ridgeline.” *Id.* at 70.

3. Following the Committee’s denial of a Certificate of Site and Facility in Docket 2012-01, AWE sought to reopen the record to allow for consideration of a revised proposal that removed the turbine found to present the most significant aesthetic impact and introduced supplemental mitigation measures, including an additional conservation easement that would permanently conserve 100% of the ridgeline and provide a total of over 900 acres of permanently conserved land. The Committee denied AWE’s motion to reopen the record by order dated

¹ The Committee indicated that certain conditions would be required to assure that the Project would not cause an unreasonable adverse effect to the natural environment for avian and bat species. Docket No. 2012-01, Decision and Order Denying Application for Certificate of Site and Facility (May 2, 2013) at pp. 64-65.

September 16, 2013. *See* Docket 2012-01, Order on Pending Motions (Sept. 16, 2013) at 10-11. In their deliberations on AWE's motion to reopen, several members of the Committee indicated that the proposed changes offered by AWE were better suited to a reapplication rather than reconsideration in Docket 2012-01. Docket 2012-01, Transcript of Deliberations on July 10, 2013 at pp. 94-99.

4. Prior to AWE filing its original Application for a Certificate of Site and Facility in January 2012, the Antrim Board of Selectmen, by letter dated February 7, 2011, requested that the Committee take jurisdiction over the Antrim Wind Project, which at the time was expected to have a total nameplate capacity of 16–22 MW. In its letter, the Board of Selectmen asserted that the Town of Antrim did not have the requisite expertise to address and regulate a project of this magnitude. AWE subsequently petitioned the Committee to take jurisdiction over the Project, and the former Chair of the Antrim Board of Selectmen sponsored a petition of more than 100 registered Antrim voters requesting the same. In an order dated August 10, 2011, the Committee took jurisdiction over the Project, which at the time was expected to have a total nameplate capacity of less than 30MW. Docket 2011-02, Jurisdictional Order at 28 (Aug. 10, 2011). Subsequent to the issuance of the Committee's Jurisdictional Order, and prior to submission of AWE's Application for Certificate of Site and Facility, AWE designed the Project to have an expected generating capacity of 30 MW, placing the Project within the automatic jurisdiction of the SEC.

5. AWE intends to re-submit an application for Certificate of Site and Facility relative to a reconfigured Antrim Wind Project. The reconfiguration reflects AWE's efforts to redesign the Project to specifically address certain mitigation measures suggested by Counsel for the Public's expert and concerns expressed by the Committee. As reconfigured, the Project will

consist of 9 turbines capable of generating up to 27–29.7 MW of electricity. The reconfigured Project eliminates a tenth turbine that was found to present the most significant aesthetic impact, and significantly reduces the height of the ninth turbine to reduce its visibility from Willard Pond.

II. Description of the Reconfigured Antrim Wind Project

6. **Project Location and Site Information:** The proposed reconfigured Antrim Wind Project will be located in the Town of Antrim, New Hampshire on the Tuttle Hill ridgeline spanning southwestward to the northeastern slope of Willard Mountain. The Project Site, as well as the location of the Project within the State of New Hampshire and the Town of Antrim, are shown on the map attached hereto as Attachment A. The entirety of the Project is located in the rural conservation zoning district and highway business district on private lands owned by five landowners. AWE has leasehold interests in these properties for a term of up to 50 years. The limits of disturbance for construction will be approximately 60 acres, including all clearing. Following construction, the Project will occupy approximately 11 acres, including anticipated setbacks and buffers.

7. **Site Attributes:** AWE selected the proposed Antrim Wind Project site due to a combination of attributes that make it well suited for a wind energy facility. Those attributes include: strong wind speeds and low turbulence coming from a direction predominantly perpendicular to the orientation of the ridgeline and turbine string; close proximity to large state highways to facilitate the delivery of turbine components and construction equipment; a suitable grid interconnection location on the Project site; existing site impacts from logging activities; a relative lack of critical environmental features that would preclude development activities; the

absence of conservation restrictions on the parcels in the Project area; and adequate distances from residences and other inhabited structures to minimize noise and shadow flicker.

8. **Project Attributes:** The reconfigured Antrim Wind Project is proposed to include nine (9) turbines capable of generating 3–3.3 MW for a total nameplate capacity of 27–29.7 MW. The turbine rotors and towers will be a light or white color, enabling the structures to blend into background sky and atmospheric conditions. Turbines 1 through 8 will have a maximum height from foundation to blade tip of not more than 495 feet. As noted above, Turbine 9, on the northeastern slope of Willard Mountain, will be shorter than Turbines 1–8.

In addition to the turbines and foundations, the Project will include an access road, an electrical substation, collector lines, a meteorological tower, and a small operations and maintenance facility. The proposed access road will originate on NH State Route 9 approximately 2.3 miles east of the Antrim town line and proceed along the northern ridgeline of Tuttle Hill, then follow in a general southwest direction to all turbine locations. The generated electrical power will interconnect with the PSNH 115 kV line via 34.5 kV collector lines that will run underground along the ridgeline road between turbines and then switch to pole-mounted lines down the access road to the collector system bus and substation. The substation will “step up” the power to 115 kV and tie into the existing PSNH line. The O&M facility and substation will be located approximately 500 feet off the southern side of Route 9 in an approximately 3-acre cleared area. On November 20, 2014, AWE obtained approval from the Antrim Planning Board for a two-lot subdivision needed to construct the substation.

9. **Studies and Surveys Performed:** Prior to its initial application for the Antrim Wind Farm in 2012, AWE, with the assistance of its environmental and engineering consultants, undertook numerous studies, including: wetland delineation, a vernal pool study; natural

community detailed mapping; a rare plant survey; an archeological survey; an acoustic bat survey; a raptor migration survey; an avian nocturnal migration survey; and a breeding bird survey. Given that the Project's infrastructure will essentially be the same as the infrastructure proposed in Docket 2012-01, with the exception of the removal of turbine 10, the significant reduction in height of turbine 9 and a change in turbine manufacturer, AWE intends to stand on these previously completed surveys. AWE also previously performed a noise study, shadow flicker study and visual assessment for the Project. AWE is presently completing new studies for these three components. The new noise study and shadow flicker study will address any changes brought about by the changes in turbine type and reconfiguration of the Project. The new visual assessment will comprehensively address the aesthetic impacts from the reconfigured Project.

10. **Regulatory and Stakeholder Outreach:** AWE has made a concerted effort to engage various stakeholders related to the potential Project. These stakeholders include Counsel for the Public, local, state and federal agencies, conservation organizations, and the Town of Antrim.

As the Committee is aware based on the earlier filing, AWE first met with the New Hampshire Department of Environmental Services ("DES") in the summer of 2009 to indicate that AWE was interested in developing a commercial wind facility in Antrim. Prior to filing its initial application for Certificate of Site and Facility in 2012, AWE also met with representatives of the Wetlands Division of DES, the New Hampshire Fish and Game Department, the New Hampshire Natural Heritage Bureau, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the New Hampshire Division of Historical Resources, and the U.S. Army Corp of Engineers, among others, to discuss the Antrim Wind Project. AWE also engaged in discussions with conservation groups such as the Antrim Conservation Commission, the Harris

Center for Conservation Education, the New Hampshire Audubon Society, The Nature Conservancy, Conservation Law Foundation, the Appalachian Mountain Club, and the Monadnock Conservancy.

Critically, AWE has maintained an ongoing dialogue and relationship with the Town of Antrim. Recently, AWE met with the Town of Antrim Board of Selectmen on September 29, 2014 to present and discuss the reconfigured Antrim Wind Project. At that meeting, the Board of Selectmen voted unanimously to reaffirm its support of the Project as well as the SEC's continued jurisdiction over the Project. At a meeting of the Antrim Board of Selectmen on November 24, 2014, the Board voted to amend the PILOT (payment in lieu of taxes) agreement between the Town and AWE by extending the deadline for commercial operations by two years.

III. Jurisdictional Standard

11. As an initial matter, AWE believes that the Committee retains jurisdiction over the Antrim Wind Project pursuant to its August 10, 2011 Order in Docket 2011-02. The Committee's August 10, 2011 Order in Docket 2011-02 asserting jurisdiction over the Project conditions the Committee's continued jurisdiction upon AWE filing a complete Application for a Certificate of Site and Facility on or before January 31, 2012. Docket 2011-02, Jurisdictional Order at 28 (Aug. 10, 2011). AWE satisfied this condition by submitting an Application for a Certificate of Site and Facility on January 31, 2012. The Committee accepted the Application on February 2, 2012 and deemed it complete on March 5, 2012. Though the Committee issued an Order denying AWE's initial Application for Certificate of Site and Facility relative to the Antrim Wind Project, that Order should not be construed to divest the Committee of its previously asserted jurisdiction over the Project. The jurisdictional authority of the Committee, once asserted, applies to the Project generally, and not merely to the Application. RSA 162-H:5,

III ([A]n applicant may request the site evaluation committee to assume jurisdiction and in the event that the site evaluation committee agrees to assert jurisdiction, the facility shall be subject to the provisions of [RSA 162-H].”). As outlined below, the circumstances supporting the Committee’s finding that it should assert jurisdiction over the Antrim Wind Project are even more compelling today than they were in 2011, and as such the Committee should find that it maintains continuing jurisdiction over the Project.

12. Even if the Committee were to determine that it must re-assert jurisdiction over the Project, it should have no difficulty doing so. A “renewable energy facility” is defined to include

electric generating station equipment and associated facilities of 30 megawatts or less nameplate capacity but at least 5 megawatts which the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1,² either on its own motion or by petition of the applicant or two or more petitioners as defined in RSA 162-H:2, XI.

RSA 162-H:2, XII. “Petitioner,” for the purposes of RSA 162-H:2, XI is defined to mean

a person filing a petition meeting any of the following conditions: (a) A petition endorsed by 100 or more registered voters in the host community . . . (c) a petition endorsed by the governing body of a host community or . . . (d) A petition filed by the potential applicant.

RSA 162-H:2, XI.

² “The legislature recognizes that the selection of sites for energy facilities may have significant impacts on and benefits to the following: the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety. Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire; that undue delay in the construction of new energy facilities be avoided; 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. In furtherance of these objectives, the legislature hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.” RSA 162-H:1.

13. AWE has submitted this petition because it intends to submit an application for a Certificate of Site and Facility relative to the reconfigured Antrim Wind Project as described above to the SEC in the near future. AWE's petition is supported by the governing body of the host community, the Antrim Board of Selectmen, which has contemporaneously filed a letter with the SEC requesting that, to the extent the August 10, 2011 jurisdictional order in Docket 2011-02 no longer applies, the Committee re-assert jurisdiction over the reconfigured Antrim Wind Project. A copy of the letter is attached hereto as Attachment B. In further support of the SEC's continued jurisdiction over the Project, a petition endorsed by 100 or more registered Antrim voters has been filed with the SEC. Thus, the requirements of RSA 162-H:2, XI(a), (c), and (d) are satisfied.

14. The fact that the Town of Antrim had no renewable energy ordinance or any other rules or regulations designed to address the construction and operation of a renewable energy facility was a factor given considerable weight by the Committee when it initially decided to take jurisdiction over the Antrim Wind Project. Docket 2011-02, Jurisdictional Order at 23-26, 28 (Aug. 10, 2011). The Town still does not have an ordinance or other rules or regulations designed to govern the review of a utility-scale renewable energy project such as the Antrim Wind Project and three attempts to enact an ordinance in Antrim have all failed to pass, the most recent of which failed earlier this year in March. The Committee's review of the Project, on the other hand, is statutorily defined and will ensure enforcement of and compliance with the findings and purposes identified in RSA 162-H:1, including the full and timely consideration of environmental consequences and the resolution of all environmental, economic, and technical issues in an integrated fashion. *See* Docket 2011-02, Jurisdictional Order at 26 (Aug. 10, 2011). The Committee has a well-developed regulatory scheme designed to address the siting,

construction, and operation of renewable energy facilities consistent with the purposes and findings articulated in RSA 162-H:1. *Id.* at 26-27. Under RSA 162-H:7, the Committee must issue or deny a certificate of site and facility within one year of an application's acceptance. RSA 162-H:7, VI-d. This timeframe ensures that consideration on the Project will be conducted without undue delay, in keeping with the findings and purposes of RSA 162-H:1. *Id.* at 27.

15. Construction of the reconfigured Antrim Wind Project will help assure that the state has an adequate and reliable supply of energy. *See* Docket 2011-02, Jurisdictional Order at 22 (Aug. 10, 2011). Moreover, the Project qualifies as a Class I renewable energy source under RSA 362-F:4, I(a) and is necessary for the purpose of meeting the goals articulated in RSA 362-F:1, which sets forth the purpose of New Hampshire's Renewable Portfolio Standard, and is consistent with the state's plan to obtain at least 25% of its total energy needs from renewable resources by 2025. *Id.* at 22-23.

16. Obtaining necessary state permits in the orderly and structured process afforded by SEC review pursuant to RSA 162-H:6-a is consistent with the RSA 162-H:1, which recognizes, *inter alia*, the importance of avoiding undue delay in the construction of new energy facilities. The SEC process will ensure that AWE provides full and timely disclosure of information about the Project to the public and that the Project's impacts on and benefits to critical factors such as the public welfare, health, and safety, economic growth, the environment, historic sites, aesthetics, and air and water quality are thoroughly reviewed by state agencies with relevant subject matter expertise. The SEC has significant experience in adjudicating wind energy project siting matters, including the initial Antrim Wind Project Application for Certificate of Site and Facility in Docket 2012-01. Given that the Antrim Board of Selectmen and a collection of more than 100 Antrim voters have again requested that the SEC take

jurisdiction over this critical new project in their community, and given the SEC's familiarity with the previous proposal for the Antrim Wind Project, it is appropriate for the Committee to maintain jurisdiction over the Project.

17. The reconfigured Antrim Wind Project is very nearly at the jurisdictional threshold of 30 MW nameplate capacity, and though the Project has been reconfigured to mitigate visual impacts consistent with the Committee's prior findings, its scale is not significantly distinguishable from a comparable 30 MW project. Indeed, this is in most key aspects the same project that the Committee considered in Docket 2012-01 where many substantive issues have already received substantial review by the Committee, reconfigured to take into account certain mitigation measures suggested in that docket. When the Commission granted the petitions of AWE, the Town of Antrim and Antrim voters to take jurisdiction over the initial Antrim Wind Project, it was only projected to be a 16–22 MW project, and the reasons for retaining jurisdiction over it are only more compelling now: the Antrim Board of Selectmen and Antrim voters continue to support SEC jurisdiction over the Project and have again petitioned the Committee to assert that jurisdiction; the Town of Antrim still does not have a wind energy ordinance and three attempts to pass one have all failed; and the Committee has gained a great deal of familiarity with the Project during its review in the 2012-01 Docket. The Committee is very familiar with the Antrim Wind Project and has already ruled favorably with respect to many of its key aspects. With the benefit of this history, the Committee is well-positioned to review and rule upon the reconfigured Project with considerable efficiency. Accordingly, the SEC should grant this petition.

IV. Request for Relief

AWE respectfully requests that the SEC either (a) find that the maintains jurisdiction over the Antrim Wind Project pursuant to its order in SEC Docket 2011-02; or (b) issue an order asserting jurisdiction over the recently reconfigured Antrim Wind Project and granting such further relief as it deems appropriate.

Respectfully submitted,

Antrim Wind Energy, LLC

By its attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: November 26, 2014

By:



Barry Needleman, Esq. Bar No. 9446

Patrick H. Taylor, Esq. Bar No. 17171

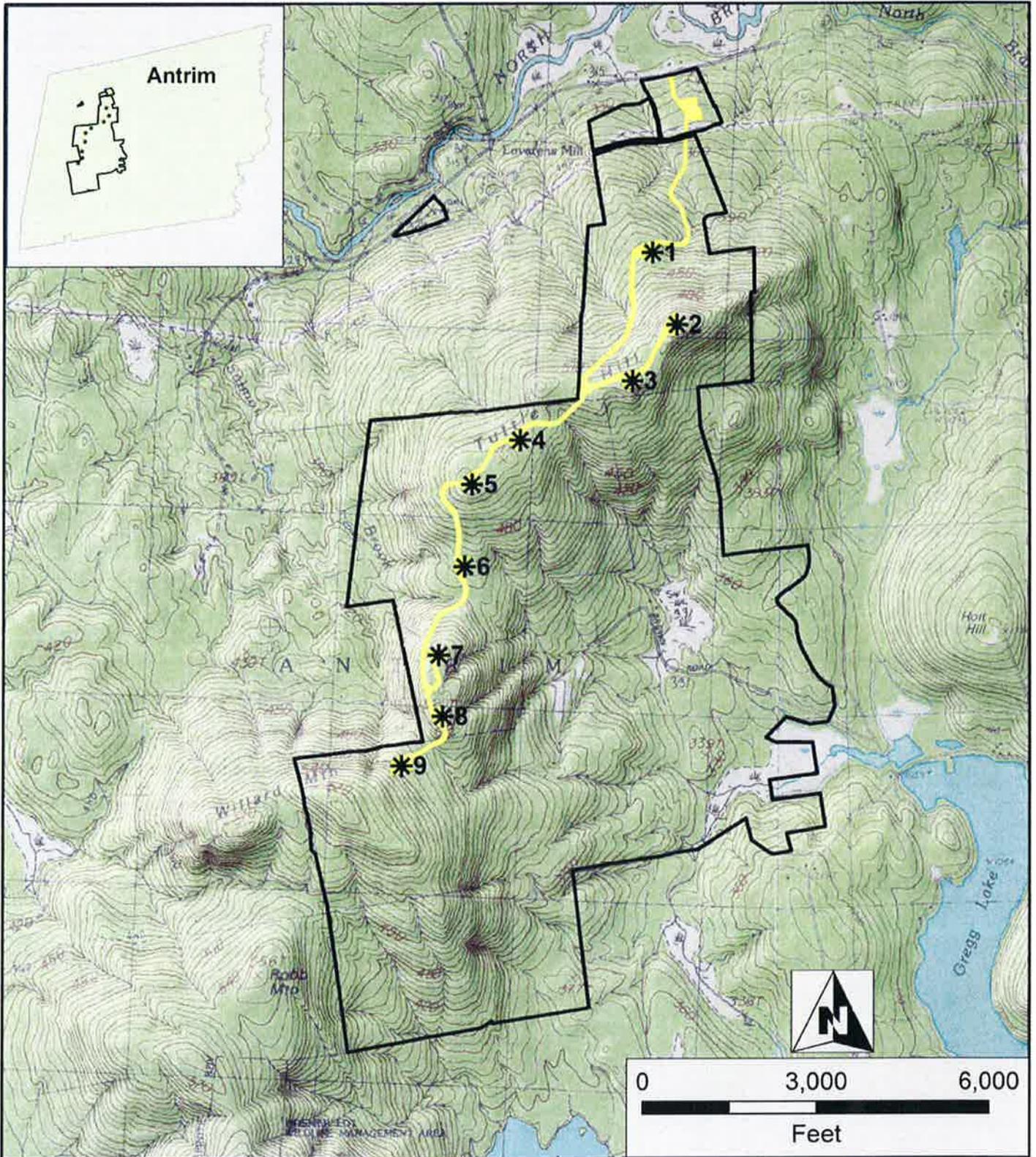
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- AWE Project Lands
- Proposed WTG
- Project Footprint

ANTRIM
WIND ENERGY LLC

Antrim Wind Energy Project
Town of Antrim, Hillsborough County, NH

Attachment A





Town of Antrim

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November 6, 2014

New Hampshire Site Evaluation Committee
C/O New Hampshire Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, New Hampshire 03302-0095

Ref: Antrim Wind Energy, LLC

The Town of Antrim has worked closely with Antrim Wind Energy LLC on multiple matters related to its proposed wind energy development in Town, which The Board of Selectmen support. The New Hampshire Site Evaluation Committee asserted its jurisdiction over the Antrim Wind Energy project in an order dated August 10th 2011. To the extent that the 2011 jurisdictional order no longer applies to the Project, we the Antrim Board of Selectmen, hereby petition the SEC to re-assert their jurisdiction over the review, approval, monitoring and enforcement of compliance in the planning, siting, construction and operation of this planned facility.

Respectfully,

A handwritten signature in cursive script, reading "Michael Genest".

Michael Genest, Chairman Board of Selectman

A handwritten signature in cursive script, reading "John Robertson".

John Robertson, Selectman

A handwritten signature in cursive script, reading "Gordon Webber".

Gordon Webber, Selectman