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January 29, 2015

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

**Re: Docket No. 2014-05: Antrim Wind Energy, LLC Petition for Jurisdiction
Over a Renewable Energy Facility**

Dear Sir or Madam:

In connection with the above-referenced docket I enclose an original and eighteen (18) copies of the following:

- Antrim Wind Energy (AWE)'s Limited Objection to the Petitions to Intervene By Abutting and Non-Abutting Property Owners;
- AWE's Objection to the Petitions to Intervene by The Windaction Group and Patrick J. Leary; and
- AWE's Reply to Counsel for the Public's Objection to AWE's Petition for Jurisdiction.

If you have any questions regarding these materials, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick H. Taylor".

Patrick H. Taylor

Enclosures

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

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

SEC DOCKET NO. 2014-05

**APPLICANT'S REPLY TO COUNSEL FOR THE PUBLIC'S OBJECTION TO
ANTRIM WIND ENERGY, LLC'S PETITION FOR JURISDICTION**

The Applicant, Antrim Wind Energy, LLC ("AWE"), respectfully submits this Reply to Counsel for the Public's Objection to AWE's Petition for Jurisdiction. Counsel for the Public ignores the fact that all key factors cited by the Site Evaluation Committee ("SEC") in favor of asserting jurisdiction over AWE's application for a certificate of site and facility in Docket 2011-02 remain unchanged. Counsel for the Public also declines to recognize that complementary petitions requesting that the SEC take jurisdiction over the Antrim Wind Project (the "Project") have been filed by the Town of Antrim Board of Selectmen and at least 100 registered voters from the Town of Antrim. Rather, Counsel for the Public surmises that the Project will not adopt all of the recommendations put forth by Counsel for the Public's witness on aesthetics in Docket 2012-01, and argues that the SEC should make factual determinations about the application before it has been filed.

I. SEC Jurisdiction Is Consistent With The Legislative Findings and Purposes of RSA 162-H:1

As Counsel for the Public correctly notes, the SEC's decision on jurisdiction is guided by the legislative declaration of purpose set forth in RSA 162-H:1. Tellingly, Counsel for the Public declines to cite to the SEC's Jurisdictional Order in Docket 2011-02 ("Jurisdictional Order"), in which the SEC enumerated the legislative findings and purposes outlined in RSA

162-H:1¹ and, having given them due consideration in light of the record before it, found that it was required to take jurisdiction over the Project. Docket 2011-02, Jurisdictional Order at 21-22, 28 (Aug. 10, 2011). As discussed below, the critical factors considered by the SEC in making that determination have not changed in any material way, and Counsel for the Public presents no compelling reason for the SEC to make a decision in this case that is entirely inconsistent with its previous Jurisdictional Order.

A. Antrim Does Not Have Any Ordinance That Can Adequately Address the Project And Its Impact On The State and Region

Notwithstanding the SEC's analysis and findings in the Docket 2011-02 Jurisdictional Order, Counsel for the Public asserts that AWE had not addressed any of the legislative purposes set forth in RSA 162-H:1. This is manifestly incorrect. The key factor considered by the SEC in its decision to assert jurisdiction over the Project in Docket 2011-02 was the fact that the Town of Antrim "does not have an ordinance or any other rules or regulations specifically designed to address the construction and operation of the [Project]." Jurisdictional Order at 23. The SEC found, based on an admission by the Antrim Planning Board, that the Town's zoning ordinances "are not designed to address the issues raised by construction of a renewable energy facility of the scale proposed [in Docket 2011-02] and, therefore, if applied, would not adequately address the issues of the impact of the [Project] on the region in general and on the Town in particular." Id. at 23-24. It further found that "there can be no guarantee that an ordinance, if enacted, will be developed and voted upon in a timely manner, will ensure the enforcement of the findings and

¹ RSA 162-H:1 was amended in 2014 and, as a result, the legislative findings and purposes have been modified. The statute no longer states that it is in the public interest to "maintain a balance between the environment and the need for new energy facilities in New Hampshire"; rather, it states that it is in the public interest to maintain a balance among "potential significant benefits and impacts" such as "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" in decisions about the siting, construction, and operation of energy facilities in New Hampshire. RSA 162-H:1. Furthermore, the statute now states that it is in the public interest to avoid undue delay in the construction of "new energy facilities," rather than "needed facilities." Id.

purposes set forth in RSA [162]-H:1, and will be enforced by the [Antrim Planning Board] in a timely and objective manner.” Id. at 26.

The SEC explained that its jurisdiction, on the other hand, “assured consolidation of all land use planning issues into a single proceeding, subject to a single appeal to the New Hampshire Supreme Court,” and that it agreed with AWE that “[SEC] jurisdiction is the superior option for the purpose of avoiding undue delay in the construction of needed facilities, providing for full and timely consideration of environmental consequences and assuring that all environmental, economic, and technical issues are resolved in an integrated fashion.” Id. In contrast to the Antrim ordinances, the SEC’s review of the Project is “statutorily defined and will assure that the findings and purposes identified in RSA 162-H:1 will be enforced and complied with”; moreover, the SEC “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.

As AWE explains in its pending petition for jurisdiction (“Petition”), the Town of Antrim still does not have an ordinance suitable to govern the review of a utility-scale renewable energy project such as the Antrim Wind Project. Petition at ¶ 14. Bearing out the uncertainty expressed by the SEC in Docket 2011-02, *see* Jurisdictional Order at 25, 26, multiple efforts to pass such an ordinance in Antrim have failed. Petition at ¶ 14. Thus, AWE, the SEC, and the Town of Antrim stand in the same position that they stood in when the SEC assumed jurisdiction over the Project in Docket 2011-02. SEC jurisdiction over the Project in this case is clearly consistent with the statutory findings and purposes of RSA 162-H:1, just as it was in Docket 2011-02:

1. The SEC process will ensure that the potential impacts on and benefits to the public welfare, private property, economic and industrial growth in the state and region, the environment of the state, historic sites, aesthetics, air and water quality, and public health and safety are thoroughly reviewed in a single proceeding by agencies with relevant

subject matter expertise and appropriately balanced in the decision to site, construct, and operate the Project. *See* Petition ¶16; Jurisdictional Order at 26 (finding that SEC review will assure that the findings and purposes identified in RSA 162-H:1 will be enforced and complied with). The Town of Antrim lacks such a process. Petition at ¶14; Jurisdictional Order at 25, 26, 28.

2. The Project is a “new energy facility” that will assure that the state has an adequate and reliable supply of energy and contribute to meeting the goals of New Hampshire’s Renewable Portfolio Standard, as well as the State’s plan to obtain at least 25% of its energy needs from renewable resources by 2025. Petition at ¶15, Jurisdictional Order at 22-23. As such, undue delay in its construction should be avoided, and the SEC process is statutorily defined to ensure timely adjudication consistent with RSA 162-H:1. Petition at ¶¶ 14, 16; Jurisdictional Order at 27. The ordinances of the Town of Antrim do not afford such a process. Petition at ¶14; Jurisdictional Order at 23-24.
3. As previously demonstrated in Docket 2012-01, the SEC process will provide for a thorough and robust examination of all aspects of the Project, ensuring a full, complete, and very public disclosure of the Project. *See* Petition ¶ 16; Jurisdictional Order at 23 (finding that SEC review would “guarantee” greater disclosure than was already provided in the Town’s review of the meteorological tower). The Project Application and supporting testimony, as well as all materials submitted by other parties relative to the proposed Project, will be widely and easily available on the SEC’s website. The lack of a suitable review process in Antrim precludes such full and complete disclosure.
4. Committee jurisdiction over the Project will provide for the full and timely consideration of environmental consequences and assure that all environmental, economic and technical issues are resolved in an integrated fashion. Petition at ¶14; Jurisdictional Order at 26. The Town of Antrim, on the other hand, does not have ordinances that can adequately address issues raised by a renewable energy facility such as the Project relative to the Town or the region generally. Petition at ¶14; Jurisdictional Order at 23-24.

Counsel for the Public maintains that the absence of suitable ordinances cannot be construed to mean that Antrim is not capable of addressing the Project. That contention directly contradicts the SEC’s findings in Docket 2011-02, and in any event misses the point. Even assuming, for the sake of argument, that the Antrim Planning Board and / or other administrative entities could address the Project in some capacity, that is not the statutory standard. The SEC will assert jurisdiction over a project when protection of the objectives and purpose of RSA 162-H:1 require it. In Docket 2011-02, the SEC found that Antrim had no ordinance that would

adequately safeguard the legislative findings and purposes of RSA 162-H:1, and had no certainty as to some ordinance that may be passed in the future.² Circumstances have not changed, and the SEC should once again assert jurisdiction over the Project.

II. The Antrim Board of Selectmen Has Petitioned The SEC To Take Jurisdiction Over the Project.

Another factor given considerable weight in Docket 2011-02 was the fact that the Antrim Board of Selectmen, “as the locally elected governing body which has the authority to speak and act on behalf of the town as a whole,” petitioned the SEC to take jurisdiction over the Project. Jurisdictional Order at 27.³ While not dispositive, the SEC recognized that “due weight and consideration should be given to such request.” *Id.* Once again, the Antrim Board of Selectmen has petitioned the SEC to assert jurisdiction over the Project, *see* Petition From the Town of Antrim dated November 6, 2014, a fact that Counsel for the Public declines to acknowledge in its Objection. Also unmentioned in Counsel for the Public’s Objection is the petition filed by 100 registered voters of the Town of Antrim requesting that the SEC take jurisdiction over the Project. *See* Petition of the Voters of Antrim NH dated December 8, 2014. The fact that the governing body of the Town – a body that Counsel for the Public ironically cites as a being capable of undertaking review of the Project – has repeatedly recognized the shortcomings in the Town’s ordinances and regulations and prevailed upon the SEC to take jurisdiction over the Project is a compelling factor that must be considered.

² Counsel for the Public notes that AWE has not indicated whether it has sought a variance from the Town or filed a site plan review with the Antrim Planning Board; the SEC considered this very issue in the previous docket and actually found that it militated *in favor of* taking jurisdiction as there would be no duplication of effort. Jurisdictional Order at 23.

³ In Docket 2011-02, the Antrim Board of Selectmen asserted in its petition that the Town does not have the level of expertise to address and regulate a Project of the size proposed in that Docket. Jurisdictional Order, p.27. The Project that is the subject of the present docket is much closer to the 30MW jurisdictional threshold (27 – 29.7 MW) than the previously proposed Project (16 – 22 MW).

III. The SEC Should Not Prejudge The Project Before An Application Is Filed.

The crux of Counsel for the Public's Objection is the unfounded contention that AWE is proposing the "same project" as the one considered by the SEC in Docket 2012-01, without adopting all of the recommendations put forth by Counsel for the Public's expert on aesthetic issues, Jean Vissering. Though Counsel for the Public has not seen AWE's application for a certificate of site and facility regarding the reconfigured Project, he pre-emptively dismisses it as "window dressing" and concludes that SEC jurisdiction over the Project will amount to "a monumental waste of State resources." Objection at 7. This argument is completely inappropriate in the context of this jurisdictional docket and fails for a number of reasons.

As an initial matter, the SEC expressly declined to impose the mitigation measures suggested by Ms. Vissering upon AWE in Docket 2012-01. Docket 2012-01, Order Denying Certificate of Site and Facility at 53-54. In its order denying AWE's application, the SEC did not indicate that incorporation of Ms. Vissering's recommendations in their entirety was a prerequisite to re-applying for a certificate of site and facility with a reconfigured project. *Id.*⁴ It did, however, state 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, and noted that a different facility may be adequately suited to the region. *Id.* at 70. As indicated in AWE's Petition, the reconfigured Project that it intends to submit for the SEC's consideration in an Application for Certificate of Site and Facility reflects efforts to redesign the Project to specifically address certain mitigation measures recommended by Ms. Vissering as well as concerns expressed by the SEC. For example, one turbine has been removed and another will be considerably shortened to address aesthetic impacts identified in Docket 2012-01.

⁴ In fact, when AWE sought to reopen the record and introduce supplemental mitigation measures, several members of the Committee indicated that the proposed changes were better suited to re-application. Docket 2012-01, Transcript of Deliberations on July 10, 2013 at pp 85, 94-99.

Without having seen AWE's application, Counsel for the Public has pre-judged the Project and asks the SEC to do the same and make premature factual determinations as to the Project's merits. Counsel for the Public's assertions amount to little more than conjecture that is irrelevant to the jurisdictional question and not appropriately considered in the context of this proceeding. Rather, the SEC must consider first whether the jurisdictional petitions of AWE, the Antrim Board of Selectmen, and the Antrim registered voters are statutorily sufficient, then assess whether the Project requires a certificate consistent with the findings and purposes of RSA 162-H:1. In this case, Counsel for the Public does not dispute the statutory sufficiency of the petitions, and jurisdiction over the proposed Project is clearly consistent with RSA 162-H:1 for the reasons set forth above. Whether the Project will have an unreasonable adverse effect upon aesthetics or any other criterion is a question to be addressed in the holistic and integrated process afforded by the SEC once AWE submits an application for the reconfigured Project.

While the reconfigured Project will, in many respects, be substantially similar to the Project submitted for the SEC's consideration in Docket 2012-01, certain critical aspects of the Project have been dramatically revised in response to Ms. Vissering's recommendations as well as concerns expressed or conditions imposed by the SEC. The SEC, Counsel for the Public, and any other interested parties will have a full opportunity to examine the reconfigured Project in both a regional and statewide context if and when the SEC asserts jurisdiction over the Project as requested. Counsel for the Public's premature objections to the Project's merits are irrelevant to the question of whether the SEC should take jurisdiction, and should be disregarded.

IV. The SEC Should Not Delay A Decision On Jurisdiction Simply Because A Rulemaking Proceeding is Pending

Finally, Counsel for the Public argues that it would be inappropriate for the SEC to take jurisdiction over the Project because the SEC is in the process of adopting rules relative to its

organization, practices, and procedures and criteria for the siting of energy facilities and wind energy systems. The SEC has already rejected a substantively similar argument. In Docket 2013-04, *Application of Atlantic Wind, LLC*, the Society for the Protection of New Hampshire Forests (“SPNHF”) requested that the SEC suspend consideration of an application for a certificate of site and facility relative to a proposed wind energy project pending the adoption of administrative rules as contemplated in RSA 162-H:10, VII. The SEC denied the motion, finding that there was no basis upon which it could find that the public interest would be served by such a delay, and that one of the purposes of RSA 162-H:1 is to avoid undue delay. Docket 2013-04, Order Determining Application to be Incomplete at 15-16 (Jan. 13, 2014). The SEC further noted that the statute lacked any requirement that the SEC refrain from considering applications filed before the statutory deadline for adopting the rules. *Id.* at 16. While there is no application currently pending relative to the reconfigured Project, suspending or declining jurisdiction on the basis that the rulemaking proceeding is ongoing is for all intents and purposes the same argument as it is predicated on the notion that an application relative to the reconfigured Project should not be considered until the new rules are in place. The SEC has already made its position on this argument clear, and should not deviate from it in this proceeding.

V. Conclusion

The key factors considered by the SEC in taking jurisdiction over the Project in Docket 2011-02 remain in place today. The Antrim Board of Selectmen, the governing body for the Town, has petitioned the SEC to take jurisdiction over this Project, and no ordinance, rule, or regulation exists in the Town of Antrim to adequately ensure that the legislative prerogatives set forth in RSA 162-H:1 will be safeguarded. Counsel for the Public presents no credible reason

for the SEC to reach a jurisdictional determination that is different from and inconsistent with its prior determination in Docket 2011-02.

Respectfully submitted,

Antrim Wind Energy, LLC

By its attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION



Dated: January 29, 2015

By: _____

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Certificate of Service

I hereby certify that on this 29th day of January, 2015, I served the foregoing Reply by electronic mail to the service list in this docket.



Patrick H. Taylor, Esq.