

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2014-05

**Petition for Jurisdiction
Over a Renewable Facility by Antrim Wind Energy, LLC**

**ORDER ON PENDING MOTIONS,
APPOINTMENT OF SUBCOMMITTEE
AND PROCEDURAL ORDER**

I. Background

In February 2011, the Town of Antrim through its Board of Selectmen and Antrim Wind Energy, LLC (Antrim Wind), filed petitions asking the Site Evaluation Committee (Committee) to assert jurisdiction over a proposed wind energy project that had a nameplate capacity of less than 30 MW. *See* Site Evaluation Committee Docket No. 2011-02. On August 10, 2011, the Committee granted the petitions and asserted jurisdiction under RSA 162-H:2, XII. On January 31, 2012, Antrim Wind filed an application for a certificate of site and facility in Docket No. 2012-01. The application was accepted and a subcommittee was assigned to consider whether to grant or deny the application. After an eleven-day evidentiary hearing and three days of public deliberations, the subcommittee denied the application.

On November 6, 2014, the current Board of Selectmen for the Town of Antrim filed correspondence with the Committee, requesting that the Committee re-assert jurisdiction over the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of a renewable energy facility proposed to be located in the Town of Antrim, Hillsborough County and developed by Antrim Wind.

On November 26, 2014, Antrim Wind filed a Petition for Jurisdiction Over a Renewable Energy Facility (Petition). Antrim Wind proposes to site, construct, and operate 9 wind turbines capable of generating 3-3.3 MW for a total nameplate capacity of 27-29.7 MW (Facility). The Facility is proposed to be located in the Town of Antrim, New Hampshire, on the Tuttle Hill ridgeline spanning southwestward to the northeastern slope of Willard Mountain. The Facility will be located in the rural conservation zoning district and highway district on private lands owned by five landowners and leased by Antrim Wind. Antrim Wind asserts that the Facility's location will be similar to the facility reviewed and denied by the Committee in Docket No. 2012-01

Antrim Wind claims that the Committee has already asserted its jurisdiction over the Project by asserting its jurisdiction over a similar project in Docket No. 2011-02. *See* Jurisdictional Order, Docket No. 2011-02, Petition for Jurisdiction Over Renewable Energy Facility Proposed by Antrim Wind Energy, LLC (August 10, 2011). In the alternative, Antrim Wind asks the Committee to re-assert jurisdiction over the Facility so that Antrim Wind can file a full Application for a Certificate of Site and Facility required for construction and operation of the Facility.

On December 30, 2014, the Committee issued an Order and Notice of Public Meeting scheduling a pre-hearing conference for January 30, 2015. The Order and Notice established a deadline for motions to intervene to be filed by January 23, 2015. The Committee received fourteen motions to intervene.

On January 23, 2015, Counsel for the Public filed an Objection to Petition for Jurisdiction. Antrim Wind filed timely responses to that motion and the various motions to intervene.

All potential intervenors attended the prehearing conference on January 30. At the prehearing conference the primary issue was the nature of pre-hearing discovery that would occur and the establishment of a procedural schedule.

On February 9, Antrim Wind filed a Motion to Strike Filings by Counsel for the Public. The Committee received a letter from the Attorney General formally appointing Senior Assistant Attorney General Mary E. Maloney as Counsel for the public in this docket on February 18. The following day, Counsel for the Public objected to Antrim Wind's motion to strike.

This order resolves all of the motions to intervene in this proceeding as well as the Motion to Strike the Filings of Counsel for the Public. This order also addresses the pre-hearing discovery issue, appoints a Subcommittee to consider the petitions for jurisdiction and sets a procedural schedule.

II. Intervention

A. Standard for Intervention

The New Hampshire Administrative Procedure Act provides when an administrative agency must allow intervention.

- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
- (b) The petition states facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of the law; and
- (c) 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.

RSA 541-A:32, I. The statute also permits the presiding officer to allow intervention “at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II.

Similarly, New Hampshire Code of Administrative Rules, Site 202.11, requires that a petition to intervene before the Committee be granted 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.

New Hampshire Code of Administrative Rules, Site 202.11 also provides that the presiding officer shall grant one or more late-filed petitions to intervene upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

The Administrative Procedure Act and the Committee’s procedural rules thus provide that intervention is mandatory in those cases where the party can establish that it has a right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in the proceeding. The statute and the rule also provide for permissive intervention in those cases where the presiding officer determines that intervention is in the interest of justice and does not interfere with the prompt and orderly conduct of the proceeding.

Pursuant to RSA 162-H:4, V, disputed petitions for intervention may be decided by the presiding officer.

Importantly, the Administrative Procedure Act and our procedural rules also allow the presiding officer to place limits on an intervenor's participation. *See* RSA 541-A:32, III; N.H. Code of Administrative Rules, Site 202.11(d). The presiding officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the purposes of the proceeding so long as the limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention.

B. The Motions to Intervene

1. Motions Filed By Local Governmental Entities. The Antrim Board of Selectmen (Antrim) and the Antrim Planning Board (Planning Board) each filed a motion to intervene in this proceeding. Antrim Wind did not object to either motion.

The Board of Selectmen in Antrim is the governing body of the town with the legal duty to “manage the prudential affairs of the town” pursuant to RSA 41:8. Under RSA 162-H:16, IV, the Committee must give due consideration to the views of the municipal governing body. RSA 541-A:39 requires the Committee to afford Antrim a reasonable opportunity to submit data, views, or comments with respect to the issuance of any permit, license or any other action within its boundaries. Antrim filed the initial petition for jurisdiction pursuant to RSA 162-H:2, XI(c). Antrim's petition to intervene in this proceeding is granted and Antrim shall participate as a full party to the proceeding.

The Planning Board also filed a petition to intervene in these proceedings. The Planning Board is an elected planning board authorized pursuant to RSA 673:1. The Planning Board is the elected statutory body having the principal responsibility for the creation and implementation of land use planning regulations in Antrim. The Planning Board argues that its role as a statutory

planning board provides it with a direct interest in this project. The Planning Board asserts that it was also granted intervenor status in Docket 2011-02 and that it exercised jurisdiction over the siting of a meteorological tower by Antrim Wind in anticipation of construction of the proposed facility. RSA 162-H:16, IV(a) requires that due consideration be given to “the views of municipal and regional planning commissions and municipal governing bodies.” The petition of the Planning Board is granted and the Planning Board shall participate as a full party.

2. Harris Center for Conservation Education. The Harris Center for Conservation Education (HCCE) is a charitable corporation organized under New Hampshire law and pursuant to §501(c)(3) of the Internal Revenue Code. HCCE asserts that among other things, it is a conservation land trust whose mission is dedicated to “promoting understanding and respect for the natural environment through education of all ages, direct protection and exemplary stewardship of the region’s natural resources, conservation research, and programs that encourage active participation in the great outdoors.” HCCE asserts that it is the current owner of property identified on Antrim Tax Map 240, Lot 12; a 185 acre tract which directly abuts the site of the proposed facility. HCCE also asserts that it has entered into agreements with five landowners, four of whom have leased land to Antrim Wind, for the purpose of acquiring and maintaining conservation easements over portions of the proposed site and certain abutting property amounting to a total of 800 acres, more or less. HCCE also submits that it owns or directly manages, for conservation purposes, approximately 7,000 acres of land near the proposed Facility, 2,135 acres of which are within a 3 mile radius of the center of the proposed Facility. In addition, HCCE asserts that it holds conservation easements on lands owned by others in excess of 10,000 acres in the eight town area including Antrim, Greenfield, Hancock, Harrisville, Nelson, Peterborough, Stoddard, and Windsor. HCCE asserts that its interest in the

land that it owns and the land that it manages, including the conservation easements, establishes substantial rights and interests that will be affected by the outcome of these proceedings. HCCE was previously granted intervention status in Docket No. 2011-02. HCCE is represented by counsel.

Antrim Wind filed a limited objection to HCCE's petition to intervene. Antrim Wind recognizes HCCE's substantial interest as an owner of abutting property and its ownership of significant acreage within 3 miles of the proposed Facility, as well as its property interest in certain conservation easements within the site of the proposed Facility. Antrim Wind asserts, however, that those interests do not amount to specific rights, duties, privileges, immunities or other substantial interests that are affected in this proceeding. Antrim Wind argues that HCCE's interests may be affected in a subsequent and separate proceeding in which the Committee evaluates Antrim Wind's Application for a Certificate of Site and Facility. Despite raising this distinction, Antrim Wind does not oppose the intervention of HCCE, but requests that any participation be limited directly to issues arising out of HCCE's property interests.

HCCE owns and has other rights to property within the site of the proposed Facility and directly abutting the proposed site for the Facility. This proceeding will determine whether the Committee will exercise its discretionary jurisdiction over the proposed Facility. The decision in this matter will determine the forum in which important issues that affect HCCE's property will be resolved. HCCE has a substantial interest in that determination of forum. Therefore the petition to intervene filed by HCCE is granted. HCCE may participate as a full party in this proceeding.

3. Audubon Society of New Hampshire. The Audubon Society of New Hampshire (ASNH) is a New Hampshire corporation and a tax exempt charity pursuant to §501(c)(3) of the

Internal Revenue Code. ASNH operates as a conservation land trust. ASNH owns property that directly abuts the site of the proposed facility. ASNH owns and manages the dePierrefeu-Willard Pond Wildlife Sanctuary. ASNH reports that the wildlife sanctuary consists of 1,659 acres in Antrim and Hancock, New Hampshire, and is situated immediately adjacent to the site of the proposed Facility. ASNH also asserts that it has, under conservation easement or other conservation protection, an additional 1,126 acres of land abutting the sanctuary. Within the sanctuary's borders is Willard Pond, a 96 acre "great pond" with scenic views of the surrounding hills including hills within the site proposed for the Facility. ASNH also asserts that Bald Mountain and Goodhue Hill are scenic viewpoints which are accessible by foot from trails on its properties, and that those scenic viewpoints will be affected by the proposed facility. Finally, ASNH asserts that it was granted intervenor status in docket 2012-01. ASNH is represented by counsel.

Antrim Wind filed a limited objection to the petition to intervene by ASNH. In its limited objection, Antrim Wind recognizes that ASNH may have certain interests stemming from its ownership of the dePierrefeu-Willard Pond Wildlife Sanctuary, abutting the site of the proposed Facility and its additional conservation lands within proximity to the site of the proposed Facility. Antrim Wind asserts, however, that ASNH has not articulated any specific interest that may be affected by this jurisdictional proceeding. Nonetheless, Antrim Wind does not object to ASNH's participation. Rather Antrim Wind requests that ASNH's participation be limited to its interests as an abutting landowner. In requesting that ASNH's participation be limited, Antrim Wind specifically asserts that ASNH has no authority to speak for the owners of additional conservation lands including the New Hampshire Fish & Game Department, the Nature Conservancy, the Harris Center for Conservation Education, and the Society for the Protection of

New Hampshire Forests, which are adjacent to the property owned by ASNH. In addition, Antrim Wind asserts that ASNH's wind power policy, cited in its motion to intervene, does not establish a substantial interest in the outcome of the proceedings in this case. Antrim Wind argues that ASNH's intervention should be limited to issues that arise solely out of its ownership of abutting lands and should not extend to other indirect interests articulated in its motion to intervene.

ASNH ownership and management of abutting lands represents a substantial property interest that may be affected by the outcome of this proceeding. ASNH is in a position similar to that of HCCE. ASNH has a direct interest, as an abutting property owner, in the decision determining the forum in which review of the proposed facility will occur. ASNH's interest arises by virtue of its ownership and the conservation management of large tracts of abutting property and other nearby property that may be affected by the proposed facility. Neither ASNH's wind power policy nor its concern for property owned and or managed by others establishes its basis for intervention. ASNH will be permitted to intervene in this matter as a full party.

4. Motions Filed by Owners of Abutting Residences. Brenda Schaefer, Mark Schaefer and Nathan Schaefer (Schaefer Family), Clark Craig, Jr., and Janice Duley Longgood are each individuals or families that own property and reside on land that abuts the site of the proposed facility. Each has filed a *pro se* petition to intervene

The Schaefer Family owns the property located at 128 Salmon Brook Road. They assert that their property directly abuts the area proposed for the construction of the Facility. They further assert that they will have close physical and visual contact with many of the turbines. In addition, they point out that they were granted intervenor status in the previous Antrim Docket,

2011-02.¹ The Schaefer family asserts that the proximity of their property to the proposed Facility demonstrates substantial rights and interests that may be affected by the proceeding before the Committee.

Mr. Craig lives at 224 Craig Road. He asserts that he is a direct abutter to the proposed facility. According to Mr. Craig, his family has owned the abutting property since 1895 and he has lived there for his entire life. He also submits that he was granted intervenor status in dockets 2011-02 and 2012-01. He asserts that his interests are substantial and demonstrate that he has a direct interest in the outcome of the proceeding.

Ms. Longgood asserts that her home at 156 Salmon Brook Road directly abuts the site of the proposed Facility. She reports that her home was purchased with the protection of certain covenants and restrictions that have since expired, but that the rural nature of her property has been protected by the Antrim zoning ordinances. Ms. Longgood asserts that she was previously granted intervenor status in dockets 2011-02 and 2012-01.

Antrim Wind has filed a limited objection to the Schaefer, Craig, and Longgood interventions. Antrim Wind recognizes that they have a substantial interest in the outcome of the proceeding, but argues that their participation in this docket should be limited to those matters directly affecting their ownership of the abutting land. In addition, Antrim Wind argues that all of the abutting landowners appear to take the same position with respect to the project and, therefore, they should be consolidated in the interests of judicial efficiency.

The residential abutters have a profound and substantial interest in the outcome of this proceeding. Each has demonstrated an interest that warrants participation with respect to all issues that may arise in this proceeding. There is no issue that any residential abutter should be

¹ It is also noted that the Schaefer Family was an intervenor in Docket No. 2102-01.

prohibited from addressing. Like HCCE and ASNH their ownership and residence on land abutting the proposed Facility requires that they be permitted to fully participate. However, each of the residential abutters do have interests similar to each other. None is represented by counsel. This causes a concern about duplicative arguments and ineffective process. Therefore, in the first instance, the residential abutters shall be combined as a full party in this proceeding. Although they may work together and each may testify (if they choose), they must designate a single spokesperson for the purposes of filing pleadings, conducting discovery, and examining witnesses at evidentiary hearings. This will assure the prompt and orderly conduct of the proceedings. Should any individual residential abutter feel that he or she has an interest that is different from the others, the Chair will hear a motion to allow that party to proceed separately on that particular issue.

5. Motions Filed by Non-Abutting Property Owners. Several non-abutting property owners have sought intervenor status. None is represented by counsel.

Loranne Carey Block and Richard Block of 63 Loveren Mill Road, Antrim, New Hampshire, assert that their home sits on approximately 242 acres of property, which is 0.5 to 1.5 miles away from, but directly faces and is in full view of, the site of the proposed facility. The Blocks assert that they are concerned that noise from the project, visual disturbance, and other negative effects will decrease their property value. Therefore, they assert that they have a substantial interest in the outcome of these proceedings. They also point out that they were granted intervenor status in Dockets 2011-02 and 2012-01.

Charles A. Levesque resides at 37 Old Pound Road in Antrim, New Hampshire. Mr. Levesque submits that he has lived in the Town of Antrim since 1997 and that he has a previously demonstrated interest in this matter as a former member of the Antrim Planning

Board. In his motion to intervene, Mr. Levesque reminds the Committee that he was a member of the Antrim Planning Board and one of two spokespersons for the Planning Board in the previous docket in this case. Mr. Levesque also advises that he was “lead author” of the Antrim Open Space Committees 2005 “Open Space Conservation Plan for Antrim.” He reports that the Open Space Plan contains substantial study and conclusions about the land area for which the facility is proposed. Finally, Mr. Levesque asserts that his residence is 1.7 miles from the ridgetop where the facility is proposed to be built and that his proximity to the proposed facility will impact him.

Fred Ward, Ph.D., of 386 Route 123 South, Stoddard, New Hampshire, asserts that his home will “have the closest view from the Town of Stoddard, being 2 to 3 miles from the proposed turbines.” He states that the turbines within the proposed facility and any flashing lights will be visible from his home 365 days and nights each year. He claims that his home will be affected by shadow flicker for 10 to 15 minutes every morning during two six-week periods each year. Dr. Ward also asserts that he was a major matching contributor to the fund that acquired the land designated as the Robb Reservoir and that he owns substantial abutting land to the Robb Reservoir, which is also held in conservation. Dr. Ward claims that his role as a professional meteorologist supports his request to intervene in these proceedings.

Annie Law and Robert Cleland of 43 Farmstead Road, Antrim, New Hampshire, assert that they have a substantial interest in the outcome of the proceeding because their home is directly in the view shed of the proposed facility. They believe that the proposed facility may have an impact on the wildlife in the vicinity of their home, as well as the value of their home and their health. Ms. Law and Mr. Cleland were previously granted intervenor status in dockets 2011-02 and 2012-01.

Elsa Voelcker of 97 Old Pound Road, Antrim, New Hampshire, asserts that her residence is within one mile of the proposed facility. Ms. Voelcker states that she was granted intervenor status in dockets 2011-02 and 2012-01.

In a “limited objection”, Antrim Wind recognizes that Elsa Voelcker, Annie Law, Robert Cleland, Richard Block, and Lorraine Carey Block were granted intervention in Docket 2011-02 on the basis that they live sufficiently close to the project and, therefore, had an interest in the outcome of the proceeding. Antrim does not object to the participation by these non-abutting landowners but argues that their participation should be limited to issues arising directly from their property interests.

Similarly, Antrim Wind does not object to the limited intervention of Dr. Ward. However, Antrim Wind asserts the arguments made in his motion concerning errors in data collection and his assessment of the environmental impacts of the proposed development are beyond the scope of this proceeding and unrelated to the issue of whether the Committee should exercise jurisdiction. Antrim Wind further asserts that Dr. Ward’s concerns are not any different than those of the general public and are sufficiently represented by Counsel for the Public.

Antrim Wind also requests that the non-abutting property owners be consolidated for the purposes of any hearings to be held in this matter.

Some of the non-abutting property owners express a more substantial interest in the outcome of this proceeding than others. For instance the Blocks own a substantial amount of real estate that is from one half to one mile from the proposed Facility. The Block property directly faces the ridgeline where the Facility is proposed to be sited. On the other hand, Dr. Ward’s property is two to three miles from the proposed Facility and the impact of the proposed Facility is much less clear.

Nevertheless, it appears that the non-abutting property owners have expressed a combination of interests that may be affected by the outcome of this proceeding. However, in order to assure the orderly conduct of these proceedings and to avoid duplication of arguments it is necessary to combine the non-abutters as a single party in this proceeding. The non-abutters shall designate a single spokesperson for the purposes of filing pleadings, conducting discovery and for examination at evidentiary hearings. To the extent that Antrim Wind seeks to limit the issue on which of the non-abutting property owners may participate, that request is denied at this point in the proceeding. Nonetheless, all parties are reminded that this docket is opened for the sole purpose of determining whether the Committee will exercise jurisdiction. This docket does not involve the merits of an application for a Certificate of Site and Facility.

6. Motion Filed by Windaction.org. The Windaction Group (Windaction) filed a petition to intervene pro se. The petition was signed by Lisa Linowes of 286 Parker Hill Road, Lyman, New Hampshire. Windaction asserts that it had previously been granted full intervenor status in Docket No. 2012-01. Windaction submits that its substantial interests in issues pertaining to this matter have not changed since the conclusion of that docket. In its petition to intervene, Windaction recognizes that the Committee has previously determined that Windaction does not meet the criteria of Site 202.11(b)(2) as an intervenor, because the group does not have a substantial interest in the outcome of the proceeding. Windaction asserts, however, that it has been allowed to intervene in several different dockets before this Committee and has not impeded the prompt and orderly disposition of proceedings.

Antrim Wind has objected to the motion of Windaction to intervene. Antrim Wind asserts that Windaction has no direct interest that may be affected by the outcome of this proceeding and further that Windaction's concern that the review of the proposed project may prove to be

duplicative is an insufficient basis for intervention. Antrim Wind also asserts that the interests asserted by Windaction are no different from the interests of the public at large and Counsel for the Public, who may be appointed to represent the public interests in such proceedings.

Windaction has participated in other dockets before the Committee with full party status. On each occasion, the Committee determined that Windaction did not have a direct substantial interest or other right that may be impacted by the outcome of the proceedings. However, on each occasion Windaction was permitted to intervene after a finding that intervention would be in the interest of justice and would not impede the prompt and orderly disposition of the proceeding. In the past Windaction has acted within the procedural rules and orders set forth by the Committee.

In this matter it appears that Windaction again has no direct interest in the outcome of this proceeding. However, intervention by Windaction will not impair the prompt and orderly conduct of the proceedings and will be in the interest of justice. The motion to intervene is granted.

7. Motion Filed by Patrick J. Leary. Patrick J. Leary of 21 Weston Road, Hancock, New Hampshire, asserts that he can demonstrate a substantial interest which may be affected by the outcome of the proceeding because he has an interest in the “lack of environmental and economic benefits to New Hampshire.” He asserts that his interest in these benefits cannot adequately be protected by any other party. He further asserts that as a resident of the Town of Hancock, he has an interest that is not adequately addressed by any other party.

Antrim Wind objects to Mr. Leary’s motion, arguing that Mr. Leary’s only articulated interest (“the lack of environmental and economic benefits to New Hampshire”) is not an interest

affected by the outcome of the proceeding and is not an interest that is any different from the interests of the public at large or the interests that may be represented by Counsel for the Public.

Mr. Leary does not demonstrate a substantial right, privilege or interest in the outcome of the proceedings. Moreover his concerns about the substance of the proceeding will be adequately addressed by Counsel for the Public and the other parties. The motion to intervene filed by Mr. Leary is denied.

III. Motion to Strike

Antrim Wind filed a motion to strike all filings submitted by Counsel for the Public. In its motion, Antrim Wind asserts that at the time of the filing, Counsel for the Public had not been appointed by the Attorney General pursuant to RSA 162-H:9. Antrim Wind also claims that Counsel for the Public appeared late and failed to file a motion to intervene in this docket. Antrim Wind cites RSA 542-A:32 and New Hampshire Code of Administrative Rules, Site 202.11. Antrim Wind also relies on the Committee's order dated December 30, 2014, requiring that motions to intervene be filed by January 23, 2015.

On February 18, 2015, Counsel for the Public was formally appointed in this docket by the Attorney General.

Counsel for the Public objects to Antrim Wind's motion. Counsel for the Public asserts that the statutory scheme of RSA 162-H does not prohibit the participation of Counsel for the Public in the absence of an application for a certificate of site and facility. Counsel for the Public cites a previous order of the Committee which held that "it is important that Counsel for the Public be involved in proceedings before the Committee as early as possible so that the public's interest can be represented at every stage of the proceedings." Petition of Antrim Wind Energy LLC, Docket No. 2011-02, Order on Motions to Intervene and Further Procedural Order at 9.

Counsel for the Public also notes that Antrim Wind has premised its objection to the participation of Patrick Leary on the basis that his individual interests are no different than the interests represented by Counsel for the Public.

Antrim Wind's motion to strike the filings of Counsel for the Public is denied. Counsel for the Public has been formally appointed by the Attorney General. Participation of Counsel for the Public is an important procedural component of the statutory scheme. *See* RSA 162-H:9. Allowing the participation of Counsel for the Public will not prejudice Antrim Wind and will assist the Committee in addressing the important issues raised in this docket. Pursuant to RSA 162-H:9, II, Counsel for the Public is "accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action" As a statutory party, Counsel for the Public would not normally be required to file a motion to intervene in the proceeding. However, to the extent that Counsel for the Public filed a late appearance in this matter, we deem the Counsel for the Public's Objection to Antrim Wind's motion to be a request for a waiver from the administrative rules and grant that request because it is in the public interest and will not impair the orderly and efficient resolution of matters before the Committee. *See* New Hampshire Code of Administrative Rules, Site 202.15.

IV. Procedural Order

A. Assignment of Subcommittee. Pursuant to RSA 162-H:4-a, the Chairperson of the Committee may establish subcommittees "to consider and make decisions on applications, including the issuance of certificates, or to exercise any other authority or perform any other duty of the committee" However, when considering a petition to establish jurisdiction, the subcommittee shall have no fewer than seven members. RSA 162-H:4-a, II. The subcommittee assumes the role of and shall be considered to be the Committee with "all of its associated

powers and duties in order to execute the charge given it by the chairperson.” RSA 162-H:4-a, I. In order to assure the prompt and efficient consideration of the Petition for Jurisdiction in this docket, I hereby appoint the following subcommittee:

1. Martin Honigberg, Chairman, Public Utilities Commission
Chair and Presiding Officer
2. Thomas Burack, Commissioner, Department of Environmental
Services
3. Robert Scott, Commissioner, Public Utilities Commission
4. Jeffrey Rose, Commissioner, Department of Resources and
Economic Development
5. Elizabeth Muzzey, Director, Division of Historical Resources
6. Roger Hawk, Public Member
7. Patricia Weathersby, Public Member

Each state agency member of the subcommittee may designate a “senior administrative employee or staff attorney” from the agency to “sit in his or her place on the subcommittee.”

RSA 162-H:4-a, II. It is requested that state agency members of the subcommittee intending to designate a staff member do so in writing prior to March 20, 2015. The subcommittee is charged with resolving all issues that may arise in this docket and determining whether to grant or to deny the petitions for jurisdiction filed by the Town of Antrim, the residents of the Town of Antrim, Antrim Wind and the Antrim Planning Board.

B. Procedural Schedule. The ultimate issue for the Committee in this docket is whether to assert jurisdiction over the Facility as proposed in the Petition for Jurisdiction filed by Antrim Wind. In making that determination the Committee must determine whether the proposed Facility “requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1.” *See* RSA 162-H:2, XII. A significant question that may be considered by the

Committee is whether the Facility as proposed in this docket is substantially different than the facility that was proposed and denied in the former docket, Application of Antrim Wind, LLC, NHSEC No. 2012-01. Antrim Wind asserts in its petition that the reconfigured Facility was designed to “specifically address certain mitigation measures suggested by Counsel for the Public and concerns expressed by the Committee.” Petition at 3. Counsel for the Public and some of the intervenors disagree with the characterization of the proposed Facility. This disagreement on factual matters warrants a period of discovery before an adjudicatory hearing is scheduled to resolve the issue. Therefore the procedural schedule in this docket will include a period of discovery during which the parties will identify witnesses, file testimony, and culminate in a single technical session prior to an adjudicatory hearing. As is the practice, the technical session, although it may be recorded, is for discovery purposes and is not in and of itself part of the record in this proceeding. Discovery shall be limited to the issue of how the proposed Facility differs from the proposed facility in Docket 2012-01. This issue is interpreted to include the physical differences between the proposed Facility and the previously proposed facility and any difference in impacts between the two proposals. The parties are cautioned that the sole purpose of this Docket is to determine whether the Committee should assert jurisdiction. It is not the purpose of this docket to debate the merits of the proposed Facility.

The procedural schedule is:

1. Antrim Wind shall identify witnesses and file testimony on or before March 30, 2015, at 5 p.m.
2. Counsel for the Public and the intervenors shall identify witnesses and file testimony on or before April 13, 2015, at 5 p.m.
3. A technical session shall occur on April 23, 2015 commencing at 9 a.m. at the offices of the Public Utilities Commission and continuing at the call of the presiding officer until concluded. Counsel to Committee, Michael J. Iacopino shall preside at the technical session. All witnesses shall attend the technical session either in person or telephonically. If telephonic appearance is necessary, arrangements shall be made with Counsel to the Committee at least 7 days prior to the technical session and shall be copied to the entire service list. All documents requested at the technical session shall be produced to all parties within seven days after the conclusion of the technical session. If any party objects to producing documents the requesting party shall file a motion to compel within seven days after the conclusion of the technical session. The responding party shall object within seven days of the filing of the motion to compel.
4. An adjudicatory hearing will be scheduled to occur not less than 14 days after the technical session. A further order scheduling the date and time of the adjudicatory hearing and specifying any additional procedural requirements will be issued in the future.

V. Orders

It is hereby ordered that the motions to intervene filed by Antrim Board of Selectmen, the Antrim Planning Board, the Harris Center for Conservation Education, the Audubon Society of New Hampshire, the Schaefer Family, Clark Craig, Jr., Janice Duley Longgood, Lorraine Carey Block and Richard Block, Charles A. Levesque, Fred Ward, PhD., Annie Law and Robert Cleland and Elsa Voelcker are granted subject to the limitations contained in this Order; and

It is hereby further ordered that the motion to intervene filed by Windaction.org is granted; and,

It is hereby further ordered that the motion to intervene filed by Patrick J. Leary is denied; and,

It is hereby further ordered that the Subcommittee appointed in this order shall resolve all issues that may arise in this docket and determine whether to grant or to deny the petitions for jurisdiction filed by the Town of Antrim, the residents of the Town of Antrim, Antrim Wind and the Antrim Planning Board. The Subcommittee shall assume the role of and be considered to be the Committee, with all of its associated powers and duties in order to execute its charge;

It is hereby further ordered that the procedural schedule set forth in this Order shall be followed by the parties unless further amended by the presiding officer.

March 13, 2015



Martin P. Honigberg, Chairman
Site Evaluation Committee