

October 3, 2016

New Hampshire Site Evaluation Committee

Dear Members:

Re: Public Comment, Docket 2015-02

Framing Deliberation

It is my hope that the Committee will not lose sight of the threshold issue left unresolved, as more appropriate for later consideration, when it elected to assert jurisdiction. The Committee took care to explain in its jurisdictional order (2014-05, 9/29/15, p 34:

“Neither the doctrine of collateral estoppel nor *res judicata*, relate to the issue of jurisdiction in this case. These doctrines are used to prevent parties from litigating claims or issues that have previously been litigated, not to preclude courts or agencies from asserting jurisdiction over a particular claim or application. If a future application raises issues of *res judicata* or collateral estoppel, these issues will be determined in the context of that application....”

Members should not deliberate upon 2015-02 as if this project were new or as if all claims or issues involved were for them legally of first impression. The Committee exercises jurisdiction in adjudicative proceedings. Once the decision of certificate denial in 2012-01 became final, its effect is binding and enforceable. The capacity to assure enforcement of final decisions (including those of certificate grant which may impose conditions) depends upon this. Otherwise: the displeased are implicitly encouraged to re-litigate or disdain in practice; those for whom the effect is intended protective often expend further time and resources to secure protection; and the body’s own effectiveness can be compromised.

“Donut Hole” Adversity

Only one site in Antrim has ever really been discussed to date for an industrial wind facility at the scale envisioned. Singular site undoubtedly in mind, Antrim zoning voters were not persuaded by repeated ballot proposals made for adoption of a large scale wind ordinance (several from the Planning Board, another by an applicant – backed private party). That these zoning ballot rejections were succeeded by the Committee’s final decision of certificate denial in 2012-01 points up the extreme special challenges of site suitability here.

“Donut hole” adversity is but one of many aspects of broadly regional aesthetic impact. (And, to me, not the most important.) That said, those whose property falls within the “donut hole” of a project posing potentially unreasonable adverse impacts do perhaps most particularly place reliance upon local zoning. RSA 162-H, sec. 16 is not to the contrary. In this regard, the Committee might inquire into whether there exists any Settlement Offer, proposed for incorporation as a condition and generally acceptable, to adequately address legitimate “donut hole” concerns (including potential property value diminution).

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