

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

RE: Petition of Antrim Wind, LLC
for Jurisdiction

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Docket No. 2011-02

**RESPONSE OF COUNSEL FOR THE PUBLIC
TO PETITION FOR JURISDICTION**

Counsel For The Public, Peter C.L. Roth, hereby responds to the Petition for Jurisdiction Over Renewable Energy Facility Proposed By Antrim Wind Energy, LLC (the “Petition”). Counsel for the Public requests that the Petition be denied because it is not ripe.

1. On April 20, 2011, Counsel for the Public was appointed by Attorney General Michael A. Delaney pursuant to RSA 162-H:9.

2. As counsel for the Public understands the Petition, the petitioner, Antrim Wind, LLC (“Antrim Wind” or “Petitioner”) seeks jurisdiction by the Site Evaluation Committee over an as yet not fully defined project between 5 and 30 MW. Petitioner says that it expects to file an application “by the end of this calendar year.”

3. Antrim Wind purports to join the February 2011 request by the former chairman of the Antrim Selectmen, Gordon Webber, in seeking jurisdiction. However, Mr. Webber requested jurisdiction only “if and when an application is made to construct this facility.” Mr. Webber’s Petition to Assume Jurisdiction filed with the SEC on April 15, 2011, is similarly qualified.

4. A Petition Against Jurisdiction filed with the Site Evaluation Committee (“SEC”) on April 15, 2011, asserts that the Antrim Planning Board is presently opposed to

jurisdiction and favors local control.¹ See also Antrim Planning Board Letter of April 12, 2011, and Petition for Intervention.

5. There is an appeal by the Petitioner pending in Hillsborough County Superior Court concerning the project due to the fact that the Antrim Zoning Board of Adjustment (ZBA) denied a site plan approval needed to construct a meteorologic tower at the site. In addition, a second appeal is pending in Hillsborough Superior by abutters to the proposed project site of a height variance granted by the ZBA to the Petitioner enabling it to construct the met-tower. A trial on these appeals is scheduled for next month.

6. It appears to Counsel for the Public that it would not be prudent for the SEC to take jurisdiction over this unripe request at this time where the Petitioner does not have an application to submit. To the extent the Petitioner is merely focused on avoiding the local control of the Town of Antrim and perhaps the State Court litigation, this does not provide a basis for a finding of jurisdiction at this time. In fact, the community has not shown a clear and unmistakable position favoring jurisdiction now. Even among those that do, many have said that jurisdiction should be coupled to an application once it is ready to be filed.² Given that Antrim Wind chose to go the local control route initially, it should not now be allowed to abjure that choice and obtain a premature decision on SEC jurisdiction simply because it

¹ The Petition Against Jurisdiction also asserts that, “only one Selectmen who supported the vote to request NH Site Evaluation Committee jurisdiction...is currently in office.” The petition appears to suggest that the new members of the Selectboard may oppose SEC jurisdiction. Petition Against Jurisdiction ¶ 1(b); see also Voelcker and Law letters questioning whether Mr. Webber was authorized to speak for the Selectboard.

² Favoring jurisdiction are: Mr. Webber claiming to speak for the Selectmen, 5 individuals writing letters (one of which is also Mr. Webber), and a Petition signed by 139 people (5 of whom share a last name or an address with Mr. Webber). Neutral are the Audubon Society and the Harris Center. Opposing jurisdiction are the Planning Board, 12 individuals writing letters or petitions to intervene, and a Petition signed by 142 individuals. In addition, 10 individuals petitioned to intervene opposing the project but took no position in their petitions on the jurisdictional question.

does not like the result. Finally, comity to the Superior Court and the completion of the appeals cases there suggest that jurisdiction now is not ripe.

7. It also appears to Counsel for the Public that SEC jurisdiction is not ripe because the project is not yet clearly defined. Once the project size, location, and power production is better defined through an application, the SEC could evaluate the extent of the State's interest in it and the desirability of committing significant State resources to its consideration.

WHEREFORE, Counsel for the Public respectfully requests that the SEC not grant the Petition at this time.

Respectfully submitted,

COUNSEL FOR THE PUBLIC

By his attorneys

MICHAEL A. DELANEY
ATTORNEY GENERAL



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