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April 22, 2011

Via Hand Delivery and Electronic Mail

NH Site Evaluation Committee
c/o Jane Murray, Secretary
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

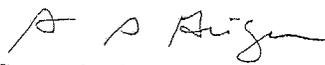
*Re: Petition for Jurisdiction Over Renewable Energy Facility
Proposed by Antrim Wind, LLC, SEC Docket No. 2011-02*

Dear Ms. Murray:

Enclosed please find an original and 3 copies of *Petitioner's Reply to Response of Counsel for the Public*.

Please contact me if there are any questions about this filing. Thank you for your assistance and cooperation.

Very truly yours,


Susan S. Geiger

cc: Site Evaluation Committee Members (via hand delivery)
Service List (via electronic mail)
Spencer Garrett (via First Class Mail)

Enclosures
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THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2011-02

RE: PETITION OF ANTRIM WIND ENERGY, LLC

PETITIONER'S REPLY TO RESPONSE OF COUNSEL FOR THE PUBLIC

NOW COMES Antrim Wind Energy, LLC ("Antrim Wind" or "the Petitioner"), by and through its undersigned attorneys, and replies to Counsel for the Public's Response to Antrim Wind's Petition for Jurisdiction by stating as follows:

1. Counsel for the Public's Response asserts that it would not be prudent for the Site Evaluation Committee ("SEC") to take jurisdiction at this time because the Petitioner has not submitted an application. This argument is invalid for the following reasons:

A. First, nothing in RSA 162-H requires the filing of an application with a petition for jurisdiction. If the legislature intended that petitions filed under RSA 162-H:2, XII be filed contemporaneously with a certificate application, it would have stated so. The absence of such a requirement must therefore be construed as authorizing the SEC to rule on petitions filed pursuant thereto in advance of the filing of an application.

B. Second, precedent exists for making a threshold decision on SEC jurisdiction prior to the filing of an application. In the Lempster Wind docket, the SEC voted on July 6, 2006 to assert jurisdiction over a renewable energy project with a nameplate capacity of less than 30 megawatts. The application for that project was not filed until August 28, 2006.

C. Third, RSA 162-H:2, XII authorizes the SEC to assert jurisdiction on its own motion. In that circumstance, it is unlikely that an application would have been filed. This evidences the legislature's intent that a decision on SEC jurisdiction may be made in advance of the filing of an application.

D. Lastly, interpreting RSA 162-H:2, XII. to require a renewable energy facility developer to incur the time and expense associated with filing a multi-volume SEC application in advance of a decision on petitions for SEC jurisdiction is unreasonable. It would impose an onerous burden which could deter renewable energy developers from pursuing smaller renewable projects in New Hampshire.

2. Paragraph 6 of Counsel for the Public's Response avers that Antrim Wind is "merely focused on avoiding the local control of the Town of Antrim and perhaps State Court litigation." That paragraph then goes on to state "[g]iven 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 simply because it does not like the result." This argument must fail for the following reasons:

A. The argument implies that there exists within the Town of Antrim a regulatory framework that the Petitioner is seeking to evade. In fact, a framework for projects such as this one does not exist, and may never exist. It is for that reason, as well as others, that the Petitioner has exercised its statutorily prescribed right to petition this Committee for jurisdiction.

B. A decision by the SEC to assert jurisdiction over the Antrim Wind project will not enable the petitioner to avoid the pending Superior Court litigation¹. That

¹ Public Counsel incorrectly states in paragraph 5 of his Response that the Superior Court litigation involves an appeal of the Antrim Zoning Board of Adjustment's ("ZBA") denial of site plan approval for a

litigation concerns only a meteorological tower, not the renewable energy facility that would be the subject of the SEC's analysis under RSA 162-H. The two processes are separate and distinct, and concern different issues. The outcome of the Superior Court litigation will have no bearing on the issue of whether the SEC should assert jurisdiction over the Antrim Wind project. Accordingly, the SEC should not defer ruling on the jurisdictional petition simply because of the pending litigation.

C. Counsel for the Public asserts that "Antrim Wind chose to go the local control route initially" and is abandoning that path "because it does not like the result." That assertion is flatly wrong and ignores fact that Antrim Wind was required to submit to local land use processes for the construction of its meteorological tower. Because the met tower cannot be certificated on a standalone basis under RSA 162-H, Antrim Wind could not seek the SEC's jurisdiction for that tower.

3. It is deeply troubling that Counsel for the Public is taking a position contrary to the Town of Antrim Selectboard, the host community's governing body, that has strongly urged the SEC to accept jurisdiction over the Antrim Wind project, and has objected to the Antrim Planning Board's intervention petition.² See Letter of Michael Genest, Chairman of the Antrim Board of Selectmen, to Chairman Burack (April 20, 2011) (requesting that the SEC accept jurisdiction over Docket No. 2011-2); and *Town of Antrim's Objection to Petition for Intervention by Antrim Planning Board* (April 20, 2011). Clearly, there are deep rifts within Antrim regarding this project. However, those

meteorological tower ("met tower"), In fact, it involves the ZBA's reversal of a Planning Board decision regarding whether a met tower is a permitted use and exempt from height restrictions.

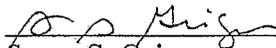
² The undersigned recognizes that the Town of Antrim Selectboard, the governing body of Antrim, filed a pleading and correspondence with the SEC on the same day that Public Counsel filed its pleading, and therefore, Public Counsel's conclusions regarding the interests of the statutorily-elected governing body were formed without the benefit of the Selectboard's most recent correspondence and pleading.

riffs only highlight the need for the SEC to take jurisdiction over this project to assure that all interested parties are properly and fairly heard, and that “local politics do not unduly delay the process and the SEC [can] impartially weigh all environmental, economic, and technical issues.” Letter of Michael Genest, Chairman of the Antrim Board of Selectmen, to Chairman Burack (April 20, 2011).

4. In addition to the foregoing substantive reasons why Counsel for the Public’s Response is unpersuasive, the Petitioner notes the following procedural defect: Counsel for the Public has been appointed prematurely and therefore should not be allowed to participate in this docket at this juncture. RSA 162-H:9 specifies that the Attorney General shall appoint an Assistant Attorney General as counsel for the public “[u]pon notification that an application for a certificate has been filed with the [Site Evaluation] committee in accordance with RSA 162-H:7.” (Emphasis added.) As Counsel for the Public admits in paragraph 6 of his Response, no such application has been filed. Accordingly, because Counsel for the Public has been appointed in violation of RSA 162-H:9, the Response filed by Senior Assistant Attorney General Roth is improper and should be struck from the record of this proceeding.

5. Even assuming, *arguendo*, that Counsel for the Public was properly appointed, he is not statutorily authorized to opine on the question of whether the SEC should assert jurisdiction in this case. RSA 162-H:9 limits Public Counsel’s role to representing “the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.” Since neither of those issues are squarely before the SEC at this juncture, Counsel for the Public’s Response should not be considered by the Committee.

Respectfully submitted,
Antrim Wind Energy, LLC
By Its Attorneys



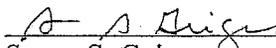
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Dated: April 22, 2011

Certificate of Service

I hereby certify that, on the date written below, I caused Petitioner's Response to Intervention Requests to be sent by electronic mail or U.S. mail, postage prepaid, to the service list in Docket No. 2011-02.

4/22/11
Date



Susan S. Geiger

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