



**Upton  
& Hatfield**<sup>LLP</sup>  
ATTORNEYS AT LAW

**Concord Office**

10 Centre Street  
PO Box 1090  
Concord, NH  
03302-1090  
603-224-7791  
1-800-640-7790  
Fax 603-224-0320

*Attorneys At Law*

Gary B. Richardson  
John F. Teague  
James F. Raymond  
Barton L. Mayer  
Charles W. Grau  
Bridget C. Ferns  
Heather M. Burns  
Lauren Simon Irwin  
Matthew R. Serge  
Michael S. McGrath\*  
Lisa M. Hall  
James A. O'Shaughnessy

*Of Counsel*

Marilyn Billings McNamara

**Hillsborough Office**

8 School Street  
PO Box 13  
Hillsborough, NH  
03244-0013  
603-464-5578  
1-800-672-1326  
Fax 603-464-3269

*Attorneys At Law*

Douglas S. Hatfield  
Margaret-Ann Moran  
Steven J. Venezia\*

**North Conway Office**

23 Seavey Street  
PO Box 2242  
North Conway, NH  
03860-2242  
603-356-3332  
Fax 603-356-3932

*Attorney At Law*

Robert Upton, II

**Portsmouth Office**

159 Middle Street  
Portsmouth, NH 03801  
603-436-7046  
1-877-436-6206  
Fax 603-431-7304

*Attorneys At Law*

Russell F. Hilliard  
Justin C. Richardson

www.upton-hatfield.com  
law@upton-hatfield.com

\*Also admitted in MA

**Please respond to the Portsmouth office**

May 6, 2011

Thomas Burack, Chairman  
Site Evaluation Committee  
29 Hazen Drive  
PO Box 95  
Concord, NH 03302-0095

Re: Antrim Wind Energy  
Docket No. 2011-02

Dear Chairman Burack:

Enclosed for filing is an original and twenty (20) copies of the Testimony of Michael Genest on behalf of the Town of Antrim's Board of Selectmen.

A copy of the foregoing has been sent electronically to all persons on the Committee's official service list, with the exception of Exhibits MG-2 and MG-3, the Town's Zoning Ordinance and Site Plan Regulations, due to their size. Any person desiring a copy of these documents may contact my assistant, Sharon Mallon, or download them from the Town's website, [www.antrimnh.org](http://www.antrimnh.org), by following links to the Town's Planning Department.

If you have any questions, please contact me.

Very truly yours,

Justin C. Richardson  
jrichardson@upton-hatfield.com

JCR/sem

Enclosure(s)

cc: Service List, via Electronic Mail  
Spencer Garrett, via First Class Mail  
Galen Stearns, Town Administrator  
Michael Genest, Selectman

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

**Antrim Wind Energy, LLC**

**Docket No. 2011-02**

**TESTIMONY OF MICHAEL GENEST ON BEHALF OF  
THE TOWN OF ANTRIM AND ITS BOARD OF SELECTMEN**

1 **Q. Please state your name and address.**

2 A. My name is Michael Genest. I reside at 83 Old Pound Road in the Town of  
3 Antrim, New Hampshire where I have been a resident since 1998.

4 **Q. What is your involvement in the Antrim Wind Energy, LLC project?**

5 A. I am Chairman of the Board of Selectmen of the Town of Antrim and have served  
6 on the Board since March 2002. I also serve as an alternate ex officio member of  
7 the Antrim Planning Board and have served in that capacity since March 2011  
8 and have also served as the Selectmen’s representative to the Planning Board on  
9 two other occasions during my 9 years on the Board of Selectmen.

10 **Q. What is the purpose of this testimony?**

11 A. I offer this testimony to explain why the Board of Selectmen supports review of  
12 the Antrim Wind Energy, LLC project by the Site Evaluation Committee under  
13 RSA 162-H. This testimony is offered on behalf of the governing body of the  
14 Town of Antrim, it’s Selectmen pursuant to their authority to “manage the  
15 prudential affairs of the town” under RSA 41:8.

16 **Q. Why does the Antrim Board of Selectmen support review of the Antrim  
17 Wind Energy, LLC project under RSA 162-H?**

18 A. Many of the reasons in support of the SEC’s review of the project under RSA  
19 162-H are stated in the Board of Selectmen’s letter to the Committee dated April  
20 20, 2011 (Attachment MG-1). Rather than simply repeat what is stated therein, I  
21 adopt the Selectmen’s letter to the Committee as part of my testimony.

22

23 In addition, I offer the following comments by way of summary in further support

1 of review by the Committee under RSA 162-H:

2

3 **1. The Town's Current Land Use Controls do not Permit or Contemplate**  
4 **Review of Renewable Wind Energy Facilities.**

5 The Town's current Zoning Ordinance and Site Plan Regulations (attached as  
6 MG-2 & MG-3) do not currently allow for commercial-scale renewable wind  
7 energy projects or contemplate their review. Because Antrim Wind Energy's  
8 project is not an allowed use in the Rural Conservation (or any other) District, it is  
9 not a certainty that any wind energy project would be allowed, even if it met the  
10 Town's Site Plan requirements. In any event, there would be not be a proper  
11 review such as that conducted by the Site Evaluation Committee.

12

13 The failure to provide a proper framework has already created problems for the  
14 Town and the project. For example, the meteorological tower for the project-  
15 testing has resulted in two appeals to Superior Court from the Town's Zoning  
16 Board of Adjustment decisions. These appeals have imposed significant legal  
17 costs on the Town, even before an application for the facility itself has been  
18 submitted. It is likely that an actual application for the project at the Town level  
19 will result in further appeals that will take years to resolve and impose significant  
20 legal costs and uncertainty on the Town, the applicant and interested parties.

21

22 **2. The Town's Current Land Use Controls do not Provide Meaningful Criteria**  
23 **for the Review of the Project.**

1 The Town’s current Zoning Ordinance and regulations simply do not provide a  
2 proper framework to review and evaluate the potential benefits and impacts of the  
3 project. There are no standards or criteria to evaluate potential benefits and  
4 impacts of the project on issues such as noise, aesthetics, or wildlife. In the  
5 absence of such criteria, it is unclear how studies or investigations by local land  
6 use boards could be conducted. These uncertainties further complicate the legal  
7 challenges that the Town, the applicant and interested parties would face at the  
8 local level, thereby increasing the legal and financial burdens to the Town.

9

10 **3. The Committee is Better Equipped to Evaluate the Potential Benefits and**  
11 **Impacts of an Appropriate Facility.**

12 Review by the Committee will provide the following benefits that are not  
13 available at the local level:

- 14 (a) The Committee has experience reviewing renewable and wind energy  
15 projects (and alternatives), such as the Lempster project, as well as the  
16 technical expertise of agencies having jurisdiction over the project. The  
17 Committee’s review will ensure that questions concerning the big picture  
18 as well as the technical details are resolved in an integrated manner.
- 19 (b) The Committee has relevant statutory criteria for review of the project  
20 which do not exist under the Town’s current Land Use Controls.
- 21 (c) The Committee has the legal authority to require studies related to noise,  
22 wildlife, and aesthetics, the cost of which is borne by the applicant, and  
23 not by the Town or interested parties.

1 (d) The Committee’s timeframes will provide a final decision in a single  
2 forum in a reasonable time period, without multiple lawsuits and appeals  
3 to Superior Court.

4 (e) Counsel for the Public is available to represent or address the concerns of  
5 members of the public regarding the quality of the environment and the  
6 adequacy of the State’s energy supply.

7 **4. The Town may or may not adopt a process to address a project like this one.**

8 As noted in MG-1, the Town has had over two years to adopt amendments to its  
9 Zoning Ordinance to provide standards for review of the project. It has thus far  
10 been unsuccessful. Even if the Planning Board were to present a proposal to be  
11 adopted at Town meeting, there is no guarantee that it would pass. Any such  
12 ordinance is likely to simply be a referendum on the project itself. Nor is there  
13 any guarantee that such an ordinance would apply if an application were  
14 submitted prior to amendment to the Town’s Zoning Ordinance. See RSA  
15 676:12, VI.

16  
17 **5. Potential Benefits of an Appropriate Project may be Lost.**

18 Antrim is a small town that, like many others, struggles to keep its tax rate low  
19 while facing the need for capital improvements in the Town. The Selectmen  
20 believe that an appropriately sited and constructed project could provide a  
21 significant tax benefit to the Town. For example, a project only half the size of  
22 the Lempster facility would likely be the Town’s largest single tax payer. This  
23 would provide benefit the Town’s existing tax payers by reducing their tax burden

1 and contribute toward the costs of municipal services and capital improvements  
2 provided by the Town.

3

4 For example, the Town through its Capital Improvements Program is planning on  
5 replacing the current Salt Shed for the Highway Department to meet current EPA  
6 and DES guidelines. The Plan also indicates that a large portion of the Town's  
7 roads and bridges need major reconstruction which is a very costly undertaking  
8 with the costs of asphalt rising. The Town has been discussing building a new  
9 Police Station in the near future as well.

10

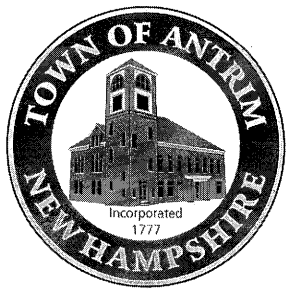
11 The Selectmen are concerned that, if the Committee does not review the project  
12 under RSA 162-H, potential legal challenges and delays would prevent even an  
13 appropriately sited and designed facility from moving forward. The Town would  
14 then lose the tax and other benefits of the project. Ironically, a defeat of Antrim  
15 Wind Energy's proposal could adversely impact even the Town's Rural  
16 Conservation District because other uses allowed in the District such as the  
17 scattered construction of single family residences, or the construction of  
18 manufactured housing parks (allowed by special exception) could have  
19 significantly greater impacts on the values protected by the District as well as the  
20 costs to provide municipal services to support such uses.

21

22 **Q. How would the Town participate in the review by the Site Evaluation**  
23 **Committee?**

1 A. The Selectmen look forward to participating in the Committee's review of the  
2 Antrim Wind Energy project and believe that its review under RSA 162-H will  
3 provide a unique opportunity to consider the potential benefits of the project and  
4 all other concerns. The Selectmen invite to Committee to hold its public  
5 information hearings in the Town of Antrim and will make every effort to make  
6 its facilities available for the Committee. On behalf of the Town, we thank you  
7 for your consideration of this matter.





# Town of Antrim

66 Main Street PO Box 517  
Antrim, NH 03440  
Tel: 603.588.6785 Fax: 603.588.2969  
www.antrimnh.org

April 20, 2011

Thomas S. Burack, Chairman  
NH Energy Facilities Site Evaluation Committee  
Dept. of Environmental Services  
29 Hazen Dr., PO Box 95  
Concord, NH 03302-0095

Re: SEC Docket No. 2011-02

Dear Chairman Burack:

The Antrim Board of Selectmen would like to strongly urge the NH Site Evaluation Committee ("the SEC") to accept jurisdiction over Docket No. 2011-2 Antrim Wind Energy, LLC for the following reasons:

- 1) Antrim's land use boards are comprised of elected volunteers who do not have the technical knowledge or expertise to handle a project of this magnitude.
- 2) Antrim's land use boards have been aware of the potential of a wind energy facility being built in the town for over two (2) years (the first conceptual presentation was made to the Antrim Planning Board at their April 2, 2009 meeting) in which time ordinances and regulations could have been written and accepted by the town. To date this has not happened and does not seem likely to come to fruition in the near future.
- 3) To date, the Planning Board has held 12 meetings concerning renewable energy facilities and/or wind energy.

- 4) The Zoning Board of Adjustment has held 13 meetings on the variance request for a meteorological tower.
- 5) In the two (2) years since this project has been debated and discussed, the ZBA granted a variance to erect a meteorological tower to gather data which has resulted in two (2) lawsuits against the town (one from residence and one from applicant). If the town retains local control, this will most likely result in further lawsuits to probably include disagreements and lawsuits between governmental agencies.
- 6) The Planning Board prior to the March elections had voted to endorse proposed zoning amendments allowing wind energy facilities as a permitted use in the district (Rural Conservation District) but due to posting errors could not be placed on the ballot for March 8, 2011 voting. The Planning Board properly posted and held a public hearing and voted 5/2 to recommend the zoning amendments and request a Special Town Meeting to allow the residents to vote on them. This vote would have answered the question of how the majority of residents feel about the proposed wind facility. With new members elected to the Planning Board on March 8, 2011, at their next meeting on March 17, 2011, the March 9<sup>th</sup> actions were reconsidered and voted 4/2 not to recommend the zoning amendments thus nullifying the Special Town Meeting the Board of Selectmen had approved.
- 7) The legislature through RSA 162-H established the procedure for review, approval, monitoring, and enforcement of compliance in the planning, siting, construction and operation of energy facilities because they recognized the need “that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion, all to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles.” The SEC has held hearings

on multiple wind energy facilities similar to the one being proposed in Antrim and has more experience and knowledge that the volunteers on Antrim's land use boards.

- 8) The Antrim Board of Selectmen feel that because of everything stated above, that this is exactly the reason that RSA 162-H:1 was established to insure that local politics do not unduly delay the process and the SEC will impartially weigh all environmental, economic and technical issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Genest", with a long horizontal flourish extending to the right.

Michael Genest  
Chairman, Board of Selectmen