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Jeffrey C. Spear
Connie Boyles Lane
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Maureen D. Smith
Todd C. Fahey
Vera B. Buck
James F. Laboe
Robert S. Carey
John M. Zaremba
Courtney Curran Vore
Justin M. Boothby
Heidi S. Cole
Jeremy D. Eggleton
Rachel A. Goldwasser
Joshua M. Pantescio
John L. Arnold
Michael T. Cretella

May 26, 2011

Via Hand Delivery and Electronic Mail

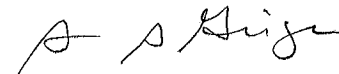
NH Site Evaluation Committee
c/o Jane Murray, Secretary
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

**Re: Antrim Wind Energy, LLC-SEC Docket No.
2011-02**

Dear Ms. Murray:

Enclosed for filing with the Site Evaluation Committee in the above-captioned docket please find an original and 3 copies of Supplemental Prefiled Testimony of Jack Kenworthy. Please contact me if there are any questions about this filing. Thank you for your assistance and cooperation.

Very truly yours,



Susan S. Geiger

Lawrence A. Kelly
(Of Counsel)

cc: Service List (via electronic mail)

Enclosures
766135_1.DOC

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2011-02

**RE: PETITION FOR JURISDICTION OVER
RENEWABLE ENERGY FACILITY
PROPOSED BY ANTRIM WIND ENERGY LLC**

SUPPLEMENTAL PREFILED TESTIMONY OF JACK KENWORTHY

MAY 26, 2011

1 **Qualifications**

2 **Q. Please state your name and business address**

3 A. My name is John (Jack) B. Kenworthy and my business address is 155 Fleet
4 Street, Portsmouth, NH 03801.

5 **Q. Who is your current employer, what position do you hold and what are**
6 **your qualifications?**

7 A. I am employed by Eolian Renewable Energy, LLC. I hold the position of
8 Chief Executive Officer. My qualifications are stated in my Prefiled Direct Testimony
9 filed May 6, 2011 in this docket and remain the same as stated therein.

10 **Purpose of Testimony**

11 **Q. What is the purpose of this supplemental prefiled testimony?**

12 A. The purpose of this testimony is, first, to respond to some of the general
13 issues raised by intervenors, second, to respond to several specific statements made by
14 some of the intervenors, and third, to present some issues which have arisen since I
15 submitted my prefiled direct testimony. First, as a general matter, this proceeding is
16 about whether the Site Evaluation Committee ("SEC") should review this Project, not
17 about the merits of the Project. My prefiled direct testimony already addresses why the
18 SEC should assert jurisdiction. That the proposed applicant, the Town of Antrim's
19 governing body, and over 100 citizen petitioners have petitioned the SEC to review this
20 Project should be dispositive of the question. However, the Antrim Planning Board,
21 through certain of its individual members, has now submitted testimony alleging that it is
22 qualified to, first, adopt rules and project review processes that could provide a basis for

1 reviewing this proposed wind Project and, second, to review the Project under these yet
2 to be developed rules. While it is questionable whether these considerations are even
3 relevant to the jurisdictional question here, which should be solely limited to the issue of
4 whether the statutorily authorized petitioners have provided a basis for SEC review, they
5 can viewed as speculative and possibly even discriminatory and should not be relied upon
6 by the SEC as a basis for declining to take jurisdiction.

7 Although some parties have alleged that the Project's details are not fully known,
8 the Project is apparently concrete enough for certain Planning Board members to
9 conclude that there is no existing mechanism for evaluating wind project-specific issues.
10 They state that existing ordinances are not sufficient for local review of the Project (see,
11 for example, Prefiled Testimony of Charles Levesque, page 9, "both the ordinance and
12 the site plan review regulations fall short of what would be required to grant approval at
13 this time") and that a lengthy *ad hoc* committee development and review process is
14 necessary to reach that point. However, to the extent that Town Planning Board
15 members and some citizens believe that Antrim lacks appropriate processes to review the
16 Project, then the most reasonable option, which is authorized by law, is to accede to SEC
17 review under existing, well-formed and legislatively-prescribed processes.

18 Planning Board members claiming that the SEC process is an "excellent model"
19 (see the prefiled testimony of Ms. Pinello, page 16) for the Town to use in its own review
20 at some undefined time in the future overlooks the fact that the Antrim Selectboard has
21 voted to seek SEC review and that Planning Board members do not have the experience,
22 expertise or authority of the SEC. Furthermore, statements made by some Planning

1 Board members during the election process (e.g. industrial scale wind projects are not
2 “low impact,” as stated by Ms. Pinello in MEP Exh. B, pg. 1) raise questions about
3 whether the proposed Project has been prejudged or whether an ordinance can be
4 developed and project review can be carried out in an unbiased and impartial
5 manner. The petitioning process under RSA 162-H:2, XII exists to address the very
6 handicaps that exist here – the lack of existing Town capacity to review the proposed
7 Project and the desire of the Town governing body and citizens to have an unbiased and
8 thorough review of a proposed project in order to balance economic, energy,
9 environmental and public health considerations in a fair and timely manner.

10

11 **Mr. and Mrs. Block’s Testimony**

12 **Q. On the second page of Mr. and Mrs. Block’s prefiled testimony, they state**
13 **that the details of Antrim Wind Energy’s (“AWE’s”) “proposal have changed**
14 **numerous times in the last two years are still vague and undefined.” The Blocks**
15 **then argue that a more specific plan is needed before the SEC may assert**
16 **jurisdiction. Do you agree with these statements?**

17 A. No. There is nothing vague about the Antrim Wind proposal. Specific details
18 about the Project have been presented in public meetings dating as far back as April 2,
19 2009. MEP Exhibit D submitted with Ms. Pinello’s prefiled direct testimony contains
20 minutes of an Antrim Planning Board meeting held on that date (and others) which
21 clearly show that I presented specific and detailed information about the Project and that I
22 answered questions about the Project from Planning Board Members and members of the

1 public. Contrary to the Blocks' assertions that the Project has changed numerous times in
2 the past two years, the Project has materially changed only once during that time. In
3 April, 2009, Antrim Wind proposed 6 to 8 wind turbines; the Project now consists of up
4 to 10 wind turbines. AWE has submitted detailed study protocols to relevant permitting
5 agencies and has commenced many of the studies required for permitting. The Project
6 has conducted initial, detailed engineering and advanced interconnection studies. The
7 Project's final proposed layout will be completed pending the results of studies currently
8 underway. Thus, the Project is far from "vague and undefined" as the Blocks claim.
9 Based on the information presented in AWE's jurisdictional petition, my prefiled direct
10 testimony and this supplemental prefiled testimony, I believe that the Site Evaluation
11 Committee ("the SEC") has before it sufficient information to make a determination
12 about whether to assert jurisdiction over the Project.

13 **Q. On the third page of their prefiled testimony, the Blocks state that a**
14 **variance for AWE's meteorological ("met") tower was granted "in spite of**
15 **overwhelming public commentary against it..." Do you agree with that statement?**

16 A. Not entirely. While it is true that the Zoning Board of Adjustment ("ZBA")
17 determined (on two occasions) that the temporary met tower met the five criteria required
18 to grant a variance, the vast majority of members of the public speaking against the
19 variance were expressing opposition to wind energy facilities, not met towers.
20 Furthermore, the determination of a variance request is not a popularity contest; it is a
21 factual and legal analysis that must be performed in accordance with state statutes and
22 local ordinances.

1 **Q. The Blocks assert, on the fourth page of their prefiled testimony, that**
2 **AWE's site plan was rejected in May 2010. Do you agree with that statement?**

3 A. No. This statement is not true. The site plan for the met tower was approved
4 and never challenged. The ZBA did not reject the site plan; it overturned the Planning
5 Board's decision that AWE's met tower was an allowed use as accessory and antecedent
6 to a public utility use, which is allowed in the Town's Rural Conservation District as a
7 matter of right.

8 **Q. The fourth page of the Blocks' prefiled testimony asserts that AWE's**
9 **"multiple simultaneous approaches at seeking permitting only serve to show how**
10 **inadequate and undefined their plans are." Do you agree with that statement?**

11 A. No. AWE is exercising its legal rights to obtain local permits for its met
12 tower, to appeal local land use interpretations, to assist in the defense of appeals of local
13 land use decisions in support of the meteorological tower, and to seek a ruling from the
14 SEC on the threshold question of whether it will assert jurisdiction over the Project.

15 It is true that AWE has employed three different approaches to obtain zoning
16 relief from the ZBA for the met tower. This is due to the way in which the Antrim
17 Zoning Ordinance is drafted and the different interpretations of the Ordinance that AWE
18 received from the Town. Put briefly, the Ordinance, as interpreted, permits different
19 approaches for an applicant to pursue to obtain approval for the met tower. These
20 different approaches were pursued in hopes of obtaining an approval from the Town that
21 would not engender litigation. AWE has not sought a Town permit for a wind energy
22 facility and has consistently voiced its support of the SEC process as a fair and

1 reasonable permitting pathway. Hence, when the Town petitioned the SEC to assert
2 jurisdiction, AWE supported the Town's position and submitted its own petition. Thus,
3 the fact that AWE has pursued multiple avenues for permitting the met tower is a
4 function of the local permitting and appeals process. The rights created by the
5 legislature in RSA 162-H:2, XII to allow a small renewable energy facility to submit to
6 the SEC process are of particular importance in this case given AWE's experience with
7 the local processes related to the met tower in Antrim.

8 **Q. The last page of the Blocks' prefiled testimony asserts that "AWE is a**
9 **new, unproven company with no prior completed projects to demonstrate their**
10 **competence." Do you agree with that statement?**

11 A. No. AWE's members have experience in developing renewable energy
12 facilities. More specifically, Westerly Wind, LLC, an entity owning fifty percent of
13 AWE, has successfully permitted and built over 700 megawatts of wind energy facilities.
14 The Blocks's suggestion that AWE is experimenting on the Town of Antrim is
15 completely off base. In fact, the opposite is occurring – i.e. certain factions within the
16 Town of Antrim are seeking to experiment with developing a process for reviewing the
17 Project, even though a clearly defined, statutorily prescribed and well-tested process has
18 existed for decades at the SEC.

19 **Ms. Pinello's Testimony**

20 **Q. On pages nine through thirteen of her testimony, and again on pages**
21 **seventeen through eighteen, Ms. Pinello testifies that the *ad hoc* committee and**
22 **subsequent consideration of proposed ordinances and regulations by the Planning**

1 **Board would not cause “undue delay” to the Project. Do you agree with Ms.**

2 **Pinello’s testimony?**

3 A. No, I do not agree. Energy project developers work in a highly competitive
4 environment and therefore need reasonable certainty with regard to timeframes, standards
5 and processes in order to manage risk and make informed decisions. The process
6 described by Ms. Pinello will delay the Project by at least a year, since there is no
7 guarantee that new standards and processes, if developed, would be approved by the
8 Town of Antrim until, at the earliest, March 2012. The Project would then be reviewed
9 during some unknown timeframe thereafter. In the meantime, summer studies to be
10 undertaken by the Project would be put on hold due to this uncertainty regarding process,
11 fairness, and standards. Thus, as discussed below, the Planning Board’s proposal creates
12 “undue delay” for this Project.

13 First, the timelines presented by Ms. Pinello are unlikely to result in a full and
14 complete process. She suggests that the *ad hoc* committee will be able to develop various
15 ordinances and regulations for wind energy within six months, permitting the Planning
16 Board three months to perform review of that Committee’s work. The *ad hoc* committee
17 has only those six months – starting at the beginning of May – to develop the complex
18 suite of regulations outlined in Ms. Pinello’s “Ordinance Checklist” outlined at MEP
19 Exhibit F. Completion of this analysis and process by November 2011 seems highly
20 unlikely. Furthermore, even if the *ad hoc* committee does develop recommendations, the
21 proposal provides three months for the Planning Board to host a public review process of
22 those recommendations, a nearly impossible timeline, especially considering how long it

1 took the Planning Board to review the limited ordinance changes which were
2 recommended and approved (but not ever voted on at Town Meeting) during the winter
3 and spring of 2010 and 2011. Even after the Planning Board accepts or rejects the *ad hoc*
4 committee's recommendations, if changes to the Ordinance are required, those changes
5 must then be presented to the people of Antrim for a vote. If there is a vote to enact an
6 Ordinance relating to this Project, it is unclear what (if any) deadlines would exist for a
7 review process. The Planning Board's position creates a host of unknowns and variables
8 which AWE cannot predict or rely upon to make critical planning decisions to advance
9 the Project within the competitive energy market. Thus, I do not agree with Ms. Pinello's
10 claim that the *ad hoc* committee proposal will not cause "undue delay" for the Project.

11 Second, there is no guarantee that a standard developed by the *ad hoc* committee
12 would be appropriate and applicable to the Project. Ms. Pinello admits that a standard for
13 large-scale wind energy projects may not even be established as a result of this process.
14 *Pinello Testimony* at p. 14 ("[i]f the process leads to a decision that industrial scale wind
15 energy will be permitted in some form . . .") (emphasis added). Therefore, even
16 assuming that the aggressive timeframes cited by Ms. Pinello are met, the Project could
17 be left, in February 2012, no closer to a local regulatory structure or appropriate standards
18 to apply. Even if a structure or standards were developed and adopted, it is unknown
19 what (if any) deadlines would apply. Therefore, likely results of the *ad hoc* committee's
20 actions include: (a) failure to develop appropriate standards; and (b) failure to complete
21 the process within a year from AWE's request that the SEC take jurisdiction. From a
22 business standpoint, these two scenarios constitute "undue delay," especially considering

1 that the SEC already has in place appropriate standards and timelines established by the
2 legislature, and has a track record of applying those standards in a fair and open process
3 which would permit the Planning Board ample opportunity to air its concerns, as
4 contemplated by RSA 162-H:16, IV(b).

5 Third, in drawing her conclusion that no “undue delay” will result, Ms. Pinello
6 relies on the fact that environmental studies and permitting for the Project are ongoing,
7 and that the met tower is standing. As this Committee is fully aware, final environmental
8 studies required by state and federal permitting agencies will inform the contours of the
9 final Project proposal, and many of those studies must be undertaken in the upcoming
10 summer and fall seasons. The fact that extensive and expensive studies are fully
11 underway and will be completed by fall 2011 indicates that applicant is close to providing
12 a final proposal and application to the Site Evaluation Committee. However, if the
13 studies cannot go forward due to regulatory uncertainty, the Project will be postponed for
14 at least a year while it awaits determination of what process and standards, if any, would
15 apply. Additionally, there is no guarantee that the studies that AWE is undertaking will
16 be the same studies sought by Antrim under a new set of standards. Additional delay
17 would result if further studies are needed under the new Town Ordinance and/or
18 regulations.

19 Finally, Ms. Pinello attempts to blame AWE for delays related to the
20 meteorological tower permitting process. However, the procedural irregularities which
21 have been highlighted in that process and in the Ordinance amendment process
22 demonstrate the challenges that the Town faces in developing standards and then trying

1 to implement them. The issue before the SEC is that this Project, which is close to being
2 ready to submit a formal application, may be postponed by at least a year – or more –
3 under the Planning Board’s proposal.

4 **Q. On page ten of her testimony, Ms. Pinello raises questions about the**
5 **financial capacity of AWE to complete the Project. Do you have any response?**

6 A. Yes. First, significant information regarding AWE was filed in its Petition for
7 Jurisdiction and in my Prefiled Direct Testimony. Second, this concern would be fully
8 vetted by the SEC if it takes jurisdiction over the Project. *See* RSA 162-H:7, V(e)
9 (requiring findings concerning the applicant's financial, technical, and managerial
10 capability for construction and operation of the proposed facility).

11 **Q. On pages eleven and twelve of her testimony, Ms. Pinello states that AWE**
12 **relied on advice from the Planning Board, citing minutes from an April 2, 2009**
13 **meeting. Do you agree with her representation of what occurred at that meeting?**

14 A. No. First, the statement regarding the steps to be taken was made by me, not
15 by Mr. Vasques, Antrim’s former Planning Officer. *See* MEP Exh. D, pg. 6 (“Mr. J.
16 Kenworthy stated that landowner leases would needed [sic] to be obtained. A variance
17 for height . . .”). The issue at hand was whether AWE should seek variances for the
18 meteorological tower and the wind turbines simultaneously, then proceed with site plan
19 approval for a wind farm if the wind data supported it – not whether AWE should pursue
20 a variance and site plan approval simultaneously for the met tower. Met towers under
21 Article XIV-D of Antrim’s zoning ordinance do not require site plan review, and no one
22 disputes that AWE’s application pursuant to this provision was at the advice of the Town

1 and the course that AWE initially followed. Any assertion by Ms. Pinello that the Project
2 did not follow Town advice is misplaced, since AWE merely decided to go forward with
3 the met tower permitting before seeking a variance for the wind Project itself.

4 **Q. On page twelve of her testimony, Ms. Pinello questions the validity of the**
5 **building permit which was granted in November 2009. Do you have any response to**
6 **this allegation?**

7 A. I agree with Ms. Pinello that the building permit was issued during the appeal
8 period for the variance that the Zoning Board of Adjustment granted for the
9 meteorological tower. However, the validity of the permit itself is not in question, nor
10 has there ever been an appeal filed to revoke the permit. The period for such an appeal
11 expired at least one and a half years ago. Moreover, after AWE received the variance for
12 the met tower, the building permit was issued by the Town's Building Inspector.
13 Thereafter, the variance, not the building permit, was appealed by a few members of the
14 public, and that appeal is the subject of litigation in the New Hampshire Superior Court.
15 There is nothing unlawful about AWE's election to proceed with erecting the tower
16 pursuant to a valid building permit before the variance appeal period expired; that
17 decision was based on the weather and AWE's desire to erect the tower before snowfall
18 in order to collect wind data through the winter.

19 **Mr. Levesque's Testimony**

20 **Q. On pages nine and ten of his testimony, Mr. Levesque testifies that the**
21 ***ad hoc* Committee and the Planning Board will produce appropriate regulations in**

1 **the time allotted. Do you have any concerns about the *ad hoc* committee's ability to**
2 **perform its duties?**

3 A. Yes. In addition to the concerns expressed in my testimony above, I wish
4 to note that at least one well-respected member of the community has already stepped
5 down from his position on the *ad hoc* Committee, citing concerns about the ability of the
6 committee to do the required job. See Attachment Supp. JBK-1, *Letter from Benjamin*
7 *Pratt* (May 13, 2011) ("I feel very strongly that the engineering profession has a great
8 responsibility to serve and protect the safety and the best interests of the community. I do
9 not wish to do anything that would not meet the high standards that have been
10 established.").

11 **Other Issues**

12 **Q. Have any other issues come to light since you filed your direct prefiled**
13 **testimony which raise questions about the Planning Board's ability to follow a fair**
14 **and open process?**

15 A. Yes. In my prefiled direct testimony, I discuss several procedural flaws
16 that were clear in the Planning Board's recent actions. The attached article from the
17 Monadnock Ledger-Transcript raises additional questions about the Planning Board's
18 ability to follow procedures and instill confidence that any process – either development
19 of ordinances and regulations or substantive analysis of a wind energy project – could be
20 transparent, fair or reasonable. The article is submitted as Attachment Supp. JBK-2. It is
21 clear that Planning Board members are not communicating openly with each other, the
22 Selectboard, or the public regarding vital legal and policy matters.

1 In addition, during recent variance request proceedings before the Zoning Board
2 of Adjustment regarding the met tower, at least one member of the *ad hoc* committee,
3 Mary Allen, submitted a letter requesting that the ZBA reject the variance request for the
4 meteorological tower, effectively attempting to make any study of wind resources on
5 Tuttle Hill impossible. Her letter is submitted as Attachment Supp. JBK-3. In addition,
6 Ms. Pinello's husband, Peter Beblowski, also spoke out strongly against the variance
7 request and the met tower. A letter submitted by Mr. Beblowski to the ZBA is submitted
8 as Attachment Supp. JBK-4. These actions raise further questions about the *ad hoc*
9 Committee's ability to fairly and impartially consider issues related to wind energy in
10 Antrim. Relevant sections of the minutes from the ZBA meeting are submitted as
11 Attachment Supp. JBK-5.

12 **Q. Does this conclude your supplemental prefiled testimony?**

13 A. Yes.

Benjamin Pratt
P.O. Box 297 64 Little's Lane
Antrim, NH 03440-0297
Phone: (603) 588-6740
bpratt@mcttelecom.com

May 13, 2011

Antrim Planning Board
P.O. Box 517
Antrim, NH 03440

Dear Folks,

After very careful consideration, I have decided that I must resign from the ad hoc committee.

I was concerned when I saw the "charge" to the committee. To "oversee the investigation of, and to make recommendations for, comprehensive oversight procedures concerning industrial wind-energy generating facilities within the Town of Antrim" is a very substantial undertaking.

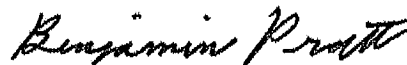
It will take a great deal of work to craft an ordinance that attempts to take advantage of the wind-energy resource in Antrim. It should try to work to the greatest advantage of all the people in the town while trying to be fair to a wind-energy developer and to the concerns of Antrim residents that would be impacted in any way by the project.

There are many technical issues that must be dealt with which will require knowledge of the advantages and limitations of various types of wind-turbine facilities. An extensive knowledge of fluid dynamics, noise propagation and numerous other disciplines will be required to adequately serve the legitimate needs of all the people who might be affected by a wind-turbine installation in Antrim.

I have no training or experience in the disciplines required for this undertaking, and it would be entirely inappropriate for me to attempt to work on such a project, knowing in advance that I lack the necessary knowledge and experience.

I feel very strongly that the engineering profession has a great responsibility to serve and protect the safety and the best interests of the community. I do not wish to do anything that would not meet the high standards that have been established.

Very truly yours,



Benjamin Pratt

ANTRIM Board to use private money for attorney

By ROBERT MICHAELSON

Monadnock Ledger-Transcript

ANTRIM — After being denied \$10,000 in funding by the Select Board on May 16, the Antrim Planning Board has voted to use private funds to pay for an attorney to advocate the board's position at the New Hampshire Site Evaluation hearings that will decide the jurisdiction of the proposed Eolian Renewable Energy wind project.

The board held a non-public session with Attorney Silas Little during its meeting on Thursday to discuss his role during the SEC process.

At the public portion of the meeting, Little said he has not received any payment from the Planning Board for his services, which cost \$200 an hour. Board member
Turn to ANTRIM.....Page 6

Planners to use private money

ANTRIM.....(from page 1)

Charles Levesque said he would volunteer to raise money toward Little's fees, which he had estimated could cost up to \$10,000.

Even though the funds are not available to pay him at the moment, Little said he would support the Planning Board during the SEC hearings. He made it clear that he was "not working pro bono" and that he was taking a risk in providing legal counsel to the board without funds being available right now.

Eolian Wind Energy has proposed 10 wind turbines from Tuttle Hill to Willard Mountain, although they have not yet applied for the project. If the SEC decides to take jurisdiction of the wind energy facility, the state would use its resources to oversee the project while consulting with boards and groups in town.

Mistrust between board members regarding two members secretly meeting with Little was discussed at length during the meeting.

Board Chair Andrew Robblee angrily spoke to Levesque and board member Martha Pinello about providing Little written testimony for the SEC hearings without notifying Robblee or other board members.

"I wasn't aware of that process, and I am chair of the board," said Robblee. "It's dirty and slimy."

Robblee said that, as chair of the board, he should have been notified if members were taking action with an attorney on behalf of the board. He said the planning staff was also not aware of the testimony.

"The non-disclosure of the amount of action that took place is very deceptive," said Robblee.

Both Pinello and Levesque apologized for not notifying Robblee of their testimony against the SEC takeover of the wind project.

Levesque said that the testimony had to be done in advance to be on time for its due date, which was Friday. He added that the board had already voted to hire Little as an attorney and he was merely doing his part.

Pinello said that she was wrong in not making her actions transparent to the rest of the board.

Planning Board alternate Steve Schacht called the actions by the two board members "deceptive" and said that it showed they don't care about working with the board as a whole.

The Planning Board has had a clear divide since Pinello and Levesque were elected in March, creating a 4-3 majority of members against the SEC taking over jurisdiction of the Eolian's proposal. They are joined by members Jesse Lazar and David Dubois, who have consistently voted alongside Pinello and Levesque on every vote regarding the wind energy issue.

Board members Robblee, Scott Burnside, and Selectman John Robertson, who serves as the Select Board's representative to the Planning Board, have voiced their support of the SEC taking jurisdiction of the facility. Schacht, who as an alternate only votes when he is filling in for an absent member, has also supported the SEC taking jurisdiction.

They have also shown clear opposition in decisions that support removing the SEC's involvement with the project, including hiring an attorney to represent the board during the SEC process.

Both Lazar and Dubois admitted to being aware of the testimony by Pinello and Levesque and not notifying other members of the board.

Dubois said he assumed the other member's testimony against the SEC takeover was personal and not associated to the Planning Board.

Lazar told Robblee that he would not go "out of my way" to share information with board members who are in support of the SEC takeover.

He also said that he did not want Robertson to be made aware of the testimony because it is a "strategic situation." The Select Board is in support of the SEC taking jurisdiction and has opposed the Planning Board's status as an intervenor in the process.

Robertson said that the actions of a few members were done "behind the back" of the rest of the board and the attorney should be working with the chair of the board.

"Who is the person [the attorney] needs to contact? It is the chair of the board. It is not one or two Planning Board members who will sit down and do it when we are not aware," said Robertson.

Both Pinello and Levesque ran on the platform of local regulation for wind energy in the town. Prior to his election, Levesque had also drafted the initial letter that pointed out a procedural error that caused amendments to ordinances, including those related to wind energy, to be removed from the March ballot.

Once elected, Levesque and Pinello joined Lazar and Dubois in voting down a request for a special town meeting proposed by the previous Planning Board and approved by the Select Board, which would have allowed the ordinance and definition changes regarding wind energy and other issues to be voted on by the public later this year.

The board has recently formed an ad hoc committee to come up with more a more detailed ordinance and definitions regarding wind energy in preparation of Eolian's future application. They hope to have these ready for voters to decide on at a proposed special town meeting later this year.

MARY ALLEN
21 Summer Street
Antrim, NH 03440

ZONING BOARD OF ADJUSTMENT
MAY 10 2011

May 10, 2011

John Kendall, Chairman
Antrim Board of Adjustment
Town Offices
P.O. Box 517
Antrim, NH 03440

Dear Mr. Kendall and members of the Antrim Board of Adjustment:

I am unable to attend tonight's public hearing on Antrim Wind Energy LLC's request for a use variance and area variance. I have a prior commitment I must honor.

I wish the following statement be entered into the record of this case. These arguments speak directly to two sections of the presentation made by Antrim Wind Energy LLC at the public hearing on May 3, 2011, and also refer to the variance application submitted by Antrim Wind Energy LLC on March 28, 2011.

2. The variance is consistent with the spirit of the ordinance.

In its arguments on this important condition, Antrim Wind Energy LLC (AWE) fails to mention how its project complies with the spirit of the Antrim Zoning Ordinance as it pertains to Rural Conservation District.

And that is really the very heart of this matter. AWE is not asking for a decision on how its plans fit the Antrim Master Plan or various state laws on renewable energy. AWE is asking for a variance to the requirements of a **specific zoning district**.

The purpose of the Rural Conservation District is "to protect, conserve and preserve the remote mountainous portions of Antrim from excessive development pressures and/or activities that would be detrimental to the unique environmental characteristics and qualities of this district and detract from the peaceful enjoyment and tranquility that this district affords local residents." (Antrim Zoning Ordinance IX-1, adopted March 14, 1989)

Principal permitted uses in the Rural Conservation District are: single-family dwellings, schools, churches, public utilities, home-based businesses, kennels, recreational facilities, farms and agricultural activities, roadside stands, stables,

farm-worker housing. The lists of accessory uses and additional uses by special exception are similar. (Antrim Zoning Ordinance IX-1, Rural Conservation District.)

There is no provision for large-scale commercial, industrial or manufacturing uses in the Rural Conservation District. In fact, such uses are directly contrary to the stated purpose of this district.

Nowhere in the arguments presented May 3rd or in their submitted application does AWE address this key issue. And by quoting various state laws supporting renewable energy (reference by AWE to RSA 674:17(j)) and RSA 672:1 III-a) and pointing to sections of the Antrim Master Plan pertaining to "sustainability" and "Encourage Renewable Energy Resources," the applicant is leading the Board away from this central argument.

Industrial uses are permitted in other zoning districts in Antrim. They are not permitted in the Rural Conservation District. And it is to this issue that the Board must direct its attention.

5. Literal enforcement of the ordinance results in unnecessary hardship.

Under this section AWE states that the "literal interpretation of the ordinance results in unnecessary hardship" and asks the Board to consider the "unique conditions of property." (quotes taken from AWE application of March 28, 2011, section 5, first sentence).

According to an article titled "New Law Defines 'Unnecessary Hardship'," published by the NH Local Government Center in 2009: "To establish unnecessary hardship, the applicant in every case will first have to demonstrate that there are 'special conditions of the property that distinguish it from other properties in the area.' The property must be different, in a meaningful way, from other properties in the area, and must be burdened more severely by the zoning restriction."

The lots being leased by AWE are hardly unique to the Rural Conservation District, or for that matter to this region of New Hampshire. There is nothing unique in these parcels or their situation that makes them usable only for commercial wind energy facilities.

While AWE sees this mountain ridge as the perfect site for their operation – citing elevation, nearness to transmission lines, access to transportation – those are business decisions and do not make create an "unique" situation for hardship. There is nothing to prevent these leased parcels from being used for many of the permitted uses spelled out in the Rural Conservation District. Abutters have had no problems enjoying their land under those zoning provisions.

Further, the suggestion that this site might contain the "only parcels in Hillsborough County" suitable for commercial wind energy cannot be substantiated. Nearby Crotched Mountain was the home of one of the first commercial wind farms in the state, although that venture was short-lived because the site was too windy.

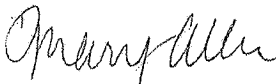
One nearby example of a similar zoning case clearly points to these issues:

In the case of Garrison vs. Henniker, the N.H. Supreme Court upheld a Superior Court decision that overturned the granting of two variances to allow Green Mountain Explosives Inc. (GME) to store and blend explosives on a 1,617-acre, remote parcel. In that decision, the lower court found that "the burden must arise from the property and not from the individual plight of the landowner." (quoting Harrington v. Town of Warner, 152 N.H. 74, 81, 872 A 2d 900 (2005)). The N.H. Supreme Court upheld that decision.

Further, in the same case the lower court opined: "The problem with GME's application and the record in this case is that, while they support a conclusion that the zoning restriction interfere with GME's proposed use of the property, they do not support a finding that the restrictions interfere with the reasonable use of the property. That is, there is no evidence in the record that the property at issue is different from other property zoned rural residential. While its size may make it uniquely appropriate for GME's business, that does not make it unique for zoning purposes." That opinion was also upheld.

In the case now before the Antrim Board of Adjustment, the same standards for hardship must apply. The applicant has not offered examples of uniqueness or hardship that meet these tests, and thus this condition for a variance has not been demonstrated.

Thank your for your consideration of these points,



Mary Allen
21 Summer St
Antrim, NH 03440

5/10/11

John Kendall, Chairman
Antrim Zoning Board of Adjustment

Re: Antrim Wind Energy, LLC Request Variance of Use and Height in the Rural Conservation District

Dear Mr. Kendall and Members of the ZBA,

My name is Peter Beblowski. I live at 318 Smith Road in Antrim.

Thank you for providing me an opportunity to speak in opposition to this request. I have a copy here for each of the board members and that these comments are part of the record of this proceeding. I will also supply the secretary with an electric copy of my comments.

I would like to start by saying that I am generally in favor of wind generated power but not all sites are appropriate for meteorological tower (met tower) sitting or industrial wind power generation.

I have four topics I would like to address this evening. They focus on my concern for the proceeding themselves, the character of the site within the district and the hardship on the part of the applicant.

1. I want to express my deep concern regarding comments made at the last meeting/hearing (on May 3, 2011) by the attorney for the applicant, and members of the ZBA regarding the rehearing of this application. It was stated that the Town attorney met with attorneys from Orr & Reno and they decided that this rehearing of this application would help to clear up problems of the previous applications and save the town and applicant money. While I am a fiscal conservative, but since when do out of town attorneys get to decide what is in the best interest of the Town of Antrim? I am very concerned that this board, our community's land use court has accepted an application with a pre-prescribed outcome.
It is this board's duty to be an impartial board. The mere appearance of a pre-prescribed outcome or reason for hearing this case taints the impartiality of the board.
2. The applicant has requested a height and use variance. The applicant received a height variance previously. This application has noted that there is not substantial change in conditions since the granting of the original height variance. Thus re-hearing this height variance is contrary to NH court rulings unless there are substantial changes which warrant a rehearing.
3. The spirit of the rural conservation district was established in 1989 with the well written purpose of the Rural Conservation District (RCD). And I quote, "the RCD is intended to protect, conserve and preserve the remote mountainous portions of Antrim from excessive development pressures and/or activities that would be detrimental to the unique environmental characteristics and qualities of this district and detract from the peaceful enjoyment and tranquility that this district affords local residents." The installation of a met tower may not greatly violate the purpose of the zone, but as it is integrally linked with the associated industrial scale wind farm, it most certainly has to be considered as violating the zone.

I would also like to speak briefly about the location of this project. It abuts a nearly 2,000 acre Audubon Wildlife Sanctuary at Willard Pond in which many people have spent a great deal of time and effort in providing a habitat in which breeding pairs of loons nest, raise their young and return year after year.

Additionally, this project if allowed to go forward closely sits adjacent to the Robb Reservoir Waterfowl Management Project. This 1600+ acre property was a project deemed of national importance and brought together a partnership of federal, state and private organizations which included and not limited to: US Fish & Wildlife, NH Fish & Game, NH LCHIP, the Town of Stoddard, the Harris Center, Audubon Society, Ducks Unlimited, The Nature Conservancy and Monadnock Conservancy. This project cost these groups nearly 4 million dollars to invest in this property. I do not think it would be right to cite wind turbines in close proximity to such a property. It is contrary to our zoning and the investment in nature made by the above named stakeholders.

4. Hardship for the applicant; the applicant chose this location for business reasons. This does not equal a hardship perhaps a gamble but not a hardship. There are wind resources located elsewhere in NH and the region. AWE, LLC has leased land in the Rural Conservation District. The owners of the land leased by AWE, LLC are free to use their land in the methods prescribed by Antrim's Zoning Ordinance. This was a business decision made by AWE to lease the properties in advance of project approval. It is not the responsibility of the ZBA to right business choices that are contrary to our zoning ordinances.

Peter Beblowski
318 Smith Road
Antrim, NH 03440

ANTRIM ZONING BOARD OF ADJUSTMENT

May 10, 2011 Meeting
Variance #2011-04ZBA Antrim Wind Energy LLC

Members & Staff Present:

Diane Chauncey (Staff) Doug Crafts (Member) John Giffin (Member)
Ron Haggett (Member) John Kendall (Chair)
Frank Scales (Member)

Members & Staff Absent: Ray Ledgerwood (Alternate)

Public Attendees:

Richard Uchida	Joshua Pantesco	Jack Kenworthy	John Soinien
James Hankard	Sam Apkarian	Rob Michaelson	Unknown lady (long hair)
Michael Pon	Gordon Webber	Clark Craig	Bob Cleland
Shelley Nelkens	Doug Stone	Loranne Block	Margaret Warner
Richard Block	Martha Pinello	Peter Beblowski	Mark Schaefer
Brenda Schaefer	Bob Bernstein	Janis Longgood	Elsa Voelcker

7:00 PM –Review Session:

- Review Minutes of May 3, 2011
- Review Public Hearing materials
- Appoint alternates to sit for absent members – not necessary – Ms. Nelkens chose to sit in the audience so that she could comment and ask questions

7:15 Public Meeting Continued Meeting from May 3, 2011

Case # 2011 -04ZBA concerning a request by Antrim Wind Energy, LLC for a variance pursuant to Article IX B. (Use) and Article IX C. 8 (Height) of the Town of Antrim Zoning Ordinance, to construct and operate a temporary meteorological tower at 354 Keene Road, Antrim, NH (Map212, Lot 30) in the Rural Conservation District.

Chair Kendall opened the meeting at 7:18pm. He reviewed the meeting procedure.

Public Hearing:

Abutters in favor: None

Abutters in opposition:

Mr. Craig

Mr. Beblowski

He read from a prepared letter that he wished to become a part of the record. He said that he was generally in favor of wind generated power but that not all sites are appropriated for meteorological tower sitting or industrial wind power generation. He had four topics to address:

1. Concern that the ZBA has accepted an application with a pre-prescribed outcome – the mere appearance of a pre-prescribed outcome or reason for hearing this case taints the impartiality of the Board.
2. Re-hearing this height variance is contrary to the NH court rulings unless there are substantial changes which warrant a re-hearing.
3. Definition of the RCD and the location of the project which abuts 2000 acre Audubon Wildlife Sanctuary, and multiple other areas of natural importance. Although the Met tower may not greatly violate the purpose of the zone, but as it is integrally linked with the associated industrial scale wind farm, it most certainly has to be considered as violating the zone.
4. “Hardship for the applicant; the applicant chose this location for business reasons. This does not equal a hardship, perhaps a gamble, but not a hardship.

For the above reasons, Mr. Beblowski urged the ZBA to deny the application for the reasons stated above.

Mr. Willeke

He stated that he was in favor of granting the variance for the height and use of a temporary structure in order to test for something that may or may not be an allowed use. He continued that land use and regulations change over time. The reasonable thing to do would be to allow the testing and collection of the data

Ms. Allen

Ms. Allen’s letter was read by the Secretary. She stated that her letter should be entered into the record of this case. Her arguments spoke to two sections of the presentation made by Antrim Wind Energy LLC at the public hearing on May 3, 2011. The following lists some of the letter’s points:

1. *Criteria #2 [The variance is consistent with the spirit of the ordinance.e]*
“AWE fails to mention how its project complies with the spirit of the ordinance...Industrial uses are permitted in other zoning districts in Antrim. They are not permitted in the RCD, and it is to this issue that the ZBA must direct its attention.”
2. *Criteria #5 [Literal enforcement of the ordinance results in unnecessary hardship.]*
“The lots being leased by AWE are hardly unique to the RCD, or for that matter to this region of NH. There is nothing unique in these parcels or their situation that makes them usable only for commercial wind energy facilities.[Several Court cases were noted – Garrison v. Henniker and Harrington v. Town of Warner]. The applicant has not offered examples of uniqueness or hardship that meet these tests, and thus this condition for a variance has not been demonstrated.”

Mr. Hankard

He asked the ZBA if any of them had spent time in Lempster. He said that he felt the ZBA was not as informed as they should be. The whoomph sound will drive people out of their homes. He asked the Board to take a poll. He stated that powerful information had been given this evening and that the Board should not vote this evening.

Ms. Block