



William L. Chapman
George W. Roussos
Howard M. Moffett
James E. Morris
John A. Malmberg
Martha Van Oot
Douglas L. Patch
James P. Bassett
Emily Gray Rice
Steven L. Winer
Peter F. Burger
Lisa Snow Wade
Susan S. Geiger
Jennifer A. Eber
Jeffrey C. Spear
Connie Boyles Lane
Judith A. Fairclough
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

Lawrence A. Kelly
(Of Counsel)

May 4, 2012

Via Hand Delivery and Electronic Mail

Ms. Jane Murray, Secretary
New Hampshire Site Evaluation Committee
N.H. Department of Environmental Services
29 Hazen Drive
Concord, NH 03302-0095

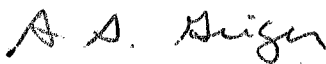
***Re: Docket 2012-01 - Application of Antrim Wind Energy, LLC
for a Certificate of Site and Facility for a Renewable Energy Facility***

Dear Ms. Murray:

Enclosed for filing with the New Hampshire Site Evaluation Committee in the above-captioned matter please find an original and one copy of Applicant's Responses to Petitions/Motions for Intervention Filed on or After April 26, 2012. A copy of the enclosed pleading is also being hand-delivered to Chairman Ignatius who is the Presiding Officer in this docket.

Please contact me if there are any questions about this filing. Thank you.

Very truly yours,


Susan S. Geiger

Enclosure
cc: Service List
880985__1

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

Docket No. 2012-01

Re: Antrim Wind Energy, LLC

**APPLICANT'S RESPONSES TO
PETITIONS/MOTIONS FOR INTERVENTION
FILED ON OR AFTER
APRIL 26, 2012**

NOW COMES Antrim Wind Energy, LLC ("the Applicant"), by and through its undersigned attorneys, and responds to the petitions or motions for intervention filed in the above-captioned docket on or after April 26, 2012 by stating as follows:

I. Procedural Background and Intervention Requests

By order dated March 20, 2012, a deadline of May 1, 2012 was established for the filing of intervention requests in the above-captioned docket. Prior to April 26, 2012, intervention petitions were filed by the Town of Antrim, Harris Center for Conservation Education and the Antrim Planning Board. The Applicant has made timely responses to those petitions in separate pleadings filed April 15, 2012, April 16, 2012 and April 19, 2012, respectively.

Between April 26, 2012 and May 1, 2012, the following entities or persons filed petitions or motions for intervention: Abutting Property Owners - Audubon Society of New Hampshire, Brenda Schaefer, Mark Schaefer, Nathan Schaefer, Janice Duley Longgood, and Craig A. Clark, Jr.; Antrim Conservation Commission; Stoddard Conservation Commission; Industrial Wind Action Group; and Non-Abutting Property

Owners - Samuel E. and Michele D. Apkarian, Richard Block and Loranne Carey Block, Clifton R. Burdette, Robert Cleland, Robert L. Edwards and Mary E. Allen, James A. Hankard, Annie Law, Katharine Elizabeth Sullivan, and Elsa Voelcker. On May 2, 2012, the Applicant received a Petition to Intervene filed by the Appalachian Mountain Club. The Applicant responds to each of these requests as set forth below.

II. Standard for Granting Intervention Petitions

The standard for granting petitions for intervention is set forth in RSA 541-A:32, I. and in the rules of the New Hampshire Site Evaluation Committee ("SEC") at N.H. Admin. Rule Site 202.11. The presiding officer must grant a petition to intervene if:

- (1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's order of notice of the hearing, at least 3 days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

RSA 541-A:32, I.

The Applicant recognizes that in the past the Committee has interpreted section II. of RSA 541-A:32 as providing it with discretionary authority to allow petitions for intervention that do not meet the standards under RSA 541-A:32, I. *See, e.g., Application of Granite Reliable Power, LLC*, SEC Docket No. 2008-04, Order Granting Petitions to Intervene and Revising Procedural Schedule (Oct. 14, 2008), pp. 5-6. The Applicant respectfully disagrees with that interpretation. Instead, the Applicant submits that discretionary nature of RSA 541-A:32, II. is temporal rather than plenary, i.e. it is limited

to late-filed intervention petitions that must, at the outset, meet the requirements of RSA 541-A:32, I. See RSA 541-A:32, II. (“presiding officer may grant one or more petitions for intervention *at any time*”[emphasis added]). Under this interpretation, the first paragraph of RSA 541-A:32 sets forth the standard that is to be used to determine whether to allow an intervention, while the second paragraph sets forth the standard to be used, in conjunction with the first paragraph, in determining whether to allow a late request for intervention.

The structure and language of RSA 541-A:32 reveal that the provisions of section II. are applied only if the request for intervention is late-filed. This interpretation is further supported by the Committee’s rules which authorize the Presiding Officer to grant “late-filed petitions to intervene pursuant to RSA 541-A:32, II.” N.H. Admin. Rule Site 202.11(c). Accordingly, in ruling upon all requests for intervention, the Presiding Officer must make findings that the parties seeking intervention meet all of the intervention standards under RSA 541-A:32, I. (i.e. that the petitions have been filed more than 3 days prior to the hearing with copies mailed to all parties, that the petition states facts demonstrating rights, duties, privileges, or other substantially affected interests, and that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing intervention.) The Petitioner believes that the discretionary provisions of RSA 541-A:32, II. should, as the Committee’s rules indicate, only be invoked in the event that a petition for intervention is late-filed.

III. Petitions/Motions For Intervention By Abutting Property Owners

A. Audubon Society of New Hampshire (“ASNH”)

1. The Applicant does not object to ASNH’s Petition for Intervention so long as ASNH’s participation in the above-captioned docket is limited in accordance with RSA 541-A:32, III. (a) to the issues relating to ASNH’s interests as the owner of property (i.e. the 1,126 acre dePierrefeu-Willard Pond Sanctuary) that abuts the Antrim Wind Project.

2. To the extent that ASNH seeks intervention because it “protects” additional properties that do not abut the Project, the Applicant objects to the Petition for its failure to explain ASNH’s protection obligations or to state facts indicating how such obligations may be affected by this proceeding as required by RSA 541-A:32, I.(b).

3. In addition, the Applicant objects to the Petition to the extent it asserts that ASNH has an “interest” in this proceeding because it “has adopted a wind power policy pursuant to which it intends to review applications of New Hampshire wind power projects for their impacts on wildlife and the environment.” *Petition for Intervention By Audubon Society of New Hampshire*, ¶ 15. The fact that ASNH has adopted such a policy and intends to review the Antrim Wind Project’s impacts does not constitute a valid basis for intervention. The legislature has charged the New Hampshire Site Evaluation Committee, not ASNH, with the responsibility of evaluating wildlife, environmental and other impacts of energy projects. *See* RSA 162-H. Thus, ASNH need not and should not participate in this docket for the purpose stated in paragraph 15 of its Petition.

4. If ASNH's Petition is granted, the Applicant respectfully requests that ASNH's participation in the above-captioned docket be further limited in accordance with RSAs 541-A:32, III. (b) and (c) as the Presiding Officer deems appropriate.

B. Brenda Schaefer, Mark Schaefer, Nathan Schaefer, Janice Duley Longgood and Craig A. Clark, Jr.

1. The Applicant does not object to these Abutters' requests for intervention so long as their participation in the above-captioned docket is limited in accordance with RSA 541-A:32, III. (a) to the issues relating to their interests as owners of properties that abut the Antrim Wind Project.

2. If these requests for intervention are granted, the Applicant respectfully requests these Abutters' participation in the above-captioned docket be consolidated and/or limited in accordance with RSAs 541-A:32, III. (b) and (c) as the Presiding Officer deems appropriate. More specifically, the Applicant requests that the Presiding Officer order these Abutters to: designate a spokesperson for the group and notify this docket's Service List of such designation as soon as possible; conduct discovery as a group; and combine their presentation of witnesses, argument, cross-examination and all other participation in this docket.

IV. Antrim Conservation Commission ("ACC")

1. The Applicant objects to the ACC's Petition for Intervention because it fails to meet the intervention standards articulated in RSA 541-A:32, I. (b). More specifically, the ACC has not demonstrated that its rights, duties, privileges, immunities or other substantial interests may be affected by this proceeding, or that it qualifies for intervention under any provision law. Although the ACC's petition states that the ACC's

statutory role and purpose “is to advocate for the maintenance, preservation and protection of the Town’s Natural Resources” *ACC Petition*, ¶ 1, nothing in RSA 36-A confers such authority upon municipal conservation commissions. The duties of such commissions are enumerated in RSAs 36-A:2 and 36-A:4 and include activities such as research, coordination with unofficial bodies, preparing and distributing documents, and keeping an index of open space and wetlands. *See* RSA 36-A:2. Conservation Commissions are also authorized to make recommendations to municipal governing boards or the Department of Resources and Economic Development for programs to protect, develop or better utilize marshlands, swamps and other wetlands. *Id.* Since municipalities (and by logical extension, subunits such as conservation commissions) “have only those powers that the state grants to them, the New Hampshire Supreme Court in recent years has repeatedly held that there must be enabling legislation for various municipal activities.” P. Loughlin, *New Hampshire Practice, Local Government Law* §743 (Third Ed. 2011) (citations omitted). Thus, in the absence of express statutory authority to participate in adjudicative proceedings such as the instant action, the ACC lacks authority to do so. *See, e.g., Hooksett Conservation Comm’n v. Hooksett Zoning Bd. of Adjustment*, 149 N.H. 63, 68 (2003) (conservation commission lacked statutory authority to move for rehearing and to appeal zoning board of adjustment decision to Superior Court).

2. Assuming, *arguendo*, that the ACC has met the intervention criteria stated in RSA 541-A:32, I. (b), its intervention petition should nonetheless be denied because ACC’s intervention will impair the orderly and prompt conduct of this proceeding. *See* RSA 541-A:32, I. (c). The Antrim Board of Selectmen has petitioned to intervene in this

proceeding, and the Applicant has not objected. As the municipal governing body of the Town of Antrim, the Board of Selectmen not the ACC has the authority to represent the citizens of Antrim in this proceeding and the Site Evaluation Committee must give “due consideration” to Selectmen’s views in determining whether the Antrim Wind Project will unduly interfere with the orderly development of the region. *See* RSA 162-H:16, IV (b). Thus, because the ACC’s participation could create redundancies and inefficiencies in light of the Selectmen’s participation, the role of Counsel for the Public and the participation of the Antrim Planning Board (either as an intervenor or as a municipal planning commission whose views on the orderly development of the region must be given “due consideration” under RSA 162-H:16, IV (b)) , the ACC’s Petition should be denied. This result is appropriate as it will help minimize “wrangling among governmental units.” *Hooksett Conservation Comm’n v. Hooksett Zoning Bd. of Adjustment*, 149 N.H. at 68.

V. Stoddard Conservation Commission (“SCC”)

1. The Applicant objects to the SCC’s Motion to Intervene for the same reasons stated in section IV. 1., above.
2. In addition to the SCC’s lack of statutory authority to intervene in these proceedings, the SCC has not provided any information to indicate that it has been authorized by the Stoddard Selectmen to represent the interests of the Town of Stoddard. Rather, SCC’s Motion indicates that the SCC is seeking intervention “to protect the integrity of conservation lands of ‘Super Sanctuary’ that will be impacted by this project” *SCC Motion to Intervene*, ¶ 11. As this interest is shared by other groups that are seeking intervention, e.g. the Harris Center for Conservation Education and the Audubon Society

of New Hampshire, SCC's participation would be duplicative and therefore would impair the orderly and prompt conduct of the proceedings.

3. Properties comprising the Antrim Wind Project exist entirely within the Town of Antrim, not Stoddard. Moreover, the Project's visual and sound impact analyses indicate that the Project will have very limited impacts on properties located within the Town of Stoddard. *See Application*, Appendices 9A and 13A. For these as well as the reasons set forth above, the SCC's Motion to Intervene should be denied.

VI. Industrial Wind Action Group ("IWAG")

1. The Applicant objects to IWAG's Petition to Intervene because does not meet the standards articulated in RSA 541-A:32, I. (b) and (c). More specifically, IWAG has not demonstrated that its rights, duties, privileges, immunities or other substantial interests may be affected by this proceeding, or that it qualifies for intervention under any provision law. In addition, IWAG's intervention is not in the interests of justice and will impair the orderly and prompt conduct of the proceedings.

2. In support of its Petition, IWAG states that it "is a national organization comprised of subscribers who reside throughout the United States, including neighbors to the lands on which the ... facilities owned by Antrim Wind, LLC will be constructed."

Petition, ¶ 1. The Petition also states that IWAG's "subscribers have a strong interest in ensuring wind energy proposals are considered in a deliberate and comprehensive manner ..." and that up to one third of IWAG's subscribers will be "substantially affected by the outcome of this proceeding" because they live within the ISO-NE control area. *Id.* The Petition lists several subjects about which IWAG's "subscribers" are interested, *see Petition*, ¶ 1. A. and B, and alleges that no other party can adequately represent IWAG's

concerns regarding whether the benefits of wind projects justify the economic costs and property impacts. *See Petition*, ¶ 2.

3. It has been previously determined that IWAG has not demonstrated rights, duties, privileges, immunities or other substantial interests that require it to be granted intervention in a proceeding similar to this one. *Application of Granite Reliable Power, LLC*, SEC Docket No. 2008-04, Order Granting Petitions to Intervene and Revising Procedural Schedule (Oct. 14, 2008), pp. 5-6. Instead, IWAG was allowed to intervene under a flawed interpretation of RSA 541-A:32, II (as explained in Section II, *supra*) and because the number of participants in the proceeding was “reasonably limited.” *Id.* at 6. Given that 20 intervention requests have been filed in this docket thus far, the rationale for allowing IWAG’s intervention in the Granite Reliable docket does not exist here. Accordingly, IWAG should not be allowed to intervene in this docket.

4. The issues of concern expressed in IWAG’s Petition are common to the public at large. As such, they will be adequately protected by Counsel for the Public’s participation in these proceedings. In these circumstances, IWAG’s Petition should be denied. *See Application of Laidlaw Berlin BioPower, LLC*, SEC Docket No. 2009-02, Order on Pending Motions (March 24, 2010) pp. 5-6 (denying intervention petition of a host community resident for his failure to state substantial interest that differs from the public interest, and because such interest will be adequately represented by Counsel for the Public.)

5. In addition, inasmuch as IWAG has not demonstrated a unique or substantial interest that is indistinguishable from the public’s interests or those of other intervenors, IWAG’s participation will create redundancies and inefficiencies. Such participation will

likely duplicate the efforts of Counsel for the Public and others whose interests legitimately qualify them for intervention. It will also compel the Applicant to answer additional, duplicative data requests and pleadings. Because IWAG's intervention will impair the prompt and orderly conduct of the proceedings, its Petition should be denied.

6. Lastly, IWAG states that it is appropriate for it "to participate in this proceeding in order to provide information on whether this project will serve the interests of [its] subscribers." *Petition*, ¶ 3. However, it should be noted that IWAG need not be an intervenor in order to provide the Subcommittee with information. *See, e.g.*, RSA 162-H:6-a, VII. (members of the public may provide comments on application at adjudicative hearing) and RSA 162-H:10, III. (SEC shall consider and weigh written information and reports submitted by members of the public).

7. For all of the reasons set forth above, IWAG's Petition to Intervene should be denied.

VII. Non-Abutting Property Owners

A. Robert L. Edwards and Mary E. Allen

1. The Applicant objects to the Petition for Intervention filed by Mr. Edwards and Ms. Allen because it does not meet the standards for intervention under RSA 541-A:32, I. More specifically, the Petition fails to demonstrate that these individuals' rights, duties, privileges, immunities or other substantial interests may be affected by this proceeding, or that they qualify for intervention under any provision law.

2. The Petition filed by Mr. Edwards and Ms. Allen asserts that their "rights, duties, privileges, immunities, or substantial interests as residents, registered voters, town officials, town meeting members, property owners and citizens may be affected by these

Docket 2012-01 proceedings.” *Petition for Intervention by Robert L. Edwards and Mary E. Allen*, at 3. The Petition does not indicate with particularity how these Petitioners’ property or other substantial interests will be affected by the instant proceedings.

3. Because the “interests” described by Mr. Edwards and Ms. Allen are indistinguishable from those of the public at large, and because Counsel for the Public can adequately protect such interests, the Edwards and Allen Petition for Intervention should be denied. *See Application of Laidlaw Berlin BioPower, LLC*, SEC Docket No. 2009-02, Order on Pending Motions (March 24, 2010) pp. 5-6 (denying intervention petition of a host community resident for his failure to state substantial interest that differs from the public interest, and because such interest will be adequately represented by Counsel for the Public.)

B. Katharine Elizabeth Sullivan

1. The Applicant objects to Ms. Sullivan’s Motion to Intervene because it fails to meet the standards for intervention under RSA 541-A:32, I. More specifically, the Petition fails to demonstrate that Ms. Sullivan’s rights, duties, privileges, immunities or other substantial interests may be affected by this proceeding, or that she qualifies for intervention under any provision law.

2. Ms. Sullivan’s Motion states that she is not an abutter to the Project site, but that her property is “entirely surrounded by a major abutter, N.H. Audubon.” The Motion also states that Audubon’s dePierrefeu wildlife sanctuary “has been ably protected and managed by N.H. Audubon and N.H. Fish and Game.” *Motion to Intervene Pro Se of Katharine Elizabeth Sullivan*, ¶ 1.

3. Audubon Society of New Hampshire has petitioned to intervene in this docket, in part, to protect its interests in the dePierrefeu Sanctuary, and the Applicant does not object to Audubon's intervention for that purpose.

4. Because Ms. Sullivan is not an abutter, and because her interests are aligned with and ably protected by Audubon Society of New Hampshire, her intervention request should be denied, as her participation would duplicate that of Audubon Society of New Hampshire and therefore impair the orderly and prompt conduct of the proceedings. *See* RSA 541-A:32, I. (c).

5. In the alternative, if Ms. Sullivan's Motion is granted, she should be required to combine her participation in this docket with Audubon Society of New Hampshire, or others whose interests are similar to hers. In addition, her participation should otherwise be limited as the Presiding Officer deems appropriate pursuant to RSA 541-A:32, III.

C. Residents of North Branch Region of Antrim

1. The Motions to Intervene filed by the following individuals all contain very similar provisions and indicate that the movants are all residents of the "North Branch Region" of Antrim: Samuel E. and Michele D. Apkarian; Richard and Lorraine Carey Block; Clifton R. Burdette; Robert Cleland; James A. Hankard; Annie Law; and Elsa Voelcker. None of these individuals owns property that abuts the Antrim Wind site, but all of them indicate that they live within 1.5 miles of the site, except for Mr. Hankard who states that he lives "in close proximity" to the Project.

2. The Presiding Officer in SEC Docket No. 2011-02 determined that "merely residing in Antrim does not create sufficient interest to justify participation as an intervenor" in the proceeding concerning whether the SEC should assert jurisdiction over

the Antrim Wind Project. *Petition for Jurisdiction Over Renewable Energy Facility Proposed by Antrim Wind Energy, LLC*, SEC Docket No. 2011-02, Order on Motions to Intervene and Further Procedural Order (May 6, 2011) at 5. However, the Presiding Officer also found that each of the non-abutting property owners who had moved for intervention in Docket No. 2011-02, lived sufficiently close to the Project to establish an interest in the outcome of the jurisdictional proceeding.

3. Being mindful of the determinations made in Docket No. 2011-02 with respect to intervention requests of non-abutting property owners, the Applicant takes no position on the Apkarian, Block, Burdette, Cleland, Hankard, Law and Voelcker Motions. However, if these individuals are allowed to intervene, the Applicant respectfully requests that the Presiding Officer order these non-abutting property owners to: designate a spokesperson for the group and notify this docket's Service List of such designation as soon as possible; conduct discovery as a group; and combine their presentation of witnesses, argument, cross-examination and all other participation in this docket. In addition, their participation should otherwise be limited as the Presiding Officer deems appropriate pursuant to RSA 541-A:32, III.

VIII. Appalachian Mountain Club ("AMC")

1. The Applicant objects to AMC's Petition to Intervene because it fails to meet the standard for intervention under RSA 541-A:32, II. More specifically, AMC has not demonstrated that its rights, duties, privileges, immunities or other substantial interests may be affected by this proceeding, or that it qualifies for intervention under any provision law. In addition, AMCs intervention is not in the interests of justice and will impair the orderly and prompt conduct of the proceedings.

2. The “interests” described by AMC are indistinguishable from those of the public at large. Because Counsel for the Public can adequately protect such interests, AMC’s Petition for Intervention should be denied. *See Application of Laidlaw Berlin BioPower, LLC*, SEC Docket No. 2009-02, Order on Pending Motions (March 24, 2010) pp. 5-6 (denying intervention petition of a host community resident for his failure to state substantial interest that differs from the public interest, and because such interest will be adequately represented by Counsel for the Public.)

3. It has been previously determined that AMC has not demonstrated rights, duties, privileges, immunities or other substantial interests that require it to be granted intervention in a proceeding similar to this one. *Application of Granite Reliable Power, LLC*, SEC Docket No. 2008-04, Order Granting Petitions to Intervene and Revising Procedural Schedule (Oct. 14, 2008), pp. 5-6. Instead, AMC was allowed to intervene under a flawed interpretation of RSA 541-A:32, II (as explained in Section II, *supra*) and because the number of participants in the proceeding was “reasonably limited.” *Id.* at 6. Given that 20 intervention requests have been filed in this docket thus far, the rationale for allowing AMC’s intervention in the Granite Reliable docket does not exist here. Accordingly, AMC should not be allowed to intervene in this docket.


4. AMC’s interests are similar to those expressed by Audubon Society of New Hampshire. Allowing AMC to intervene in addition to Audubon would likely create redundancies and inefficiencies that would impair the orderly and prompt conduct of these proceedings which is impermissible under RSA 541-A:32, I. (c). Moreover, AMC need not intervene in order to provide comments and other information to the

Subcommittee. *See* RSAs 162-H:6-a, VII. and 162-H:10, III. Accordingly, AMC's Petition should be denied.

WHEREFORE, the Applicant respectfully requests that the Presiding Officer:

- a. Deny the Petitions or Motions for Intervention filed by Antrim Conservation Commission, Stoddard Conservation Commission, Industrial Wind Action Group, Robert L. Edwards and Mary E. Allen, Katharine Elizabeth Sullivan and Appalachian Mountain Club; and
- b. Grant such further relief as requested herein and as deemed appropriate.

Respectfully submitted,
Antrim Wind Energy, LLC
By its Attorneys,
Orr and Reno, P.A.

By: 
Susan S. Geiger
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550
603-223-9154
sgeiger@orr-reno.com

Dated: May 4, 2012

Certificate of Service

I hereby certify that on this 4th of May, 2012, a copy of the foregoing Response was sent by electronic mail or U.S. Mail, postage prepaid, to persons named on the Service List of this docket, excluding Committee Members.


Susan S. Geiger

