

1 Pre-filed Testimony of Mary E. Allen

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**THE STATE OF NEW HAMPSHIRE**

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**SITE EVALUATION COMMITTEE**

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**Docket No. 2012-01**

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**Re: Antrim Wind Energy, LLC**

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**PRE-FILED TESTIMONY OF MARY E. ALLEN**

2  
3 July 31, 2012

4 **Q. Please state your name and address for the record.**

5 A. Mary E. Allen, 21 Summer Street, Antrim, New Hampshire.

6  
7 **Q. How long have you lived at your present home?**

8 A. Since February, 1975 ... thirty-seven years.

9  
10 **Q. What is the purpose of this testimony?**

11 A. I wish to provide the N.H. Site Evaluation Committee with certain  
12 information regarding Antrim Wind Energy's application as it concerns  
13 economic benefits, or shortfalls, for Antrim. My primary concern is potential  
14 taxpayer impacts from the Payment In Lieu Of Taxes (PILOT) agreement and the  
15 Alternative PILOT agreement, both executed by the Antrim Board of Selectmen  
16 and Antrim Wind Energy LLC on June 20, 2012. In addition, I hope during this  
17 permitting process that the N.H. Site Evaluation Committee will consider setting  
18 conditions that modify some aspects of the operating agreement (the  
19 "Agreement") signed between Antrim Wind Energy LLC and the Town of  
20 Antrim on March 8, 2012.

1

2 **Q. Could you briefly describe your work experience and education?**

3 A. In the 1970s, I was a high school teacher and worked in guidance-related  
4 fields in Syracuse, N.Y. Prior to that, I was a VISTA worker in Providence, R.I.,  
5 involved in community credit union development, low-income housing and  
6 developing a community newspaper.

7

8 After moving to New Hampshire, I spent 24 years as a working journalist and  
9 was employed by the former *Monadnock Ledger* (now the *Ledger-Transcript* of  
10 Peterborough), the *Concord Monitor* and *The Keene Sentinel*. I held various  
11 positions at those newspapers, including reporter, copy editor, assignment  
12 editor, local desk editor, local news editor and editorial writer. In my last  
13 position, in Keene, I was in charge of all the local news coverage and was  
14 responsible for assigning, editing stories and training a team of six full-time local  
15 news reporters. This training included helping reporters learn how to analyze  
16 tax data to write articles on local and state tax stories.

17

18 I earned a bachelor's degree (cum laude) from Syracuse University, with a major  
19 in education. In addition, I earned 36 graduate hours in guidance and  
20 counseling from Syracuse.

1

2 **Q. Have you been involved with municipal or community affairs?**

3 A. On the town level, I was appointed to and served for 12 years on the Antrim  
4 Board of Adjustment (as clerk and then chairman). I was elected and served 12  
5 years as a Supervisor of the Checklist (as chairman in my second term). I was  
6 appointed as an alternative to the Antrim Planning Board and served for two  
7 years.

8

9 Other town appointments include terms on two Master Plan committees, a term  
10 on the town's Capital Improvement Plan committee, and several years as a  
11 member of the Antrim Scholarship Committee.

12 I have also been involved with numerous community groups, including the  
13 Antrim Players, the Antrim Daffodil Day Festival, and Antrim's fundraising fair  
14 for Monadnock Community Hospital.

15

16 On a regional level, I am currently serving my second, elected, three-year term as  
17 one of two Antrim school board members on the 13-member Contoocook Valley  
18 Regional School Board. In addition, I am a member of the board of directors for  
19 the Contoocook Housing Trust.

20

1    **Q. In connection with your town and regional service, did you attend training**  
2    **session on the responsibilities of municipal office-holders?**

3    A. Yes, I attended several training sessions offered by the State for planning and  
4    zoning officials. In addition, as I received training in the N.H. Right-to-Know  
5    law as a town official, a school board member and as a journalist.

6

7    **Q. Do you think that Antrim Wind Energy's proposed project will be an**  
8    **economic benefit to Antrim?**

9    A. The project may have some economic benefit to the town, but it will not be  
10   what the voters and taxpayers of Antrim have been led to expect. And this  
11   project could have serious negative economic impacts on Antrim, if certain  
12   conditions determining Antrim's school and county tax shares (and they have a  
13   high probability of occurring) develop while the PILOT taxation agreement runs  
14   its 20-year course.

15   **Q. What economic benefits do Antrim taxpayers expect from the proposed**  
16   **project? What events lead to that expectation?**

17   A. When Antrim Wind Energy first proposed this project several years ago, a  
18   vague figure of \$200,000 in "tax revenue for the town" was floated at public  
19   meetings and in other discussions. During the run-up to the November 8, 2011,  
20   ballot vote on the town's proposed large-scale wind ordinance, most households

1 in Antrim received a mailing from Antrim Wind Energy that stated "The Antrim  
2 Wind Energy Project planned on Tuttle Hill will bring in over \$337,500 per year  
3 in tax revenue for Antrim." A copy of that mailing is attached as **Edwards-Allen**  
4 **Exhibit Aa.**

5  
6 In either case there was no hint that, at a minimum, more than half of the  
7 revenue figure would not be available for the town's use. In other words, there  
8 was no information identifying AWE's annual payment to the town as a gross  
9 revenue figure that did not net out the increases in other taxes the town would  
10 pay as a result of increased equalized valuation from AWE's wind-energy  
11 facility.

12  
13 In fact, this project would increase two portions of the Antrim's tax rate (the local  
14 school tax due to the Contoocook Valley Regional School District and the county  
15 tax due to Hillsborough County) as those two taxes are based in part (ConVal) or  
16 all (county) on equalized evaluation as determined by the NH Department of  
17 Revenue Administration (DRA). Both would see an increase since equalized  
18 value was being added to Antrim's taxable property by virtue of AWE's wind-  
19 energy facility.

20

1 And, in a worst-case scenario, it was possible that additional funds, in other  
2 words more money than the PILOT payments provided each year, might be  
3 needed to cover those increased taxes, if the DRA uses a full market value figure  
4 as the basis in figuring the local school portion and the county portion of the tax  
5 rate.

6

7 **Q. At least three public meetings have been held in Antrim to discuss**  
8 **Payment in Lieu of Taxes (PILOT) plans and an operating agreement between**  
9 **the town and Antrim Wind Energy LLC. Were those points raised at those**  
10 **meetings?**

11 Yes. But there were no definitive answers from either the Antrim Board of  
12 Selectmen or representatives of Antrim Wind Energy LLC . What was learned  
13 was that this issue was being referred by the Antrim Selectmen to the NH  
14 Department of Revenue Administration (DRA) for a ruling.

15

16 **Q. What was the issue that AWE and the Antrim Board of Selectmen were**  
17 **taking to DRA?**

18 A. The issue can be summarized this way: AWE interprets RSA 72:74,III and  
19 RSA 21-J:3, XIII, which govern PILOT payments for renewable energy facilities,  
20 to mean that for the purpose of determining Antrim's share of taxes due to the

1 Contoocook Valley Regional School District and Hillsborough County, the  
2 abated value of this facility as calculated from the PILOT payment would be  
3 used for its equalized value (as DRA does for voluntary PILOT payments made  
4 by charitable organizations that are exempt from property taxes) rather than  
5 equalized value based on the DRA's assessment of the wind energy facility's full  
6 market value.

7 Please see **Edwards-Allen Exhibit Ba**, which includes a series of communications  
8 between attorneys for the Town of Antrim, AWE, and the NH Department of  
9 Revenue Administration concerning this issue.

10

11 **Q. What is your understanding of the status of this dispute?**

12 A. Through the data request process, AWE has provided several letters from  
13 DRA which indicate that DRA will adhere to RSA RSA 21-J:3,XII, and will use  
14 the full market value for the wind-energy facility as the basis for determining the  
15 local school tax portion and the county tax portion of Antrim's tax rate.

16

17 AWE does not agree with DRA's ruling and is challenging it ... but that will give  
18 little comfort to Antrim's taxpayers.

19



1 As reference to my next points, please see attached **Edwards-Allen Exhibit Ca**  
2 **(Payment In Lieu Of Taxes Agreement or "PILOT")** and **Edwards-Allen Exhibit**  
3 **Da** (Agreement Regarding Alternative PILOT Payments or "Alternative  
4 PILOT"). Both agreements were signed by the Antrim Board of Selectmen and  
5 Antrim Wind Energy LLC following a public hearing on June 20, 2012.

6  
7 According to the last sentence in Paragraph 3 of the "Alternative PILOT"  
8 document (Exhibit C): "AWE expects to contest, with the concurrence of the  
9 Town, NHDRA's interpretation of RSA 21-J:3,XII in a declaratory judgment  
10 action in Superior Court, and, if necessary, in the New Hampshire Supreme  
11 Court."

12 But there is nothing in the language of these documents to compel AWE to seek a  
13 court decision. The problem and risk to the Town of Antrim is found in the  
14 opening clause of two sections of the "Alternative PILOT" document. Both  
15 Section 4 and Section 5 begin with the words: "In the event of a final and  
16 binding court order upholding ..." and both sections continue on to describe  
17 whether the original "PILOT" or the "Alternative PILOT" will be used as the  
18 basis for AWE's annual payment.

19

1 The assumption is clear. As soon as the wind energy project is completed, and  
2 taxation begins, AWE will begin annual payments to the Town of Antrim using  
3 the "PILOT," not the "Alternative PILOT."

4

5 **Q. If AWE does not continue this taxation dispute in court, what effect will it**  
6 **have on Antrim taxpayers?**

7 A. Unless there is a definitive and final court ruling that "kicks in" the  
8 "Alternative PILOT" payment schedule, AWE intends to begin its PILOT  
9 payments at \$337,500 per year.

10

11 This will mean that Antrim taxpayers will have to make up the difference  
12 between the PILOT payment for that year and what will be owed to the county  
13 and local school district for that year.

14

15 **Q. Can you be more specific? Exactly how might this shortfall occur?**

16 A. In the case of the first full-year PILOT payment of \$337,500, AWE would  
17 expect the value of the wind-energy facility to be set at \$14.6 million at the 2011  
18 Antrim tax rate of \$23.14 ( $\$337,500 / .02314$ ). This figure compares to the current  
19 \$50 million to \$60 million for the projected construction cost of AWE's facility  
20 and DRA's common practice of assessing new projects close to their construction

1 cost. The reasoning is that there is no depreciation to begin with, and a project  
2 would not be built if its market value was less than its cost.

3

4 This means the original PILOT signed by the Town provides AWE with an  
5 abatement of between \$35 to \$45 million, which amounts to a 70 to 75 percent  
6 abatement from full market value on a cost basis. DRA disagrees with that  
7 interpretation and will use full market value for the local school and county  
8 equalized evaluations after the wind-energy facility is completed.

9

10 This is a significant difference. If full valuation is the basis for taxation, Antrim's  
11 ConVal school tax payment alone would increase by \$395,749 on a full market  
12 equalized valuation of \$50 million based on current equalized values of the  
13 ConVal District (and it would increase by \$472,714 if based on a \$60-million  
14 value).

15

16 Both of these figures (\$395,749 for \$50M value; \$472,714 for \$60M value) are  
17 greater than the \$337,500 PILOT payment for the first full year, resulting in a net  
18 revenue loss to Antrim and a taxpayer subsidy to AWE. This is contrary to  
19 AWE's representations of a net revenue gain to Antrim.

1 The "Alternate PILOT" – the provision that could mitigate the Town's negative  
2 revenue position – would not likely apply here. As explained above, the  
3 "Alternate PILOT" does not come into effect until there is a "final and binding  
4 court order" in AWE's dispute with the DRA over the marker value for  
5 equalized valuation. This case, if it is pursued in court, will likely take years to  
6 resolve. Absent such a decision in court, it's clear the DRA will continue to use  
7 full market value for equalized value and Antrim will have to pay ConVal and  
8 Hillsborough County costs based on full-market value.

9  
10 On the other hand, if AWE's contention that the full market value basis should  
11 not be used under a PILOT agreement for renewable energy, and instead the  
12 equalized valuation of the Project should be set at \$14.6 million based on the  
13 \$337,500 payment (and Antrim's 2011 tax rate), then Antrim's payments for the  
14 ConVal and Hillsborough County tax assessment would increase approximately  
15 \$135,000 from the addition of this wind-energy facility and Antrim would net  
16 \$202,500, not including other factors, for the first full year.

17  
18 **Q. If AWE does not dispute the DRA ruling in court, why can't the Town of**  
19 **Antrim take this issue to court?**

1 A. As a party in this matter, the Town of Antrim could pursue a court decision  
2 that might reverse the current DRA ruling. But this action will be costly to the  
3 taxpayers and it might take years for a final determination. And there is no  
4 guarantee that the Town will be successful.

5 Meanwhile, the Town will be receiving annual payments from AWE under the  
6 PILOT, but those payments will not cover the gap caused by full market value  
7 assessment by DRA for the local school and county portions of the Antrim tax  
8 rate.

9

10 **Q. Is this a case of "unintended consequences" when dealing with a complex**  
11 **issue like taxation? In that case, why won't the Alternative PILOT come into**  
12 **play without a court ruling?**

13 A. AWE has made it clear in public discussions and meetings that it considers  
14 the payment schedule developed under the PILOT to be generous even though it  
15 represents a 70 to 75 percent abatement from the full market value that all other  
16 Antrim taxpayers must pay. And it appears that it the Applicant is reluctant to  
17 switch to the higher "Alternative PILOT" payments without a court decision that  
18 reverses DRA's ruling.

19

1 **Edwards-Allen Exhibit Ea** is a copy of a draft of the Alternative PILOT that  
2 appears to have been prepared by Orr and Reno on May, 17, 2012. The final  
3 paragraph on the last page gives "a hypothetical example" of what happens if a  
4 court decision favoring DRA's position is reached in the third year of the project.  
5 This document makes it is clear that the PILOT payments would be used until  
6 the matter is settled in court.

7  
8 This hypothetical example does not include any make-up compensation to the  
9 Town for the first two years under PILOT payments or for any time before the  
10 "Alternative PILOT" would be in force. The PILOT payments in those first two  
11 years (\$337,500 and \$345,938, respectively) will not cover the increased taxes that  
12 will due to the local school district or the county under DRA's current decision.

13  
14 This "hypothetical example" was dropped from the final draft of the  
15 "Alternative PILOT" that was presented at the public hearing on June 20, 2012.  
16 And it has not included in the final document signed by both AWE and the  
17 Antrim Selectmen.

18

1 This draft of the "Alternative PILOT" was shared by an Antrim Selectman (Eric  
2 Tenney) with an Antrim resident (Charles Levesque) during one-on-one  
3 discussions about the PILOT agreements.  
4

5 **Q. Short of a court ruling on the PILOT taxation, is there anything that can be**  
6 **done to help Antrim taxpayers?**

7 A. The "PILOT" and "Alternative PILOT" agreements have already been signed.  
8 And it appears that there is no "look-back" provision in either document. Each  
9 agreement has a term of 20 years.  
10

11 Meanwhile, there appears to be little financial incentive for AWE to take this  
12 issue to court. Adhering to the payment schedule of the "PILOT" will be less  
13 costly than launching a court case that might continue up to the N.H. Supreme  
14 Court. And while the language in the "Alternative PILOT" says AWE "expects  
15 to contest" the DRA interpretation, that language does not assure that AWE will  
16 actually contest that interpretation.  
17

18 And finally, there is no financial incentive for AWE to "do the right thing" and  
19 voluntarily switch to the Alternative PILOT payments at the expense of its  
20 bottom line thus lessening the burden on Antrim taxpayers while waiting for a

1 court case to resolve the issue. Antrim taxpayers will be forced to make up the  
2 difference because of the huge abatement granted in the PILOT, in effect  
3 subsidizing AWE and its bottom line. Again, this is the opposite of what Antrim  
4 taxpayers were led to believe.

5

6 **Q. Could Antrim's "Adequacy Grant for Education" from the State of New**  
7 **Hampshire potentially be negatively affected by AWE's wind-energy facility?**

8 A. Antrim's Adequate Education Grant for 2011 and 2012 was fixed at the 2010  
9 levels by the New Hampshire Legislature. The formula used to determine  
10 Antrim's 2010 adequacy grant included a factor of equalized valuation per pupil.  
11 The higher the equalized valuation per pupil, the lower the Adequacy Grant for  
12 a town.

13

14 If AWE's wind-energy facility had been in place in 2009, it would have decreased  
15 Antrim's adequacy grant thereby increasing the local school tax portion of  
16 Antrim's property tax rate. That increase would have been needed to make up  
17 the difference.

18

19 This decrease has not been calculated, but it can be assumed that the adequacy  
20 grant will be decreased significantly if the DRA uses an equalized valuation of



1 \$50 million to \$60 million and will be decreased less if the equalized valuation is  
2 approximately \$15 million as sought by AWE. And because Antrim's yearly  
3 adequacy grant is significant as a "property-poor" town, that cut could be  
4 significant.

5  
6 The New Hampshire Legislature has changed the Adequacy for Education Grant  
7 formula every two years since 2000, and up until 2011, a municipality's equalized  
8 valuation per pupil was always a factor inversely affecting a municipality's grant  
9 as described above. In 2011, the new formula for the Education Adequacy Grant  
10 eliminated this factor, so if and when this 2011-passed formula is used, AWE's  
11 project will not affect Antrim's Adequacy Grant for Education.

12  
13 However, given the history of the Legislature's ever-changing formulas for this  
14 sensitive grant, and equalized valuation per pupil being a factor in every other  
15 formula in the history of this tax, it is highly likely this formula will be used  
16 again at some point in the during This time span of the PILOT agreement.

17  
18 This is especially likely as the 2010 formula, which contained an equalized  
19 valuation per pupil, was approved by the New Hampshire Supreme Court as an

1 acceptable response to the Claremont II Decision whereas the 2011 formula is  
2 untested in the courts.

3

4 The "PILOT" and the "Alternative PILOT" agreements executed by AWE and  
5 the Town of Antrim appear to make no provision for this contingency. That  
6 oversight could potentially become significant, as it could increase the negative  
7 financial impact to the Town of Antrim under a reduced Adequacy Grant for  
8 Education.

9

10 **Q. How has this potential tax impact been handled in AWE's application now**  
11 **before the New Hampshire Site Evaluation Committee?**

12 A. It has not been addressed directly. This perception of an optimistic cash flow  
13 to the Town of Antrim – and largely failing to differentiate between the gross  
14 and net revenues to the town from the PILOT – is again presented in AWE's  
15 application before the SEC.

16

17 In the Conclusion (Section 5) of the economic AWE's application to the SEC  
18 (Appendix 14a, Page 19), economic analysts Ross Gittell and Matt Magnusson  
19 state: "An annual PILOT payment of \$337,500 would have a significant impact

1 on the revenue to the Town of Antrim and the Town would also experience  
2 positive impacts from conservation measures put in place as part of this Project.”

3

4 This statement implies a positive impact of the \$337,500 PILOT payment and that  
5 it is a net benefit to the Town, although in Ross Gittell’s June 20, 2012, response  
6 to Request No. Edwards-Allen (UNH) 1-3 and 1-5, Gittell states “Therefore  
7 specific analysis of the tax liability of the Town of Antrim was not analyzed as  
8 part of the study.” (last sentence in 1-3) and that “No, the analysis did not  
9 include any offsetting payments or negative impacts due to equalized valuation  
10 taxation methods . . .”

11

12 The economic impact statement also fails to point out the simple mathematical  
13 reality that if the DRA assesses the equalized fair market value of the project at  
14 \$43 million or more, because of how Antrim’s payments to the ConVal School  
15 District and Hillsborough County are currently determined, the sum of these  
16 increases from the project would be greater than \$337,500. This amounts to a net  
17 revenue loss for Antrim taxpayers and a subsidy to a private for-profit  
18 corporation. Further, there is no guarantee and little chance that this subsidy  
19 will be spent by AWE in Antrim or anywhere in New Hampshire. (Note: This  
20 does not include the increases in valuation and revenues from the property used

1 by the wind-energy facility offset by likely but unknown reductions in the  
2 valuation and revenues of vacation homes – especially on Gregg Lake – and  
3 other recreational properties.)  
4

5 As a final point, the last sentence of the above Gittell-Magnusson economic  
6 impact summary also implies “positive impacts from conservation measures put  
7 in place as part of this Project.” when from the June 20, 2012, response from Ross  
8 Gittell to Request No. Edwards-Allen (UNH) 1-6 makes it clear that these  
9 “positive impacts” from land in conservation are already being received by the  
10 Town because all of AWE’s land is already taxed under the current use tax  
11 classification and is undeveloped.

12 Further, it is in the Town’s Rural Conservation District that already restricts  
13 development and supports the economic benefits of conservation easements.  
14 The economic benefit of large parcels of land being conserved under easement or  
15 current use taxation was already evident in this zone before the AWE project was  
16 proposed.  
17

18 **Q. If the “PILOT” and the “Alternative PILOT” have been agreed to by the**  
19 **Town and AWE, what is the role of the SEC in this matter?**

1 While the SEC has broad powers in approving the certificate and permits to  
2 build and operate wind energy facilities in New Hampshire, the taxation  
3 methodology is left up to the local community and the developer to decide.

4

5 Different towns have handled this situation differently: The Town of Lempster  
6 uses ad valorem taxation basing taxes on their wind facility's full market value –  
7 and using this approach with no abatement, unlike the case of Antrim and AWE,  
8 it is impossible for the Town of Lempster (or any municipality) to be in a  
9 negative revenue position.

10

11 The Town of Groton uses a PILOT agreement, but significantly, neither Groton  
12 nor Lempster are in a cooperative school district that uses equalized valuation to  
13 apportion costs.

14

15 While the SEC may not be able to amend the details of these signed contracts, it  
16 is almost impossible to justify this proposed wind energy facility with any  
17 certainty as being an "economic benefit" for Antrim.

18

19 As noted in the examples above, there is a high probability of negative revenue  
20 to the Town of Antrim as a result of this wind-energy facility. In addition, this

1 facility is a capital-intensive project that produces few direct jobs, and because  
2 Antrim is small and not a regional center, it would capture few if any indirect  
3 benefits during or after construction.

4  
5 The economic benefit to a host community -- or at least an economically neutral  
6 impact -- is an important aspect of the SEC review process. But until the  
7 question of equalized valuation for the local school district and the county are  
8 put to rest, there is a high probability that Antrim taxpayers will have to  
9 subsidize this project for years. This is an unheard of situation for local  
10 taxpayers, who were expecting - and were repeatedly assured - that they would  
11 be enjoying a tax benefit from the AWE wind project.

12

13 **Q. Is there anything else about taxation that should be/or should have been**  
14 **explored?**

15 A. In public discussions of the "PILOT" and the "Alternative PILOT," AWE has  
16 stated that it can't afford full ad valorem taxation of this project. This statement  
17 has raised questions in some minds as to the financial wherewithal of AWE and  
18 the financial viability of this project, especially without subsidies from the Town  
19 and without a court decision that would force the DRA, and the State of New

1 Hampshire, to overturn longstanding practice in determining equalized  
2 valuation.

3

4 Paying property taxes is just "the cost of doing business" for any developer in  
5 New Hampshire, and while the State has made a provision for PILOT payments  
6 for alternative energy facilities, the default is always ad valorem taxation. When  
7 proposing a project of this size, the developer should have the financial reserves  
8 to meet that tax burden. The SEC should ensure that this developer has that  
9 capacity.

10

11 **Q. Are there other economic impacts that should be considered?**

12 A. Looking at taxation from a regional standpoint, using ad valorem taxation  
13 would be the fairest methodology, and would provide the most economic benefit  
14 for the Monadnock Region.

15

16 Towns like Peterborough, which is also part of the ConVal Regional School  
17 District, have complained when recent retail projects increased the equalized  
18 valuation of that town, thus shifting a greater percentage local school or county  
19 expenses onto Peterborough's shoulders. And while the proportion of its tax

1 burden, or its ratio vis a vis other towns in the school district increases,  
2 Peterborough is able to collect full property taxes to cover that increase.

3

4 A retail hub like Peterborough might expect some relief when a nearby town is  
5 slated to host a \$50-million to \$61-million wind energy project. Ad valorem  
6 taxation would make it easier for Antrim to share the tax burden with  
7 Peterborough, and with the other towns in this cooperative school district. If  
8 this wind project is compared to adding a WalMart store to a town (a retail  
9 establishment that costs \$10 million to \$15 million to construct and which does  
10 not qualify for PILOT payments), then the AWE facility could be compared to  
11 adding the equivalent of three or four WalMarts to Antrim's tax base if ad  
12 valorem taxation is used. Peterborough and the other district towns would  
13 benefit as well as Antrim from this increase to the taxable base.

14

15 **Q. An agreement between the Town and AWE was signed on March 8, 2012,**  
16 **during a public meeting of the Antrim Board of Selectmen. Does this**  
17 **"agreement" hold any concerns for you?**

18 A. Yes. On Page 1 of the Agreement, under Definitions, 1.8, an "Occupied  
19 Building" is defined as a "permanent structure used a year-round residence,  
20 school, hospital, church, public library or other building used for public



1 gathering that is occupied or in use as of the Effective Date." Please see

2 **Edwards-Allen Exhibit Fa.**

3

4 In answers to our data requests, the Applicant replied and stated that "seasonal"  
5 homes or other part-time occupied buildings were not found within the setbacks  
6 for this project or the limits of the sound testing.

7

8 This "seasonal home" question was raised on March 8, 2012, at the Antrim  
9 Selectmen's meeting prior to signing the "Agreement," but without result. And  
10 it now seems reasonable to ask the SEC: What happens to a year-round  
11 residence in that area of concern if it becomes a seasonal residence?

12

13 There are year-round homes located near the setbacks or within areas that may  
14 be tested in the future for noise complaints. If those structures become seasonal  
15 homes, do the owners lose their rights of redress under the "Agreement"? In  
16 addition, there is a Girl Scout camp located on Gregg Lake. Under this  
17 definition, are any of its buildings defined as "occupied" buildings? The camp's  
18 cottages are dwellings, but they are not occupied year-round.

19

1 Although the Agreement has been signed, and cannot be reopened unless both  
2 parties (AWE and the Town) agree, I believe the SEC can, and should, cover this  
3 concern in conditions it may attach to any approval of AWE's project.

4

5 Certainly a homeowner will bear an unusual financial burden if he or she tries to  
6 sell their full-time residence, but then cannot provide any assurance that seasonal  
7 use would provide any rights or protections offered under this "Agreement."

8 This "oversight" in the Definitions has negative economic ramifications.

9

10 **Q. Are there any other economic impacts that you would like to raise?**

11 A. The former Hawthorne College campus is for sale again. The photo-  
12 simulation presentations offered at the time of the SEC visit to Antrim show  
13 several of the wind turbines will be visible from the property. It is unknown if  
14 any sound readings on the property will be near or above the sound limits sets in  
15 the "Agreement."

16

17 This is a large property with a number of buildings. It has been used as a college  
18 and a meditation center over the past three decades – with periods of vacancy in  
19 between.

20

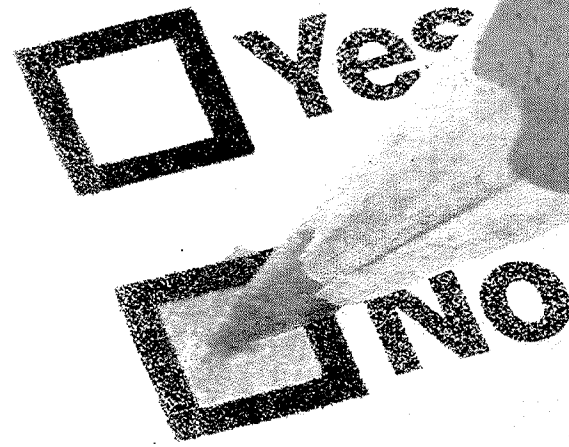
1 While this is private property, Antrim taxpayers hope this unique and historic  
2 property will find a buyer that appreciates the former college for its quiet setting  
3 and natural beauty. In the 1970s and 1980s, this campus was a major employer  
4 in town and had a significant, positive economic impact on retail establishments  
5 in Antrim.

6

7 **Q. Does this conclude your testimony?**

8 A. Yes.

Do you want to  
eliminate millions  
of dollars in  
tax revenue for  
Antrim generated  
by renewable  
energy?



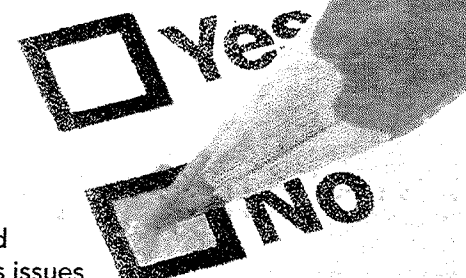
Vote NO on November 8.



**On November 8th, support the Tuttle Hill wind farm by voting NO on restrictive ordinances that will eliminate millions of dollars in tax revenue in the years to come for Antrim.**

***Why should you vote NO:***

- The Antrim Wind Energy Project planned on Tuttle Hill will bring in over \$337,500 per year in tax revenue for Antrim, making it the number one taxpayer in town, while requiring virtually no town services.
- This wind farm would provide clean, renewable energy – the annual equivalent of approximately 14,000 New Hampshire homes – displacing dirty fossil fuel power generation, reducing air pollution, and stimulating the State and local economy.
- These ballot items are not necessary – The State of New Hampshire's Site Evaluation Committee, with experience evaluating the merits of wind projects, provides Antrim residents with permitting oversight and protections and Antrim Wind Energy has offered to sign a contract with the Town of Antrim that addresses issues of local concern such as noise, public safety, decommissioning, and many other issues.
- The Antrim Wind Energy project would pay more dollars per megawatt than any wind farm in New Hampshire with a tax agreement and more than double the per megawatt payment of the Granite Reliable project in Coos County.



***On November 8th, come out from 8am to 7pm at the town hall and vote NO on both questions at the special town meeting.***

Antrim Wind Energy, LLC  
155 Fleet Street  
Portsmouth, NH 03801

First Class  
Presorted  
U.S. Postage  
**PAID**  
Permit #1  
Manchester, NH



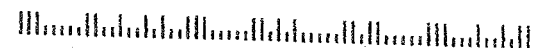
**Article 1** would create a Large Scale Wind Energy Ordinance so restrictive it effectively prohibits commercial wind energy development in Antrim and would cost Antrim millions of dollars in revenue. The State of New Hampshire already has proper regulations in place to protect public health and safety as well as the environment.



**Article 2** would outright prevent a wind farm in the Tuttle Hill area, where the Antrim Wind Energy Project has been proposed.

\*\*\*\*\***AUTO\*\*5-DIGIT 03440**

**ANDREW MIS  
17 ELM ST  
ANTRIM NH 03440 3916**



*Don't let a few citizens decide such an important economic and clean energy matter for Antrim!*

Exhibit B

**Concord Office**

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Michael S. McGrath\*

**Of Counsel**

Frederic K. Upton  
Marilyn Billings McNamara  
Maureen Soraghan\*

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

Please respond to the North Conway office

March 13, 2012

Commissioner Kevin A. Clougherty  
New Hampshire Department of Revenue Administration  
109 Pleasant St.  
P. O. Box 1313  
Concord, NH 03302-1313

**Hillsborough Office**

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\*Also admitted in MA

Re: Valuation of Antrim Wind Project for Purposes of Town of  
Antrim's Contributions to ConVal Cooperative School District  
Under RSA 72:74 III and RSA 21-J:3, XIII

Dear Commissioner Clougherty:

We write to request reconsideration of the position recently taken by the Department's Property Appraisal Division and Municipal Services Division with respect to the issue of how the Antrim Wind Project should be valued for purposes of the Town of Antrim's annual contributions to the Contoocook Valley Cooperative School District under RSA 72:74, III and RSA 21-J:3, XIII.

Antrim Wind Energy, LLC ("Antrim Wind") has proposed to build a 30-MW wind-powered "renewable generation facility" in the Town of Antrim. Under RSA 72:74, I, the Town and Antrim Wind have negotiated a PILOT Agreement providing for a PILOT payment of \$337,500 (\$11,250 per MW) in the first full tax year following commencement of commercial operations, increasing at 2.25% annually thereafter. So far as we are aware, on a per-MW basis this is the most generous PILOT payment structure agreed to by any renewable generation facility in the state of New Hampshire.

Antrim Wind and the Town assumed that under RSA 72:74, III, the annual PILOT payment proceeds would be pro-rated between the Town and the cooperative school district (and the county) "in the same manner as local taxes are pro-rated . . . between the . . . Town and pre-existing school district," meaning that the annual PILOT payments would be pro-rated among the Town, the cooperative school district and the county in the same proportion as the annual municipal, local school district, and county tax rates. The Town Selectmen and

March 13, 2012

Page 2

representatives of Antrim Wind met with Property Appraisal Division Director Stephan Hamilton and Municipal Services Division Director Barbara Robinson on January 11, 2012, at which time they presented a letter expressing that understanding and requesting clarification of the Department's position (copy attached as Exhibit A).

In the January 11 meeting, and in a follow-up letter response dated January 13, 2012 (copy attached as Exhibit B), Director Hamilton took the position that while RSA 72:74, III governs the allocation of annual PILOT payment proceeds between the Town and the cooperative school district, the annual pro-rated PILOT payment contribution to the cooperative school district under RSA 72:74, III would not necessarily satisfy the Town's annual obligation to the cooperative school district with respect to the Antrim Wind Project. He based his position on RSA 21-J:3, XIII (including the 2006 amendment thereto), which he interpreted to require that the Antrim Wind Project be valued at full *ad valorem* fair market value for purposes of calculating the Town's total equalized assessed valuation and its resulting annual pro-rata contribution to the ConVal Cooperative School District (whose allocation formula is based 50% on Average Daily Membership and 50% on total equalized assessed valuation in each of the nine towns in the district).

---

The 2006 PILOT provisions were intended to encourage the development of renewable generation facilities in New Hampshire. Former State Senator Peter Burling, primary sponsor of the Senate floor amendment to HB 1758 that became RSA 72:73-74, has reviewed our January 11 letter (Exhibit A) and the Department's January 13 response (Exhibit B). His letter on the legislative intent underlying the 2006 PILOT legislation is enclosed herewith as Exhibit C.

Respectfully, the Town and Antrim Wind suggest that Director Hamilton's reading of RSA 21-J:3, XIII is simply not consistent with the legislative intent of the 2006 PILOT legislation. We believe RSA 21-J:3, XIII is susceptible to two alternative interpretations (compare the underlined statutory language from RSA 21-J:3, XIII on page two of Exhibits A and B respectively), only one of which is consistent with the legislative intent and the plain wording of RSA 72:74, III. Contrary to the legislative intent and the plain wording of the statute, Mr. Hamilton's interpretation would perversely penalize the Town for hosting a renewable generation facility that cannot be developed without a PILOT agreement, by:

- requiring the Town to make annual payments to ConVal potentially exceeding the entire value of annual PILOT payments from the Project (see projections attached as Exhibit D);
- requiring Antrim's other resident/taxpayers to pay higher *ad valorem* taxes than they otherwise would under RSA Chapter 72 on account of the Antrim Wind Project, thus violating RSA 72:74,II, which provides that "...Payments made pursuant to such [PILOT] agreement shall satisfy any tax liability relative to a renewable generation facility that otherwise exists under RSA 72..." (emphasis added);
- effectively subsidizing the cooperative school district contributions of the eight other ConVal district towns—a result which we believe would be inequitable and

March 13, 2012

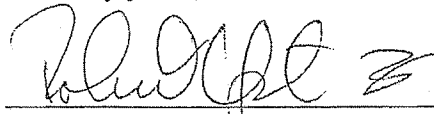
Page 3

unjust, in violation of RSA 21-J:3,XIII. (The Antrim Wind Project will not result in any appreciable increase in the number of school-age children attending ConVal schools or increase cooperative school district expenses in any way. Thus the pro-rata Antrim Wind PILOT contribution to the ConVal school district under RSA 72:74,III would represent surplus revenue without any accompanying expense.);

- effectively undermining the legislative intent by giving towns a disincentive to enter into PILOT agreements with renewable generation facility developers, who are often not able to consider project development in the absence of a PILOT agreement. (If the Town of Antrim cannot enter into a PILOT agreement with the most generous PILOT payments in the state without being penalized for doing so, what other Town in a cooperative school district with an allocation formula based at least in part on total equalized assessed valuation would be able to do so?).

We hope you will give careful consideration to Senator Burling's statement with respect to the legislative intent underlying the 2006 PILOT provisions. For the reasons set forth above, in Sen. Burling's letter, and in our original letter of January 11, and in order to exhaust administrative remedies, we respectfully request that you reconsider the Department's provision on the question posed in this appeal.

Sincerely yours,



Robert Upton, II  
Attorney for Town of Antrim



Howard Moffett  
Attorney for Antrim Wind Energy, LLC

cc: Stephan Hamilton, Property Appraisal Division  
Barbara Robinson, Municipal Services Division  
Antrim Board of Selectmen  
Antrim Wind Energy, LLC  
Sen. Peter Burling



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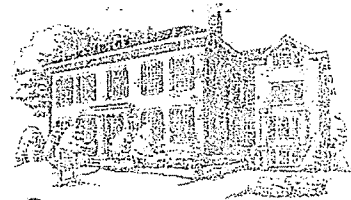
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Trilyn Billings McNamara  
Maureen Soraghan\*

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



January 11, 2012

By Hand

Barbara Robinson, Director, Municipal Services Division  
Stephan Hamilton, Director, Property Appraisal Division  
New Hampshire Department of Revenue Administration  
109 Pleasant Street  
Concord, NH 03301

*Re: Valuation of Antrim Wind Project for Purposes of Town of Antrim's  
Annual Contributions to ConVal Cooperative School District under  
RSA 72:74, III*

Dear Ms. Robinson and Mr. Hamilton:

Thank you for meeting with us this morning. As we have explained, Antrim Wind, LLC has proposed to build a 30-megawatt wind-powered "renewable generation facility" (the "Project") in the Town of Antrim. Under RSA 72:74, I, the Town of Antrim and Antrim Wind have negotiated a PILOT agreement providing for a PILOT payment of \$337,500 (\$11,250 per MW) in the first full tax year following commencement of commercial operations, increasing at 2.25% annually. Before signing the PILOT agreement, the Selectmen want to be sure they understand how the agreement will affect the Town's annual contributions to the ConVal Cooperative School District. Specifically, they would like to know whether the Project's assessed valuation for purposes of annual contributions to the cooperative school district, which will be a portion of the Town's total equalized assessed valuation under RSA 21-J:3, XIII, will be based on:

(a) A pro-rata allocation of the annual PILOT payment between the Town, the school district, and the county, as provided in RSA 72:74, III, or

(b) A fair market value appraisal of the Project conducted by the Property Appraisal Division, as if the Project were to pay *ad valorem* taxes under RSA 72:8, or

(c) Some other basis.

**Hillsborough Office**

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Justin C. Richardson

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mail@upton-hatfield.com

\*Also admitted in MA

The applicable statutes provide as follows:

RSA 72:74, II and III provide:

II. A renewable generation facility subject to a voluntary agreement to make a payment in lieu of taxes under this section shall be subject to the laws governing the utility property tax under RSA 83-F. Payments made pursuant to such agreement shall satisfy any tax liability relative to the renewable generation facility that otherwise exists under RSA 72. In the absence of a payment in lieu of taxes agreement, the renewable generation facility shall be subject to taxation under RSA 72 (emphasis added).

III. If a municipality that contains more than one school district receives a payment in lieu of taxes under this section, the proceeds shall be prorated to the districts in the same manner as local taxes are prorated to the districts, or in the case of a cooperative school district between the city or town and pre-existing school district (emphasis added).

RSA 21-J:3, XIII provides that "...the commissioner shall:

XIII. Equalize annually by May 1 the valuation of the property as assessed in the several towns, cities, and unincorporated places in the state including the value of property exempt pursuant to RSA 72:37, 72:37-b, 72:39-a, 72:62, 72:66, and 72:70, and property, which is the subject of a payment in lieu of taxes under RSA 72:74 by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes or payments in lieu of taxes as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a (emphasis added).

The Town and Antrim Wind believe that RSA 72:74, II and III and RSA 21-J:3, XIII require that Antrim's annual contribution to the ConVal school district budget be based on a pro-rata distribution of the annual PILOT proceeds between the Town, the cooperative school district, [and the county] "in the same manner as local taxes are pro-rated" between the Town, the school district, and the county, as suggested in alternative (a) above. In addition to the fact that the plain language of RSA 72:74, III provides for this result, RSA 72:74, II would be violated if, notwithstanding the PILOT agreement, Antrim's annual contribution to the cooperative school district were to be based on the *ad valorem* taxes that would have been paid under RSA 72:8 rather than the PILOT payments that will be made under RSA 72:74, I. To decide the issue as suggested in alternative (b) above would mean that other Antrim taxpayers would have to pay more in taxes under RSA 72 "relative to the renewable generation facility" in order to make up for an increase in the Town's total equalized assessed valuation attributable to

the full market value of the Project. This result defies common sense as well as RSA 72:74, II and III, and would render the PILOT statute ineffective in providing incentives for the development of new renewable energy projects in New Hampshire.

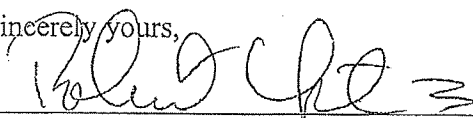
RSA 21-J:3, XIII further supports the alternative (a) interpretation. It distinguishes between (i) property whose value is to be equalized "by adding to or deducting from the aggregate valuation of the property in towns...such sums as will bring such valuations to the true and market value of the property (for purposes of *ad valorem* taxation under RSA 72:6 and 8), and (ii) "other property from which the towns...receive...payments in lieu of taxes," whose value is to be adjusted in a manner that is "equitable and just."

There is nothing "equitable and just" about setting Antrim's total equalized assessed valuation at a level that incorporates the *ad valorem* value of the Project, when the town is receiving PILOT payments under RSA 72:74, I that do not reflect the Project's full *ad valorem* value but that make the Project economically viable, so that it can be developed at all. To do so would effectively end the development of wind-powered generating facilities in towns which participate in cooperative school districts with apportionment formulas tied to total equalized valuations, when such projects could be developed under the PILOT statute, RSA 72:74, but not under *ad valorem* taxation.

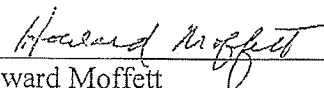
Please bear in mind that both the Antrim Board of Selectmen and Antrim Wind, LLC feel considerable urgency about getting a clear resolution of the issue outlined in this letter as soon as possible. Antrim Wind is under an order from the Site Evaluation Committee to file its application for a certificate of site and facility under RSA 162-H by January 31, 2012 – but cannot commit to going forward with the Project without a signed PILOT agreement with the Town. The Selectmen want to sign the PILOT agreement, but before they do so they are required under RSA 72:74, I to hold a public hearing, at which they need to be able to give Antrim taxpayers a clear answer to the question posed in this letter.

We thank you for your consideration of this question, and will appreciate an early reply.

Sincerely yours,



Robert Upton, II  
Attorney for Town of Antrim



Howard Moffett  
Attorney for Antrim Wind, LLC



Kevin A. Clougherty  
Commissioner

Margaret L. Fulton  
Assistant Commissioner

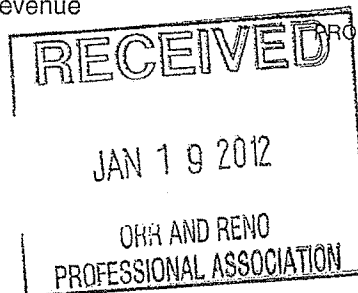
# State of New Hampshire Department of Revenue Administration

109 Pleasant Street  
PO Box 1313, Concord, NH 03302-1313  
Telephone (603) 230-5950  
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PROPERTY APPRAISAL DIVISION  
Stephan W. Hamilton  
Director

David M. Cornell  
Assistant Director



January 13, 2012

Robert Upton, Esq.  
Attorney for Town of Antrim  
Upton & Hatfield  
23 Seavey St  
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North Conway, NH 03860-2242

Attorney Howard Moffett  
Attorney for Antrim Wind, LLC  
Orr & Reno, P.A.  
P.O. Box 3550  
Concord, NH 03302-3550

RE: Equalization of RSA 72:74 Payment in lieu of Taxes property pursuant to the provisions of RSA 21-J:3, XIII

Dear Attorneys Upton and Moffett:

On Wednesday, January 11, 2012, the Board of Selectmen of Antrim convened a public meeting here at the offices of the Department of Revenue. The meeting was attended by Town officials and representatives of Antrim Wind, and generally concerned a contemplated Payment in lieu of Taxes ("PILOT") agreement between these two parties pursuant to RSA 72:74. The focus of the meeting was the presentation of a letter from you asking:

"... whether the Project's assessed valuation for purposes of annual contributions to the cooperative school district, which will be a portion of the Town's total equalized assessed valuation under RSA 21-J:3, XIII, will be based on:

- a) A pro-rata allocation of the annual PILOT payment between the Town, the school district, and the county, as provided in RSA 72:74, III, or
- b) A fair market value appraisal of the Project conducted by the Property Appraisal Division, as if the project were to pay *ad valorem* taxes under RSA 72:8, or
- c) Some other basis."

## 1. RSA 21-J:3, XIII and Equalization

RSA 21-J:3, XIII is not a statute that controls the apportionment for a school district, rather, it specifies required action to ensure the equity and proportionality of the tax burden in any common, shared taxing jurisdiction. RSA 21-J:3 requires that:

"... the commissioner shall:

....  
XIII. Equalize annually by May 1 the valuation of the property as assessed in the several towns, cities, and unincorporated places in the state including the value of property exempt pursuant to RSA 72:37, 72:37-b, 72:39-a, 72:62, 72:66, and 72:70, and property which is the subject of a payment in lieu of taxes under RSA 72:74 by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes or payments in lieu of taxes as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a."  
(Emphasis added).

The requirement to equalize the market value of property subject to a RSA 72:74 PILOT agreement was added to duties of the commissioner at the same time that the exemption through authorization of a PILOT agreement was enacted into law (Chapter 294, Laws of 2006). The legislature knew that along with the potential for exemption of certain value came a duty to apply the true and market value in equalization, and made the requisite changes that directly reference RSA 72:74. The portion of this statute that your letter highlights and upon which your interpretation appears to rest existed prior to the adoption of RSA 72:74. Since the effective date of the changes to RSA 21-J:3, XIII, the department has faithfully applied the requirements of the statute for other similarly situated property in the state.

## 2. RSA 72:74, III and Apportionment of PILOT Proceeds

Distribution by the town of PILOT payments made pursuant to an agreement executed under RSA 72:74 are controlled by the provisions contained therein:

"72:74 Payment in lieu of Taxes. -

....  
III. If a municipality that contains more than one school district receives a payment in lieu of taxes under this section, the proceeds shall be prorated to the districts in the same manner as local taxes are prorated to the districts, or in the case of a cooperative school district between the city or town and pre-existing school district." (Emphasis added).

Apportionment of any cooperative school district tax burden is made by formula, adopted by the members of the school district, and may or may not entirely rely upon the total equalized value of each of the member municipalities. Frequently these formulae rely on a more complicated set of factors that include such variables as student population.

The requirement of the statute is clear, in the case such as exists in Antrim, where there is a cooperative school district. The apportionment of the PILOT payment shall be between the town and the pre-existing

school district. RSA 72:74 does not prescribe the method of equalization. That process is carefully constructed in RSA 21-J:3, XIII and RSA 21-J:9-a. Likewise, RSA 21-J:3 does not reference or control the apportionment of the PILOT payment, as this is a matter for the municipalities receiving a PILOT payment to administer.

### 3. Conclusions

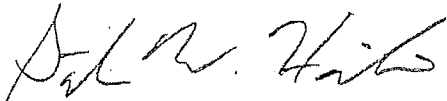
In consideration of all of the foregoing, and after consultation with our Revenue Counsel, the answer to the presented question is that we will continue to administer the requirements of RSA 21-J:3, XIII, and equalize the value of RSA 72:74 PILOT property at their true and market value.

As identified at the meeting, any municipality aggrieved of the determination of its total equalized value may appeal that determination pursuant to RSA 71-B:5, II.

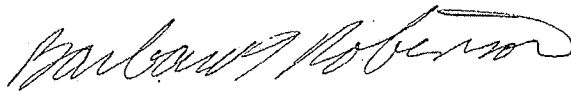
Finally, while we allowed the meeting to go forward on January 11, 2012, we believe that the format of the meeting was problematic for three reasons: there was no advance notice to the department that this meeting was to be a posted selectboard meeting; the department has no role relative to the negotiation of PILOT agreements between municipalities and taxpayers; and, the conduct of such a "public" meeting at such a remote distance from Antrim deprives the citizenry the opportunity to be present. Among other problems, areas of the department's building are not generally accessible to the public, and we must make special accommodation to allow such use. It should be clear to everyone involved that in the future, such requests for the use of our facility for a public meeting must be made in writing to the Commissioner or his/her designee. Such requests will be approved at the Commissioner's sole discretion.

If there are other questions that the department can answer on this issue, please let us know as soon as possible.

Sincerely,



Stephan W. Hamilton, Director  
Property Appraisal Division



Barbara J. Robinson, Director  
Municipal Services Division

Cc: Town of Antrim

March 9, 2012

Hon. Kevin Clougherty, Commissioner  
NH Department of Revenue Administration  
109 Pleasant Street, PO Box 1313  
Concord, NH 03302-1313

RE: Legislative Intent of RSA 72:74, III

Dear Commissioner Clougherty:

Gordon Webber, former chairman of the Antrim Board of Selectmen, has recently brought to my attention an apparent dispute between the Town of Antrim and Antrim Wind Energy, LLC, on the one hand, and your Department on the other. The dispute appears to turn on the meaning of two statutes passed by the Legislature in 2006, namely, RSA 72:74, III and a contemporaneous amendment to RSA 21-J:3, XIII. The issue is framed in two letters which have been provided to me and, I understand, to you: a January 11, 2012 letter from the Town's attorney Robert Upton and Antrim Wind's attorney Howard Moffett to the Directors of the Property Appraisal and Municipal Services Divisions at NHDRA, and the Directors' letter response to Messrs. Upton and Moffett dated January 13, 2012.

As sponsor of the Senate amendment which became RSA 72:73-74, I have been asked by Mr. Webber and Attorneys Upton and Moffett to explain the intent behind the PILOT legislation. I'm happy to do so.

The general legislative intent of RSA 72:73-74 is set out in the "Purpose" clause to the 2006 Senate floor amendment to HB 1758 (2006-2196bs), as reported in the Senate Journal at 2006 SJ 1203 on May 4, 2006:

SENATOR BURLING: Thank you, Mr. President. This amendment brings together a concept which the committee felt was very important and that is to authorize local communities, where appropriate, to enter into payment in lieu of tax agreements with the developers of renewable energy projects. It is legislation which authorizes communities to enter into these arrangements. The language is very carefully drafted to make it clear that the creation of a payment in lieu of tax agreement is a method of fulfilling the obligation to pay real property taxes. That fulfillment of obligation continues as long as the payments under the agreement are actually made. If, at any point, there is a termination of payments by the project owner or lessee, then the obligation to pay real estate taxes is...it's not instantly reinstated, it's never been suspended. What we think is that this is going to be an opportunity to encourage local communities to make decisions about how to encourage renewable energy products within their boundaries. And, Senator Odell and myself offer this and urge your support of it.

[2006 SJ 1203.]

May 4, 2006

006-2196s

03/10

Floor Amendment to HB 1758

Amend the bill by replacing all after section 4 with the following:

5 Purpose. High energy demand and tight supply are pushing energy prices, including the prices of oil, natural gas, coal, and electricity, to new records and increasing price volatility. The 2002 New Hampshire Energy Plan recognizes "energy's central role in fulfilling our priorities of economic growth, environmental quality, and a diverse energy supply" and recommends consideration of energy policies and programs that include encouraging the development of cleaner, affordable alternative energy sources; utilizing our plentiful renewable natural resources; and reducing our dependence on foreign oil. (New Hampshire Energy Plan at 1-1.) Such policies are supported by HJR 2 (1981), a resolution to establish a state policy on energy, and by the state's Energy Policy set forth in RSA 378:37 "to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; the protection of the safety and health of the citizens, the physical environment of the state, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities." In order to promote the state's energy policies as well as the public interest, the general court believes that impediments to preserving, expanding, and improving existing renewable generation facilities in the state, and to developing new renewable generation facilities in the state, should be reduced. Furthermore, the general court believes that practices, procedures, and methodologies related to property assessment for the purposes of taxation can be such an impediment. Therefore, the general court finds that it is desirable to reauthorize each municipality to enter into voluntary agreements with the owners of renewable generation facilities located in the municipality to make payments in lieu of taxes. Such tax policy is appropriate because renewable generation facilities differ from other utility property and traditional generation facilities, such as fossil fuel and nuclear plants. Specifically, many renewable generation facilities are very small and some renewable technologies like wind and hydroelectric facilities are weather-dependent and not able to operate at full output throughout the year. Furthermore, unlike other manufacturing operations, renewable generation facilities are considered utility property and are required to include all generation production equipment as taxable property. Unlike regulated utilities, renewable generation facilities are unable to recover their tax-related expenses through regulated rates.

6 New Subdivision; Exemption for Renewable Generation Facilities. . . .



balance of amendment text here omitted; available in on-line *Senate Journal*].

Let me turn now to the specific intent of the Legislature on the point at issue between Antrim and Antrim Wind and the Department of Revenue Administration, as framed in the January 11 letter from the attorneys for the Town and Antrim Wind and the Directors' January 13 reply.

It is my clear recollection that during the Senate's 2006 deliberations on the proposed PILOT legislation, we gave careful attention to the possible impact of that legislation on towns that participate in cooperative school districts. We wrote what became RSA 72:74, III to make clear that a host town's annual contribution to its cooperative school district would be a pro-rata share of the renewable generation facility's annual PILOT payment, based on the then-current proportion that the host town's local school district tax rate bears to its municipal tax rate. We considered and specifically rejected the alternative of having the renewable generation facility assessed at its full fair market value (as in *ad valorem* taxation) for purposes of calculating the host town's annual contributions to the cooperative school district, on the grounds that this could severely disadvantage the host town vis a vis the other towns in the cooperative school district. Assessment of the host town's renewable generation facility at full fair market value would effectively give the other towns in the cooperative school district a windfall contribution to their own school district expenses, while the host town might actually have to increase its local school district tax rate (and thus its total tax burden) in order to cover the higher contribution triggered by an *ad valorem* fair market value assessment of the renewable generation facility.

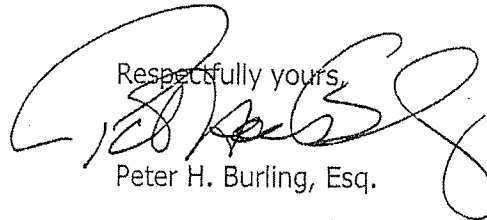
I also specifically recall the discussions that led to the contemporaneous 2006 one-line addition to the equalization statute, RSA 21-J:3, XIII, i.e. "...and property which is the subject of a payment in lieu of taxes under RSA 72:74...". The reason for that simple addition was that we were concerned about a possible "tax gap" in the event that a renewable generation facility with a PILOT agreement were to stop making PILOT payments, either because the PILOT had terminated or because of a change or stoppage in operations at the facility. We wanted to make very sure that in that event, the property would immediately be subject to *ad valorem* taxation on a fair market value basis, without any gap. In other words, we specifically intended that any PILOT arrangement based on RSA 72:74 would suspend, not terminate, the applicability of the normal *ad valorem* tax structure under RSA Chapter 72. In order to make sure that NHHDR was prepared for that contingency, we added the language in RSA 21-J:3, XIII so that the Department would continue with its yearly fair market value appraisals of renewable generation facilities, in order to be sure there would be no lag in appropriate fair market value assessments if and when a PILOT agreement was no longer in effect. We did not intend that such fair market value appraisals would become the basis for adding to a host town's contributions to a cooperative school district during the effective life of a PILOT agreement under RSA 72:74. Our intent on that issue was, we believed, clearly expressed in RSA 72:74, III.

I hope I have clarified the legislative intent relating to these statutes. To the extent that the Department's reading of RSA 21-J:3, XIII suggests that the value of a

wind generation facility subject to a PILOT agreement should be calculated at *ad valorem* fair market value (rather than a pro-rata share of the annual PILOT payment) for purposes of a host town's contribution to a cooperative school district, you should be aware that the Legislature intended otherwise, i.e. the Legislature intended that these statutes be interpreted as the Town and Antrim Wind read them. The Department's reading, I believe, would result in an unequal and unjust apportionment of public taxes among the towns in a cooperative school district, in violation of both the rationale for and the express wording of the underlying statute, RSA 21-J:3,XIII.

Thank you for your consideration of this issue. I would be happy to discuss this further with you when we return from a 30-day absence from home if that would be helpful.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Peter H. Burling', written over the typed name.

Peter H. Burling, Esq.

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cc: Antrim Board of Selectmen, c/o Robert Upton, II  
Antrim Wind Energy, LLC, c/o Howard Moffett  
Gordon Webber

## EXHIBIT D

### Antrim PILOT "Worst Case" ConVal Analysis Based on 2010 Figures

<u>Antrim Total Equalized Value</u>		2010 <u>Conval Dist. Valuation</u>	<u>% of Total District Valuation</u>
Antrim Now (2010 figure)	\$ 250,119,063	\$ 2,114,482,586	11.83%
Antrim Estimated Future Value	\$ 300,000,000	\$ 2,164,363,523	13.86%
Estimated Net Increase due to Antrim Wind Project*	\$ 49,880,937		2.03%

#### PILOT - Pro Rata Analysis per RSA 72:74, III

First Year PILOT Payment		\$ 337,500
Municipal (\$11.42/1000 = 52.8% of \$21.64)	52.8%	\$ 178,200
School (\$9.10/1000 = 42.0% of \$21.64)	42.0%	\$ 141,750
County (\$1.12/1000 = 5.2% of \$21.64)	5.2%	\$ 17,550
SWEPT (\$2.50/1000 >> Antrim Mill Rate of \$24.14)	N/A	

#### Market Rate Equalized Value Analysis

2010 ConVal School Budget (50% based on valuation)	\$ 19,437,727
2010 Antrim Allocation	\$ 2,299,260
Hypothetical Allocation Due To Equalized Value Adjustment	\$ 2,694,242
Potential Increase Due To Equalized Value Adjustment	\$ 394,981

#### Comparison

Inequitable Overpayment To Conval School District	\$ 394,981
As A Result Of Failure To Make Adjustment to Equalized Value	\$ (141,750)
	\$ 253,231
	\$ 337,500
	\$ (394,981)
Net Result To Antrim As Host Community With PILOT	\$ (57,481)

\* We use \$49.88 million as the hypothetical NHDRA "fair market value" assessment of the Antrim Wind Project, based on current NHDRA wind project valuation methodology. For its part, Antrim Wind believes the actual fair market value of taxable assets under RSA 72:8 and RSA 83-F:1, V is likely to be substantially less than this figure, but acknowledges that the valuation figure will be set initially by NHDRA.

**PAYMENT IN LIEU OF TAXES AGREEMENT BETWEEN  
THE TOWN OF ANTRIM AND ANTRIM WIND ENERGY LLC**

This Payment in Lieu of Taxes (PILOT) Agreement (hereafter "Agreement") is made this \_\_\_\_ day of June 2012, under New Hampshire Revised Statutes Annotated (NHRSA) § 72:74, between the Town of Antrim, New Hampshire ("Town") and Antrim Wind Energy LLC ("AWE"), a Delaware limited liability company with a business address at 155 Fleet Street, Portsmouth, New Hampshire 03801.

**Background**

AWE seeks to develop a renewable wind-powered electric generating facility (the "Facility") using between eight and eleven multi-megawatt wind turbines to be located on and around Tuttle Hill Ridge in the northwest section of the Town of Antrim, with road access from NH Route 9. AWE expects the final installed Nameplate Capacity to be approximately 30 megawatts (MW). For the purposes of this Agreement, the term "Nameplate Capacity" shall mean the sum of all of the nameplate capacities for all wind turbine generators installed and operating at the Facility. Once the project has reached commercial operation, defined below, the parties will sign a letter amendment to this Agreement specifying the actual Nameplate Capacity of the Facility.

The Facility will be built on land leased from private landowners in the Town, identified on Town tax maps as tax parcels 212-030, 212-027, 212-034, 235-014, 236-001, 236-002 and 239-001.

Under its lease agreements with landowners, AWE will be responsible for the payment of local *ad valorem* real estate taxes on Facility structures and other

improvements under NHRSA Chapter 72 (but not for taxes on the value of the underlying land, which will continue to be the landowners' responsibility).

The Facility will be a "renewable generation facility", as defined in NHRSA §72:73 and NHRSA 374-F:3, V(f)(3). Under NHRSA §72:74, the owner of a renewable generation facility and the governing body of the municipality in which the facility is located may, after a public hearing, enter into a voluntary agreement to make payments in lieu of taxes.

AWE and the Town desire to enter into such a PILOT agreement under NHRSA §72:74.

NOW THEREFORE, the parties hereto agree as follows:

**Terms and Conditions**

1. Payments in Lieu of Taxes. AWE will make payments in lieu of taxes to the Town for each tax year (April 1 to March 31) during the term of this Agreement, in accordance with Sections 3, 4, and 5 below. These PILOT payments will be in lieu of any and all *ad valorem* real estate taxes otherwise payable under NHRSA Chapter 72, including all town, county, and local school district taxes.

2. Term. Mindful of RSA 72:74, VI and VII, the parties have determined that a long-term agreement providing predictability of tax revenues and expenses would be advantageous to both the Town and AWE. Accordingly, the term of this Agreement shall be 21 (twenty-one) years, beginning with a "transition tax year" described in Section 4 below and continuing thereafter for 20 additional years (the "Operating Term") as described in Section 5 below. If the Facility fails to achieve commercial operation by December 31, 2015, this Agreement shall be deemed void and of no effect. For the purposes of this Agreement, the term "commercial operation" shall be deemed to have

occurred once (a) each Wind Turbine has been commissioned and accepted by AWE in accordance with applicable commissioning and inspection procedures (b) the Facility has been interconnected to the utility electric grid, and (c) AWE has commenced the sale of energy from the Facility on a commercial (rather than test) basis to one or more purchasers. The date on which AWE commences energy sales on a commercial basis shall be deemed the "Commercial Operation Date." AWE shall give the Town written notice of said Commercial Operation Date within seven (7) days after it occurs, together with a proposed letter amendment confirming the Facility's actual Nameplate Capacity.

3. Construction Period. During the Construction Period, which commences on the Construction Start Date (defined below), AWE shall make the following PILOT payments to the Town:

- (a) \$50,000 within 30 days of the start of construction;
- (b) A second \$50,000 within 30 days of the Commercial Operation Date;
- (c) If the Commercial Operation Date has not occurred within twelve (12) months of the start of construction, then AWE shall either notify the Town in writing that it will not proceed with construction of the Wind Project, or make a third \$50,000 payment if it decides to continue with construction;
- (d) If the Commercial Operation Date has not occurred within twenty-four (24) months of the start of construction, then AWE shall either notify the Town in writing that it will not proceed with construction of the Wind Project or make a fourth \$50,000 payment if it decides to continue with construction;

(e) If the Commercial Operation Date has not occurred within thirty-six (36) months of the start of construction and AWE still plans to complete construction and operate the Wind Project, AWE and the Town will enter into good faith discussions about further interim PILOT payments during the Construction Period.

For the purposes of this Agreement, the Construction Start Date shall be the date upon which AWE has released its general contractor to commence civil construction work on the Facility. AWE shall provide notice to the Town of the Construction Start Date within seven (7) days of such date.

4. Transition Tax Year Payment. The tax year in which the Facility achieves commercial operation, the Transition Tax Year, shall be the first tax year covered by this Agreement. Recognizing that construction of the Facility may not have commenced (or that if construction has commenced that the Facility is likely to be only partially constructed) as of April 1 of said Transition Tax Year, and that AWE's revenues for said tax year may be non-existent or minimal, the PILOT payment for said Transition Tax Year will be based on the following formula, calculated as of the Commercial Operation Date:

$$(\text{Nameplate Capacity}) \times (\text{days left in Transition Tax Year}/365) \times (\text{first year PILOT rate}) \times 0.5$$

For example, if Nameplate Capacity is 30 MW and commercial operation is reached on September 1, the Transition Tax Year payment would be calculated as:

$$(30 \times (211/365) \times \$11,250) \times .5 = \$97,551$$

The Transition Tax Year Payment will be made within ninety (90) days of the Commercial Operation Date.

5. PILOT Payments for 20-Year Operating Term. Subject to possible adjustments up or down under Section 6 below, annual PILOT payments to the Town for the 20-year Operating Term shall begin at the rate of \$11,250 per megawatt of Nameplate Capacity, in the tax year that begins on April 1 following the commercial operation date. The rate for annual PILOT payments will increase by 2.5% (two and one-half percent) cumulatively in each successive year of the Operating Term. Assuming a total of 30 MW of Nameplate Capacity installed and operating (a turbine on scheduled outage for maintenance shall be considered operating) on April 1 each year during the 20-Year Operating Term and a 2014 tax year start for the Operating Term, AWE's payments to the Town in lieu of taxes during the Operating Term covered by this Section 5 would be as follows:

<b>Tax Year Beginni ng April 1</b>	<b>Total Installed Namepl ate Capacity</b>	<b>Cumulative 2.5% Increase/M W</b>	<b>Payments in lieu of Taxes</b>
2014	30	\$11,250	\$337,500
2015	30	\$11,531	\$345,938
2016	30	\$11,820	\$354,586
2017	30	\$12,115	\$363,451
2018	30	\$12,418	\$372,537
2019	30	\$12,728	\$381,850
2020	30	\$13,047	\$391,397
2021	30	\$13,373	\$401,181
2022	30	\$13,707	\$411,211
2023	30	\$14,050	\$421,491
2024	30	\$14,401	\$432,029
2025	30	\$14,761	\$442,829
2026	30	\$15,130	\$453,900
2027	30	\$15,508	\$465,247
2028	30	\$15,896	\$476,879
2029	30	\$16,293	\$488,801
2030	30	\$16,701	\$501,021



2031	30	\$17,118	\$513,546
2032	30	\$17,546	\$526,385
2033	30	\$17,985	\$539,544

**TOTAL**

**\$8,621,3  
22**

If the Facility's actual Commercial Operation Date occurs after March 31, 2014, then the schedule of annual PILOT payments during the Operating Term covered by this Section 5 will be amended to reflect that the first year of the Operating Term will be the tax year following the tax year in which commercial operation begins.

6. Potential Adjustment of PILOT Payments.

(a) Increase in Capacity. In the event that some or all of the Facility's turbines are replaced with larger ones during the term of the Agreement in such a way as to increase the Facility's total capacity, then PILOT payments beginning in the next tax year will be adjusted upwards. For example, if three 3.2-MW turbines replace three 3.0-MW turbines, increasing the Facility's total capacity from 30 to 30.6 MW of installed and operating capacity, then the PILOT payment in the following tax year would be based on 30.6 MW rather than 30 MW.

(b) Reduction in Capacity: If the Facility's installed and operating capacity as of April 1 in any tax year is materially reduced (due to causes beyond AWE's control) from the previous tax year due to: (i) damage caused by natural forces, (ii) operational restrictions caused by a change in law, regulation, ordinance, or industry management standards, (iii) decommissioning and removal of any turbines, or (iv) the permanent cessation of the Facility's operations, then the PILOT payment will be adjusted

downward based on the total actual installed and operating Nameplate Capacity after the reduction in capacity, or in the case of clause (iv) above, this Agreement will terminate.

7. Payment of Amounts Due. Other than the Construction Period payments, which shall be made as set forth in Section 3 above, and the Transition Tax Year Payment, which shall be made as set forth in Section 4 above, AWE shall make the PILOT payments due hereunder for any given tax year in the Operating Term to the Town in two equal installments, at the Town Tax Collector's office, on July 1<sup>st</sup> and December 1<sup>st</sup>.

8. Non-Payment. Non-payment of any payment due the Town shall constitute a default. Notice of non-payment or any other default shall be provided to AWE (and to AWE's Lender, as further specified in Section 9 below), in the manner and at the address provided for Notices in Section 12 of this Agreement. AWE shall have 30 days to cure the default after receiving such notice. In the event the condition causing the default is not cured within 30 days, the Town may commence an action to collect any non-payment under RSA 80:50, seek specific performance of a non-monetary default or proceed against the real estate under RSA 80:58-80. It shall not be a defense to such a proceeding that AWE is obligated under this Agreement to make payments in lieu of taxes rather than taxes.

9. Lender's Right to Cure. The Town shall send a copy of any notice of default sent to AWE to AWE's Lender by certified mail at the same time such notice is sent to AWE, and no such notice of default to AWE shall be effective unless and until a copy of such notice has been delivered to AWE's Lender. AWE's Lender shall have the same time and rights to cure any default as AWE, and the Town shall accept a cure by AWE's Lender as if such cure had been made by AWE. AWE shall provide written

notice to the Town as to the name and address of AWE's Lender for such notices to be sent.

10. Public Hearing. Prior to signing this Agreement, the Town shall hold a public hearing as required by NHRSA §72:74, I. Such hearing shall have been duly noticed by the Town as provided by law.

11. Other Taxes Not Covered. This Agreement covers only *ad valorem* real estate taxes payable under NHRSA Chapter 72. It does not include or cover other local, state, or federal taxes which may be payable on account of Facility revenues or activities, including the Land Use Change Tax, Timber Tax, State Utility Property Tax, Business Enterprise Tax, or Federal Income Tax.

12. Notices. Any notice to be provided under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or by certified mail at the following addresses:

For the Town: Chairman, Antrim Board of Selectman  
66 Main Street  
P.O. Box 517  
Antrim, NH 03440

For AWE: Antrim Wind Energy LLC  
155 Fleet Street  
Portsmouth, NH 03801

For AWE's Lender: (to be provided by AWE)

with a copy to: Orr and Reno, P.A.  
One Eagle Square  
Concord, NH 03302

In the event of a change in the address of any party listed above, the responsible signatory (AWE in the case of itself, its Lender and/or its counsel) shall give the other

party prompt written notice of such change of address, which shall be effective upon receipt.

13. Miscellaneous.

(a) This Agreement shall be construed and interpreted in accordance with the laws of the State of New Hampshire. In the event any term of this Agreement or the application of any such term shall be held invalid by any court having jurisdiction, the other terms of this Agreement and their application shall not be affected thereby and shall remain in full force and effect, provided that the remaining terms continue to preserve the essential economic terms of this Agreement.

(b) The terms and provisions contained in this Agreement constitute the final Agreement between the parties with respect to this Agreement and supersede all previous communications, representations or agreements, either verbal or written. No modification or amendment to this Agreement shall be valid unless it is in writing and signed by both parties hereto.

(c) AWE shall have the right, in its sole discretion, to assign this Agreement to any bona fide purchaser, transferee, or assignee, provided that said purchaser, transferee or assignee has the financial, managerial, and technical capacity to construct and operate the Facility as contemplated by the parties hereto. All covenants, agreements, terms and conditions contained in this Agreement shall apply to and be binding upon the parties, their assigns and successors. AWE shall provide written notice to the Town of any sale, transfer, or assignment not less than 30 days prior to such sale, transfer or assignment taking effect.

(d) Section titles or subject headings in this Agreement are provided for the purpose of reference and convenience only and are not intended to affect the meaning of the contents or scope of this Agreement.

(e) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original instrument, but all of such counterparts together will constitute but one Agreement.

TOWN OF ANTRIM, NEW HAMPSHIRE

By: \_\_\_\_\_

Eric Tenney  
Chairman  
Antrim Board of Selectman

\_\_\_\_\_  
Michael Genest  
Selectman

\_\_\_\_\_  
John Robertson  
Selectman

ANTRIM WIND ENERGY, LLC

By: \_\_\_\_\_

John B. (Jack) Kenworthy  
Executive Officer

Agreement Regarding  
Alternative PILOT Payments in the Event of Increased Cooperative School District  
and County Contributions Based on FMV Assessments

1. Under RSA 72:74, the Antrim Board of Selectmen and Antrim Wind Energy (AWE) have negotiated and signed a "Payment in Lieu of Taxes Agreement" (PILOT Agreement, attached hereto as Attachment A) with respect to the 30-MW Antrim Wind Project. AWE is continuing to develop the Project and expects to begin Project operations based on the terms set forth in Attachment A.
2. RSA 72:74, III requires that PILOT payment proceeds be pro-rated between a town and a cooperative school district "...in the same manner as local taxes are pro-rated...", while RSA 21-J:3, XIII requires that NHDRA annually make "such adjustments in the value of other property from which the towns...receive...payments in lieu of taxes as may be equitable and just..."
3. Notwithstanding these statutory provisions, the New Hampshire Department of Revenue Administration (NHDRA) has opined, in a letter dated January 13, 2012, that the value of the Project, for purposes of determining the Town's annual contribution to the Coontocook Valley Cooperative School District (and presumably the County) based on its total equalized assessed valuation under RSA 21-J:3, XIII, would be based on NHDRA's annual appraisal of the Project's full and true market value ("FMV") rather than reflecting the school district's and county's pro-rata shares of PILOT payment proceeds, as AWE and the Town contend. AWE expects to contest, with the concurrence of the Town, NHDRA's interpretation of RSA 21-J:3, XIII in a declaratory judgment action in Superior Court, and, if necessary, in the New Hampshire Supreme Court.
4. In the event of a final and binding court order upholding the interpretation of RSA 72:74, III and RSA 21-J:3, XIII taken by AWE and the Town, the original PILOT Agreement attached as Attachment A shall continue in effect according to its terms.
5. In the event of a final and binding court order upholding NHDRA's interpretation of the statutes (i.e., requiring the Project's valuation for purposes of annual cooperative school district and county contributions to be based on NHDRA-conducted appraisals of the Project's full and true market value rather than being equitably adjusted based on the school district's *pro rata* share of PILOT proceeds), then, in order to mitigate the effect of such a ruling on the Town, AWE will make "Alternative PILOT Payments" to the Town for all years in which (a) the adverse ruling is in effect and (b) the Alternative PILOT Payments under the formula below would exceed the original PILOT Payments that would otherwise be made under Section 5 of Attachment A, in lieu of those original PILOT payments. Alternative PILOT Payments shall be based on the following calculations:

Alternative PILOT Payments ("APP") shall equal the greater of [A + B] or C, where:

- A = The amount of the Town's annual contributions to (i) the ConVal Cooperative School District and (ii) Hillsborough County, if said payments are increased beyond what they would be as pro rata shares of the original PILOT payments under Section 5 of Attachment A and RSA 72:74,III, due to NHDRA's calculation of the Project's FMV and the associated increase in the Town's total equalized assessed valuation under RSA 21-J:3,XIII.
- B = The amount shown for the applicable PILOT year on the attached Schedule B.
- C = The amount that would be payable for such PILOT year under Section 5 of the original PILOT Agreement (Attachment A).

Dated this \_\_\_\_ day of June, 2012.

TOWN OF ANTRIM, NEW HAMPSHIRE

By: \_\_\_\_\_  
Selectman

\_\_\_\_\_  
Selectman

\_\_\_\_\_  
Selectman

ANTRIM WIND ENERGY, LLC

By: \_\_\_\_\_

Its \_\_\_\_\_  
Executive Officer

**SCHEDULE B**

<b>PILOT YEAR</b>	<b>Sched. B Payment</b>
1	\$125,000
2	\$125,000
3	\$125,000
4	\$125,000
5	\$132,875
6	\$141,246
7	\$150,145
8	\$159,604
9	\$169,659
10	\$180,347
11	\$191,709
12	\$203,787
13	\$216,625
14	\$230,273
15	\$244,780
16	\$260,201
17	\$276,594
18	\$294,019
19	\$312,542
20	\$332,233



O&amp;R Draft 5/17/12

Agreement Regarding  
Alternative PILOT Payments in the Event of Increased Cooperative School District  
and County Contributions Based on FMV Assessments

1. Under RSA 72:74, the Antrim Board of Selectmen and Antrim Wind Energy (AWE) have negotiated and signed an Agreement for Payments in Lieu of Taxes (PILOT Agreement, attached hereto as Attachment A) with respect to the 30-MW Antrim Wind Project. AWE is continuing to develop the Project and expects to begin Project operations based on the terms set forth in Attachment A.
2. RSA 72:74, III requires that PILOT payment proceeds be pro-rated between a town and a cooperative school district "...in the same manner as local taxes are pro-rated..." while RSA 21-J:3,XIII requires that NHDRA annually make "such adjustments in the value of other property from which the towns...receive...payments in lieu of taxes as may be equitable and just..."
3. Notwithstanding these statutory provisions, the New Hampshire Department of Revenue Administration (NHDRA) has opined, in a letter dated January 13, 2012, that the value of the Project, for purposes of determining the Town's annual contribution to the Coontocook Valley Cooperative School District (and presumably the County) based on its total equalized assessed valuation under RSA 21-J:3,XIII, would be based on NHDRA's annual appraisal of the Project's full and true market value ("FMV") rather than reflecting the school district's and county's pro-rata shares of PILOT payment proceeds, as the Town and AWE contend. The Town and AWE expect to contest NHDRA's interpretation of RSA 21-J:3,XIII in a declaratory judgment action in Superior Court, and, if necessary, in the New Hampshire Supreme Court.
4. In the event of a final and binding court order upholding the interpretation of RSA 72:74,III and RSA 21-J:3,XIII taken by the Town and AWE, the original PILOT Agreement attached as Attachment A shall continue in effect according to its terms.
5. In the event of a final and binding court order upholding NHDRA's interpretation of the statutes (i.e., requiring the Project's valuation for purposes of annual cooperative school district and county contributions to be based on NHDRA-conducted appraisals of the Project's full and true market value rather than being equitably adjusted based on the school district's *pro rata* share of PILOT proceeds), then, in order to mitigate the effect of such a ruling on the Town, AWE will make "Alternative PILOT Payments" to the Town for all years in which (a) the adverse ruling is in effect and (b) the Alternative PILOT Payments under the formula below would exceed the original PILOT Payments that would otherwise be made under Section 5 of Attachment A, in lieu of those original PILOT

payments. Alternative PILOT Payments shall be based on the following calculations:

Alternative PILOT Payments ("APP") shall equal the greater of  $[A + B]$  or C, where:

- A = The amount of the Town's annual contributions to (i) The ConVal Cooperative School District and (ii) Hillsborough County, if said payments are increased beyond what they would be as pro rata shares of the original PILOT payments under Section 5 of Attachment A and RSA 72:74.III, due to NHDRA's calculation of the Project's FMV and the associated increase in the Town's total equalized assessed valuation under RSA 21-J:3, XIII.
- B = The amount shown for the applicable PILOT year on the attached Schedule B
- C = The amount that would be payable for such PILOT year under Section 5 of the original PILOT Agreement (Attachment A).

As a hypothetical example, and in order to avoid doubt or disagreement, suppose that after two years of normal PILOT payments under Section 5 of Attachment A, there is a final and binding court order directing that the Town's annual contribution to the ConVal Cooperative School District and Hillsborough County should be based (beginning in PILOT Year 3 under Section 5 of Attachment A) on the Town's total equalized assessed valuation, including the FMV of the Project as determined by NHDRA. Suppose further that the School District's and County's pro rata shares of the original PILOT Year 3 payment under Section 5 would total \$ 167,364.56, but that the NHDRA's calculation of the FMV of the Project increases the Town's PILOT Year 3 contributions to the School District and County to a total of \$ 350,000.00. In that event, AWE would make a PILOT Year 3 Alternative PILOT Payment to the Town equal to \$350,000 plus the amount shown for PILOT Year 3 in Schedule B (\$125,000) for a total Alternate PILOT Payment of \$475,000. The same calculation would be made for each succeeding PILOT Year, until and unless the normal PILOT Payment that would be made under Section 5 exceeds the annual APP calculated according to the formula set forth above.

SCHEDULE B

PILOT YEAR	Sched. B Payment
1	\$125,000
2	\$125,000
3	\$125,000
4	\$125,000
5	\$132,875
6	\$141,246
7	\$150,145
8	\$159,604
9	\$169,659
10	\$180,347
11	\$191,709
12	\$203,787
13	\$216,625
14	\$230,273
15	\$244,780
16	\$260,201
17	\$276,594
18	\$294,019
19	\$312,542
20	\$332,233

884227.1

+ 500,000 hand TAX

+ 100,000 START OF PAYMENTS

Exhibit F



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  
Richard Y. Uchida  
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)

April 16, 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 16 copies of an Agreement between the Town of Antrim and Antrim Wind Energy, LLC. This document is intended to supplement Antrim Wind's Application, and has been labeled Appendix 17A. Please include it under Tab 17 in Volume 3 of the Application.

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

Very truly yours,

Susan S. Geiger

Enclosures

cc: Service List, excluding Committee Members  
874186\_1

AGREEMENT BETWEEN TOWN OF ANTRIM NEW HAMPSHIRE AND ANTRIM WIND ENERGY  
LLC, DEVELOPER/OWNER OF THE ANTRIM WIND POWER PROJECT DATED AS OF MARCH  
8<sup>th</sup>, 2012 ("Effective Date")

**1 Definitions**

- 1.1 "Agreement" – This agreement between the Town of Antrim, New Hampshire and Antrim Wind Energy LLC, and its successors and assigns, which shall apply from the Effective Date until the End of Useful Life of the Wind Farm
- 1.2 "Ambient Sound Pressure" – The sound pressure level excluded from that contributed by the operation of the Wind Farm.
- 1.3 "Decommissioning Funding Assurance" – An assurance provided by the Owner as more fully described in Section 14.2 in a form reasonably acceptable to the Town that guarantees completion of decommissioning activities, as provided in this Agreement.
- 1.4 "Effective Date" – The date of this Agreement as set forth above.
- 1.5 "End of Useful Life" – The point in time at which the Wind Farm, or an individual Wind Turbine as the case may be, has not generated electricity for a continuous period of twenty-four months for reasons other than the wind regime, maintenance or repair, facility upgrade or repowering.
- 1.6 "Non-Participating Landowner" – Any landowner in the Town of Antrim, other than a Participating Landowner.
- 1.7 "Owner" – Antrim Wind Energy LLC, its successors and assigns.
- 1.8 "Occupied Building" – A permanent structure used as a year-round residence, school, hospital, church, public library or other building used for public gathering that is occupied or in use as of the Effective Date.
- 1.9 "Participating Landowner" – Any landowner having entered into an agreement with the Owner for lease of real property or the granting of easements for access, entry or conveyance of the other real property rights related to the Wind Farm.
- 1.10 "Project Site" – Property with rights as conveyed to Owner by lease, easement or other agreement with a Participating Landowner that includes all access roads, and other ancillary facilities required for construction and operation of the Wind Farm.
- 1.11 "Town" – Town of Antrim, New Hampshire

- 1.12 "Turbine Height" – The distance from the surface of the tower foundation to the tip of the uppermost blade when in a vertical position.
- 1.13 "Wind Turbine" – A wind energy conversion system that converts kinetic wind energy into electricity, comprised primarily of a tower, a nacelle housing the generator, and a 3-blade rotor.
- 1.14 "Wind Farm" – The wind powered project being developed in the Town of Antrim by Owner, including but not limited to up to 10 Wind Turbines, cable, accessory buildings and structures including substations, permanent and temporary meteorological towers, electric infrastructure, access roads, and cables and other appurtenant structures and facilities that comprise such wind power project.

## **2 General Provisions**

- 2.1 Enforceability. This Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner.
- 2.2 Applicability to Owner. This Agreement shall apply to the Owner only to the extent of Owner's rights and responsibilities related to the Wind Farm and Project Site as conferred to Owner by Participating Landowner agreements.
- 2.3 Recording.
  - 2.3.1 At the Town's request, the Owner shall submit to the Town evidence of all agreements between the Owner and Participating Landowner, which may take the form of memoranda recorded with the Hillsborough County Registry of Deeds.
  - 2.3.2 This Agreement shall be recorded at the Hillsborough County Registry of Deeds.
- 2.4 Invalidity. The invalidity of any section, portion, or paragraph of this Agreement will not affect any other section, portion, or paragraph in this Agreement.
- 2.5 Limitation on Turbines. This Agreement relates to the installation and operation of the Wind Farm. The Wind Turbines used in the Wind Farm shall be consistent with the size and configuration as approved by the New Hampshire Site Evaluation Committee (NHSEC); provided, however, that in no event shall the overall Turbine Height of any Wind Turbine used in the Wind Farm exceed 500 feet. Communications or other equipment attached to the Wind Turbines shall be limited to that which is incidental or necessary for the

safe and efficient construction, operation, maintenance, and interconnection of the Wind Farm.

- 2.6 On-Site Burning. The Owner will obtain a permit from the Town of Antrim, and comply with all state requirements before Owner or its agents perform any on-site burning.
- 2.7 Warnings.
  - 2.7.1 A clearly visible warning sign concerning voltage must be placed on all of the Wind Farm's aboveground electrical collection facilities, switching or interconnection facilities, and substations.
  - 2.7.2 Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of the Wind Farm's guy wires, if any, and along the guy wires up to a height of ten feet from the ground.
  - 2.7.3 Clearly visible warning signs concerning safety risks related to winter or storm conditions shall be placed on access roads to the Wind Farm no less than 750 feet from each Wind Turbine tower base and on informal roads and trails in the vicinity of the Project at no less than 500 feet from each Wind Turbine tower base.
- 2.8 Access. The Town shall have access to all gated entrances to the Project Site for the purpose of emergency response. The Owner shall provide to the Town any keys, combination codes, and/or remote control devices necessary to open such gates. Such keys or access devices may not be provided by the Town to anyone other than members of the Board of Selectman, Police Department, Fire Chief, EMS or Highway Department while engaged in official duties. The Owner shall provide access to the Project Site, Wind Turbines or other facilities upon reasonable request by the Town for the purpose of building or safety inspections under the Town ordinances. The Owner shall provide access for emergency response purposes pursuant to the protocols provided under Section 7 of this Agreement. The Owner shall coordinate agreements with responding town emergency services and ensure access for those responder departments. Building, occupancy or other permits or approvals required by Town regulations and ordinances are not required for any of the site plans, subdivisions, facilities, buildings, roads or other structures certificated by the New Hampshire Site Evaluation Committee.
- 2.9 Liability Insurance. Upon the closing of the construction financing for the Wind Farm, the Owner shall maintain a current general liability policy covering body injury and property damage with limits of at least \$10 million in the aggregate which may be covered as a part of an umbrella or blanket policy. Certificates verifying such insurance coverage shall be made available to the Town upon request.

- 2.10 Indemnification. The Owner specifically and expressly agrees to indemnify, defend, and hold harmless the Town and its officers, elected officials, employees and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees resulting from or arising out of any negligence or wrongful acts of the Owner, its employees, agents, representatives or subcontractors of any tier, their employees, agents or representatives in connection with the Wind Farm. The indemnity obligations under this Article shall include without limitation:
- 2.10.1 Loss of or damage to any property of the Indemnitees or, to the extent that loss of or damage to property of Owner, results in a third party claim against the Town, loss of or damage to any property of Owner;
  - 2.10.2 Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town, or of the Owner or its subcontractors of any tier.
  - 2.10.3 The Owner's indemnity obligation under this Article shall not extend to any liability caused by the negligence or willful misconduct of any of the Indemnitees, or third parties outside the Owner's control.
- 2.11 Reopener Clause. Upon agreement of both parties to this agreement, this agreement or portions thereof may be revised or amended.

### **3 Wind Turbine Equipment and Facilities**

- 3.1 Visual Appearance.
  - 3.1.1 Wind Turbines shall be painted and lighted in accordance with Federal Aviation Administration (FAA) regulations. Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or any other applicable authority that regulates air safety. Lights shall be shielded to the greatest extent possible from viewers on the ground.
  - 3.1.2 Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer and/or Owner.
- 3.2 Controls and Brakes. All Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall



regulation shall not be considered a sufficient braking system for over-speed protection.

- 3.3 Electrical Components. All electrical components of the Wind Farm shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.
- 3.4 Power Lines. On-site distribution power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

#### **4 Project Site Security**

- 4.1 Wind Turbines exteriors shall not be climbable up to fifteen (15) feet above ground surfaces.
- 4.2 All access doors to Wind Turbines and electrical equipment shall be locked, fenced, or both, as appropriate, to prevent entry by non-authorized persons.
- 4.3 Entrances to Project Site shall be gated, and locked during non-working hours. If the Owner identifies problems with unauthorized access, the Owner shall work to implement additional security measures.

#### **5 Public Information, Communications and Complaints**

- 5.1 Public Inquiries and Complaints. During construction and operation of the Wind Farm, and continuing through completion of decommissioning of the Wind Farm, the Owner shall identify an individual(s), including phone number, email address, and mailing address, posted at the Town Hall, who will be available for the public to contact with inquiries and complaints. The Owner shall make reasonable efforts to respond to and address the public's inquiries and complaints. This process shall not preclude the Town from acting on a complaint.
- 5.2 Signs. Signs shall be reasonably sized and limited to those necessary to identify the Wind Farm and provide warnings or liability information, construction information, or identification of private property. There will be no signs placed in the public right of way without the prior approval of the Town. After the completion of construction, signs visible from public roads shall be unlit and be no larger than twelve square feet, unless otherwise required by applicable permits or as otherwise approved by the Town.

#### **6 Reports to the Town of Antrim**

- 6.1 Incident Reports. The Owner shall provide the following to the Chairman of the Board of Selectmen or the Chairman's designee as soon as practicable, but not later than thirty days after an incident:

- 6.1.1 Copies of all reports of environmental incidents or industrial accidents that require a report to U.S. EPA, New Hampshire Department of Environmental Services, OSHA or another federal or state government agency.
- 6.2 Periodic Reports. The Owner shall submit, on an annual basis starting one year after the commencement of commercial operation of the Wind Farm, a report to the Board of Selectmen of the Town of Antrim, providing, at a minimum, the following information:
  - 6.2.1 If applicable, status of any additional construction activities, including schedule for completion;
  - 6.2.2 Details on any calls for emergency, police or fire assistance during the prior year;
  - 6.2.3 Location of all on-site fire suppression equipment; and
  - 6.2.4 Identity of hazardous materials, including volumes and locations, as reported to state or federal agencies.
  - 6.2.5 Summary of any complaints received from Town of Antrim residents, and the current status or resolution of such complaints or issues.

## **7 Emergency Response**

- 7.1 Upon request, the Owner shall cooperate with the Town's emergency services and any emergency services that may be called upon to deal with a fire or other emergency at the Wind Farm through a mutual aid agreement, to develop and coordinate implementation of an emergency response plan for the Wind Farm. The Owner shall provide and maintain protocols for direct notification of emergency response personnel designated by the Town, including provisions for access to the Project Site, Wind Turbines or other facilities within 30 minutes of an alarm or other request for emergency response, and provisions notifying the Town of contact information for personnel available at every hour of the day. The Owner shall coordinate with other jurisdictions as necessary on emergency response provisions.
- 7.2 The Owner shall cooperate with the Town's emergency services to determine the need for the purchase of any equipment required to provide an adequate response to an emergency at the Wind Farm that would not otherwise need to be purchased by the Town. If agreed between the Town and Owner, Owner shall purchase any specialized equipment for storage at the Project Site. The Town and Owner shall review together on an annual basis the equipment requirements for emergency response at the Wind Farm.

7.3 The Owner shall maintain fire alarm systems, sensor systems and fire suppression equipment customarily installed in all Wind Turbines and related facilities.

7.4 If an emergency response event related to the Wind Farm creates an extraordinary expense (i.e. expenses beyond what the Town would normally incur in responding to an emergency event for a business located in the Town) for the Town, Owner shall reimburse the Town for actual expenses incurred by the Town.

## **8 Roads**

8.1 Public Roads. In the event that the Owner wishes to utilize Town of Antrim roads for construction or operation of the Wind Farm for oversize or overweight vehicles, and/or use during posted weight limit time periods, then the Owner shall:

8.1.1 Identify and notify the Town of Antrim of all local public roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the Wind Farm.

8.1.2 Hire a qualified professional engineer, as mutually agreed to with the Town, to document local road conditions prior to construction and as soon as possible after construction is completed (but no later than 30 days after such date) or as weather permits.

8.1.3 Promptly repair, at the Owner's expense, any local road damage caused directly by the Owner or its contractors at any time.

8.1.4 Reimburse the Town for reasonable costs associated with special police details, if required to direct or monitor traffic within the Town limits during construction of the Wind Farm.

### **8.2 Wind Farm Access Roads**

8.2.1 The Owner shall construct and maintain roads at the Wind Farm that allows for year-round access to each Wind Turbine at a level that permits passage and turnaround of emergency response vehicles.

8.2.2 Any use of Town of Antrim public ways that is beyond what is necessary to service the Wind Farm or that is beyond the scope of Participating Landowner agreement(s) shall be subject to approvals under relevant Town ordinances or regulation, or state or federal laws.

## **9 Construction Period Requirements**

- 9.1 Site Plan. Prior to the commencement of construction, the Owner shall provide the Town with a copy of the final Soil Erosion and Sediment Control site plans or New Hampshire Stormwater Pollution Prevention Plan, as approved by the New Hampshire Department of Environmental Services showing the construction layout of the Wind Farm.
- 9.2 Construction Schedule. Upon request of the Town, prior to the commencement of construction activities at the Wind Farm, the Owner shall provide the Town with a schedule for construction activities.
- 9.3 Disposal of Construction Debris. Tree stumps, slash, and brush will be disposed of onsite or removed consistent with state law. Construction debris and stumps shall not be disposed of at Town facilities.
- 9.4 Blasting. The handling, storage, sale, transportation, and use of explosive materials shall conform to all state and federal rules and regulations. In addition:
  - 9.4.1 At least ten days before blasting commences, the Owner shall brief Town officials on the blasting plan. The briefing shall include the necessity for blasting and the safeguards that will be in place to ensure that building foundations, wells or other structures will not be damaged by the blasting.
  - 9.4.2 In accordance with the rules of the State of New Hampshire, the Owner shall notify the Town police and fire chiefs before blasting commences. Any changes to the schedule for blasting will be reported immediately to the Town police and fire chiefs.
  - 9.4.3 A copy of the appropriate Insurance Policy and Blasting License will be provided to the Town.
- 9.5 Storm Water Pollution Control. The Owner shall obtain a New Hampshire Site-Specific Permit and conform to all of its requirements including the Storm Water Pollution Prevention Plan and requirements for inspections as included or referenced therein. The Owner shall provide the Town with a copy of all state and federal stormwater, wetlands, and water quality permits.
- 9.6 Design Safety Certification. The design of the Wind Farm shall conform to applicable industry standards, including those of the American National Standards Institute. If requested by the Town, the Owner shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies or other similar certifying organizations.

## 9.7 Construction Vehicles

- 9.7.1 Vehicles used for construction of the Wind Farm shall only use Town roads mutually agreed upon by the Owner and the Town. Staging or idling vehicles shall not be permitted on public roads. The Owner shall notify the Town at least 24 hours before any construction vehicle with a gross vehicle weight greater than 88,000 pounds is scheduled to use a Town road. Acceptance by the Town of vehicles exceeding this weight is not a waiver of the Owner's obligation under Section 8.1.3 of this Agreement to repair all damage to Town roadways caused by the Owner or its contractors.
- 9.7.2 Construction vehicles will not travel on Town roads before 6:00 am or after 7:00 pm, Monday through Saturday, unless prior approval is obtained from the Town. Construction vehicles will not travel on Town roads on Sunday, unless prior approval is obtained from the Town.
- 9.7.3 Construction will only be conducted between 6:00 am and 7:00 pm, Monday through Friday, and between 7:00 am and 7:00 pm on Saturdays unless prior approval is obtained from the Town. Construction will not be conducted on Sundays, unless prior approval is obtained from the Town.
- 9.7.4 The start-up and idling of trucks and equipment will conform to all applicable Department of Transportation regulations. In addition, the start-up and idling of trucks and equipment will only be conducted between 5:30 am and 7:00 pm, Monday through Friday and between 6:30 am and 7:00 pm on Saturday.
- 9.7.5 Notwithstanding anything in this Agreement to the contrary, upon mutual agreement between the Town and Owner, over-sized vehicles delivering equipment and supplies may travel on Town roads between the hours of 7:00pm and 6:00am and on Sundays so that the timing of such over-sized deliveries will minimize potential disruptions to area roads.

## 10 Operating Period Requirements

- 10.1 Spill Protection. The Owner shall take reasonable and prudent steps to prevent spills of hazardous substances used during the construction and operation of the Wind Farm. This includes, without limitation, oil and oil-based products, gasoline, and other hazardous substances from construction related vehicles and machinery, permanently stored oil, and oil used for operation of permanent equipment. Owner shall provide the Town with a copy of the Spill

Prevention, Control and Countermeasure (SPCC) for the Wind Farm as required by state or federal agencies.

- 10.2 Pesticides and Herbicides. The Owner shall not use herbicides or pesticides for maintaining clearances around the Wind Turbines or for any other maintenance at the Wind Farm.

## **11 Noise Restrictions**

- 11.1 Residential Noise Restrictions. Sound from the Wind Farm during Operations at the exterior facades of homes shall not exceed 50 dBA or 5 dBA above ambient, whichever is greater during daytime and 45 dBA or 5 dBA above ambient, whichever is greater, at night.
- 11.2 Pre-Construction Sound Modeling. Upon request of the Town, the Owner shall provide a full noise study prepared by a qualified professional, which demonstrates that the Wind Farm will meet the requirements of this Agreement and any conditions imposed by the Site Evaluation Committee in a Certificate of Site and Facility.
- 11.3 Post-Construction Noise Measurements. Within one year of the commencement of commercial operations of the Wind Farm, the Owner shall retain an independent qualified acoustics engineer to take sound pressure level measurements in accordance with the most current version of ANSI S12.18. The measurements shall be taken at sensitive receptor locations as mutually identified by the Owner and Town. The periods of the noise measurements shall include, as a minimum, daytime, winter and summer seasons and nighttime. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. The Owner shall provide the final report of the acoustics engineer to the Town within thirty (30) days of its receipt by the Owner.

## **12 Setbacks**

- 12.1 Setback From Occupied Buildings. The setback distance between a Wind Turbine and a Non-Participating Landowner's existing Occupied Building shall be not less than 2,200 feet. The setback distance shall be measured in a straight line from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.
- 12.2 Setback From Property Lines. The setback distance between a Wind Turbine and Non-Participating Landowner's property line shall be not less than 1.1 times the Turbine Height. The setback distance shall be measured in a straight line from the nearest point on the property line to the center of the Wind Turbine base.

- 12.3 Setback From Public Roads. All Wind Turbines shall be setback from the nearest public road a distance of not less than 1.5 times the Turbine Height as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.

### **13 Waiver of Restrictions**

- 13.1 Waiver of Noise Restrictions. A Participating Landowner or Non-Participating Landowner may waive the noise provisions of Section 11 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. The written waiver shall state that the consent is granted for the Wind Farm to not comply with the sound limits set forth in this Agreement.
- 13.2 Waiver of Setback Requirements. A Participating Landowner or Non-Participating Landowner may waive the setback provisions of Section 12 of this Agreement by signing a waiver of their rights, or by signing an agreement that contains provisions providing for a waiver of their rights. Such a waiver shall include a statement that consent is granted for the Owner to not be in compliance with the requirements set forth in this Agreement. Upon application, the Town may waive the setback requirement for public roads for good cause.
- 13.3 Recording. A memorandum summarizing a waiver or agreement containing a waiver pursuant to Section 13.1 or 13.2 of this Agreement shall be recorded in the Registry of Deeds for Hillsborough County, New Hampshire. The memorandum shall describe the properties benefited and burdened and advise all subsequent purchasers of the burdened property of the basic terms of the waiver or agreement, including time duration. A copy of any such recorded agreement shall be provided to the Town.

### **14 Decommissioning**

- 14.1 Scope of Decommissioning Activities.
- 14.1.1 The Owner shall submit a detailed estimate of both the costs associated with site-specific decommissioning activities and the salvage value of the decommissioned materials from the site to the Town before construction of the Wind Farm commences. The estimates shall be prepared by a qualified third party consultant, reasonably satisfactory to the Town, with experience in wind farm decommissioning and salvage value estimates. These estimates shall be updated and submitted to the Town every three years thereafter and in each instance shall be performed by a qualified third party consultant reasonably acceptable to the Town. The consultant shall produce, as part of the scope of services, a "Site Specific Decommissioning Estimate" that shall

be the cost of decommissioning activities, minus the recoverable salvage value of the decommissioned materials. The plan and estimate shall include the cost of removing the foundations down to eighteen (18) inches below grade.

14.1.2 The Owner shall, at its expense, complete decommissioning of the Wind Farm or individual Wind Turbines, pursuant to Section 14.1.3 of this Agreement, within twenty-four (24) months after the End of Useful Life of the Wind Farm or individual Wind Turbines, as the case may be, as defined in Section 1.5. For the avoidance of doubt, in no instance shall End of Useful Life for an individual Wind Turbine trigger decommissioning requirements for the entire Wind Farm.

14.1.3 The Owner shall provide a decommissioning plan to the Town no less than three months before decommissioning is to begin. The decommissioning plan shall provide a detailed description of all Wind Farm equipment, facilities or appurtenances proposed to be removed, the process for removal, and the post-removal site conditions. The Town will consider the remaining useful life of any improvement before requiring its removal as part of decommissioning. Approval of the Town, not to be unreasonably withheld, conditioned or delayed, must be received before decommissioning can begin.

#### 14.2 Decommissioning Funding Assurance:

14.2.1 The Owner shall provide a Decommissioning Funding Assurance for the complete decommissioning of the Wind Farm in a form reasonably acceptable to the Town. The Wind Farm will be presumed to be at the End of Useful Life if no electricity is generated from the Wind Farm for a continuous period of twenty-four (24) months, and as defined in Section 1.5.

14.2.2 Before commencement of construction of the Wind Farm, the Owner shall provide Decommissioning Funding Assurance in an amount equal to the greater of the Site-specific Decommissioning Estimate plus twenty-five percent (25%) or \$200,000. The Owner shall adjust the amount of Decommissioning Funding Assurance to reflect the updated decommissioning costs and salvage value after each update of the decommissioning estimate, in accordance with Section 14.1.1.

14.2.3 Decommissioning Funding Assurance in the amount described in Section 14.2.2 shall be provided by posting a decommissioning bond, letter of credit, or other financial mechanism that provides for an irrevocable guarantee to cover the reasonably anticipated costs of complying with Owner's decommissioning obligations. Any decommissioning bond, letter of credit or other financial mechanism



must be issued or made by an entity having and maintaining a minimum credit rating of "BBB" from Standard and Poor's, or "Baa2" from Moody's, each as defined on the Effective Date, or their commercial equivalent.

14.2.4 Funds expended from the Decommissioning Funding Assurance shall only be used for expenses associated with the cost of decommissioning the Wind Farm.

14.2.5 If the Owner fails to complete decommissioning within the period prescribed by this Agreement, the Town may, at its sole discretion, require the expenditure of decommissioning funds from the Decommissioning Funding Assurance on such measures as reasonably necessary to complete decommissioning. In such an event, where the Owner has failed to complete the required decommissioning obligations under this Agreement and the Town expends the funds from the Decommissioning Funding Assurance to effect the decommissioning requirements, the Town shall also have the right to receive the salvage value available from the decommissioned materials in an amount sufficient to reimburse the Town for any out of pocket expenses incurred for performing decommissioning that were in excess of the otherwise available decommissioning funds (e.g. to be "made whole"). Any remaining salvage value for the decommissioned materials shall be paid to the Owner.

#### 14.3 Transfer of Decommissioning Responsibility

14.3.1 Consistent with Section 2.1 of this Agreement, the provisions of Section 14 of this Agreement shall apply to and be binding and enforceable on all successors and assigns of the Owner.

14.3.2 The Owner shall ensure that any successors or assigns of the Wind Farm shall agree to be bound by this Agreement and shall provide the Town with written confirmation from any successors or assigns stating that they agree to be bound to this Agreement.

### 15 Environmental Standards

15.1 Wildlife Protection. Prior to commencing construction, Owner shall provide the Town with copies of all protocols and plans for post-construction monitoring and impact mitigation related to wildlife that are contained in any permit condition or as a condition of the Certificate of Site and Facility issued by the New Hampshire Site Evaluation Committee.

15.2 Environmentally Sensitive Areas. The Wind Farm shall be constructed and operated in such a manner as to comply with all applicable environmental

permits and conditions associated with a Certificate of Site and Facility issued by the New Hampshire Site Evaluation Committee.

- 15.3 Erosion Control. The Wind Farm shall be designed constructed and maintained in accordance with accepted erosion and sediment control methods as required by the New Hampshire Department of Environmental Services (NHDES).
- 15.4 Hazardous Wastes. The Owner agrees to comply with all state and federal regulations applicable to the use and disposal of hazardous wastes involved in or generated by the Wind Farm during construction, operation, maintenance or decommissioning.

**16 Support for the Project**

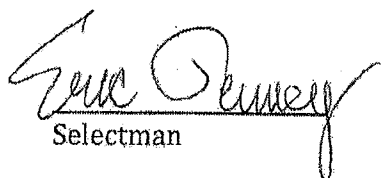
- 16.1 The Town and Owner agree that they will propose to the New Hampshire Site Evaluation Committee that the terms and conditions of this Agreement be incorporated as conditions to any Certificate of Site and Facility issued by the SEC for the Project. The Town further agrees that it shall support the Project during the SEC process.

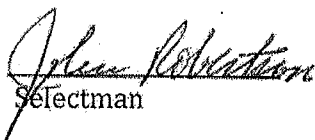
*[signatures appear on the following page]*

The parties agree the terms of this Agreement are effective as of the date first above written,  
regardless of the date of execution by either party.

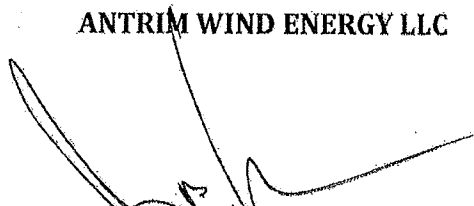
**TOWN OF ANTRIM**


  
Chairman, Board of Selectmen

  
Selectman

  
Selectman

**ANTRIM WIND ENERGY LLC**

  
Print Name: Jack Kenworthy  
Title: Executive Officer

  
Print Name: John Soininen  
Title: Executive Officer