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July 17, 2015

Via Hand Delivery

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

Re: Docket No. 2014-05: Antrim Wind Energy, LLC Petition for Jurisdiction Over a Renewable Energy Facility

Dear Sir or Madam:

In connection with the above-referenced docket I enclose an original and eighteen (18) copies of Antrim Wind Energy, LLC's Post-Hearing Memorandum of Law.

If you have any questions regarding these materials, please do not hesitate to contact me.

Sincerely,

Patrick H. Taylor

Enclosures

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

PETITION FOR JURISDICTION OVER A RENEWABLE FACILITY
BY ANTRIM WIND ENERGY LLC

SEC DOCKET NO. 2014-05

MEMORANDUM OF LAW IN SUPPORT OF ANTRIM WIND ENERGY LLC'S PETITION FOR JURISDICTION

Antrim Wind Energy, LLC ("AWE") respectfully submits this Memorandum of Law in Support of AWE's Petition for Jurisdiction. In support hereof, AWE states as follows:

I. Introduction

As the SEC recognized in its Procedural Order, the ultimate issue to be decided in this docket is whether to assert jurisdiction over the wind energy facility proposed in AWE's petition for jurisdiction. Docket 2014-05, Procedural Order at 18 (March 13, 2015). "In making that determination the Committee must determine whether the proposed facility requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1." Id. (citing RSA 162-H:2, XII). AWE's petition, the pre-filed testimony of AWE's Jack Kenworthy and David Raphael of LandWorks, and the evidence adduced over two days of hearings, when considered in combination with the circumstances underlying the SEC's original grant of jurisdiction in Docket 2011-02, present a clear case for SEC jurisdiction over the proposed Antrim Wind Project (the "Project"). Specific factors favoring SEC jurisdiction include the following:

- While the proposed Project is in many aspects similar to the project proposed in Docket 2012-01, on the whole it is materially and substantially different due to numerous substantive changes, most notably the removal of the most prominent turbine, Turbine #10, and the reduction in height of Turbine # 9. Even without the reduction in height of Turbine #9, the SEC has already recognized that many of the changes are "material" and merit *de novo* review.

- AWE's consultant, LandWorks, prepared an extremely thorough Visual Impact Analysis ("VIA") demonstrating that changes to the proposed Project have lessened the visual

impact to sensitive resources within a 10-mile radius, including but not limited to the Willard Pond and dePierrefeu Wildlife Sanctuary resources and other sensitive resources identified by the SEC in Docket 2012-01. The consultant retained by Counsel for the Public acknowledged the thoroughness of the LandWorks VIA and admitted that she had not performed her own detailed analysis of the new Project's impacts.

- Though the SEC did not adopt the seven recommendations of Jean Vissering, Counsel for the Public's consultant, in Docket 2012-01, she nevertheless acknowledged during the hearings in this docket that AWE has addressed, fully or in part, each of those recommendations.

- The same circumstances underlying the SEC's original grant of jurisdiction, including the fact that the Town of Antrim lacks any ordinance that will ensure the review, siting, and operation of the proposed facility in a manner consistent with the purposes and findings of RSA 162-H:1, remain present today.

- The Town of Antrim Board of Selectmen has petitioned the SEC to take jurisdiction, and the Town of Antrim Planning Board has intervened in this docket, because the Town lacks the expertise and resources to properly evaluate the Project. Moreover, more than 100 registered Antrim voters have petitioned the SEC to take jurisdiction over the Project.

Counsel for the Public suggests that the proposed Project is not substantially different from the project evaluated in Docket 2012-01, but has offered no evidence supporting its position beyond the testimony of a consultant who acknowledged that she conducted no analysis of the Project's visual impacts and who admitted that each of her recommendations have been addressed by AWE. Counsel for the Public also suggests that the SEC need not take jurisdiction because the Town of Antrim has "bodies in place to assess a complex project such as the one being proposed by the Petitioner," notwithstanding the SEC's findings to the contrary in Docket 2011-02 and the written and oral testimony of the Antrim Board of Selectmen and Planning Board. Tellingly, Counsel for the Public does not attempt to argue that these Town "bodies" can provide a review "consistent with the findings and purposes set forth in RSA 162-H:1," the lodestar of this proceeding.

The factors militating in favor of SEC jurisdiction are overwhelming, and not refuted by any testimony or exhibits in the record. The SEC should take jurisdiction over the proposed Project and ensure that the purposes and findings of RSA 162-H:1 are properly carried out.

II. Standard of Review

As the guiding purpose of RSA chapter 162, RSA 162-H:1 recognizes that the selection of sites for energy facilities may have significant impacts on and benefits to "the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety." RSA 162-H:1. Thus, the New Hampshire legislature found

- that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire;
- that undue delay in the construction of new energy facilities be avoided;
- that full and timely consideration of environmental consequences be provided;
- that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and
- that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.

Id. The SEC and the review process established in RSA chapter 162-H exist to ensure that energy facilities are reviewed, approved, sited, constructed, and operated in a manner consistent with these objectives. Id.; *see also* RSA 162-H:3, RSA 162-H:4. The SEC "shall" evaluate and issue a certificate of site and facility, and determine the terms and conditions of any such certificate, for a renewable energy facility, which is defined to include "electric generating station equipment and associated facilities of 30 megawatts or less nameplate capacity . . . which

the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1." RSA 162-H:2, VII(f); RSA 162-H:2, XII; RSA 162-H:4(a), (b). The SEC may make such a determination on its own motion or by petition of the applicant or "two or more petitioners as defined in RSA 162-H:2, XI," including the applicant itself, a petition endorsed by 100 or more registered voters in the host community, or a petition endorsed by the governing body of the host community. RSA 162-H:2, XI, XII.

Counsel for the Public and the various intervenors do not contest the statutory sufficiency of these jurisdictional petitions, nor do they attempt to dispute that SEC jurisdiction will ensure that the objectives of RSA 162-H:1 are met with respect to this Project. The SEC determined in Docket 2011-02 that the lack of a proper review process and ordinances in the Town of Antrim necessitated the SEC taking jurisdiction over a significantly smaller (16 – 22 MW) wind project to ensure that the objectives of RSA 162-H:1 were safeguarded. Docket 2011-02, Order on Jurisdiction at 24-28 (Aug. 10, 2011). Counsel for the Public ignores the SEC's findings in Docket 2011-02 and instead suggests, without making any reference to RSA 162-H:1 at all, that the Town is capable of conducting an adequate review. This contravenes not only the previous findings of the SEC but also the Town of Antrim's Board of Selectmen and Planning Board,[1] both of which have indicated that the Town lacks the experience or resources to review AWE's Project.

The statutory prerequisites are in place for the SEC to take jurisdiction. The Antrim Board of Selectmen and Planning Board have asked the SEC to take jurisdiction, explaining how their own processes are manifestly inadequate for the purposes of carrying out the objectives of

[1] Counsel for the Public has indicated that the Antrim Planning Board "support[s] the project." Counsel for the Public's Memorandum in Support of Objection to Jurisdiction at 9. This is inaccurate. The Planning Board supports the SEC taking jurisdiction over the Project because it lacks the technical expertise and resources to accommodate it, and the Town's Site Plan Review list is not updated to accommodate it. Testimony of Planning Board at 2.

RSA 162-H:1. *See* Board of Selectmen Testimony at 8-9. As discussed below, the proposed Project is materially and substantially different from that proposed in Docket 2012-01, a fact that the SEC already recognized in its order on AWE's motion to reopen the record in Docket 2012-01, and the impacts of the project have changed materially and substantially as a result. The SEC should take jurisdiction over the Project to ensure that the legislative prerogatives reflected in RSA 162-H are satisfied.

III. AWE Reasonably Understood the SEC's Order on its Motion to Reopen the Record to Invite a New Application

After the SEC denied its application for a certificate of site and facility in Docket 2012-01, AWE proposed certain revisions to its previously proposed project to address specific concerns articulated by the SEC, including the removal of turbine #10 to decrease impacts to regional aesthetics, a payment to the Town to enhance the Gregg Lake Beach area, and the offer of a payment to New Hampshire's Audubon Society. Docket 2011-02, Order on Pending Motions at 10 (Sept. 10, 2013). In its Order denying AWE's motion to reopen the record in Docket 2012-01, the SEC concluded that review of the new evidence "would require the re-review of the entire Application in light of the requirements set forth by RSA 162-H," and that the newly offered changes "would materially change the original Application and would require extensive *de novo* review." Id. at 10-11 (emphasis added). In deliberations preceding the Order on AWE's motion, several members of the SEC subcommittee indicated that AWE's proposed changes to address the SEC's concerns were better suited to review upon submission of a new application for a certificate of site and facility. Docket 2012-01, Transcripts of Deliberations on July 10, 2013 at pp. 94-99.

In its September 2013 Order, the SEC did not indicate that the changes proposed by AWE were inadequate, or that consideration of the proposed changes would yield the same

result. Rather, it very clearly stated that the changes were "material" with respect to the application and that they would require "extensive *de novo* review" by the SEC. The only logical interpretation of the Order's plain language is that the SEC could reach a different conclusion after conducting such a review. AWE therefore reasonably understood the SEC's order to invite, or at the very least permit, a new application incorporating these "material" changes for a fresh, "*de novo*" review if the Company chose to do so. Firmly believing that Antrim presents a uniquely ideal setting for a wind energy facility in terms of both physical characteristics and local support, and that such a facility is critical to the public interest in that it furthers the State's renewable energy goals in addition to providing tangible economic benefits to the Town and local economy, AWE redoubled its efforts and conceived a new project that retains many aspects of the original proposal while incorporating substantial and material changes to the turbine array as well as additional compensatory mitigation measures. After considerable effort and expense, AWE is prepared to submit a new application for a new Project with new turbines and a new, extremely thorough Visual Assessment (VA) that sets forth in significant detail the wide-ranging effect that the changes will have on aesthetic impacts.

The SEC presumably chose its words carefully when it determined that AWE's efforts to revise the project proposed in Docket 2012-01 would "materially change" the underlying application. In *Fisher v. Dover*, 120 N.H. 187 (1980), the New Hampshire Supreme Court considered an appeal from a decision of the City of Dover Zoning Board of Adjustment ("ZBA") (subsequently affirmed by the Superior Court) granting a variance after having previously denied an application for the same. The Court concluded that a zoning board can only lawfully reach the merits of a second application after first finding that "either a material change of circumstances affecting the merits of [an] application" has occurred or that the second

application "is for a use that materially differed in nature and degree from the use previously applied for and denied by the board." *Id.* at 190-191 (emphasis added).

Though the *Fisher* court found that the Dover ZBA had erred by failing to first find that material changes or differences existed between the applications at issue, subsequent cases applying this standard – including those that have considered it in the context of administrative proceedings as opposed to zoning proceedings – have largely concluded that material changes permit subsequent applications or petitions, even when a second application is based on the original application. For example, in *Morgenstern v. Town of Rye*, 147 NH 558 (2002), the Court, citing *Fisher*, concluded that the applicant "did not merely resubmit substantially the same application for a variance but, at the Town's invitation, submitted a new proposal to meet the town's concerns." *Id.* at 566. Similarly, in *In re Town of Nottingham*, 153 N.H. 539 (2006), the Supreme Court, "assuming without deciding" that the *Fisher* materiality standard would extend to an administrative proceeding, concluded that a water company's application to the Department of Environmental Services for a groundwater withdrawal permit "supplemented its prior [application] in response to comments made by DES in denying the prior application," and "was therefore not 'substantially the same application.'" *Id.* at 565-66; *cf. In re Town of Seabrook*, 163 N.H. 635, 640 (2012) (noting that while an application to DES was "largely duplicative" of a prior application, there had been "material changes" since the prior application and the governing statute had been modified).

Thus, the SEC, employing the language of *Fisher* and its progeny, invited a new application for a wind energy facility from AWE incorporating the changes in project configuration and mitigation first proposed in connection with its motion to reopen the record in Docket 2012-01. AWE has gone even further, reducing the height of turbine # 9 by more than

45 feet in addition to removing turbine # 10 to further mitigate impacts on sensitive scenic resources, utilizing a new turbine manufacturer and design that slightly reduces the height of turbines ## 1 – 8, utilizes a smaller nacelle, smaller rotor diameter, more slender tower and is quieter. AWE has also added offsite mitigation through a commitment with the New England Forestry Foundation ("NEFF") to fund $100,000 for new permanent conservation lands specifically as mitigation for aesthetic impacts. As discussed more fully below and in the testimony of David Raphael during the hearings, the material changes to the Antrim Wind Project will have a substantive and real diminishing effect upon aesthetic impacts throughout the region and on the specific sensitive resources that the SEC focused on in the last docket.

IV. The Proposed Project is Materially and Substantially Different From the Project Proposed in Docket 2012-01

a. Changes to the Turbine Array and Additional Compensatory Mitigation Measures

The Project proposed by AWE cannot rationally be considered "substantially the same" as the project proposed in Docket 2012-01. As previously noted, the SEC has already concluded that several of the differences between the projects, including the complete removal of Turbine #10, are "material," requiring *de novo* review. Docket 2012-01, Order on Motion to Reopen the Record at 10-11 (Sept. 10, 2013). Since proposing changes to the proposed project in Docket 2012-01 on its motion to reopen the record, AWE has made further revisions to the Project to respond to concerns expressed by the SEC, rendering the changes to the Project even more substantial. Those changes include:

- The removal of Turbine #10, the highest, most prominent, and most impactful turbine in the array, as well as all of its associated civil and electrical infrastructure;
- The substantial shortening of Turbine #9 by over 45 feet to address aesthetic impacts to sensitive scenic resources;

- The slight shortening of Turbines ## 1-8 by several feet;

- A change in turbine manufacturer and design, from Acciona AW 3000/116 to the Siemens SWT-3.2-113 direct drive turbine. As indicated in the written and oral testimony of Mr. Kenworthy, the Siemens SWT-3.2-113 turbines utilize a smaller nacelle, have a smaller rotor diameter, more slender tower, and are quieter;

- The inclusion of an additional 100 acres of permanently conserved land surrounding Turbines ## 5, 6, 7, and 8 for a total of 908 acres of valuable forest land and habitat. The inclusion of these additional 100 acres makes the conservation land contiguous across the ridgeline where the Project is located, a recommendation of Counsel for the Public's consultant, Ms. Vissering;

- A payment of $40,000.00 to the Town of Antrim for the enhancement of the recreational and aesthetic experience at the Gregg Lake recreational area;[2]

- The updating of a PILOT agreement with Antrim that will pay the highest per MW payment of any PILOT agreement for a wind project in the state; and

- An agreement with the New England Forestry Foundation (NEFF) providing $100,000 to fund the acquisition of new permanent conservation land in the region of the Project for additional aesthetic mitigation.

Each of these changes responds to specific concerns raised by the SEC in Docket 2012-01, and as described below the resulting changes in visual impacts to surrounding scenic resources are significant.

Counsel for the Public suggests that changes to the Project, which the SEC has already deemed "material," do not suffice to meet its burden to show as much because they "do[] not reflect the changes recommended by Ms. Vissering." Counsel for the Public's Memorandum at 12. Yet the SEC never adopted Ms. Vissering's "recommendations" as necessary prerequisites to filing a new application, and in any event AWE has at least partially addressed each of Ms. Vissering's seven recommendations (*see* Counsel for the Public's Memorandum at 13-14), as she acknowledged at the hearing:

[2] The Town of Antrim has agreed that this constitutes "full and acceptable compensation for any perceived visual impacts to the Gregg Lake area." Testimony of Jack Kenworthy at 6.

(1) it eliminated Turbine # 10 and substantially reduced the height of Turbine # 9 to reduce visual impacts, particularly at Willard Pond, Bald Mountain, and Goodhue Hill;

(2) it has agreed to use radar-activated night lighting;

(3) it has removed one turbine and significantly shortened another, reducing visual impacts to Willard Pond, Gregg Lake and Meadow Marsh, *see* Ex. AWE 13, turbines 1-8 are now smaller in as measured by nacelle size, rotor diameter, tower diameter and slightly reduced in overall height, and AWE has entered into an agreement with the Town of Antrim to mitigate the visual effects on Gregg Lake;

(4) it has acquired an additional 100 acres of permanent conservation land around Turbines ## 5, 6, 7, and 8, resulting in 908 contiguous acres of conserved land across the ridgeline where the turbine array is located, *see* Ex. AWE 15, and furthermore entered into the above-described agreement with NEFF;

(5) The road, ridgeline clearing, and cut and fill between Turbines ## 9 and 10 are now entirely eliminated, and AWE has committed to re-vegetating cut-and-fill slopes using indigenous species;

(6) As noted above, AWE has committed to re-vegetating cut-and-fill slopes and non-permanent surfaces using indigenous species; and

(7) The Company has committed to substation and O&M building screenings, as evidenced in the Substation Mitigation Planting Plan attached as Exhibit 19 to the LandWorks VIA.

Though the SEC did not decree Ms. Vissering's recommendations to be the baseline standard for a new application, Ms. Vissering's admissions at the hearing as to each of those recommendations demonstrates that the material and substantial changes that AWE has made to the Project have substantively, if not completely, addressed them.

Counsel for the Public also suggests that the increased compensatory mitigation offered by AWE is simply "more of the same" of what the SEC "rejected" in its Order denying AWE's application for a certificate of site and facility in Docket 2012-01. This argument would only hold true if AWE was once again proposing the same 10-turbine project. In this case, AWE is proposing a new and materially different project, with demonstrably reduced visual impacts. Thus, the SEC will consider the increased mitigation measures in conjunction with the reduction

in project scope and diminished visual impacts and may reach an entirely different conclusion. Counsel for the Public gives the SEC's Order and overly restrictive reading and presumes too much.

b. Diminished Impacts Resulting From the Changes

There is only one VIA in the record showing the changes in visual impacts resulting from the removal of Turbine # 10 and the reduction in height of Turbine #9, and that is the VIA prepared by LandWorks. Ms. Vissering, who did not conduct an assessment of overall visibility for the new Project or update her VIA from Docket 2012-01, conceded that the LandWorks VIA is extremely thorough, and she did not materially dispute any of the analysis set forth therein. For example. Ms. Vissering did not dispute that overall Project visibility within a 10-mile radius had been reduced by 12%, that the angle of view had been dramatically reduced from several key vantage points, that the field of view had been reduced at several key locations, that the number of turbines visible from several key locations had been reduced, or that Project visibility was eliminated from numerous resources.

The LandWorks VIA is the product of more than a year's worth of work, including multiple site visits to 127 distinct resources, inventorying and identifying sensitive scenic resources, analyzing visual effect and the effect on a viewer from sensitive scenic resources, viewshed mapping, and visual simulations. It employs a comprehensive methodology and concludes that the impacts to numerous scenic resources, including but not limited to Willard Pond, will be impacted to a lesser degree than they previously were under the 10-turbine proposal, and in several cases visibility of the Project will be eliminated entirely. On the other hand, Ms. Vissering, consultant to Counsel for the Public, concedes that she spent only approximately 30 hours reviewing material related to this docket, that she prepared no

independent analysis of visual impacts associated with the new Project, and that she did not apply a rational analysis with clearly stated reasoning as the basis for her conclusions.

Counsel for the Public, having not provided an analysis of the visual impacts of the new Project, instead takes the approach of referring sarcastically to Mr. Raphael's "superior method" and mischaracterizing his VIA. Counsel for the Public's Memorandum at 15. It is not accurate for Counsel for the Public to say that Mr. Raphael "re-analyzed" the visual impacts of the Project, id.; rather, Mr. Raphael and LandWorks conducted a new analysis of the visual impacts associated with a new Project that removes the most prominent turbine and shortens another such that its hub sites below the tree line when viewed from the most highly impacted resource, Willard Pond. Mr. Raphael's findings are most assuredly not "in contrast" to the SEC's conclusion in Docket 2012-01 that there would be "significant qualitative impacts upon Willard Pond, Bald Mountain, Goodhue Hill and Gregg Lake," and "moderate impacts on . . . Robb Reservoir, Island Pond, Highland Lake, Nubanusit Pond, Black Pond, Franklin Pierce Lake, Meadow Marsh and Pitcher Mountain." Order Denying Application for Certificate of Site and Facility at p. 50 (Apr. 25, 2013). Those SEC findings refer to impacts at these sensitive resources from the prior project configuration. Mr. Raphael is not in any way challenging the Committee's conclusions regarding those prior effects. And, he explicitly acknowledges that that each resource the SEC found to be "sensitive" is, in fact, sensitive. The critical point here, missed entirely by Counsel for the Public, is that the effects of the new project configuration result in diminished or eliminated visual impacts at every one of those sensitive resources that were of particular concern to the Committee in the last docket. The record on that decisive point is clear and uncontested.

V. Circumstances Underlying the SEC's Grant of Jurisdiction in Docket 2011-02 Have Not Changed

As noted above, Counsel for the Public incorrectly argues that the Town of Antrim has the ability to conduct a sufficient review of the Project. This argument stands in direct contravention of the SEC's findings in Docket 2011-02, in which the SEC asserted jurisdiction over the Project in part because the Town of Antrim "does not have an ordinance or any other rules or regulations specifically designed to address the construction and operation of the [Project]." Docket 2011-02, Jurisdictional Order at 23 (Aug. 10, 2011). The SEC found that the Town's zoning ordinances "are not designed to address the issues raised by construction of a renewable energy facility of the scale proposed [in Docket 2011-02] and, therefore, if applied, would not adequately address the issues of the impact of the [Project] on the region in general and on the Town in particular." Id. at 23-24. Considering the possibility that the Town might enact an ordinance to address larger-scale renewable energy facilities, the SEC emphasized that such an ordinance would need to "ensure the enforcement of the findings and purposes set forth in RSA [162]-H:1," and that the Planning Board would need to enforce it "in a timely and objective manner." Id. at 26. Notwithstanding multiple attempts to pass an ordinance for the purposes of reviewing a renewable energy facility such as the Project, the Town continues to have no such ordinance in place. The Town's Board of Selectmen and Planning Board have both submitted testimony indicating that the Town lacks the expertise and resources to evaluate the Project, and a representative of the Planning Board testified during the hearing that the Town lacks not only a specific large-scale wind ordinance, but *any* ordinances that would address aesthetic, noise, and environmental issues.

In contrast, SEC found that jurisdiction "assure[s] consolidation of all land use planning issues into a single proceeding, subject to a single appeal to the New Hampshire Supreme

Court," and that it agreed with AWE that "[SEC] jurisdiction is the superior option for the purpose of avoiding undue delay in the construction of needed facilities, providing for full and timely consideration of environmental consequences and assuring that all environmental, economic, and technical issues are resolved in an integrated fashion." Id. In contrast to the Antrim ordinances (or lack thereof), the SEC's review of the Project is "statutorily defined and will assure that the findings and purposes identified in RSA 162-H:1 will be enforced and complied with"; moreover, the SEC "has a well-developed regulatory scheme designed to address the siting, construction and operation of renewable energy facilities consistent with the purposes and findings articulated in RSA 162-H:1." Id. at 26-27.

Counsel for the Public does not attempt to argue that the Town can provide a review consistent with the objectives of RSA 162-H:1. Rather, both the written and oral testimony of the Town of Antrim Planning Board and Board of Selectmen make it abundantly clear that the Town is ill-equipped to provide such a review, as the Town lacks an ordinance governing wind facilities such as the Project, as well as ordinances to ensure the protection of aesthetics, noise, or the environment. Members of the Board of Selectmen and Planning Board also testified that the absence of sufficient ordinances virtually ensures that the Town will endure many years of difficult and expensive litigation in the event that it attempts to evaluate the Project. Needless to say, the purposes of and findings of RSA 162-H:1 will not be promoted by the Town's review of the Project.

a. The Governing Law Has Changed

It should be noted that the legislative findings and purposes set forth in RSA 162-H:1, while similar to those that guided the SEC's review of AWE's application in Docket 2012-01, has changed in certain important aspects, as did other statutes in RSA chapter 162-H. The statute

no longer states that it is in the public interest to "maintain a balance between the environment and the need for new energy facilities in New Hampshire"; rather, it states that it is in the public interest to maintain a balance among "potential significant benefits and impacts" such as "the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety" in decisions about the siting, construction, and operation of energy facilities in New Hampshire. RSA 162-H:1. Furthermore, the statute now states that it is in the public interest to avoid undue delay in the construction of "new energy facilities," rather than "needed facilities." Id. In other words, the SEC's review is now more holistic in nature, rather than being limited to maintaining a balance between the environment and new facilities; it also recognizes a more inclusive approach that promotes the construction of new energy facilities, as opposed to the more restrictive "needed facilities." Changes in the governing law can constitute a "material change" for the purposes of submitting a new application, *see Brandt Development Co. of New Hampshire, LLC v. City of Somersworth*, 162 N.H. 553, 559-60 (2011), and intervening amendments to RSA 162-H:1 and the remainder of RSA chapter 162-H, considered in combination with the many material changes to the Project, merit SEC jurisdiction in this case.

The record before the SEC demonstrates that the Project is materially and substantially different from that proposed in Docket 2012-01, making jurisdiction proper and rendering Counsel for the Public's *res judicata* and *collateral estoppel* arguments inapposite to this matter. Moreover, the record in this case as well as the SECs findings in 2011-02, the prior jurisdictional docket, demonstrates that the SEC must take jurisdiction is the purposes and findings of RSA 162-H:1 are to be carried out.

Respectfully submitted,

Antrim Wind Energy, LLC

By its attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: July 17, 2015 By: _____

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Certificate of Service

I hereby certify that on this 17th day of July, 2015, I served the foregoing Memorandum by electronic mail to the service list in this docket.

_____
Patrick H. Taylor, Esq.