



July 17, 2015

The Honorable Martin Honigberg, Chairman  
New Hampshire Site Evaluation Committee  
c/o New Hampshire Department of Environmental Services  
29 Hazen Drive, P.O. Box 95  
Concord, New Hampshire 03302-0095

**Re: PETITION FOR JURISDICTION OVER A RENEWABLE FACILITY BY  
ANTRIM WIND ENERGY, LLC - DOCKET 2014-05**

Dear Chairman Honigberg:

Attached please find the Windaction Group's Post-hearing Memorandum recommending denial of Antrim Wind's petition for jurisdiction.

Thank you for the opportunity to participate in this docket. If you have any questions, please do not hesitate to contact me by phone at 603-838-6588 or e-mail at [llinowes@windaction.org](mailto:llinowes@windaction.org).

Sincerely,

Lisa Linowes  
for The Windaction Group

cc: Parties to Docket 2014-05

THE STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

RE: Petition by Antrim Wind Energy, LLC       )  
for jurisdiction over renewable energy facility   )  
SEC Docket Number 2014-05                        )

WINDACTION GROUP POST-HEARING MEMORANDUM  
RECOMMENDING DENIAL OF THE PETITION FOR JURISDICTION

The Windaction Group ("Windaction"), through its representative, Lisa Linowes, hereby submits this post-hearing memorandum.

**Introduction**

The Town of Antrim ("Town") and Antrim Wind Energy LLC ("AWE") have petitioned the Site Evaluation Committee ("SEC" or "Committee")<sup>1</sup> to exercise its jurisdiction over AWE's plan to construct a wind energy facility in Antrim. The project, at 28.8 MW, is below the 30 MW threshold required for mandatory jurisdiction. The Committee may assert its jurisdiction if it determines the project "requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1." RSA 162-H:2, XII.

AWE argues the Committee still retains jurisdictional authority over the project pursuant to the Committee's August 10, 2011 Order in Docket 2011-02 despite a May 2, 2013 decision<sup>2</sup> denying certification. AWE also claims that the reconfigured project, at 28.8 MW, is "very nearly at the jurisdictional threshold of 30 MW" and that "its scale is not significantly distinguishable from a comparable 30 MW project."<sup>3</sup> Both the Town and AWE maintain that the Town lacks the knowledge and requisite regulations needed to site renewable energy facilities. Concerns were also raised by the petitioners regarding possible law suits and the risk of delay should the project undergo local review.

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<sup>1</sup> "Committee" in this filing may refer to the full SEC or the Subcommittee that reviewed the AWE project.

<sup>2</sup> Dkt No. 2012-01, Decision and Order Denying Application for Certificate of Site & Facility (May 2, 2013).

<sup>3</sup> Antrim Wind Energy LLC Petition for Jurisdiction at para 17.

In prior dockets, the Committee sought to satisfy the following four factors articulated under RSA 162-H:1 when considering the question of jurisdiction:

(1) maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire;

(2) avoid undue delay in the construction of new energy facilities and provide full and timely consideration of environmental consequences;

(3) ensure that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans;

(4) 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.

### **Argument**

The current proposed project differs very little from the 2012 Project. Turbine 10 has been removed but turbines 1-9 are situated in the same location as in the original application; the linear layout of the roads and project infrastructure are unchanged. AWE intends to rely on previously completed impact studies since "this is in most key aspects the same project that the Committee considered in Docket 2012-01."<sup>4</sup> While the project's nameplate capacity may be nearly 30 MW in size, it falls short of the threshold set by the legislature for energy facilities that it deemed would cause sufficient impact on the public interests and thus warrant Committee review.

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<sup>4</sup> Petition For Jurisdiction Over a Renewable Energy Facility Proposed By Antrim Wind Energy, LLC at 6 and 11

When the Committee asserted conditional jurisdiction in 2011, such jurisdiction may have run with the project, however, the project proposed in 2011 is not the same as the one now under consideration. The 2011 project configuration, while not final, was anticipated to consist of 10 turbines in the 2 MW size each standing no more than 475 feet<sup>5</sup>. If we are to accept AWE's assertion, then any project proposed for the site that is under 30 MW in size would indefinitely serve as a proxy for the 2011 proposal. The project ultimately submitted to the SEC in 2012 was 30 MW in size and this new proposal consists of nine 3.2 MW turbines for a total nameplate capacity of 28.8 MW. The project configurations in Dockets 2012-01 and 2014-05, while substantially identical, are not the same as that proposed in 2011.

An assertion of jurisdiction is not needed to maintain a balance between the potential significant impacts and benefits in siting the facility. While the Town of Antrim does not currently have regulations for reviewing the project, the necessary components for such a review are in place. The town of Antrim has a select board, a planning board, a zoning board of adjustment, a master plan, and a small wind ordinance. A signed operating agreement exists between the Town of Antrim and AWE which articulates various standards for the construction and operation of the facility. The Town and AWE have also asserted public support for the project. Despite not having an ordinance specific to large wind facilities, nothing prohibits the planning board from undertaking a public process to adopt site plan regulations that would codify standards. RSA 675:6 empowers the Antrim planning board to amend its site plan regulations at any time provided a public hearing is held on the matter and the amended regulations are certified by a majority of the board and filed with the town clerk. Pursuant to RSA 674:44 II (cited in part below), the planning board has the power to enact rules to fully assess the impacts of the project on the community.

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<sup>5</sup> Jurisdictional Order August 10, 2011 at 2

**674:44 Site Plan Review Regulations. –**

I. Before the planning board exercises its powers under RSA 674:43, it shall adopt site plan review regulations according to the procedures required by RSA 675:6.

II. The site plan review regulations which the planning board adopts may:

(a) Provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of:

(1) Inadequate drainage or conditions conducive to flooding of the property or that of another;

(2) Inadequate protection for the quality of groundwater;

(3) Undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties; and

(4) Inadequate provision for fire safety, prevention, and control.

(b) Provide for the harmonious and aesthetically pleasing development of the municipality and its environs.

... *and*

(k) As a condition of site plan approval, require that the applicant protect or document archeological resources in areas of archeological sensitivity that have been identified in the master plan in accordance with RSA 674:2, III(h).

A use variance and area variance are likely to be required in order to permit the project to proceed under the Town's current zoning, but such variances are commonplace<sup>6</sup> and accounted for under Antrim's current land use regulations. AWE has already sought and was granted an area variance that allowed for the erection of a meteorological tower at the project site in 2009.

Should the planning board require outside expertise in reviewing the project, Section IV (D)(2) of the Antrim site plan regulations<sup>7</sup> allows for the board to refer an application to a consultant or consultants for review and comment. The costs of such consultations would be borne by the applicant. Local review of the project does not absolve AWE from having to secure the necessary state and federal permits including the wetlands and alteration of terrain permits as well as review by the State's fire marshal. The regulations governing the Antrim planning board would ensure that the project is treated as a significant land-use planning effort and the issues cited in RSA 162H:1 (environmental, economic, and technical) would be addressed and resolved in an integrated fashion.

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<sup>6</sup> Mr. Cordon stated at the adjudicative hearing that the ZBA recently granted a variance for the construction of a cell tower in a residential zone. <http://www.ledgertranscript.com/home/16987811-95/zba-approves-cell-tower-plan>

<sup>7</sup> [http://www.antrimnh.org/Pages/AntrimNH\\_Planning/SubSite%20Regs\\_as%20of%20April%2018,%202013\[1\].pdf](http://www.antrimnh.org/Pages/AntrimNH_Planning/SubSite%20Regs_as%20of%20April%2018,%202013[1].pdf)

AWE and the Town persist in claiming that local review will trigger law suits resulting in an undue delay. This claim is not substantiated by the record. Two law suits were mentioned during the adjudicative hearing: one in 2009 filed by Richard and Loranne Block objecting to the area variance granted for a meteorological tower and a second filed by Antrim residents against the Select board for alleged violations of New Hampshire's Right-to-Know law, RSA Chapter 91-A. There is no evidence that these legal actions were brought in bad faith nor did the litigation appear to hinder AWE from proceeding with its plans. AWE has been before Antrim's planning board at least twice since 2012<sup>8</sup> without incident.

New Hampshire statutes governing the powers of a planning board are strict in the amount of time a planning board has to act on an application. Planning boards must approve, conditionally approve or disapprove applications within sixty-five (65) days after acceptance, subject to extensions or waivers as provided in RSA 676:4 (c) and (f). In contrast, the Committee has 365 days from when an energy facility application is accepted before it must issue or deny a certificate. RSA 162H:7 VI-d In either case, decisions by the planning board and the Committee are subject to judicial review. If the Committee decides to assert jurisdiction, a full review of the application will be required despite the revised project being substantially identical to the original application. Such a review could potentially take two to three *years* to complete.

There is no reason to suspect that a full and complete disclosure of the project plans will not occur. According to Selectman Gordon Webber, the litigation involving the Right to Know Act, was related to poor legal advice received from the Town's attorney. The court found in favor of the residents. Presumably, this mistake will not happen again. In AWE's petition for jurisdiction, AWE details the level at which it has already engaged the community and state agencies on this project. (*Petition For Jurisdiction at 10*) In fact, the local process conducted in the Town of Antrim is more likely to encourage community involvement.

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<sup>8</sup> At the adjudicative hearing, Mr. Kenworthy stated AWE received approval for a subdivision ([http://antrimnh.org/Pages/AntrimNH\\_PlanMinutes/2014minutes/S04DA8F10](http://antrimnh.org/Pages/AntrimNH_PlanMinutes/2014minutes/S04DA8F10)). AWE received an extension for the met tower.

At 28.8 MW, the project falls short of the threshold set by the legislature for automatic jurisdiction by the Committee. Despite Antrim not having a large wind ordinance or specific expertise on the matter, there is no language in RSA 162H that precludes local review for these reasons. If the Committee is persuaded by this claim, the effect would be felt statewide as every New Hampshire community would be on notice to adopt a large wind ordinance forthwith in order to preserve their right to regulate themselves. If this were the intent of the legislature, mandates for local regulations would have been imposed by statute.

The Town of Antrim has the authority to quickly adopt site plan regulations that govern siting of the project. Outside consultants can be hired to assist in areas where the planning board lacks specific knowledge. The review of the project at the local level will likely take significantly less time than a full review by the Committee. The threat of lawsuits appears to be more a fear on the part of AWE than one substantiated by the evidence.

For the reasons stated herein, and also contained in our response to the Town of Antrim's June 26, 2015 memorandum of law, we respectfully ask that the Committee to deny the petition for jurisdiction.

Date at Lyman, New Hampshire, this 17th day of July, 2015.

INDUSTRIAL WIND ACTION GROUP, INC.



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