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January 22, 2015

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 the following:

- Antrim Wind Energy (AWE)'s Limited Objection to the Petition to Intervene By the Audubon Society of New Hampshire; and
- AWE's Limited Objection to the Petition to Intervene By the Harris Center for Conservation Education.

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

Sincerely,

Adam Smith
for:

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

**APPLICANT'S LIMITED OBJECTION TO PETITION TO INTERVENE BY
AUDUBON SOCIETY OF NEW HAMPSHIRE**

NOW COMES the Applicant, Antrim Wind Energy, LLC ("AWE"), and respectfully submits this Limited Objection to the Petition to Intervene by the Audubon Society of New Hampshire ("Audubon") and requests that, to the extent the New Hampshire Site Evaluation Committee ("SEC") grants Audubon's Petition to Intervene, the SEC limit Audubon's participation in the proceedings.

I. Introduction

AWE submitted its petition requesting that the SEC assert jurisdiction or maintain previously asserted jurisdiction over the Antrim Wind Project on November 26, 2014. The SEC subsequently opened Docket 2014-05, and on December 30, 2014, the SEC issued an Order and Notice of Public Hearing. AWE has not yet submitted a revised Application for a Certificate of Site and Facility for the Antrim Wind Project, and Docket 2014-05 is limited to adjudicating the issue of whether the SEC should assert or maintain jurisdiction over the Project.

Audubon asserts several interests in its Petition to Intervene, including its ownership of the dePierrefeu-Willard Pond Wildlife Sanctuary, which abuts the site of the proposed Project, and its protection of additional abutting lands that are subject to conservation easements. Audubon also claims to have adopted a wind power policy pursuant to which it reviews all applications for wind power projects in New Hampshire for impacts to wildlife and the environment. Though Audubon has not articulated any specific interest that may be affected by

the SEC's decision on AWE's petition for jurisdiction, AWE does not object to Audubon's participation as an intervenor. However, Audubon's participation should be limited to its interests as an abutting landowner.

II. Standard for Intervention

Pursuant to RSA 542-A:32, I and Site 202.11, the SEC shall grant a petition to intervene in a proceeding if: (1) the petition is timely and submitted in writing; (2) the petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and (3) the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. RSA 541-A:32, I; N.H. Code Admin R., Site 202.11(b). The SEC may also impose conditions limiting an intervenor's participation in a proceeding to designated issues in which the intervenor has a particular interest. RSA 541-A:32, I; N.H. Code Admin R., Site 202.11(b).

In this case, Audubon has articulated no specific rights, duties, privileges, immunities or other substantial interests that may be affected by this jurisdictional proceeding, nor does it allege that it qualifies as an intervenor as a matter of law. Rather, Audubon has articulated certain interests that may arguably be affected in a subsequent and separate proceeding in which the SEC will evaluate AWE's application for a certificate of site and facility, should the SEC grant AWE's jurisdictional petition in this docket. Though Audubon was granted intervention in the previous jurisdictional docket related to the Antrim Wind Project, Docket 2011-01, it took no position on whether the SEC should take jurisdiction over the Project as it was proposed at the time.

Though it is unclear as to what specific rights, duties, privileges, immunities or other substantial interests of Audubon, if any, may be affected by the outcome of this Docket, AWE does not object to Audubon's petition to intervene in its entirety. However, to the extent that the SEC permits Audubon's intervention, it should impose conditions limiting Audubon's participation to its interests as an abutting landowner.

III. To the Extent That the SEC Grants Audubon's Petition to Intervene, Audubon's Participation Should Be Limited to Its Interests as an Abutting Landowner or Conservator

The primary interest identified by Audubon in its Petition to Intervene is Audubon's status as a direct abutter of the proposed Project site. Audubon is the fee owner of the de-Pierrefeu-Willard Pond Wildlife Sanctuary (the "Sanctuary"), a 1,659-acre sanctuary in Antrim and Hancock, NH, as well as the grantee of conservation easements protecting an additional 1,126 acres abutting the Sanctuary. Audubon Petition at ¶ 5. Though Audubon has not articulated how the outcome of this jurisdictional docket may affect that interest, AWE recognizes that Audubon, as an owner or conservator of significant acreage abutting the proposed Project site, is concerned about safeguarding its interest and may wish to participate in proceedings related to the Project. As such, AWE does not object to Audubon's intervention to the extent that it is limited to issues directly arising out of its interest as an owner or conservator of land abutting the proposed Project site.

However, Audubon states additional purported interests in support of its petition that are not appropriate grounds for intervention in this Docket, or a subsequent siting proceeding. Audubon asserts that additional lands protected by other conservation organizations, including the New Hampshire Fish and Game Department ("NHFGD"), exist within three miles of the proposed Project site. *Id.* at ¶ 10. Audubon asserts that the lands under its protection, in

combination with the proposed Project site and the various parcels managed by other conservation agencies, provide important habitat for various wildlife. Id. at ¶ 11. Audubon asserts no direct interest in any of these additional lands, and in fact it identifies the parties that own or manage those lands, including NHFGD, The Nature Conservancy, the Harris Center for Conservation Education, and the Society for the Protection of New Hampshire Forests. To the extent that those parties believe that they have a substantial interest that will be affected by the outcome of this docket or any subsequent docket related to the Project, those parties can petition the SEC for intervention.¹ Audubon has no “rights, duties, privileges, immunities or other substantial interests” directly arising out of these nearby lands and should not be permitted to stand in the shoes of parties who may in fact possess such substantial interests and who may or may not wish to seek to intervene in this Docket.

Audubon also alleges that it has adopted a wind power policy “by which it intends to review applications of New Hampshire Wind Power projects for their impact on wildlife and the environment,” and that this constitutes a separate interest justifying Audubon’s intervention in this Docket. Audubon Petition ¶ 14. AWE disagrees and opposes the intervention of Audubon in connection with this broad, self-bestowed mandate. As an initial matter, the instant Docket pertains solely to the matter of whether the SEC will assert or maintain jurisdiction over the proposed Project; no application for a certificate of site and facility has yet been filed by AWE. More to the point, the SEC process already provides for a “full and timely consideration of environmental consequences” of proposed energy projects, RSA 162-:1, and the Commissioner of the New Hampshire Department of Environmental Services acts as vice-chairperson of the SEC. RSA 162-H:3, I(b). Audubon’s asserted interest in this regard is no different from that of

¹ On January 14, 2015, the Harris Center for Conservation Education filed a Petition to Intervene in this Docket asserting substantial interests that include ownership of land near the proposed Project.

the public at large, and Counsel for the Public may be appointed to represent the public's interest in such proceedings. RSA 162-H:9, I; *Order on Pending Motions*, Docket 2009-02 at 6 (March 10, 2009). Furthermore, the "[c]onservation, protection, and management of wildlife populations and habitats" are specific duties assigned to the NHFGD. RSA 206:4-a, I. While the Audubon is free to adopt internal policies consistent with its mission statement, it is ultimately a private organization that possesses no state or federal mandate to evaluate and advise upon wind power project applications in New Hampshire. There is no reason for private parties such as Audubon to assume roles otherwise entrusted to public agencies or public counsel. If any private organization or individual claiming a broad and indirect interest in the potential impacts of wind project applications is permitted to intervene in SEC proceedings, the orderly and prompt conduct of such proceedings would unquestionably become inefficient and impaired. RSA 541-A:32, I; N.H. Code Admin R., Site 202.11(b). For these reasons, Audubon's intervention should be limited to issues arising directly out of its interest in abutting lands for which it holds a property interest.

Audubon states a number of additional points regarding the proposed Project without claiming that they constitute substantial interests of Audubon. Specifically, Audubon notes that the Proposed project site has been identified as an area of "particular conservation interest" due to its presence in a large unfragmented forest block, and that it is important to "identify the special environmental concerns that which are at the heart of the SEC's remit"; that most of the proposed Project site is within the Antrim Rural Conservation Zone; that a significant portion of the site falls within conservation areas identified by the Quabbin to Cardigan Partnership; and that NHFGD's NH Wildlife Action Plan identifies areas of the proposed site Project site as highly ranked habitat. To the extent that these constitute substantial interests of any person or

entity, they are not substantial interests of Audubon. Rather, they are the interests of the SEC, the Town of Antrim, the Quabbin to Cardigan Partnership, and NHFGD, respectively.

Audubon's participation as an intervenor in this Docket, if allowed by the SEC, should not broadly encompass these issues or any other issues that do not arise out of Audubon's direct interest as an owner or conservator of lands abutting the proposed Project site.

IV. Conclusion

Audubon owns or holds conservation easements for several thousand acres of abutting lands and as such has substantial interests that may be affected by the proposed Project. Though it is not clear how the outcome of this jurisdictional docket will affect those interests, AWE does not oppose the intervention of Audubon in this Docket provided that its participation is limited to issues arising out of Audubon's direct property interests. The scope of Audubon's intervention should not be unlimited, nor should extend to the indirect interests articulated in its petition.

Respectfully submitted,

Antrim Wind Energy, LLC

By its attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: January 22, 2015

By: Adam Smith For:
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Certificate of Service

I hereby certify that on this 22nd day of January, 2015, I served the foregoing Objection by electronic mail to the service list in this docket.

Adam Drüll for:
Patrick H. Taylor, Esq.