

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

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RE: Petition of Antrim Wind Energy, LLC)	
for Jurisdiction)	Docket No. 2014-05
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OBJECTION TO PETITION FOR JURISDICTION

Counsel for the Public¹ hereby objects to the Petition for Jurisdiction over the Renewable Energy Facility Proposed by Antrim Wind Energy, LLC (the “Petition”).

Counsel for the Public requests that the Petition be denied.

1. The petitioner, Antrim Wind Energy, LLC (“Petitioner”) seeks jurisdiction by the Site Evaluation Committee over a project of approximately 27 – 29.7 MW of wind generation to be constructed in the Town of Antrim (the “Project”).

2. The Petitioner first applied for a certificate of site and facility for a project in Antrim in January 2012 (“2012 Project”). The 2012 Project was designed to have 10 turbines each rising to a level of 492 feet above ground level. As proposed, each turbine would have been between 25% and 35% of the elevation of the ridgeline where it was proposed to be located.

3. Petitioner’s 2012 application was denied on May 2, 2013, by the Site Evaluation Committee (“Committee”), finding that the project would have an unreasonable

¹ Counsel for the Public was appointed in the matter of *Petition of Antrim Wind Energy, LLC*, N.H. Site Eval. Comm., no. 2012-01, and in the prior jurisdictional docket, no. 2011-02. As this project is essentially the same project, and Counsel for the Public was contacted as a “stakeholder”, by the Petitioner in the instant matter, Counsel for the Public is filing this response to the Petition for Jurisdiction even though an Application for Certificate has yet to be filed by Petitioner.

adverse impact on aesthetics. 5/2/13 Decision and Order Denying Application for Certificate of Site and Facility, p. 50-51. *Petition of Antrim Wind Energy, LLC*, N.H. Site Eval. Comm., no. 2012-01).²

4. In reaching that conclusion, the Committee relied upon the testimony of Jean Vissering, a landscape architect hired by Counsel for the Public. *Id.* at 47-48. As noted by the Committee in its decision, Ms. Vissering determined that the project as designed would have unreasonable adverse impacts on the scenic quality and resources of the surrounding area. *Id.* at p. 47. Ms. Vissering found that there would be substantial impacts on visually sensitive resources throughout the region, not just Willard Pond. *Id.* Ms. Vissering specified that there would be significant adverse impacts on the views from Willard Pond, Bald Mountain, Goodhue Hill, Gregg Lake and other locations. *Id.* at p. 48.

5. The Committee also noted that Ms. Vissering indicated that the Site could support a wind energy facility if it were to undertake certain measures including the elimination of the turbines that would impose upon Willard Pond (believed to be Turbines 9 and 10) and the use of a smaller turbine throughout the Project. *Id.* Among Ms. Vissering's recommendations to reduce the aesthetic impacts were that the Project: (i) use radar activated collision avoidance system for lighting of the towers; (ii) provide additional conservation lands as off-site mitigation; and (iii) take steps to shield the view of the road and turbine pads that may be visible from Goodhue Hill and other areas where the infrastructure of the Project other than the turbines will be significant. *Id.*

² The Committee deferred making a final determination as to Antrim Wind Energy LLC's financial capacity to construct and operate the 2012 Project, and ultimately voted to deny the application on other grounds. *Id.* p. 39-40.

6. Petitioner's current proposed Project differs very little from the 2012 Project. The Petitioner maintains that the Project's infrastructure will be the same as the infrastructure for the 2012 Project with the exception of the elimination of turbine 10, the reduction in height in turbine 9 (approximately 40-45 feet) and a change in turbine manufacturer. The remaining turbines will rise to a level of 495 feet above ground level in the same configuration as the prior plan. *See* Petition at p. 6. The Petitioner also states that it has already undertaken numerous studies as part of the 2012 Project, including wetland delineation, a vernal pool study, natural community details mapping, a rare plant survey, an archeological survey, an acoustic bat survey, a raptor migration survey, an avian nocturnal migration survey, a breeding bird survey. *Id.* at p. 5-6. The Petitioner intends to stand on these prior studies. *Id.* at p. 6.

ARGUMENT

Where a project falls below the 30 MW threshold for mandatory jurisdiction, upon an appropriate petition, the Committee may treat a renewable project as an "energy facility," subject to its jurisdiction, if the Committee determines it "requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1." RSA 162-H:2, XII.

In other cases when the Committee has addressed the question of jurisdiction over renewable energy projects it has considered the factors or findings that relate to the public interests expressed in RSA 162-H:1. *Petition for Jurisdiction of Timbertop Wind I, LLC*, N.H. Site Eval. Comm., no 2012-04; *Petitions of Laflamme and Jones (In re Clean Power Development, LLC)*, N.H. Site Eval. Comm., no. 2009-03. The factors utilized by the Committee in deciding whether to assert jurisdiction over a project are set forth below:

- (1) Maintain a balance between the environment and the need for new energy facilities in New Hampshire;
- (2) Avoid undue delay in the construction of needed 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; and,
- (4) Ensure that the construction and operation of energy facilities are treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.

RSA 162-H:1.

The Petitioner has not addressed any of these factors. Instead, the Petitioner suggests that this Project is a reconfiguration of the 2012 Project, said reconfiguration reflecting Petitioner's efforts to address certain mitigation measures suggested by Jean Vissering, Counsel for the Public's expert. The Petitioner maintains that the project's infrastructure will be the same as the infrastructure for the 2012 Project. The Petitioner also states that it intends to rely on most of the prior studies it submitted for the 2012 Project.

Given the Committee's reliance on Ms. Vissering's testimony as the basis of its decision in denying the application, and the fact that the Petitioner is proposing, in essence, the same project, it is important to emphasize in full Ms. Vissering's opinion and recommendations regarding the aesthetic impacts of this Project.

Ms. Vissering's testimony concluded that the mitigation measures discussed by Petitioner's expert, Saratoga Visual Report were generic measures used in nearly all recently proposed wind energy projects and they did not address the particular characteristics, resources and impacts that would result from the project. *See* Report of Jean Vissering, p.

18, *Petition of Antrim Wind Energy, LLC*, N.H. Site Eval. Comm., no. 2012-01). She believed that substantial modification would be required for this project to meet the requirements of RSA 162-H:16, IV, (c). *Id.* Ms. Vissering recommended the following combined mitigation measures as *the minimum necessary* to adequately reduce the significant and unreasonable impacts of the project:

- (1) Eliminate turbines #9 and #10. These two turbines are the most prominent as viewed from Willard Pond, Bald Mountain and Goodhue Hill and will result in unreasonable adverse aesthetic impacts. Visibility of clearing around turbine #9 will also result in significant visual impacts.
- (2) Use an OCAS or similar motion activated collision avoidance system. This will be essential as night lighting will result in significant and unreasonable adverse aesthetic impacts to the area given the high visibility of the project from numerous lakes and ponds and especially from within wildlife sanctuaries and conservation areas.
- (3) Use smaller turbines. The scale of the landscape in this part of New Hampshire is small with relatively low hills and mountains. The proposed turbines will overwhelm the ridgeline especially from a vantage point like Gregg Lake.
- (4) Specific plans for land conservation as part of an off-site mitigation program must be identified and provide a meaningful counterbalance to the impacts to the natural and scenic resources of the area. Audubon's dePierrefeu-Willard Pond Sanctuary will be heavily impacted as a result of the project. The developer should work with Audubon to find a reasonable conservation off-set in conjunction with other measures identified here to reduce the visual impacts of the project.
- (5) Identify and address all areas from which portions of roads, ridgeline clearing, cut and fill slopes and or turbine/pads may be visible. Of particular concern is the visibility of the road between turbines #5 and #6 from Goodhue Hill, any other areas where project infrastructure other than turbines are visible will be a significant concern. The applicant should conduct line-of-sight studies from portions of roadway and turbine clearings to all sensitive vantage points. Specific plans need to be provided showing how these areas of project infrastructure visibility will be mitigated. Among the measures that must be considered would be reducing the size of clearings, reducing the size of cut and fill slopes, eliminating

turbines in areas where visibility could be high, re-vegetating cut and fill slopes using indigenous species.

- (6) General re-vegetation of cut and fill slopes and all non-permanent surfaces must occur immediately following construction. Revegetation must be with native plants and seed sources preferably using stock-piled soil. Introduction of exotic species should be avoided. Planting of indigenous species may be required in some areas as discussed above. A specific plan should be developed and approved by the NH Department of Forestry and Lands including on-going monitoring to ensure re-vegetation is successful.
- (7) Any significant visibility of the substation and O&M facility may need to be mitigated with screening plantings.

Id. at 18-19.

Petitioner's current project proposal adopts only part of one of the seven recommendations made by Ms. Vissering. Petitioner is maintaining turbine 9, but states that it will be reduced in size approximately 40 – 45 feet. Petitioner also disregarded Ms. Vissering's recommendation to use smaller turbines for the remaining turbines in the project. Instead, the current proposal is that the remaining turbines 1 – 8 will be up to 495 feet which is slighter *larger* than those proposed in the 2012 Project. The Petition for Jurisdiction is silent as to the remaining recommendations made by Ms. Vissering. In short, Petitioner's changes to the facility proposed in 2012 do not even approach Ms. Vissering's recommendations to address the unreasonable aesthetic impacts from the 2012 Project. Thus there is very little about these changes that will mitigate the significant visual impacts on Willard Pond, the dePierrefeu Wildlife

Sanctuary and the many other resources identified by the Committee in its previous decision.³

The Committee decision denying the 2012 application was issued after holding eleven days of evidentiary hearings and three days of public deliberations. The Committee heard from 39 witnesses and considered more than 260 exhibits, along with oral and written statements from interested members of the public. *See* 9/10/13 Order on Pending Motions, *Petition of Antrim Wind Energy, LLC*, N.H. Site Eval. Comm., no. 2012-01. The Committee also held a public hearing in Antrim, several technical sessions and visited the proposed site. *Id.* The entire process took well over a year.

Yet, a little over a year after the Committee issued its final ruling denying the 2012 Project, the Petitioner is seeking that the Committee again take up and reconsider essentially the same project. The reconfiguration of the 2012 Project is window dressing and does not address the unreasonable adverse aesthetic impacts of the 2012 Project in a serious way. As such Counsel for the Public objects to the Committee taking jurisdiction over this Project because it would be a monumental waste of State resources and would risk inconsistency in the adjudicative process.

Further, Petitioner's assertion that the Committee retained jurisdiction over this project by virtue of its taking jurisdiction of the 2012 Project is not supported by the plain language of RSA 162-H:5, III or the previous order granting jurisdiction. Rather RSA 162-H:5, III simply states that that " ... an applicant may request the site evaluation committee to assume jurisdiction and *in the event that the site evaluation*

³ In a visual simulation dated in 2014 for the current proposal and recently shown to Counsel for the Public by the Petitioner, turbine 9 and at least 5 others continue to have significant visual impacts on Willard Pond and the Audubon sanctuary.

committee agrees to assert jurisdiction, the facility shall be subject to the provisions of this chapter.” RSA 162-H:5, III.(emphasis added). The provisions of RSA 162-H address the procedures and issues related to the certificate process and construction of energy facilities that are certificated by that process. Thus, it is the procedures and issues related to the certificate process and construction of energy facilities to which the statute refers when it states that the “facility shall be subject to the provisions of this chapter.” *Id.* Here, the Committee denied the Petitioner’s application for the 2012 Project, so there is no facility before the Committee. Moreover, had the Committee intended to retain jurisdiction over the 2012 Project it could have so indicated.

The fact that the Town of Antrim has not committed to an ordinance that would specifically address development standards for a large scale wind project cannot be construed to mean that Antrim is not capable of addressing the Petitioner’s Project. As noted by a dissenting opinion in *Petition of Antrim Wind Energy, LLC*, N.H. Site Eval. Comm., no. 2011-02), Antrim has bodies in place to assess a complex project like the one being proposed by the Petitioner, including a Board of Selectmen, a Planning Board, a Zoning Board of Adjustment, and a master plan. *See id., Dissent from Jurisdictional Order*, 8/23/11. Like the situation in 2011, Petitioner has not indicated whether it has applied for a variance with the Antrim Zoning Board of Adjustment or whether a site plan review has been filed with the Antrim Planning Board. Thus there is no basis to conclude that there are any issues with bias, undue delay, and no basis to conclude that either the Zoning Board of Adjustment or the Planning Board will not act on the proposal fairly or in a timely fashion. Moreover, among the reasons stated by the Committee in granting jurisdiction in 2011 was a concern that the Town of Antrim

Planning Board was not acting with appropriate dispatch, was not reviewing the 2012 Project objectively, and was at “loggerheads” with the Town governing body “over the manner in which the project should be considered.” 2011 Jurisdictional Order at 25-27. Upon information and belief, the Selectmen and the Planning Board are not at loggerheads and are populated by members supportive of the development of the project. *See, e.g.*, http://www.nhsec.nh.gov/projects/2011-02/documents/110421condon_letter.pdf (letter of Christopher Condon, dated April 21, 2011 (supporting jurisdiction and expressing approval for the previous project); Petition to Intervene by Antrim Planning Board, dated January 22, 2015 (signed by Mr. Condon as Chairman). Consequently, there is presently no reason to believe that the difficulties and conflict that the Project previously experienced because of divisions in Town government or biases at the Planning Board are manifest now and there is every reason to believe that the Town could expeditiously review the project in a fair and unbiased way. Thus, this Committee’s intervention to serve the purposes of the statute, which purposes the Committee previously believed could not be served locally, is no longer necessary.

Finally, it would be inappropriate to take jurisdiction of this Project at this time because the General Court enacted RSA 162-H:10, in 2014 directing the Committee to adopt rules relative to the organization, practices, and procedures of the committee and criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV have been met by the applicant for a certificate of site and facility. RSA 162-H:10, VII. The Committee is also charged with establishing criteria governing the siting of wind energy systems in order

to ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process. RSA 162-H:10-a. Specifically the Committee must address rules related to: (1) Visual impacts as evaluated through a visual impact assessment prepared in accordance with professional standards by an expert in the field; (2) Cumulative impacts to natural, scenic, recreational, and cultural resources from multiple towers or projects, or both; (3) Health and safety impacts, including but not limited to, shadow flicker caused by the interruption of sunlight passing through turbine blades and ice thrown from blades; (4) Project-related sound impact assessment prepared in accordance with professional standards by an expert in the field; (5) Impacts to the environment, air and water quality, plants, animals and natural communities; (6) Site fire protection plan requirements; (7) Site decommissioning, including sufficient and secure funding, removal of structures, and site restoration; and (8) Best practical measures to avoid, minimize, or mitigate adverse effects. RSA 162-H:10-a, II. The Committee has begun that process but it has not yet been completed and there is no way to know when it will be.

Within the draft proposed rules are a number of standards or criteria addressing the issues upon which the Committee based its denial of the certificate in the 2012 Project, including, unreasonable adverse aesthetic impacts. These impacts remain a serious and decisive issue in the reconfigured current Project, along with other issues including but not limited to the financial capability of the Petitioner to assure construction and operation of the facility. New rules will better inform the process as to factual and legal requirements for the facility, which will also inform the

Committee's judgment on whether to grant jurisdiction. When they become law the new rules shouldl serve to ensure fairness, consistency and due process for the Petitioners, Interveners and the public. Given that no application has been filed it would not delay the process to wait until these regulations are passed before considering jurisdiction.

WHEREFORE, for the reasons cited herein, Counsel for the Public respectfully requests that the Committee not grant the Petition for Jurisdiction.

Respectfully submitted,

COUNSEL FOR THE PUBLIC
By his attorneys

Joseph A. Foster
ATTORNEY GENERAL



Dated: January 23, 2015

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CERTIFICATE OF SERVICE

I, Peter C.L. Roth, do hereby certify that on this day, I caused a true copy of the foregoing to be served upon the Parties [on the official service list,] by electronic mail.

Dated: January 23, 2015

/s/ Peter C.L. Roth
