

## Terms of Agreement

These Terms of Agreement (the "Agreement") are agreed to this 31<sup>st</sup> day of July 2012 by and between Antrim Wind Energy LLC ("AWE"), a Delaware limited liability company having its principal office at 155 Fleet Street, Portsmouth, NH, 03801, and Appalachian Mountain Club ("AMC"), a 501c3 not-for-profit corporation having its headquarters at 5 Joy Street, Boston, MA 02108. AWE and AMC are sometimes referred to herein as a "Party" or collectively as the "Parties".

*Whereas*, AWE is the Applicant in NH Site Evaluation Committee ("SEC") Docket #2012-1 and is seeking a Certificate of Site and Facility for a 30 MW wind energy facility in Antrim, New Hampshire (the "Project"); and

*Whereas*, AMC has petitioned to intervene as a Party in Docket # 2012-1 and has been granted full party status pursuant to an SEC Order dated May 18, 2012; and

*Whereas*, as an intervener in Docket 2012-1, AMC has raised certain concerns related to viewshed impacts related to the Project and has submitted various data requests and an ensuing motion to compel dated June 28<sup>th</sup>, 2012; and

*Whereas*, AMC and AWE desire to reach terms of agreement acceptable to both Parties that will satisfy AMC's specific concerns related to the Project.

*Now Therefore*, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree on the following terms addressing next steps of the Parties regarding SEC Docket 2012-1:

### **I – Obligations of Antrim Wind Energy LLC**

- A. Viewshed Impact Assessment: AWE has agreed to extend the viewshed analysis of the Project from a five-mile radius from any proposed turbine location to a ten-mile radius from any turbine location. This work has been completed and provided to AMC as well as other parties in the proceeding. In addition, AWE agrees that it shall perform at least two (2) and up to four (4) additional visual simulations from locations selected by AWE and agreed to by AMC, such agreement not to be unreasonably withheld or delayed, in the 5-10 mile range and that one of the locations shall be from Pitcher Mountain.
- B. Radar Activated Obstruction Lights: AWE hereby agrees that it shall seek, as part of its application filed with the SEC in Docket 2012-1, approval from the SEC of facilities needed to install a radar activated lighting control system such as the Harrier Radar system designed by DeTect, Inc. (the "Radar System"). Furthermore, AWE agrees that depending on the status of the issuance of a revised FAA Advisory Circular detailing the requirements of the Radar System (the "Advisory Circular"), it shall take the following steps:
  - i. If the FAA has issued the Advisory Circular 60 days or more before the commencement of construction of the Project that allows for the Radar

System to be operated, then AWE shall install and operate the Radar System simultaneously with the commissioning of the Project.

- ii. If the FAA has not issued the Advisory Circular at least sixty (60) days before the commencement of construction, but issues the Advisory Circular at any time during the commercial operation of the Project, then AWE shall be required to implement and operate the Radar System within one year of the issuance of the Advisory Circular.
- iii. At its sole option, as an alternative to (b) above, AWE may install the Radar System simultaneously with the remainder of the construction of the facilities in the Project. In this scenario, in the event that the Advisory Circular is issued later than 60 days prior to the commencement of construction, then AWE will commence with operation of the Radar System as soon as commercially reasonable but no longer than one year of the issuance of the Advisory Circular.

## **II – Obligations of Appalachian Mountain Club**

- A. Non-opposition: AMC agrees that it shall not, directly or indirectly, oppose AWE in its efforts to obtain a Certificate of Site and Facility from the SEC in Docket 2012-1 or act in any capacity that would harm AWE's ability to obtain all necessary permits to construct and operate the Project. AMC further agrees that it shall abstain from further data requests or cross-examination of witnesses during the remainder of the SEC proceedings involving the AWE Project, provided that there are no changes to the Application that would substantively and substantially increase the visual impact of the project. This Agreement does not imply that AMC now supports the AWE Project, or that other issues raised by other interveners are without merit or in any way resolved by the terms of this agreement.
- B. Non-collusion: AMC agrees that it shall not assist or support, directly or indirectly, other interveners in the Docket who take positions opposing AWE.

## **III – Filings with the SEC**

- A. AWE's application shall be amended to include the updated information relating to the Radar System on or before the deadline for final supplemental filings, currently established as September 5<sup>th</sup>, 2012.
- B. AWE and AMC shall submit a joint filing with the SEC, in a form mutually acceptable to the Parties, stating that the Parties have agreed that installation and operation of the Radar System consistent with the terms and conditions of this agreement should be a condition of any Certificate of Site and Facility issued by the SEC.
- C. AMC shall file a letter with the SEC stating that AMC's objective to have reasonable best available technology to diminish the viewshed impacts of the AWE Project have been satisfied in Docket 2012-1 and further that AWE has agreed to implement such technology by virtue of making a commitment to the Radar System as soon as reasonably feasible. The letter will clarify that while these terms satisfy AMC's

specific objective that wind projects should include in their Application reasonable best available technologies to mitigate viewshed impacts, AMC's agreement to these terms does not imply AMC support for the Project, nor that this Agreement resolves other concerns raised by other interveners in Docket 2012-1.

#### **IV - General Terms**

- A. Entire Agreement: This Agreement contains the entire and integrated agreement between the Parties relating to the subject matter contained herein. Each Party acknowledges that no representations, inducements, promises, or agreements, oral or written, with reference to the subject matter herein have been made other than those expressly set forth herein.
- B. Waiver: No waiver by any Party of a breach hereof or a default hereunder shall be deemed a waiver by such Party of any other breach or default.
- C. Binding Agreement: This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- D. Choice of Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of New Hampshire, without regard to any choice or conflict of law provision or rule (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire.
- E. Authority: The Parties to this Agreement represent and warrant that they are authorized to enter into this Agreement in their individual or representative capacities. The Parties further represent that the execution and delivery of this Agreement and the performance of the Parties' obligations hereunder have been duly authorized by all necessary action.
- F. Signatures: This Agreement may be signed in multiple identical counterparts, each of which shall be deemed an original, but all of which together shall constitute the Agreement. Signatures delivered by facsimile or other electronic means shall have the same effect as delivery of an original signature.
- G. Severability: If any clause or provision of this Agreement or the application thereof shall be held unlawful or invalid, no other clause or provision of this Agreement or its application shall be affected, and this Terms of Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained herein.

- H. No Third Party Beneficiaries: This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.
- I. Amendments and Waiver: The terms of this Agreement may not be amended, waived or terminated orally, but only by an instrument in writing signed by the Parties. No waiver by any Party of any provision of this Agreement or any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way rights arising by virtue of any prior or subsequent such occurrence.
- J. No Joint Venture: Nothing in this Agreement is intended to create an association, trust, partnership or joint venture between AMC, on the one hand, and AWE, on the other hand, or impose a trust, partnership, fiduciary duty, obligation, or liability on or with respect to any Party.

**WITNESS:**

**Appalachian Mountain Club**

\_\_\_\_\_

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

Print Name: \_\_\_\_\_

**WITNESS:**

**Antrim Wind Energy, LLC**

  
\_\_\_\_\_

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

Print Name: John B. Kenworthy

**WITNESS:**

DM Pullerton

**Appalachian Mountain Club**

By: [Signature]

Print Name: JOHN D. JUDGE, AMC PRESIDENT

**WITNESS:**

[Signature]

**Antrim Wind Energy, LLC**

By: [Signature]

Print Name: John B. Kenworthy