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August 26, 2016

VIA ELECTRONIC MAIL & HAND-DELIVERY

New Hampshire Site Evaluation Committee
Pamela G. Monroe, Administrator
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: NH Site Evaluation Committee Docket No. 2015-02:
Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility –
Motion to Strike Certain Supplemental Testimony**

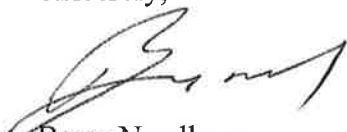
Dear Ms. Monroe:

Please find enclosed for filing in the above-captioned matter, an original and one copy of Applicant's Motion to Strike Certain Supplemental Testimony.

We have provided members of the distribution list with electronic copies of this Motion, pending addition of the document to the Committee's website.

Please contact me directly should you have any questions.

Sincerely,



Barry Needleman

BN:rs3

Enclosure

cc: Distribution List

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-02

**APPLICATION OF ANTRIM WIND ENERGY, LLC
FOR A CERTIFICATE OF SITE AND FACILITY**

**APPLICANT'S MOTION TO STRIKE CERTAIN SUPPLEMENTAL
PRE-FILED TESTIMONY**

Antrim Wind Energy, LLC ("AWE" or the "Applicant") by and through its attorneys, McLane Middleton, Professional Association, submits the following Motion to Strike Supplemental Pre-Filed Testimony (the "Motion"). In support of this Motion, the Applicant states as follows:

1. On March 25, 2016, the Committee issued a Procedural Schedule stating that Supplemental Pre-Filed Testimony was due on August 15, 2016. Subsequently, the Committee issued an Order on August 15, 2016, extending that deadline to August 18, 2016.
2. On July 13, 2016, the Committee held a technical session for the intervenor and Counsel for the Public's witnesses. During the technical session, Counsel for the Committee discussed the deadline for filing supplemental pre-filed testimony and the appropriate purposes for such testimony.
3. Counsel for the Committee reiterated the long-standing practice of the SEC, stating that supplemental testimony is not intended to allow parties to submit additional material or make arguments that they could have made at the time initial pre-filed testimony was due. Rather, it is intended for parties to address information that was not available to them at the time their original pre-filed testimony was filed.

4. The content of Mr. Block's, Ms. Law and Mr. Cleland's, Ms. Berwick's, and Mr. Jones' supplemental testimony does not reference any information that was unavailable to them at the time their initial pre-filed testimony was filed. Instead, their supplemental testimony improperly seeks to introduce new material that unquestionably could have been included in their initial testimony.

5. That supplemental testimony should therefore be struck as it is inconsistent with the purpose for supplemental pre-filed testimony. Moreover, if parties are permitted to contravene SEC practice and use supplemental testimony to introduce new arguments and documents that plainly could have been included in their initial testimony, it creates substantial risk of unfairness and interference with the orderly conduct of the proceedings. Unless it is made clear that such practice is unacceptable, it will invite parties opposing an application in the future to save key arguments and important documents for their supplemental testimony, thereby evading the discovery process and creating substantial unfairness for applicants.

I. Supplemental Pre-Filed Testimony of Richard Block

6. Mr. Block asserts that the purpose for his supplemental testimony is to "prove that the revised turbine proposal...is virtually unchanged from the proposal denied by the SEC." Mr. Block goes on to state that an additional purpose for his supplemental testimony is to "bring forward from SEC Docket #2012-01 a series of photographs included with the testimony submitted by Susan Morse." This information has been available to Mr. Block since the 2012 Docket. If Mr. Block wished to provide this information to the Committee, it should have been included in his originally filed testimony submitted on May 23, 2016.

7. In the first substantive point of Mr. Block's supplemental testimony on Page 2, Mr. Block refers to Jack Kenworthy's pre-filed testimony. Mr. Block goes on to rebut

information provided in Mr. Kenworthy's testimony regarding the effect of the reduction in turbine height from the prior 2012 Docket on the currently proposed Project. Mr. Kenworthy's testimony was submitted to the Committee on October 2, 2015. If Mr. Block wished to respond to statements made in Mr. Kenworthy's testimony, he should have included his response in his originally filed testimony.

8. On Page 3 of his supplemental testimony, Mr. Block references an article in *Renewable Energy World Magazine* from March 2, 2016. This information was also available to Mr. Block prior to filing his original testimony on May 23, 2016. In addition, Mr. Block provides testimony in response to claims made by Mr. Kenworthy that the residents of the Town of Antrim support the Project. The statements to which Mr. Block refers were provided by the Applicant in response to Counsel for the Public's Data Requests, PC 1-21, which were provided to all parties on April 11, 2016. The only other statements to which Mr. Block may be referring were either stated during the 90-day Public Hearing, which took place on February 22, 2016, included in Mr. Kenworthy's original testimony filed in October, included in Mr. Kenworthy's revised testimony, filed on March 3, 2016, or potentially discussed during the technical session of the Applicant's experts, which took place on April 25 and 26, 2016. In any of these instances, this information was available to Mr. Block and should have been included in his original testimony.

9. On Page 4 of Mr. Block's supplemental testimony, Mr. Block refers to research completed in 2012 in preparation for testimony submitted to the SEC in the prior Docket. All of this data was available to Mr. Block prior to filing his testimony in May. In addition, Mr. Block seeks to include the Antrim Planning Board Land Use Survey from March 9, 2010. None of this

information appears to be provided to rebut any assertions made by any party after May 23, 2016. Mr. Block is simply seeking to improperly add additional arguments into the record.

10. Mr. Block's Supplemental Testimony is not in any way intended to rebut or respond to statements made by parties after the time Mr. Block filed his testimony. Rather, he seeks to introduce new information and arguments that could have been included in his May testimony. As such, this is an improper use of supplemental testimony. For these reasons this testimony should be struck.

II. Supplemental Pre-Filed Testimony of Annie Law and Robert Cleland

11. Ms. Law and Mr. Cleland assert that the purpose for their testimony is to "provide supplemental information to prove that property values of homes near Industrial Wind Farms are greatly reduced." This information is not being offered to rebut any statements or information that was provided after May 23, 2016 when their initial testimony was submitted. The attached Property Value Impact & Zoning evaluation included with Ms. Law and Mr. Cleland's supplemental testimony was performed in 2011. Ms. Law and Mr. Cleland conclude by requesting that, should the Committee grant the Certificate, that the Committee impose certain obligations on AWE to provide a Property Value Guarantee.

12. Ms. Law and Mr. Cleland assert that this information is relevant to the proceedings. Whether the information is relevant or not has no bearing on this issue. Ms. Law and Mr. Cleland had an obligation to submit the subject information in a timely manner. They failed to do so. Ms. Law and Mr. Cleland are seeking to add to arguments raised in their original testimony by providing additional documentation. There was nothing preventing Ms. Law and Mr. Cleland from providing this information earlier as it was available to them in May, 2016

when they filed their original pre-filed testimony. Given the improper use of their supplemental testimony, Ms. Law and Mr. Cleland's testimony and the attached report should be struck.

III. Supplemental Pre-Filed Testimony of Barbara Berwick

13. Ms. Berwick asserts that the purpose for her supplemental testimony is "to show that the statements made by Jack Kenworthy regarding wind turbines being environmentally friendly is not true." Ms. Berwick then seeks to introduce three different studies on health effects associated with wind facilities.

14. The only statements to which Ms. Berwick could possibly be referring were made by Mr. Kenworthy either during the 90-day Public Hearing, which took place on February 22, 2016, included in Mr. Kenworthy's original testimony filed in October, included in Mr. Kenworthy's revised testimony, filed on March 3, 2016, or potentially discussed during the technical session of the Applicant's experts, which took place on April 25 and 26, 2016. Under any of these circumstances, these statements were made by Mr. Kenworthy before Ms. Berwick's original testimony was due on May 23, 2016.

15. In addition, all of the studies Ms. Berwick seeks to introduce were also published prior to May 23, 2016 and available for Ms. Berwick to include in her original testimony. The article written by Roy D. Jeffery was published in Canadian Family Physician in May 2013. The EPA Report was published on August 15, 2011. The Toxicological Evaluation was published by the Occupational Safety and Health Research Institute in 2013.

16. All of this information could have been provided by Ms. Berwick in her original testimony if she wished to have it included in the record. Permitting Ms. Berwick to introduce this new information now would be an improper use of supplemental testimony.

IV. Supplemental Pre-Filed Testimony of Geoffrey Jones

17. It is unclear from Mr. Geoffrey Jones' submittal on August 18, 2016, whether Mr. Jones wished to provide supplemental testimony or whether he was seeking to have exhibits entered into the record. Mr. Jones did not provide a narrative form of testimony. Rather, he provided a PowerPoint presentation of images, maps, and information.

18. If Mr. Jones wishes to use this information during the final hearing and have his slides entered as exhibits into the record, he may seek to do so during the Final Pre-Hearing Conference on September 7, 2016 or use them during cross examination of other witnesses.

19. The information Mr. Jones includes in his PowerPoint is improper for purposes of submitting supplemental testimony as it is not being provide to rebut or respond to any statements made by any parties following the submission of Mr. Jones' original testimony in May. Additionally, the article Mr. Jones has attached to his testimony, Wind Energy Development and Wildlife Conservation: Challenges and Opportunities, was published before May of this year.

20. In addition, Mr. Jones includes in his PowerPoint, on page 10, an excerpt from the Supplemental Testimony filed by the Antrim Board of Selectmen on August 18, 2016. Mr. Jones use of another party's supplemental testimony to bolster his own argument is improper and is unfair to parties that submitted supplemental testimony before Mr. Jones. Such a practice gives parties an incentive to wait until the last moment to file supplemental testimony to ensure they get in the final word, which is not the intended purpose for supplemental testimony and would not promote the orderly conduct of the proceeding. For these reasons the Applicant believes this information was improperly provided as supplemental testimony and should be struck.

WHEREFORE, Antrim Wind Energy, LLC respectfully request that this Committee:

- A. Grant the Applicant's request that the Supplemental Pre-Filed Testimony of Richard Block be struck;
- B. Grant the Applicant's request that the Supplemental Pre-Filed Testimony of Annie Law and Robert Cleland be struck;
- C. Grant the Applicant's request that the Supplemental Pre-Filed Testimony of Barbara Berwick be struck;
- D. Grant the Applicant's request that the Supplemental Pre-Filed Testimony of Geoffrey Jones be struck; and
- E. Grant such further relief as it deems appropriate.

Respectfully Submitted,


Antrim Wind Energy, LLC

By its attorneys,

McLANE MIDDLETON,
PROFESSIONAL ASSOCIATION

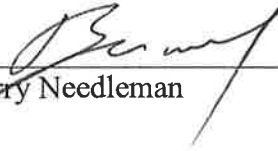
Dated: August 26, 2016

By: _____


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Certificate of Service

I hereby certify that on the 26th day of August 2016, an original and 1 copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee.



Barry Needleman