

November 21, 2016

VIA EMAIL AND FIRST CLASS MAIL

Pamela G. Monroe, Administrator
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**RE: New Hampshire Site Evaluation Committee Docket No. 2015-02
Application of Antrim Wind Energy, LLC for a Certificate of
Site and Facility**

Dear Ms. Monroe:

Enclosed please find the **Post-Hearing Memorandum of Law of the Audubon Society of New Hampshire** for filing in the above-captioned matter with the New Hampshire Site Evaluation Committee.

Copies of this letter and its enclosure have this date been forwarded via email to all parties on the Distribution List.

If you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,



Nicole M. Manteau
Firm Administrator

/nmm

Enclosure

cc: Distribution List (rev. 10/3/16)
Client



STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-02

Application of Antrim Wind Energy, LLC
for a Certificate of Site and Facility

**POST-HEARING MEMORANDUM OF LAW
OF THE AUDUBON SOCIETY OF NEW HAMPSHIRE**

The Audubon Society of New Hampshire (“NH Audubon”), by and through its attorneys, BCM Environmental & Land Law, PLLC, submits this Memorandum of Law, as follows:

NH Audubon is a statewide non-governmental organization, completely independent of the National Audubon Society, dedicated to protecting New Hampshire’s environment for wildlife and for people. NH Audubon owns the 1,700-acre dePierrefeu-Willard Pond Wildlife Sanctuary (“dePierrefeu Sanctuary” or “Sanctuary”). The dePierrefeu Sanctuary is part of a much larger “SuperSanctuary” of conserved lands including approximately 34,500 acres of mostly contiguous lands acquired with funding from federal, state, local, and non-profit organizations over many years. The SuperSanctuary, in turn, is within a larger Quabbin-to-Cardigan conservation area stretching from the Quabbin Reservoir in Massachusetts to Mount Cardigan in the White Mountains.

I. **NH Audubon’s dePierrefeu Sanctuary Includes Three Sensitive Viewsheds that would Experience an Unreasonable Adverse Aesthetic Effect, Individually and Collectively**

In addition to impacts on the region’s viewshed, if the SEC approves the Application, NH Audubon and the users of the dePierrefeu Sanctuary will be disproportionately impacted.

Counsel for the Public’s visual impact expert Kellie Connelly identified a “cluster” of highly impacted sites within the dePierrefeu Sanctuary that includes Willard Pond, Bald Mountain, and Goodhue Hill. (Tr. Day 13, A.M., at p. 122–23.) In addition to the dePierrefeu cluster, Ms.

Connelly identified a second highly impacted cluster consisting of Meadow Marsh, Gregg Lake, and White Birch Point. (Id.) She testified, “what I think is unusual about the [proposed] Antrim site is the clustering of the high [impact areas]. It’s not just that these are spread out throughout the region, it’s that they get clustered into these very sensitive locations.” (Id. at 122.)

Willard Pond, Bald Mountain, and Goodhue Hill are all within the dePierrefeu Sanctuary. No other landowner or environmental organization is in a situation remotely similar to that of NH Audubon with respect to the affected landscape. Neither Mr. Raphael nor the Applicant fully appreciated the depth of NH Audubon’s investment in the Sanctuary. Mr. Raphael did not know that NH Audubon owns the entire Willard Pond shoreline as part of the Sanctuary, testifying that he thought that approximately 50% of the shoreline is owned and conserved by NH Audubon. (Tr. Day 5, A.M., at p. 111.) In addition, the project map in the AWE Application reveals a lack of knowledge of NH Audubon’s interests, showing a non-conserved parcel abutting Willard Pond. (Application at p. 12.)

The individual aesthetic effects on the Sanctuary’s Willard Pond, Bald Mountain, and Goodhue Hill are unreasonably adverse, and even more so when considered collectively. The SEC understood this in 2012. Jean Vissering (visual impact consultant for Counsel for the Public in the 2012 docket) and Ms. Connelly reached the same conclusion. Even Mr. Raphael concluded that the overall visual effect on Willard Pond would be “Moderate-High.” When the dePierrefeu cluster is considered in company with the Gregg Lake/White Birch Point, and Meadow Marsh cluster, the adverse effect is that much more adverse.

The SEC’s Decision and Order in 2012 gave thoughtful consideration to the project’s impacts on NH Audubon’s dePierrefeu–Willard Pond Wildlife Sanctuary. The current

Application and AWE's witnesses, therefore, went to great lengths to minimize the uniqueness of the experience that the dePierrefeu Sanctuary offers visitors.

The pre-filed testimonies of immediate past president Michael Bartlett (adopted by current president Douglas Bechtel) and Frances Von Mertens offer compelling testimony regarding the high value people place on the Sanctuary, in many instances handed down through generations. A letter attached to Ms. Von Mertens's testimony titled "Raised on Willard Pond" is a letter from a father to his children that begins, "My dearest children, I like to think you were raised here on Willard Pond. You've done some of your growing up here, and I have had the joy of being part of that." It ends, "My great hope is that . . . you will remember that—like the loons here—you were raised on Willard Pond." (ASNH 5, Attachment FVM 3.) Mr. Kerrick, in making a donation in his children's name, was one of over 200 families who made donations to purchase the last unprotected Willard Pond shoreline parcel in 2008. (ASNH 5 at p. 4.)

Ms. Von Mertens's prefiled testimony also mentioned another donor who included a note with her contribution: "One woman, in her sixties, wrote that it was the last place she visited—for one last paddle—before leaving the area for two years of Peace Corps service in South Africa." (*Id.*) As Ms. Von Mertens's prefiled testimony states, "the Sanctuary is where people take their visitors from away to show them why they live in the Monadnock Region." (ASNH 5 at p. 7.)

A. Willard Pond

At every turn, Mr. Raphael attempted to portray Willard Pond as nothing special. He stated that the view "from the boat launch at Willard Pond is not one-of-a-kind or strikingly memorable compared to other ponds in the study area, such as Dublin Lake with its stunning view of Mount Monadnock." (App. 53 at p. 128.) Under cross-examination, Mr. Raphael

revealed that he had not actually been to Dublin Lake in connection with this proposed project, and that he did not know where his staff member was standing to record the purportedly “one-of-a-kind” view from that location. (Tr. Day 5, P.M, at p. 29). Route 101, the region’s major east-west highway, traverses the entire north side of Dublin Lake, coming within feet of the Lake, while Lake Road circles the remaining shore. This situation is in no way comparable to Willard Pond. This is an example of Mr. Raphael making inaccurate comparisons of Willard Pond to other regional waterbodies.

Mr. Raphael also describes Willard Pond as “an artificial impoundment” and “a pleasant, human-altered pond” (App. 53 at p. 126) and states that “in its present configuration and size, [Willard Pond] is the result of human manipulation via the damming of the water feature.” (App. 9 at p. 14, Lines 16–17.) And again, “[t]his is not a remote wilderness pond. It is a human altered pond where water levels are regulated.” (App. 53 at p. 90, Tbl. 18.) Mr. Raphael undertook no analysis to determine the extent to which the Willard Pond dam has changed the size or configuration of the Pond, rather, he “presume[d] there would be effects.” (Tr. Day 5, A.M., at pp. 80, 82.) This is another example of Mr. Raphael making unsupported characterizations of Willard Pond, valued by so many for its natural qualities, including a ridgeline equally free of man-made elements.

Mr. Raphael also stated that the turbines would not interrupt any “key scenic focal point” on Willard Pond, which is contradicted by looking at his own simulation from the boat launch and the simulations in the record provided by Ms. Connelly,¹ Ms. Vissering, and Michael Buscher.² Mr. Raphael agreed that, so long as weather conditions permit, anyone approaching

¹ It is noted that EDR made Ms. Connelly’s simulations, however, for ease of reference the simulations contained in Ms. Connelly’s report are herein referred to as her simulations.

² At considerable cost, NH Audubon hired Mr. Buscher, landscape architect and principal of T.J. Boyle Associates, to provide an animated simulation from Willard Pond (he did it from the dam) because NH Audubon was greatly

the Pond at the boat ramp would view the proposed project. (Tr. Day 5 A.M., at p. 60.) Given that the project would be directly visible looking straight out from the boat ramp (and over the loon nesting area), this view is a key focal point.

It is unclear how Mr. Raphael evaluates “key focal points.” For example, Mr. Raphael described Bald Mountain and “the overall shoreline” as key focal points from the boat launch, yet went to great lengths to argue that one would be inclined to view these two focal points from the boat launch but only see the turbines in the periphery. (*Id.* at p. 62.) The simulations by the other experts show that viewing Mr. Raphael’s key focal points of Bald Mountain and the overall shoreline from the boat launch would include the turbines in direct, inescapable view. (In addition to the simulations, see also Exhibit C to Ms. Connelly’s pre-filed testimony, which is Ms. Vissering’s VIA, the cover of which (and at page six of the Vissering VIA) shows the access area/boat launch at Willard Pond with Bald Mountain rising to the left.)

Mr. Raphael states that “[t]he pond itself is not unlike many small ponds throughout the region, scenic in its own way, but certainly not a remote or highly scenic wilderness location.” (App. 53 at p. 126.) As discussed at the hearing, it makes little sense to discount Willard Pond because it is not a “remote trout fishery” designated by the New Hampshire Fish and Game Department, a category primarily of lakes that can be stocked only by helicopter access. (Tr. Day 5 at pp. 14–15.) However, Mr. Raphael’s characterizations of Willard Pond as similar to other local ponds is mistaken. Trout Unlimited states that Willard Pond “has the true feel of a remote pond,” “is unmatched in the Monadnock region,” and “is a special place and should remain unspoiled.” (Trout Unlimited, September 28, 2016 letter submitted as Public Comment.)

concerned about the visibility of the turbines and the meteorological tower in Mr. Raphael’s simulations (see discussion of Site 301.05(b)(8) below) and felt that Mr. Raphael’s simulations and his characterizations of the Willard Pond experience needed to be balanced out.

Trout Unlimited had previously spoken to the wilderness-like feel of Willard Pond, as follows:

Members of Monadnock Chapter of Trout Unlimited are very familiar with Willard Pond as our summer ‘meetings’ have been enjoyed there. We were pleased to contribute to the purchase and protection of the last privately owned land on the pond and the chapter matched member's [sic] individual contributions. Willard is special providing the feel of wilderness, with no man made structures, nesting loons, eagles, and fish hawks. Trout feed and grow well in the clean water they need to survive. The pond is accessible from float tubes and small water craft and since no gas engines are allowed, it remains peaceful, quiet and serene.

(ASNH 5 at p. 3.)

Mr. Raphael’s statements that users of Willard Pond, particularly paddlers and fishermen, would be too engaged in their activities to be affected by the proposed project is unsupported.

(E.g., App. 9 at p. 13.) Trout Unlimited’s statements, among other evidence, refute Mr. Raphael’s position, stating that its “members and their guests regularly fish the pond and the later discussions of the trips center more on the natural beauty of the place than the fishing” and that “all the activities that take place on Willard Pond depend a great deal on the beauty of the location, not entirely on the activity itself.” (Trout Unlimited, September 28, 2016 letter.)

As for Mr. Raphael’s suggestion that if one paddles the full perimeter of the lake in a clockwise direction “it is possible that one would not notice or even see the Project,” there is nothing in the record indicating that this is the way that paddlers typically enjoy the Pond (or any body of water, for that matter), and unreasonably assumes that such a paddle would not involve looking around in all directions. (App. 9 at p. 14.) At the hearing, Mr. Raphael agreed that any such paddler would—at the very least—view the project from the boat launch, weather conditions permitting. (Tr. Day 5 A.M., at p. 60.)

Mr. Raphael repeatedly downplayed the number of turbines visible from any given location. For example, he stated that “only portions of two turbines will be visible above the tree

line” from the boat launch at Willard Pond. (App. 53 at p. 127.) At the hearing, Mr. Raphael conceded that portions of four turbines would actually be visible from the boat launch, as the moving blades of the additional two turbines are part of the turbines. (Tr. Day 5, A.M., at p. 59.)

One Subcommittee member suggested that the statement in the Landworks VA might be “misleading.” (Tr. Day 6, A.M. at p. 89.) In the course of answering the question, Mr. Raphael stated, “Certainly, I would not argue with you that, you know, a moving object does draw the eye. Again, context here is very, very important. Distance, sometimes over distance, it’s harder to detect that movement.” (Tr. Day 6, A.M., at pp. 91–92.) The distances from which moving objects would become more difficult to detect are typically greater than the distance from Willard Pond to the turbines.

Mr. Raphael’s methodology of counting only turbine hubs that are visible is indeed misleading. (See, e.g., App. 53 at p. 72 (explaining that, in the evaluation of visual effect from sensitive scenic resources, the number of turbines visible is based on “how many turbine hubs are visible from a given resource”).) This methodology contradicts Mr. Raphael’s own testimony that the blade is part of the turbine and that “a moving object does draw the eye.” It is also curious that, with his emphasis on the hub as having the highest visibility, Mr. Raphael was unaware that the hub heights for turbines 1 through 8 had not changed from the 2012 proposed project. At the hearing, Mr. Buscher discussed the relevance of considering hub visibility but disagreed with Mr. Raphael’s opinion that the scale of the hub tends to draw the eye more than spinning blades. (Tr. Day 8, P.M., at p. 64–65.)

Although the visual effect of the proposed project from the boat launch would be dramatic, there would be even greater project visibility from the water and other parts of the Pond. Ms. Connelly’s simulation from a boat shows that eight turbines and the meteorological

tower would be visible from that location. (CFP Exhibit 1 (VIA Appendix F, Viewpoint 1).)³ Mr. Buscher's animated simulation from the dam at Willard Pond show that six turbines and the meteorological tower would be visible. (ASNH 7.)⁴ Mr. Raphael's own simulation from Willard Pond shows seven turbines and, presumably, the meteorological tower, though it does not appear visible in the simulation. (App. 53 at Exh. 13.)

Finally, Mr. Raphael concluded that Willard Pond lacks the hallmarks of a "broad public consensus of the [its] value." (App. 53 at pp. 126, 127.) However, Mr. Raphael himself lists several of the publications and websites that discuss Willard Pond. (*Id.* at p. 62.) The following passages are from some of the publications listed by Mr. Raphael:

"Hidden in the southwestern part of New Hampshire, protected by an Audubon Society preserve, Willard Pond is simply breath-taking." (*Quiet Water New Hampshire and Vermont*, 2nd ed.);

"a secluded pond for canoeing, fly fishing, or shoreline exploration, with plentiful wildlife and a summit overview of the major Monadnock peaks" (*Hiking New Hampshire*, 2nd ed.);

"pristine 100-acre Willard Pond"; "In the heart of an 18-mile long corridor of protected lands in Southern New Hampshire's uplands is the 1,056 acre dePierrefeu-Willard Pond Wildlife Sanctuary, which is the largest property of the New Hampshire Audubon Society." (*The Wildlife of New England*); and

"wilderness' pond"; "The undeveloped tract is contiguous to other protected lands and part of more than 2,000 acres that include hills, pristine ponds, and a mixture of woodlands." (*The New Hiking the Monadnock Region*).

³ Note that on the thumb drive that Applicant's counsel handed out at the hearing containing PDFs of Ms. Connelly's simulations the quality of the image makes it difficult to see all eight turbines, as the tip of the fourth turbine from the left is difficult to see. The simulations attached to Ms. Connelly's pre-filed testimony and report on the SEC online docket offer a much clearer viewing experience (despite being sideways).

⁴ At the hearing, Mr. Buscher was questioned about not having other elements of the landscape moving in the simulation other than the turbines. However, given the prominence of the turbines, it is without question that the movement of clouds or trees would not obscure the view of the turbines, though other such movement, as Mr. Buscher stated, "can add a certain dynamic into the animations." (Tr. Day 8 P.M., at p. 104, Lines 6-7.)

(ASNH 1 at pp. 7–8.) The Antrim Bennington Lions Club also featured a view from Bald Mountain overlooking Willard Pond as the cover photograph for its publication *Outdoor Guide to Antrim and Bennington*. (ASNH 1, Attachment MJB 6.)

In addition to the public’s value of Willard Pond and the dePierrefeu Sanctuary as reflected in publications and websites, their values are perhaps more significantly shown by the public and private funding that have protected the Sanctuary and Willard Pond. The SEC recognized this in 2012, stating as follows:

Public funds have been dedicated to the dePierrefeu Wildlife Sanctuary and the surrounding conservation lands through a conservation program known as the Forest Legacy Program, the federal government has invested approximately \$3.5 million to conserve the lands within and directly adjacent to the Wildlife Sanctuary. The State has invested approximately \$400,000.00 for similar purposes. In addition, Willard Pond and the dePierrefeu Wildlife Sanctuary sit within the “Quabbin to Cardigan Initiative,” an interstate regional effort to conserve the Monadnock Highlands of north central Massachusetts and western New Hampshire.

(Decision and Order Denying Application, April 25, 2013, at p. 52 (citations omitted).)

Specifically with regard to NH Audubon’s efforts to conserve the last non-conserved parcel on Willard Pond, more than 200 families made donations. (ASNH 5 at p. 4.) This was for a single parcel out the many parcels that NH Audubon has fundraised to protect in the Sanctuary. These expenditures and the numerous publications touting Willard Pond’s undeveloped beauty demonstrate that there is a public consensus that the value of the dePierrefeu Sanctuary and wilderness-like Willard Pond is high.

In addition to impacts on the region and on the Gregg Lake area, the proposed project would have an unreasonable adverse effect on the aesthetics at Willard Pond under RSA 162-H:16(iv)(c), and, therefore, the SEC must deny the Application.

B. Goodhue Hill

Mr. Raphael did not do a photosimulation from Goodhue Hill, though Ms. Connelly and Ms. Vissering each did. Mr. Raphael states that “[a] typical hiker would likely be surprised at how inconsequential the Goodhue Hill experience and view is.” Ms. Connelly’s and Ms. Vissering’s simulations show otherwise, as does the prefiled testimony and photo attachments of past president Michael Bartlett. (ASNH 1.) Note that Ms. Vissering’s simulation from Goodhue Hill shows essentially the same view as the current version of the AWE project because 2012’s turbine 10 would not have been visible from the simulation location on Goodhue Hill.

At the adjudicative hearing, the Applicant suggested that NH Audubon conducted a logging operation on Goodhue Hill after learning about the proposed AWE project. (Tr. Day 8 at p. 105.) If the implication is that NH Audubon manages its land in order to accentuate perceived impacts from proposed projects, it is clearly without merit. Incidentally, there would have been no reason for NH Audubon to have expected that such a ploy would have worked given that, at the time of the harvest, the SEC had never denied an application for a wind facility; the SEC’s denial of the AWE project in 2012 was the first time that a wind project was not approved, which speaks to the ill-suited proposed location compared to the locations of currently operating wind projects.

NH Audubon’s plan to further open Goodhue Hill was in place long before the first Antrim Wind Energy project was proposed. Much of the summit of Goodhue Hill was sheep pasture at one time. A photograph of the stone wall bordering the 2012 harvest is included as Attachment DB 6-4 to ASNH 2. Aerial photography from 1952 shows an extensive open area on the north slope and summit of Goodhue Hill. (ASNH 2, Attachment DB 6-1.) Remnant stone walls indicate the previous extent of this clearing. Aerial photography from 1974 shows the

edges of this area growing in to white pine, with a central open area remaining. (ASNH 2, Attachment 6-2.) NH Audubon's decision to open Goodhue Hill was not in any way connected to the 2012 AWE application.

In addition to impacts on the region, the proposed project would have an unreasonable adverse effect on the aesthetics of Goodhue Hill under RSA 162-H:16(iv)(c), and, therefore, the SEC must deny the Application.

C. Bald Mountain

Bald Mountain would also experience an unreasonable adverse aesthetic effect. There is a ledge on Bald Mountain from which Mr. Raphael and Ms. Connelly did simulations. (App. 53, Exh. 6; CP Exh. 1 (Terraink VIA), Appendix F, Viewpoint 27.) Mr. Raphael's statement that one has to "creep down" to a ledge in order to view the proposed project area was countered by Ms. Connelly, as follows:

[T]here's a cairn that marks the opening to the ledges, I found that hike up Tamposi to the cairn to the ledge quite apparent. It was pleasant, and there's a natural draw to go out on to those ledges once you reach that cairn and take in the expansive view of Willard Pond and the greater scenery. I did not find the ledges to be precarious or dangerous. I actually thought that they would be a great family trip, where I lead for AMC and I take families on hikes, that I could really see a multitude of ages enjoying sitting on those ledges and sort of taking in the view.

(Tr. Day 12 at p.11.) The ledges are a draw for visitors as documented in the *Outdoor Guide to Antrim and Bennington* published by the Antrim Bennington Lions Club. (ASNH 1, Attachment MJB 6.) Ms. Connelly took a photograph from the same spot as the Lions Club publication and testified that this is the same ledge from which she and Mr. Raphael performed simulations. (Tr. Day 12 at p.11-12; ASNH 14.) Mr. Raphael's photograph (App. 23 at p. 36 (top photograph)) is from a different location than that of the Lions Club photograph, ASNH 14, and the two simulations. Thus, the Lions Club promotes visitation to the ledge from which all nine turbines

and the meteorological tower would be visible. (App. 53, Exh. 6.) There is little to no support for Mr. Raphael's opinion that this ledge is off the beaten path.

In addition to impacts on the region, the proposed project would have an unreasonable adverse effect on the aesthetics of Bald Mountain and, therefore, the SEC must deny the Application under RSA 162-H:16(iv)(c).

In conclusion, the evidence shows that the proposed project would have an unreasonable adverse effect on each of the three prominent locations in the dePierrefeu Sanctuary as well as collectively on this cluster of sensitive locations. The proposed project would also have an unreasonable adverse aesthetic effect on the cluster of Gregg Lake, White Birch Point, and Meadow Marsh. For these reasons, the SEC must deny the Application pursuant to RSA 162-H:16(iv)(c).

II. The Proposed Mitigation Does Not Mitigate the Aesthetic Effects

The Applicant proposes conservation easements on 908 acres of land, just less than half of the property AWE would lease for the project. In connection with the 2012 project, the Applicant proposed the conservation of 808 acres. The difference between the two projects is an additional 100 acres of land. To put this in perspective, in a region very actively engaged in land conservation, the Harris Center conserved 805 acres of land in the past calendar year, and the Monadnock Conservancy conserved over 1,100 acres of land in the past calendar year. (Tr. Day 8, P.M., at p. 152.)

The six conservation easements proposed by AWE lack many of the provisions that have become standard components of easements held by New Hampshire land trusts, particularly with respect to forest management. (ASNH 3 at pp. 6–7; see also Application at Appendix 10 (containing the easements).) For example, standard conservation easement goals provide for

maintenance of soil productivity; protection of water quality, wetlands, vernal pools, and riparian zones; maintenance or improvement of the overall quality of forest products; protection of significant natural habitat, such as habitat for rare species, exemplary natural communities, and important wildlife habitat, as identified by the NH Natural Heritage Bureau, the NH Fish and Game Department, or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such natural features; conservation of scenic quality; protection of unique historic and cultural features; and conservation of native plant and animal species. (ASNH 3 at pp. 6–7.) Standard easement language for use limitations regarding forestry provides considerably more specific guidance than is presented in the proposed easements. (See model easement at ASNH 3, Attachment CRF-8.)

The Applicant repeatedly claims that approval of the project is the only way to conserve the 908 acres. However, in addition to the inadequacies stated above, the easements do not protect the 908 acres from development, especially in the high-elevation areas of the proposed conserved lands. For example, the Ott easement includes the permanent reserved right to construct a 3,500 s.f. home at high elevation, thus providing for continued fragmentation of that parcel by a road extending permanently through the easement area for more than 4,000 feet. (See Application at Appendix 10.) The Ott easement also allows for the construction of a “cell tower’ anywhere on the Property” (see section 3.C of the easement).

Additionally, the Bean (Antrim Limited Partnership) easement on the recently added 100 acres allows the landowner to keep the “Wind Facility access road” open and allows the construction of another road, with overhead utilities, not to exceed 80-feet in width across the very ridge that is purported to be “protected.” (*Id.* at sections 3.A.v and 3.B of the easement); see also Kenworthy Testimony at Tr. Day 7, A.M., at p. 122.) The easement also allows for

agriculture and ancillary structures (see section 2.C of the easement). All of the easements have shortcomings and at least two allow for permanent visual impacts on the ridge.

It must be kept in mind that the object of this SEC proceeding is not to conserve acreage but to determine whether the proposed AWE site on Tuttle Hill south to Willard Mountain is appropriate for a utility scale wind project and its associated impacts. With regard to the proposed 808 acres of conservation land, the SEC in 2012 stated the following:

[T]he Subcommittee finds that the offer of more than 800 acres of conservation easements in and around the proposed Facility is a generous offer by the Applicant. However, the dedication of lands to a conservation easement in this case would not suitably mitigate the impact. While additional conserved lands would be of value to wildlife and habitat, they would not mitigate the imposing visual impact that the Facility would have on valuable viewsheds.

(Decision and Order Denying Application, April 25, 2013, at p. 53 (emphasis added).) A conservation easement on another 100 acres does not compel a different conclusion, especially when the SEC considers what that conservation easement allows, a road with utilities crossing Tuttle Hill, perpendicular to the ridge. The conservation of an additional 100 acres will not mitigate the visual impact on sensitive viewsheds.

Further, it is Ms. Connelly's opinion that "[y]ou can't mitigate aesthetics with money and conversation [sic] land. It's a wonderful thing to increase conservation land. I'm all for that, but I don't see it being used as a mitigation for unreasonable adverse aesthetic impact." (Tr. Day 12 at p. 41, Lines 10–15.) Even if the SEC is of the mind that some amount of money and conservation land can mitigate the proposed project's aesthetic impacts, an additional 100 acres is insufficient, and, in any case, the extra 100 acres would in no way limit the adverse aesthetic effect that the proposed project would have on the region, including NH Audubon and the users of Willard Pond, Bald Mountain, Goodhue Hill, Gregg Lake, White Birch Point, Meadow Marsh, and other locations. The SEC must deny the Application pursuant to RSA 162-

H:16(iv)(c) because it would cause an unreasonable adverse effect on the aesthetics of these locations, individually and collectively.

III. The Proposed Project is Not Materially Different from the Project Denied in 2012

The original project included ten turbines; the proposed project includes nine turbines. The locations for the proposed nine turbines are identical to those proposed in 2012. (Tr. Day 2, A.M., at p. 130, Lines 1–7.) The hub heights of turbines 1 through 8 are the same as those proposed in 2012. (Compare 2012 Application at page 23 (“The hub height is 92.5 meters.”) with 2016 Application at page 27 (“The hub height is 92.5 meters for WTG #1 – WTG #8 and 79.5 meters for WTG #9.”).) When questioned, Mr. Raphael did not know that the hub height remains the same. (Tr. Day 5, A.M., at p. 47, Lines 3–17.) The only difference in height for turbines 1 through 8 is the blade tips, and the reduction of 3.2 feet is inconsequential.

The Applicant has reduced turbine 9 from 492 feet to 446.2 feet, a 9% reduction. Even at that reduced height, it will be taller than any other turbine in the State. These changes are not “dramatic,” as Mr. Raphael described them. Turbines 1 through 8 would be 45 stories tall, and turbine 9 would be 41 stories tall. (ASNH 9.) All nine towers would be taller than the tallest building in New Hampshire. (ASNH 10.) The changes proposed by the Applicant do nothing to change the continued accuracy of the SEC’s following observations in 2012:

The proposed turbines are the tallest ever sought to be certificated in this state. In fact, if constructed they may be the tallest free-standing structures in the state. By way of illustration, the tallest building in Manchester, New Hampshire, One City Hall Plaza, is approximately 275 feet in height. The location for the site is not remote and is within the viewshed of numerous areas, both publicly and privately owned, where the public will see a significant impact on the landscape.

(Decision and Order Denying Application, April 25, 2013, at p. 50.)

As for the 9% reduction in height for turbine 9, the turbine would still be visible from Willard Pond, Goodhue Hill, Bald Mountain, Gregg Lake, and other sensitive locations. As for

Willard Pond, the moving blades of turbine 9 (and another turbine) would be visible over the flank of Bald Mountain and could be even more jarring to the eye than the view of a full turbine.

Ms. Connelly explained:

It is the spinning nature of the tips that are bisected on a ridgeline that often cause them to be more noticeable and can be deemed as being odd to the viewer.

....

You can't help yourself but look at the turbines.

(Tr. Day 12 at pp. 15–16.) Thus, the 44.8-foot lowering of turbine 9 could result in a *heightened* visual impact to Willard Pond.

Additionally, the proposed changes do not comport with the mitigation measures suggested by Ms. Vissering. Ms. Vissering suggested the following, among other mitigation measures:

- (1) “Eliminate turbines #9 and #10”; and
- (2) “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.”

(Ms. Vissering’s VIA is Exhibit C to Ms. Connelly’s pre-filed testimony (CP Exhibit 1), see page 18 of the Vissering VIA.) Turbine 9 has not been eliminated, and the moving blades of turbine 9 (and another turbine) over the flank of Bald Mountain could be more eye-catching than a full turbine. (Tr. Day 12 at pp. 15–16.)

As for Ms. Vissering’s recommendation to use smaller turbines, the currently proposed turbines do not satisfy Ms. Vissering’s recommendations. The reduction in height of turbine 9 could increase rather than decrease the adverse aesthetic effect on Willard Pond. And reducing the length of the blade tips of turbines 1 through 8 by 3.2 feet each does not result in materially smaller turbines. In addition to the height changes, the Applicant proposes turbines of which

“the tower diameter is reduced by 13% at the base and 15% at the top and the length of the nacelle is reduced by 19%.” (App. 10 at p. 8, Lines 12–19.) These minor changes to the tower diameter and length of the nacelle are not the type of “smaller turbines” recommended by Ms. Vissering, as they do not address Ms. Vissering’s reason for recommending smaller turbines, which is to prevent the towers from “overwhelming” the landscape. That the proposed turbines do not accomplish this is apparent when comparing Ms. Vissering’s simulations from the 2012 project with the simulations of the current proposed project.

Despite efforts by AWE to modify its project, the adverse effects of this project, as articulated by the Subcommittee that denied the application in 2012 for the wind energy facility on Tuttle Hill and Willard Mountain, persist. For this reason, the SEC must deny the current Application under RSA 162-H:16(iv)(c). To do otherwise would set an unfortunate precedent that would allow a subcommittee to second guess a prior subcommittee on what is essentially the same proposal.⁵

IV. New Hampshire’s Environmental Community is Not Supportive of the Antrim Wind Project

The Applicant has inaccurately portrayed the New Hampshire environmental community as supportive of the proposed Antrim Wind project. In reality, some groups have opposed the project, others have supported it, and most have taken no position.

In his pre-filed direct testimony, Jack Kenworthy listed the following seven organizations with which AWE met: New Hampshire Audubon, The Harris Center for Conservation Education, The Nature Conservancy, The Society for the Protection of New Hampshire Forests, the Monadnock Conservancy, Conservation Law Foundation, and Conservation New Hampshire.

⁵ During public comment, former Antrim Planning Board and Conservation Commission member Martha Pinello articulated many of these concerns about the two AWE proposals. (Tr. Day 8, A.M., at pp. 46–50.)

(App. 10 at p. 13.) The Society for the Protection of New Hampshire Forests, the Monadnock Conservancy, Conservation Law Foundation, and Conservation New Hampshire have taken no formal position with respect to the project.

The Nature Conservancy submitted a letter stating its position that the proposed project would not have an unreasonable adverse effect on air and water quality or the natural environment, and would be in the public interest. (Letter dated April 8, 2016.) (See RSA 162-H:16, IV(c) and (e).) The Nature Conservancy deliberately stated that they did not render an opinion on aesthetics or any other criteria because those criteria are outside of The Nature Conservancy's expertise. (*Id.* at p. 5.) Indeed, when delivering oral comment to the SEC, The Nature Conservancy's Executive Director was careful to clarify The Nature Conservancy's position:

Our analysis focused on topics where the Nature Conservancy has expertise.
We're not passing judgment on the project as a whole, as we recognize that there are other factors that the SEC must consider.

(Tr. Day 8, A.M., at p. 125, Lines 15–19 (emphasis added).) The Nature Conservancy's position that the proposed project would not have an unreasonable adverse effect on air and water quality and the natural environment is consistent with the SEC's 2012 decision reaching the same conclusion but nevertheless finding that the effect on aesthetics was unreasonably adverse.

The Applicant also points to letters of support from the Sierra Club and the New England Forestry Foundation (NEFF), both of which fully support the proposed project. The Applicant has also repeatedly suggested that the Harris Center is in favor of the project, pointing to general language of the conservation easements. (App. 24 at pp. 15, 19.) In his supplemental prefiled testimony, Mr. Kenworthy portrayed the position of the Harris Center as follows:

[The] HCCE, TNC, NHSC and NEFF . . . are all well-established conservation organizations that are very active in New Hampshire including in this region. All

those environmental groups agree that this Project will not cause unreasonable adverse effects on the environment and will be a valuable addition to the conservation interests in the region.

(App. 24 at p. 19 (emphasis added).) The Harris Center has scrupulously maintained neutrality in these proceedings. First, in its Petition for Intervention, the Harris Center clearly stated: “For the avoidance of doubt, HCCE wishes to state that it should not be identified as “for” the Proposal or “against” the Proposal. It is “for” a full development of the facts and “for” a decision based on science.” (Petition for Intervention, January 11, 2016.)

Then, in its August 10, 2016 letter, the Harris Center further explained its reasoning for remaining neutral:

AWE’s project has been deeply controversial in Antrim and surrounding towns. The Town is divided into two camps. We believe that Harris Center supporters adhere to each camp. The Harris Center Board determined that it was not in its reputational or financial interests to become identified either with those supporting the project or with those opposing it. As a result, it has taken and maintained the position throughout—stated in our petition to intervene and elsewhere—that it is neutral.

(App. 24, Attachment JK-17 at ¶ 5.) Further, attached to JK-17 are minutes from December 8, 2015 Harris Center Board of Trustees meeting in which it is stated that “AWE has asked us to raise our level of support,” but the Harris Center declined to do so and has remained neutral.

Indeed, the Harris Center appears to have taken the prudent course that, given the possibility that the SEC would approve the reconfigured AWE proposal, the Harris Center agreed to participate in the conservation easement process. This in no way indicates whether the Harris Center believes the three-mile Tuttle to Willard Mountain ridgeline—in the midst of the SuperSanctuary of conserved lands it has worked three decades to achieve—is an appropriate site for utility-scale wind project. The Harris Center’s agreement to enter into conservation

easements if the project is constructed is not the equivalent of asking the SEC to approve the project in the first place.

The SEC must also consider the missions of the environmental organizations involved. Some organizations are national (and global), and others are not. NH Audubon is a statewide organization. Organizations such as The Nature Conservancy, Sierra Club, and NEFF are not similarly situated to NH Audubon, or to the Monadnock Chapter of Trout Unlimited. NH Audubon's dePierrefeu Sanctuary is an approximately 1,700-acre sanctuary within the larger 34,500-acre SuperSanctuary of conserved lands clustered in Antrim and surrounding towns, and is home to Willard Pond, Bald Mountain, and Goodhue Hill. Although groups such as The Nature Conservancy own property within the project study area, none of those groups are owners of a "cluster" of highly impacted sites such as those identified by Ms. Connelly. The Nature Conservancy's properties do not have the views and recreational use that Willard Pond and the dePierrefeu Sanctuary have.

In its September 28, 2016 public-comment letter, Trout Unlimited refuted Mr. Raphael's testimony that Willard Pond is not unique and that fishermen and other users of Willard Pond would be so focused on their uses so as to not really notice the turbines. Trout Unlimited closed its letter by stating:

The members of Trout Unlimited are strong supporters of renewable energy. However, there are a variety of factors that need to be weighed in every situation. In this particular case, the very unique nature of the pond coupled with the diverse population of users make for an opportunity to enjoy a beautiful landscape that is unmatched in the Monadnock region. To disrupt the view from any location on the pond would be a fundamental mistake.

Trout Unlimited Public Comment, Sep. 28, 2016.) Trout Unlimited's statement is consistent with Audubon's position, which is not opposed to properly sited wind facilities, and in line with

the specific findings of the SEC in 2012. (See NH Audubon's Wind Policy, ASNH 1, Attachment MJB 9.)

In his supplemental pre-filed testimony, Mr. Kenworthy discusses several environmental organizations and reaches the strained conclusion that the three organizations that support the project, at least to some extent, constitute "numerous" groups. (App. 24 at p. 17, Line 7.) It is clear from the context of Mr. Kenworthy's statement that he interprets an organization's silence as support. In all, of the nine environmental organizations listed by Mr. Kenworthy or that have submitted letters, only NEFF and the NH Sierra Club fully support the proposed project. This does not constitute "numerous" organizations or general support of the proposed project among New Hampshire's environmental organizations.

Mr. Kenworthy also mentions the Appalachian Mountain Club (AMC), which signed a settlement agreement in 2012 with AWE regarding lighting. (App. 24 at p. 16, Lines 21–23.) Mr. Kenworthy portrays AMC as supportive of the proposed project, however, the settlement agreement clearly states, similarly to the Harris Center's repeated statements, that "[t]his Agreement does not imply that AMC now supports the AWE project." (AWE Application, Appendix 11, at p. 2.)

In sum, based on two letters in full support, one letter in partial support, the expressly stated neutrality of the Harris Center, the express statement of AMC that it should not be interpreted as supporting the project, the significant investment of time and resources invested by NH Audubon and its supporters (again), the opposition of Trout Unlimited, and the non-involvement of the majority of environmental organizations, it would be a distorted view to conclude that the New Hampshire environmental community is largely in support of the project. Neither silence nor neutrality should be interpreted as support.

Further, NH Audubon invested significant resources in the 2012 docket and was unexpectedly forced to do so again with regard to AWE's reconstituted project. The SEC should regard NH Audubon's actions as not out of step with the local environmental community but, instead, consistent with NH Audubon's mission and the findings of the 2012 SEC subcommittee. The changes to the proposed project do not address NH Audubon's and the SEC's concerns about the 2012 project, and they do not even satisfy the mitigation measures suggested by Ms. Vissering in 2012, as discussed above.

V. David Raphael's Visual Impact Assessment Did Not Adhere to the SEC Rules

Mr. Raphael's methodology ignored at least three of the SEC's administrative rules. The SEC may not grant a condition of site and facility to an applicant that has not followed the administrative rules.

A. Mr. Raphael's Simulations Were Not Taken Under Clear Weather Conditions and at a Time of Day that Provides Optimal Clarity and Contrast

Site 301.05(b)(8) states that "[p]hotosimulations shall" be taken "under clear weather conditions and at a time of day that provides optimal clarity and contrast." As is readily apparent in comparing the simulations of Mr. Raphael, Michael Buscher, and Ms. Connelly, only Mr. Raphael's simulations were taken under cloudy skies that do not provide optimal clarity and contrast.⁶ In Mr. Raphael's simulations one must strain to even see the permanent meteorological tower involved with the proposed project. That Mr. Raphael was unable to do simulations under conditions of "optimal clarity and contrast" defies belief given the amount of time he professed to have spent in the vicinity, especially at Willard Pond. That the other experts were able to conduct simulations in accordance with Site 301.05(8) further discredits Mr.

⁶ For example, with regard to Willard Pond, compare Mr. Raphael's Exhibit 12 (in App. 53) with Ms. Connelly's Appendix F, Viewpoint 1 (in CFP Exhibit 1) and Mr. Buscher's animated simulation (ASNH 7).

Raphael's criticism of Ms. Connelly that she did not spend enough time at Willard Pond and Bald Mountain to truly understand those places. (App. 23 at pp. 9–10.)

Based on the Applicant's failure to comply with the Rule, the SEC must deny the Application.

B. Mr. Raphael's Simulations Do Not Show Blades in the 12 O'clock Position

Mr. Raphael also did not follow Site 301.05(b)(8)(e)(3), which requires that, in simulations, "[t]urbine blades shall be set at random angles with some turbines showing a blade in the 12 o'clock position." Mr. Raphael conceded that most of his simulations do not depict turbine blades at the 12 o'clock position but nevertheless testified that he complied with the rule because *some* of the simulations showed turbines in the 12 o'clock position. (Tr. Day 5, A.M., at pp. 48–51.) Mr. Raphael's interpretation that only three of the four requirements enumerated in Site 301.05(b)(8)(3) apply to every simulation and that the 12 o'clock position requirement only applies to the simulations as a series ignores the plain language of Site 301.05(b)(8)(e). That is not how legal rules are properly applied.

Based on the Applicant's failure to comply with the Rule, the SEC must deny the Application.

C. Mr. Raphael Did Not Evaluate Nighttime Lighting

With regard to nighttime lighting, the Applicant chose not to comply with Site 301.05(b)(9), which requires the following:

If the proposed facility is required by Federal Aviation Administration regulations to install aircraft warning lighting or if the proposed facility would include other nighttime lighting, a description and characterization of the potential visual impacts of this lighting, including the number of lights visible and their distance from key observation points[.]

Mr. Raphael did not evaluate the proposed lighting for the AWE project. When

questioned about Site 301.05(b)(9), the following exchange occurred:

Raphael: We did not need to address this issue because the project developers have committed right from the outset to use the radar activated lighting which means that, for the most part, there will be no lighting at night of the facility. So it's not necessary to evaluate that in depth.

Reimers: Okay. In the rule that I just stated, did it state an exemption for that type of lighting?

Raphael: No. It doesn't speak to that.

(Tr. Day 5, P.M., at pp. 57–58.) Even if one assumes that the lights would be radar-activated, the applicability of Site 301.05(b)(9) does not change. As Mr. Raphael agreed, the Rule does not exempt radar-activated lights, and the possibility of radar-activated lights was known to the SEC when this Rule was adopted, as AWE had proposed the same lighting in 2012.

There should be no dispute that a radar-activated lighting system is a type of “aircraft warning lighting . . . or other nighttime lighting” as those terms are used in Site 301.05(b)(9). Further, Mr. Raphael acknowledges that, if approved, lights would be on the nacelles of six turbines and on the meteorological tower and that radar-activated lighting will have an impact. (App. 53 at p. 37.) However, Mr. Raphael did not “descri[be] and characteriz[e] . . . the potential visual impacts of this lighting, including . . . their distance from key observation points” as required by the Rule.

Mr. Raphael states that the lights will “remain off at all times unless an aircraft is operating in the vicinity of the wind farm.” (Id.) However, there is no analysis of how often an aircraft will be in the vicinity, how long the lights will stay on when an aircraft is nearby, and, perhaps most importantly, what the effects will be on “key observation points” as required by the Rule. This lack of analysis is especially important given that the proposed project location is approximately 45 miles due west of the Manchester-Boston Regional Airport.

The Applicant's position that the proposed use of radar-activated lights does not trigger Site 301.05(b)(9) is in direct conflict with the plain language of the Rule. Based on the Applicant's deliberate decision not to comply with the Rule, the SEC must deny the Application.

VI. Conclusion

At the hearing, the Applicant asked the NH Audubon panel whether the presence of the wind project would provide NH Audubon, within the context of the educational activities that NH Audubon provides at Willard Pond and elsewhere, with a teachable moment on the subject of renewable energy. Mr. Bechtel responded that "it would be a great educational opportunity for us to discuss inappropriate siting of wind turbines." (Tr. Day 8, P.M., at p. 128, Lines 7-9.) The SEC understood this in 2012, and, after consideration of the differences between the two projects, the same result is appropriate now.

WHEREFORE, NH Audubon respectfully requests that the SEC deny in full the Applicant's application for a certificate of site and facility.

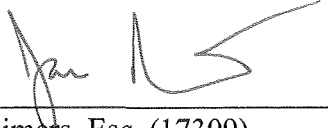
Respectfully Submitted,

AUDUBON SOCIETY OF NEW HAMPSHIRE

By its Attorneys,

BCM Environmental & Land Law, PLLC

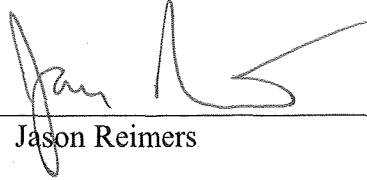
Date: November 21, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this day, November 21, 2016, a copy of the foregoing Motion was sent by electronic mail to persons named on the Service List of this docket.

A handwritten signature in black ink, appearing to read "Jason Reimers", is written over a horizontal line.

Jason Reimers