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June 2, 2017

HAND DELIVERED
Eileen A. Fox, Clerk of Court
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

NHPUC 5JUN'17PM12:21

Re: Appeal of Antrim Wind Opponents Group of the Application of Antrim Wind Energy, LLC for a Certificate of Site and Facility
Case No._____

Dear Clerk Fox:

Please find enclosed an original and eight (8) copies of the Petition to Appeal from the Administrative Decision of the Site Evaluation Committee Pursuant to NH RSA 541:6 and Supreme Court Rule 10 and Request for Suspension of Site Evaluation Committee's Decision Granting Certificate of Site and Facility Dated March 17, 2017 and an Appendix related to same in the above-captioned matter. Also, enclosed please find our firm check in the amount of $250.00 for the filing fee of same. Please file in your usual manner.

I hereby certify that copies of the foregoing have this day been forwarded to all counsel and parties of record, and the NH Site Evaluation Committee.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC

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NH Site Evaluation Committee

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2017 TERM
SPRING SESSION

NO. _____

APPEAL OF ANTRIM WIND OPPONENTS GROUP (NEW HAMPSHITE SITE EVALUATION COMMITTEE)

PETITION TO APPEAL FROM THE ADMINISTRATIVE DECISION OF THE SITE EVALUATION COMMITTEE PURSUANT TO NH RSA 541:6 AND SUPREME COURT RULE 10 AND REQUEST FOR SUSPENSION OF SITE EVALUATION COMMITTEE'S DECISION GRANTING CERTIFICATE OF SITE AND FACILITY DATED MARCH 17, 2017

Mary Allen, Bruce Berwick, Barbara Berwick, , Richard Block, Robert Cleland, Kenneth Henninger, Jill Fish, Annie Law, Janice Longgood, Brenda Schaefer, Mark Schaefer, the Stoddard Conservation Commission, and the Windaction Group

By Their Attorneys:

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B. A COPY OF THE ADMINISTRATIVE AGENCY'S FINDINGS AND RULINGS; A COPY OF THE ORDER SOUGHT TO BE REVIEWED; A COPY OF THE MOTION FOR REHEARING, AND ALL OBJECTIONS THERETO; AND A COPY OF THE ORDER ON THE MOTION FOR REHEARING.

1. Decision and Order Granting Application for Certificate of Site and Facility, issued by the SEC on March 17, 2017 ("Decision"), appended hereto in Appendix to Petition to Appeal from the Administrative Decision of the Site Evaluation Committee Pursuant to NH RSA 541:6 and Supreme Court Rule 10 ("App.") at 1.

2. Meteorological Intervenor's Motion to Rehear, filed on March 25, 2017 ("Meteorological Intervenor's Motion for Rehearing"), appended hereto in App. at 183;

3. Applicant Antrim Wind Energy, LLC Objection to the Meteorological Intervenor's Motion for Rehearing, filed on April 5, 2017 ("AWE's Objection to Meteorological Intervenor's Motion"), appended hereto in App. at 203;

4. Joint Motion for Rehearing of the Abutting Landowners Group, Non-Abutting Landowners Group, the Levesque-Allen Group, the Stoddard Conservation Commission, and the Windaction Group, filed on April 14, 2017 ("Joint Motion for Rehearing"), appended hereto in App. at 217;

5. Motion for Counsel for the Public for Rehearing or Reconsideration, filed on April 17, 2017 ("CFP's Motion for Rehearing"), appended hereto in App. at 270;

6. Applicant Antrim Wind Energy, LLC's Objection to the Joint Motion for Rehearing, filed on April 24, 2017 ("AWE's Obj. to Joint Motion"), appended hereto in App. at 288;

7. Applicant Antrim Wind Energy, LLC's Objection to Counsel for the Public's Motion for Rehearing, filed on April 25, 2017 ("AWE's Obj. to CFP Motion"), appended hereto in App. at 330;

8. Joint Response to Antrim Wind Energy, LLC's Objection to Opposing Intervenors' Motion for Rehearing, filed on May 2, 2017 ("Joint Response to AWE's Obj."), appended hereto in App. at 354;

9. The SEC's written decision denying the various motions for rehearing filed by the Meteorological Intervenors, the Opposing Intervenors, and Counsel for the Public has not been issued. The SEC orally denied the Motions for Rehearing during a public session of the SEC on May 5, 2017, the transcript to which is attached hereto at App. 367 (hereinafter "Rehearing Transcript").

C. SPECIFIC QUESTIONS TO BE RAISED ON APPEAL EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE. RULE 10(1)(C).

1. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when that decision was issued by a Subcommittee that consisted of only one public member in violation of RSA 162-H:4-a and when the initial second public member resigned early in the proceedings, the alternate public member left on maternity leave and did not preside over any adjudicative or deliberative sessions in this matter, and the Chairperson of the SEC did not seek to have the Governor and Executive Council fill the alternate public member's vacancy on the Subcommittee. See App. at 220-227; App. 356-358.

2. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when it granted AWE's Application for a Certificate of Site and Facility (hereinafter "2015 Application") to construct a nine turbine wind farm on Tuttle Hill in the Town of Antrim (hereinafter "the Project") when the SEC denied a prior application for a Certificate of Site and Facility to construct a wind farm on Tuttle Hill in the Town of Antrim in SEC Docket No. 2012-01 (hereinafter "Antrim I") and the 2015 Application did not materially differ from the

application submitted in Antrim I (hereinafter "2012 Application"). See App. at 221-224; App. 358-360.

3. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee found that the Project would not have unreasonable adverse impacts, despite the Subcommittee failing to properly apply the SEC's administrative rules regarding aesthetics and despite the Subcommittee failing to properly consider or analyze the Project's aesthetic impact on various scenic resources, including Highland Lake, Lake Nubanusit, and the dePierrefeau Wildlife Sanctuary in its entirety, when the SEC had previously identified those scenic resources as being impacted in the Antrim I case. See App. at 235-238.

4. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee considered mitigation measures proposed by AWE in finding that the Project would not have unreasonable adverse aesthetic impacts despite those mitigation measures being substantially similar to mitigation measures proposed in Antrim I that the SEC, in that case, found would not mitigate adverse aesthetic impacts. See App. at 242-245.

5. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee found that the Project would not have unreasonable adverse aesthetic impacts, in part, because the Project would utilize radar detection lighting systems, despite the Subcommittee receiving no evidence as to the frequency, intensity, duration, or any other relevant facts associated with the operation of the radar detection lighting systems. See App. at 242-245; App. at 362.

6. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee found that the Project would not have any noise-related adverse public health or safety impacts when the only evidence supporting that conclusion was a Sound Assessment prepared by AWE's Expert, Robert O'Neal, which did not comply with standards and requirements set forth in the SEC's administrative rules. See App. at 247-254.

7. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee found that the Project would not have any noise-related adverse public health or safety impacts due to AWE's representation that AWE would implement "noise reduction operations," ("NRO") despite the Subcommittee receiving no evidence as to the specific details regarding NRO or NRO's impacts on the Project. See App. at 247-254; App. at 362-364.

8. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee found that the Project would not have any shadow flicker-related adverse public health or safety impacts despite the fact that the shadow flicker analysis prepared by AWE's expert, Robert O'Neal, reflected that the Project would result in shadow flicker in excess of the maximum thresholds set forth in the SEC's administrative rules. See App. at 254-57.

9. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee found that the Project would not have any shadow flicker-related adverse public health or safety impacts based upon AWE's representation that the Project would implement shadow control protocols ("SCP"), despite the Subcommittee receiving no evidence as to the specific details regarding SCP or SCP's impacts on the Project. See App. at 256-257; App. at 362-364.

10. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee found that the Project would not have an unreasonable adverse impact on the orderly development of the region based upon the flawed and incomplete real estate analysis of AWE's real estate expert, Matthew Magnusson. See App. at 265-268.

11. Whether the SEC Subcommittee's decision was unjust, unlawful, and unreasonable when the Subcommittee granted a Certificate of Site and Facility and declined to condition said approval upon the creation of a Property Value Guaranty despite the Subcommittee's acknowledgement that the Project may have adverse impacts on property values. See App. at 265-268.

12. Whether the SEC Subcommittee acted unjustly, unlawfully, and unreasonably when it excluded evidence submitted by the Appellants which would have supported the establishment of a Property Value Guaranty and then later rejected the Property Value Guaranty due to a lack of evidence on the record associated with the Property Value Guaranty. See App. at 265-268.

The Appellants hereby reserve the right to amend this Notice of Appeal and the Questions Presented upon issuance of a written decision by the SEC Subcommittee denying the Joint Motion for Rehearing, the Meteorological Intervenors Motion for Rehearing, and CFP's Motion for Rehearing.

D. PROVISIONS OF THE CONSTITUTIONS, STATUTES, ORDINANCE, RULES, OR REGULATIONS INVOLVED IN THE CASE, SETTING THEM OUT VERBATIM AND GIVING THEIR CITATION.

The provisions of RSA 162-H:1, RSA 162-H:3, RSA 162-H:4-a, RSA 162-H:11, RSA 162-H:16, RSA 541:3, RSA 541: 6, RSA 541:7, RSA 541:13, RSA 541:18, N.H. CODE OF ADMIN. RULES Site 301.05, 301.08, 301.09, 301.14, 301.16 and 301.18 are set forth in the Appendix starting at 396.

E. PROVISIONS OF INSURANCE POLICIES, CONTRACTS OR OTHER DOCUMENTS INVOLVED IN THE CASE, SETTING THEM OUT VERBATIM.

Not Applicable.

F. CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED, WITH APPROPRIATE REFERENCES TO THE TRANSCRIPT, IF ANY.

1. The 2012 and 2015 Applications

On January 31, 2012, Antrim Wind Energy, LLC filed an Application for Site and Facility with the SEC, seeking authorization to construct ten wind turbines along the ridgeline of Tuttle Hill in the Town of Antrim, New Hampshire, commencing the Antrim I matter. See Antrim I, Decision and Order Denying Application for Certificate of Site and Facility, appended hereto in App. at 433, 439-440.

Tuttle Hill is immediately adjacent to a "supersanctuary," comprised of over 34,500 acres of conservation land, a portion of which includes the dePierrefeu Wildlife Sanctuary. App. at 480. This supersanctuary is part of a larger initiative called the Quabbin to Cardigan Partnership, which is a collaborative effort to conserve the Monadnock Highlands of north-central Massachusetts and western New Hampshire, an area spanning one hundred miles and encompassing approximately 2 million acres. App. at 481.

The wind turbines in Antrim I were to have a height of approximately 492 feet. App. at 440. In addition to the turbines, AWE proposed to install a meteorological tower. App. at 440. The elevation of Tuttle Hill, on which these ten turbines and the meteorological tower were to be located ranges between 1,431 to 1,896 feet. App. at 440. The Project would have been visible from various sensitive scenic resources including, but not limited to, the dePierrefue Wildlife Sanctuary, Willard Pond (a Great Pond located in the interior of the Sanctuary), Bald Mountain, Goodhue Hill, Pitcher Mountain, and Gregg Lake. App. at 479-480. As a purported attempt to mitigate the aesthetic impacts associated with siting nearly 500 foot wind turbines in an

ecologically significant area, AWE proposed a mitigation plan which involved the dedication of 800 acres of land to conservation easements and the implementation of radar detection lighting systems. App. at 481-482.

On April 25, 2013, a subcommittee of the SEC denied the 2012 Application in a 71 page decision, following 11 days of hearings on the merits and 3 days of deliberations, wherein the subcommittee found that the proposed project would have an adverse aesthetic impact upon the area, including "significant qualitative impacts upon Willard Pond, Bald Mountain, Goodhue Hill, and Gregg Lake." See App. at 479. The subcommittee in that case further found that the project would "have a particularly profound impact on Willard Pond and the dePierrefeu Wildlife Sanctuary." App. at 480. The subcommittee also found that the proposed mitigation plan would not suitably mitigate these unreasonable aesthetic impacts, stating that "[w]hile additional conserved lands would be of value to wildlife and habitat, they would not mitigate the imposing visual impact the Facility would have on valuable viewsheds." App. at 482. AWE did not appeal the subcommittee's denial of a certificate of site and facility.

On October 2, 2015, AWE filed the 2015 Application, in which it sought to install nine wind turbines and a meteorology tower along the ridgeline of Tuttle Hill. App. at 14. These nine turbines would be located in the same locations and at the same elevations as those proposed in the 2012 Application. Including turbine blades, eight of the turbines would be 488.8 feet tall and the ninth turbine would be 446.2 feet tall, constituting a reduction of 3.2 feet from the turbine heights in the 2012 Application (45.8 feet for turbine nine). App. at 14-17. Like the 2012 Application, AWE proposed a mitigation package. This package was identical to that

proposed in 2012 but provided an additional 100 acres of conservation land and a grant of $100,000.00 to the New England Forestry Foundation.[1] App. at 46, 118.

In support of the 2015 Application, AWE provided: (a) a "Visual Assessment for the Antrim Wind Project" ("VA Report") prepared by David Raphael of Landworks; (b) a "Sound Level Assessment Report" prepared by Robert O'Neal of Epsillon Associates, Inc.; (c) a "Shadow Flicker Analysis" also prepared by Mr. O'Neal; and (d) an analysis of the "Impact of the Lempster Wind Power Project on Local Residential Property Values Update" prepared by Matthew Magnusson of Seacoast Economics.[2]

Mr. Raphael's VA Report opined that the Project would not have an unreasonable adverse aesthetic impact to scenic resources. The first step in Mr. Raphael's methodology was to determine the scenic resources that would have visibility of the Project, basing those scenic resources on those sites that would have visibility of the Project's hub (excluding those scenic resources that would see the Project's 185-foot spinning turbine blades but would not see the turbine hub). Mr. Raphael culled the list of impacted scenic resources down to ten by using a cultural and scenic-quality grading system, whereupon he analyzed the Project's effects on viewers of the ten sites based on contradictory criteria. In support of his VA, Mr. Raphael also provided photosimulations of the Project at the ten sites; however, contrary to Rule Site 301.05, the photosimulations were taken under cloudy, hazy, and otherwise unclear conditions and with

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[1] Although the mitigation package styles the land grants as "conservation land," AWE has reserved the right in the conservation deeds to install and operate up to thirteen wind turbines on the conservation land for fifty years from the effective date of the lease that AWE executed to obtain the necessary real estate interests to construct the Project.

[2] These assessments would later be supplemented due to an intervening amendment to the SEC's administrative rules. For the purpose of this Notice of Appeal, the Appellants refer to the supplemented assessments unless otherwise indicated.

AWE provided additional analyses and reports regarding other Project impacts that are not pertinent to this Appeal.

objects in the foreground. Mr. Raphael also opined that the radar detection lighting systems would not have an adverse impact on aesthetics, but provided no details as to the radar detection lighting systems or how frequently those lights would be activated.

Mr. O'Neal's Sound Assessment sought to determine whether the sound from the Project would exceed forty-five decibels (dBA) at any time during the day and forty dBA at any time during the night at properties used in whole or in part for residential purposes. See N.H. CODE OF ADMIN. R. Site 301.14(f)(2). Mr. O'Neal predicted the sound from the turbines for property within a two-mile radius of the Project, purporting to utilize standard ISO 9613-2 1996-12-15 ("ISO 9613-2")[3] and inputting into a software program called Cadna/A the turbine height and elevation, the various properties' locations in relation to the Project, and the terrain for the Project. Mr. O'Neal applied a ground factor ("G Factor") of 0.5 (as opposed to 0.0 which would have required the addition of three dBA to predictive sound measurements) based on the assumption the sound would be partially absorbed by the ground prior to sound reaching a residence. Mr. O'Neal did not make any adjustments to the ISO 9613-2 standard to account for limitations inherent in the ISO 9613-2 standard.

Mr. O'Neal's Shadow Flicker Analysis determined the extent of alternating changes in light intensity that would occur when the rotating blades of the Project are back lit by the sun and cast shadows on the ground or shadows. See N.H. CODE OF ADMIN. R. Site 102.48 (defining "shadow flicker"). Mr. O'Neal's analysis determined the amount of shadow flicker on properties within one mile of the Project under a worst-case, astronomical maximum scenario as well as the anticipated hours per year of shadow flicker expected to be perceived under anticipated meteorological conditions. See N.H. CODE OF ADMIN. R. Site 102.11 (defining "astronomical

[3] The ISO 9613-2 standard is incorporated by reference as Appendix B to N.H. CODE OF ADMIN. R. Site 300, et seq.

maximum"). The result of the Shadow Flicker Analysis reflected that twenty-four locations would experience between eight hours and thirteen hours and forty-eight minutes of shadow flicker per year — above the eight hours per year maximum established by the SEC's rules. See N.H. CODE OF ADMIN. R. Site 301.14. Mr. O'Neal stated that the Project would implement a "shadow control method" "to ensure that the 24 locations that are conservatively expected to experience between 8 hours and 13 hours and 48 minutes of shadow flicker per year, will not exceed a total of 8 hours per day." AWE provided no additional evidence or detail as to how these "shadow control methods" would be initiated or operated, or how these methods would otherwise impact the Project's operations.

Mr. Magnusson's report analyzed whether the nearby Lempster Wind Project had an impact on real estate values within the region. Mr. Magnusson's analysis was limited to completed sales of single-family homes. Mr. Magnusson did not consider properties which did not sell or had otherwise been taken off the market. Mr. Magnusson's analysis examined thousands of property sales transactions within Sullivan County, New Hampshire completed over many years (2005-2011). The data set was dominated by sales of properties situated many miles from the Lempster Wind Project where there would be no reasonable expectation of Project impactsthe properties being impacted by the turbines. Based on the statistical review of completed transactions, Mr. Magnusson concluded that wind projects do not impact real estate values.

2. Procedural History

On October 19, 2015, then Attorney General Joseph Foster appointed Assistant Attorney General Mary E. Maloney to act as Counsel for the Public. App. at 10. On October 20, 2015,

the SEC appointed the Subcommittee to preside over the 2015 Application. App. at 10. The Subcommittee was comprised of Robert Scott of the Public Utilities Commission ("PUC"), Thomas Burack of the Department of Environmental Services, Kathryn Bailey of the PUC, Jeffrey Rose of the Department of Resources and Economic Development, Elizabeth Muzzey of the Division of Historic Resources, Roger Hawk as a Public Member, and Patricia Weathersby as a Public Member. Commissioner Bailey would later designate Robert Clifford to sit for her, Director Burack designated Eugene Forbes to sit for him, and Director Muzzey designed Richard Boisvert to sit for her. On December 1, 2015, the Subcommittee accepted the Application. App. at 10.

On December 31, 2015, Public Member Hawk resigned and died shortly after. On January 11, 2016, SEC Chairman Martin Honigberg appointed Rachel Whitaker to act as an alternate public member on the Subcommittee. However, Member Whitaker did not preside over any proceedings in the 2015 Application, as she went on maternity leave shortly after being appointed.

3. Evidence Presented and Subcommittee's Decisions

Between February and August, 2016, AWE, CFP, and the Appellants (amongst other intervenors) submitted pre-filed and supplemental pre-filed testimony. The SEC conducted adjudicative hearings over thirteen days between September 13, 2016 and November 7, 2016. App. at 12-13. Through pre-filed testimony and the adjudicative hearings, CFP, the Appellants, and other intervenors challenged the evidence submitted by AWE.

With regard to aesthetics, CFP and the Intervenors asserted that Mr. Raphael's VA was predicated upon data inputs and methodologies that were intended to reach a predetermined

result – that the Project would not have an unreasonable adverse impacts on aesthetics. See App. at 111-117. Specifically, the Appellants challenged Mr. Raphael's selection of scenic resources, his methodology to determine the resources' cultural significance and scenic quality, and the view effects to those scenic resources that would result from the Project. App. at 111-117. The Appellants further challenged Mr. Raphael's photosimulations, which did not comply with the SEC's requirements. App. at 115-116; see also N.H. CODE OF ADMIN. R. Site 301.05(b)(8). CFP also submitted a Visual Impact Assessment prepared by Kellie Connelly of Terraink, Inc., which concluded that the Project would have an unreasonable adverse impact on aesthetics and critiqued various aspects of Mr. Raphael's VA. App. at 111-115.

The Appellants also challenged the conclusions and methodologies set forth in Mr. O'Neal's Sound Assessment. The Appellants noted that the SEC required the use of the standard ISO 9613-2 — a standard predicated upon noise sources that are no taller than 30 meters in height and located on flat or constantly sloping ground — and that the ISO 9613-2 standard advised that use of a ground attenuation factor, or ground factor, is not applicable when predicting noise sources that are at high elevations or situated on uneven terrain. In order to omit the ground factor component, consistent with the ISO 9613-2 standard, a ground factor of 0.0 should have been input into the CADNA/A product used by Mr. O'Neal, which would have increased modelled sound levels by three dBAs. App. at 149-150; see also ISO 9613-2 1996-12-15 at § 7.3.1 (titled "Ground effect: General method of calculation"). The Appellants further noted that Mr. O'Neal should have further adjusted his predictive sound model to account for deficiencies in the ISO 9613-2 standard, which would have resulted in increased modelled sound levels by between three and five decibels. App. at 149-150; see also ISO 9613-2 1996-12-15 at §

9 (titled "Accuracy and limitations of the method"). The Appellants presented extensive evidence in support of these model adjustments, some of which were cited by Mr. O'Neal in his own testimony, and further presented Richard James of E-Coustic Solutions who further corroborated the need for adjustments under the ISO 9613-2 standard. App. at 149-150; see e.g. Wind Action Exhibit 28 at *3, *12; Wind Action Exhibit 6, Wallace, J. et. al, "Wind Turbine noise modeling and verification: two case studies—Mars Hill and Stetson Mountain I, Maine" at *2, 7, 17 (July 25-27, 2011); WindAction Exhibit 12, Resource Systems Group, Inc., "Massachusetts Study on Wind Turbine Acoustics" at 65; Pre-filed Testimony of Richard James at 10-11, 17-18. The evidence and testimony submitted by the Appellants reflected that the Project would result in exceedances of the forty-five dBA daytime and forty dBA nighttime sound levels provided by the SEC's administrative rules. See N.H. CODE OF ADMIN. R. Site 301.14(f)(2).

In response to these criticisms, Mr. O'Neal, for the first time during the proceedings, stated that the Project would not result in exceedances because AWE could implement NRO to reduce sound-levels. See 9/20/2016 PM Transcript at 46. No further details or specifics were provided as to how NRO would operate, when it would be triggered, or what impact it would have on the Project's operations. One AWE official testified that AWE had high confidence in Mr. O'Neal's noise predictions and further testified that AWE took no action to determine how application of NRO would impact the financial analysis for the Project. See 9/13/16 AM Transcript at 100.

The Appellants further challenged Mr. O'Neal's Shadow Flicker Analysis, asserting that the Project would exceed the SEC's minimum standards and further noting for the SEC the lack

of detail and specifics associated with the purported "shadow control" methods to be implemented by AWE. App. at 161-163. The Appellants demonstrated that Mr. O'Neal's analysis was understated due to Mr. O'Neal's use of historic meteorological data to determine the duration of sunshine during the year. App. at 161-163.

The Appellants also challenged Mr. Magnusson's real estate analysis, asserting that the study was incomplete because of its failure to consider properties that did not sell, the time properties were on the market, or properties that were taken off of the market. App. at 84-85. The intervenors further sought the imposition of a property value guaranty, through which the intervenors would be compensated for any reduction in property value associated with the Project.[4] App. at 84-85.

At the close of the evidence, the SEC permitted the parties to submit post-hearing memoranda. Through the post-hearing memoranda, CFP and various intervenors asserted that the SEC should deny the Project because the 2015 Application was either barred by the doctrines of res judicata and collateral estoppel by the SEC's decision in Antrim I. App. at 42-45. AWE asserted that res judicata and collateral estoppel did not apply because the Project was sufficiently different from the 2012 Application and because there had been an intervening change in the law. App. at 45-49.

The SEC deliberated on December 7, 9, and 12, 2016, during which the SEC, by a vote of 5-1, found that the Project did not present unreasonable adverse impacts to aesthetics or public health and safety and would not unduly interfere with the orderly development in the region. See

[4] The Appellants sought to introduce evidence of prior instances in which a property value guaranty had been used in Massachusetts in the context of a wind project; however, the SEC excluded the evidence, stating that the evidence was from a different state and was, therefore, not relevant.

14; see also RSA 162-H:16, IV. On March 17, 2017, the SEC formally issued a written decision in which it found that the Project would not have unreasonable adverse impacts and issued a Certificate of Site and Facility.

In granting the Certificate of Site and Facility, the Subcommittee determined that the Project differed from the proposal in Antrim I and, therefore, the 2015 Application was not precluded under the doctrine of res judicata or collateral estoppel. App. at 49-50. Although the Subcommittee noted that the SEC in Antrim I found that conservation land was an insufficient mitigation measure for aesthetic impacts, the Subcommittee narrowed that conclusion to the facts of Antrim I and noted that the mitigation measures associated with the Project were sufficient to offset aesthetic impacts in this instance. See App. at 49-50.

The Subcommittee also found that, although the Project would result in adverse aesthetic impacts, those impacts would not be unreasonable based, in part, on the mitigation package proposed by AWE. App. at 117-121. With regard to noise, the Subcommittee found that the Project would not have any unreasonable adverse effects to public health and safety because AWE "demonstrated that it has the technical capability to decrease the Project's noise by curtailment or implementation" of NRO. App. at 153. As for shadow flicker, despite AWE's own expert acknowledging that the Project would exceed acceptable levels with regard to shadow flicker, the Subcommittee only stated that the Project will not have unreasonable adverse effects on public health and safety if it did not produce more than eight hours of shadow flicker each year and imposed a condition on AWE that AWE was to submit a report of the amount of shadow flicker produced by the Project on a semi-annual basis. App. at 163-164.

On March 25, 2017, the Meteorological Intervenors filed a Motion to Rehear, to which AWE objected on April 5, 2017. App. at 181; App. at 204. The Appellants filed a Joint Motion for Rehearing on April 14, 2017, in which the Appellants asserted that the Subcommittee's determinations with regard to res judicata/collateral estoppel, aesthetics, sound, shadow flicker, and orderly development (amongst other matters) was unjust, unlawful, and unreasonable. App. at 217-269. The Appellants, observing that Member Whitaker had not presided over any of the adjudicative or deliberative hearings, further argued that the Subcommittee was unlawfully constituted. App. at 224-227._CFP filed a Motion for Rehearing and Reconsideration on April 17, 2017, in which it raised concerns similar to the Appellants. App. at 270.

AWE objected to the Joint Motion for Rehearing and CFP's Motion for Rehearing and Reconsideration on April 24 and 25th respectively. App. at 288; App. at 330. Thereafter, the Appellants filed a Brief Response to AWE's Objection on May 2, 2017. App. at 354.

On May 5, 2017, the Subcommittee denied the various motions for rehearing at a public hearing. During the public hearing, the Subcommittee frequently expressed its position that it had fully "vetted" the issues raised by the various moving parties and that no evidence was presented which caused the Subcommittee to reconsider its determination. App. at 367-391.

The Subcommittee has yet to issue a written decision on the motions for rehearing as of the submission of this Notice of Appeal.

Additional facts will be discussed in Section H.

G. JURISDICTIONAL BASIS FOR THE APPEAL, CITING RELEVANT STATUTES OR CASES.

RSA 162-H:11 Judicial Review. – Decisions made pursuant to this chapter shall be reviewable in accordance with RSA 541.

RSA 541:6 Appeal. – Within thirty days after the application for rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the Supreme Court.

H. DIRECT AND CONCISE STATEMENT OF THE REASONS WHY A SUBSTANTIAL BASIS EXISTS FOR A DIFFERENCE OF OPINION ON THE QUESTION AND WHY THE ACCEPTANCE OF THE APPEAL WOULD PROTECT A PARTY FROM SUBSTANTIAL AND IRREPARABLE INJURY, OR PRESENT THE OPPORTUNITY TO DECIDE, MODIFY OR CLARIFY AN ISSUE OF GENERAL IMPORTANCE IN THE ADMINISTRATION OF JUSTICE.

a. Question 1

There is a substantial basis for a difference of opinion between the Appellants, CFP, AWE, and the Subcommittee as to whether the Subcommittee was properly constituted due to the absence of a public member from the Subcommittee during the entirety of the adjudicatory and deliberative processes in this matter.

The SEC is comprised, in part, of two public members appointed by the Governor and Executive Council. See RSA 162-H:3. When considering the issuance of a certificate of site and facility, the SEC may appoint a subcommittee to adjudicate and decide the matter. See RSA 162-H:4-a, II. The subcommittee "shall have no fewer than 7 members," and "[t]he 2 public members shall serve on each subcommittee with the remaining 5 or more members selected by the chairperson from among the state agency members of the committee." Id. (emphasis added). If at any time a public member on a Subcommittee "must recuse himself or herself on a matter or is not otherwise available for good reason," the chairperson of the SEC "shall appoint the alternate public member, or if such member is not available, the governor and council shall appoint a replacement upon petition of the chairperson." See RSA 162-H:3, XI (emphasis added).

Here, the initial public member appointed to the Subcommittee resigned shortly after the

SEC accepted the 2015 Application. Thereafter, Member Whittaker, the alternate appointed by the SEC chairman, left on maternity leave and did not preside over any aspect of the adjudicative or deliberative process in this matter. Despite the statutory mandate in RSA 162-H:3 and :4-a, the Chairperson of the SEC did not seek to have another public member appointed by the Governor and Executive Counsel.

The Appellants and CFP are of the opinion that a public member's unfilled vacancy from the Subcommittee throughout the entirety of the adjudicative and deliberative processes in this matter renders the Subcommittee unlawfully constituted, which has the effect of nullifying the Subcommittee's decision in this matter. App. at 224-27; App. at 286; App. at 356-358. The Appellants and CFP's positions are supported by the fact that RSA 162-H:3 and :4-a were revised in 2014 as part of a comprehensive revision to RSA chapter 162-H, a primary purpose of which was the increased involvement and participation of the public in SEC matters. The absence of the second public member deprived the Subcommittee of a vital and necessary public participant, whose involvement was necessary to safeguard the public's interest.

The Subcommittee and AWE are of the opinion that the Subcommittee was properly constituted so long as the Subcommittee had a quorum of five members during the proceedings. See App. at 295-300; App. at 372. This opinion is a misinterpretation of the Appellants and CFP's arguments and effectively nullifies the SEC chairman's obligation to seek to have public member vacancies filled, thus depriving the public of necessary representation on a subcommittee and further depriving the public of the input of such a public member during proceedings that implicate the public health, safety, and welfare.

This Court should accept this appeal because, left unaddressed, the Subcommittee's

decision will allow a significant piece of energy infrastructure to be constructed in an ecologically sensitive region that will likely result in significant public health and safety impacts, all without the level of public input and participation mandated by the Legislature. The Subcommittee's process was conducted in a manner inconsistent with RSA chapter 162-H, and the Court should address this error and rule accordingly.

Moreover, the Court should accept this appeal because this appeal provides the Court with the opportunity to decide an unaddressed matter of general importance in the administration of justice. This matter presents a matter of general importance in the administration of justice because the siting of energy facilities is a matter which strongly implicates the public health and safety, the stability of the natural environment, and individual property rights. See RSA 162-H:1. The public involvement and the extent to which the SEC had an obligation to ensure the public involvement is fundamental to ensuring that the various competing interests implicated by the siting of an energy facility are properly weighed and all parties properly protected. For these reasons, this Court should accept this appeal.

b. Questions 2 through 4.

With regard to the Questions 2 through 4, there is a substantial basis for a difference of opinion between the Appellants, CFP, AWE, and the Subcommittee with regard to whether the Project is sufficiently different from the wind farm proposed by AWE in Antrim I such that the SEC's decision and findings from Antrim I are not binding upon the present Project.

The Appellants and CFP argued that the Project is not sufficiently different from the wind farm proposed in Antrim I because the Project did not meaningfully address the concerns raised by the SEC in the Antrim I decision, specifically with regard to aesthetics. See App. at 221-24;

App. at 275-281; App. at 358-362. see also CBDA Dev. V. Town of Thornton, 168 N.H. 715, 724 (2016). The Project did not meaningfully address the concerns raised by the SEC in its denial of the 2012 Application in Antrim I because: (a) the Project involves only one less turbine; (b) the remaining nine turbines will be constructed in the same locations as nine of the turbines in Antrim I; (c) eight of the turbines in the Project will be only three feet shorter than the turbines in Antrim I; (d) the ninth turbine in the Project will only be 45.8 feet shorter than the turbines in Antrim I; (e) the Project will still remain highly visible to scenic resources identified as significant in Antrim I, including Willard Pond and the dePierrefeu Wildlife Sanctuary; (f) AWE has not proposed any mitigation measures which would mitigate the actual aesthetic impacts posed by the Project; and (g) AWE has only proposed additional conservation land and monetary compensation, which the SEC previously found insufficient to mitigate aesthetic impacts.

The Appellants and CFP further assert that, even if the Project were not barred by the SEC's decision in Antrim I, the Subcommittee acted unlawfully, unjustly, and unreasonably because the Subcommittee failed to properly apply its rules regarding aesthetics. See App. at 233-246; App. at 271-275. The Appellants and CFP are of the opinion that the Subcommittee failed to properly consider all impacted scenic resources, failed to properly consider the quality of impacted scenic resources, and failed to properly consider the impact of the Project on those scenic resources. See App. at 233-246; App. at 271-275.

AWE and the Subcommittee disagree with the arguments of the Appellants and CFP, citing the above-noted differences and claiming that those distinctions are sufficiently material to warrant the Subcommittee's reconsideration of the Project and that the Subcommittee followed

Rule 301.14. See App. 291-295; App. 343-347; App. at 369-72. AWE's position is erroneous, and the Subcommittee's ruling is unlawful, unjust, and unreasonable, however, because the analysis fails to acknowledge that the impacts to Willard Pond and the dePierrefeu Wildlife Sanctuary were at the heart of the SEC's denial in Antrim I and that the Project will still remain highly visible and in stark contrast to both scenic resources. Additionally, the Subcommittee failed to address aesthetic impacts to Nubanusit Lake and Highland Lake, scenic resources that were identified by the SEC as being adversely impacted by the Proposal in Antrim I. Moreover, AWE's position and the SEC's ruling ignores that the types of mitigation offered in this case — conservation land and monetary donations — were expressly found to be insufficient to mitigate the unreasonable aesthetic impacts of the proposal in Antrim I. Stated simply, there is fundamental inconsistency between the Subcommittee's decision in this docket and the SEC's decision in Antrim I, which deprives the public of the administrative consistency and certainty expected of the SEC. Cf. CBDA Dev., 168 N.H. at 721 (discussing need for certainty and consistency with regard to planning board decisions).

The acceptance of this appeal will protect the Appellants and the public from substantial and irreparable injury because the subject Project will disfigure the scenic resources in and around the Project, resources from which the Appellants and the public derive significant benefits, both recreationally and through the Appellants' property values. When built, the nine turbines which constitute the Project will be the tallest man-made structures in the State of New Hampshire and will be located on a prominent ridgeline in an area that has been the subject of a multi-state conservation initiative and for which hundreds of thousands of dollars have been donated, both privately and through the State. The SEC previously acknowledged in Antrim I

the harm posed by the AWE's proposal and the efforts undertaken to conserve these scenic and ecologically significant resources; the Subcommittee, here, unlawfully and unreasonably chose to depart from that wisdom. This Court should exercise its discretion, accept this appeal, and resolve this disagreement.

This Court should further accept this appeal because the Court will have the opportunity to clarify the bounds of its decision in CBDA v. Town of Thornton, specifically what changes are sufficient for an administrative agency to justly and reasonably determine that a subsequent proposal "meaningfully addresses" concerns raised by the agency in denying a prior proposal. This matter is of general importance to the administration of justice in New Hampshire because, in the absence of clear guidance, concerned property owners and citizens, such as the Appellants, who have successfully challenged impactful and invasive land use proposals will be forced to constantly expend considerable money and resources in defending subsequent proposals with arguably de minimis modifications. Moreover, in the absence of clear guidance, applicants, such as AWE, can effectively wait until the make-up of the administrative agency changes and propose a substantially similar proposal and obtain a completely contrary result, frustrating the consistency expected of administrative agencies. This Court should accept this appeal, address this question, and provide much-needed guidance on this matter.

c. Questions 5 and 7 through 9

There exists a substantial basis for a difference of opinion between the Appellants, CFP, AWE and the Subcommittee with regard to Question 5 and Questions 7 through 9 because the parties disagree as to the evidence required to allow for the Subcommittee to reasonably and lawfully find that proposed mitigation measures would actually mitigate adverse impacts

associated with the Project.

The Appellants are of the opinion that the Subcommittee's findings that the Project would not create unreasonable adverse impacts to aesthetics or public health and safety is unjust, unlawful, and unreasonable because AWE did not provide evidence as to how these mitigation measures would operate sufficient to allow the Subcommittee to find that the unreasonable adverse impacts would be mitigated. In support of the Project, AWE proposed three mitigation measures — radar detection lighting systems, NRO, and SCP — to reduce adverse impacts associated with required night-lighting, sound, and shadow flicker, respectively. However, AWE did not present, and the Subcommittee did not hear, any evidence as to how these mitigation measures would work, the effectiveness of these measures, or the impact of the measures on the Project's operations.

With regard to radar detection lighting systems, AWE only presented the testimony of Mr. Raphael who stated that that radar detection lighting systems would not cause adverse aesthetic impacts. AWE did not present any evidence as to when the radar detection lighting systems would be triggered, what would trigger it, or how long the lighting would remain activated once triggered to allow the Appellants or the Subcommittee to meaningfully analyze Mr. Raphael's conclusions. The Subcommittee effectively abdicated its responsibility of safeguarding the public from adverse impacts associated with night-lighting by granting a Certificate of Site and Facility in the absence of this information.

The same could be said with regard to NRO and SCP, for which there was no evidence presented other than that AWE would implement these procedures to reduce sound and shadow flicker if the Project exceeded maximum thresholds. This issue is particularly glaring in light of

Mr. O'Neal's conclusion that shadow flicker resulting from the Project will exceed the SEC's maximum threshold of eight hours per year at twenty four properties. See N.H. CODE OF ADMIN. R. Site 301.14(f)(2)(b). The SEC's decision is devoid of any analysis of the specifics of these mitigation measures or how these mitigation measures would impact the operations and financial viability of the Project.

AWE and the Subcommittee are of the opinion that AWE presented sufficient evidence of the mitigation measures' feasibility to permit the Subcommittee to find that the Project would not have unreasonable adverse effects. App. at 312-313, 315-320; App. at 380-383. However, the evidence presented was limited to AWE's conclusory and unsupported statements that the Project, once in operation, will not result in adverse aesthetic impacts or would not cause sound or shadow flicker to exceed applicable standards. See 9/20/2016 PM Transcript at 46; Pre-filed Testimony of Robert O'Neal at 13-14. Moreover, AWE's evidence was limited to the conclusory testimony of one of its officials that only SCP was "studied" and that study (which was not produced) revealed that the Project's operations would not change. 9/13/16 AM Transcript at 99-100. Despite AWE and the Subcommittee's assertions to the contrary, there was no evidence presented which would allow AWE to carry its burden and allow the Subcommittee to make the required findings that the Project would not have unreasonable adverse impacts to public health or safety.

This Court should accept this appeal because the Appellants face substantial and irreparable injury as a result of the Subcommittee's error. The Appellants face substantial and irreparable injury as a result of the Subcommittee's error because the Subcommittee has approved the construction of an industrial energy facility without sufficiently vetting the

purported safeguards that are intended to protect the public from adverse effects associated with the Project. Mr. O'Neal admitted that under the SEC's modeling standards, the Project would exceed maximum shadow flicker thresholds. Additionally, as argued below, if Mr. O'Neal had properly applied the ISO 9613-2 standard, the predictive sound models would have determined that the Project would result in sound levels in excess of maximum sound thresholds. See N.H. CODE OF ADMIN. R. Site 301.14(f)(2)(a). These maximum thresholds exist to protect the public, and are an acknowledgment from the SEC of when an energy facility will adversely impact the public's health and safety. However, despite the fact that the Project is anticipated to exceed maximum thresholds, the Subcommittee granted a Certificate of Site and Facility to AWE based on AWE's un-supported and un-vetted promises that they will control the Project's operations.

The Subcommittee's decision was unjust, unlawful, and unreasonable, to detriment of the health and safety of the Appellants and the public. This Court should accept this appeal.

d. Question 6

A substantial basis for a difference of opinion exists with regard to Question 6 because the parties disagree that the Subcommittee could reasonably or lawfully rely on Mr. O'Neal's Sound Assessment to find that the Project would not exceed the maximum sound thresholds of forty-five dBA during the day and forty dBA during the night at residences.

The Appellants are of the opinion that the Subcommittee could not rely upon Mr. O'Neal's Sound Assessment because Mr. O'Neal's Sound Assessment did not follow Rule Site 301.18(c). It is axiomatic that administrative agencies must follow their own rules. See Appeal of Town of Nottingham (N.H. Dep't. of Envtl. Servs.), 153 N.H. 539, 554-55 (2005). Rule Site 301.18(c) requires that sound assessments be prepared in accordance with ISO standard 9613-2

and that the model "incorporate other corrections for model algorithm error to be disclosed and accounted for in the model." The ISO 9613-2 standard is predicated upon a wind turbine constructed on ground that is "approximately flat either horizontally or with a constant slope" and that are no more than thirty meters in height. See ISO 9613-2 1996-12-15 at § 9 (titled "Accuracy and limitations of the method"). The turbines in this instance are located on a prominent ridge that does not have a constant slope and exceed ninety meters in height. Notwithstanding, Mr. O'Neal did not make any adjustments to his model to account for express limitations in the ISO 9613-2 standard. Mr. O'Neal also did not use the appropriate ground factor for this Project, assuming instead that the ground would absorb a portion of the sound produced, even though the sound would, in most instances, have no ability to interact with the ground prior to reaching a structure due to the turbines' placement on a ridge that would tower over vegetative buffers and any other sound impediments prior to reaching residences. Further, to the extent any ground absorption might occur, there are many hours of the year when snow and ice pack on the ground would reflect noise. Moreover, the SEC rules require Mr. O'Neal predict noise emissions from the Project based on the wind speed and operating modes that would result in the worst case wind turbine noise levels during the nighttime hours (before 8:00 a.m. and after 8:00 p.m. of each day). See N.H. CODE OF ADMIN. R. Site 301.18(c)(3). Mr. O'Neal does not account for the worst case emissions because he applies no adjustments to his modeled predictions to account for meteorological and other operating conditions outside the limits of the ISO 9613-2 standard that would increase noise emissions.

AWE and the Subcommittee are of the opinion that Mr. O'Neal exercised professional judgment in declining to adjust his model for ISO 9613-2 standard limitations and ground factor,

see App. at 313-318; App. at 380-382, despite the fact that materials and studies relied upon by Mr. O'Neal either incorporated the adjustments or reported sound exceedances in the absence of those adjustments, see Wind Action Exhibit 28 at *3, *12; Wind Action Exhibit 6 at *2, 7, 17; WindAction Exhibit 12 at 65; Pre-filed Testimony of Richard James at 10-11, 17-18. The Subcommittee simply stated that Mr. O'Neal's Sound Assessment was prepared in accordance with the SEC's rules, App. at 153, but provided no further elaboration as to how Mr. O'Neal's Sound Assessment complied with the SEC's rules in light of the extensive evidence to the contrary.

This Court should accept this appeal because of the above-referenced difference in opinion and because, in the absence of this Court rectifying the Subcommittee's errors, the Appellants and the public may be exposed to sound levels in excess of the maximum thresholds established by the SEC. These exceedances jeopardize the Appellants and the public's health and safety and cause the Appellants and the Public to be completely reliant on the un-corroborated and unsupported promises that AWE will not operate at levels in excess of maximum thresholds (the monitoring of which will be difficult, if not impossible). Justice and the public welfare exhort this Court to accept this appeal.

e. Questions 10 through 12

There is a substantial difference of opinion with regard to Questions 10 through 12 because the Appellants, AWE, and the Subcommittee disagree as to whether the Project will have unreasonable adverse effects on real estate values and, thus will unduly interfere with the orderly development of the region.

The Appellants are of the opinion that the Subcommittee acted unlawfully, unreasonably,

and unjustly when it found that the grant of a Certificate of Site and Facility would not interfere with the orderly development of the region because the Subcommittee admitted that it was not "convinced that the Project will [not have] any effect on values of some properties," but refused to institute a property value guarantee to protect affected landowners. The Appellants opinions are supported by the Subcommittee's comments regarding shortcomings associated with Mr. Magnusson's real estate analysis, including Mr. Magnusson's failure to consider properties that were removed from the real estate market or had not sold. The Appellants' opinions are further supported by comments from residents of the nearby Lempster Wind Project — which Mr. Magnusson studied to arrive at his real estate value conclusion — that the Lempster Wind Project caused properties to be unable to sell. Further, Mr. Magnusson acknowledged there were at least two property assessments in Lempster that indicated a decline in property values due to the Lempster Wind Project. See 9/20/2016 AM Transcript at172-77; see also Wind Action Exhibit 10. Mr. Magnusson insisted these assessments were outliers and not indicative of the general effect of the Lempster Wind Project facility on real estate values; however, such a claim by Mr. Magnusson cannot negate the fact that an independent assessor concluded that there was a loss in property value as a result of a wind facility.

The Appellants' opinion is also supported by the Subcommittee's rejection of a "property value guaranty," which would have provided a necessary protection of property owners' interests should the Project impact property values. The Subcommittee declined to adopt a "property value guaranty" based on a lack of evidence as to the adoption of a property value guaranty in prior instances. App. at 86. The Subcommittee, however, rejected evidence which would have specifically demonstrated the use of a property value guaranty in prior instances under the

erroneous determination that such evidence was not "relevant or material to the issues before the Subcommittee." Order on Motions to Strike at 5-6 (dated September 19, 2016). In other words, the Subcommittee acknowledged that the Project may have adverse impacts on property values but granted approval for the Project without any safeguards for property owners after it rejected evidence which would have supported the imposition of a necessary safeguard.

AWE is of the opinion that the Project's impact to real estate values are just one component of the "orderly development" analysis and, therefore, the Subcommittee could have granted a Certificate of Site and Facility notwithstanding the Project's impacts to Property values. App. at 326-27. The Subcommittee also considered the impact to real estate values under the "public interest" criteria set forth in the SEC's rules. App. at 181; see also N.H CODE OF ADMIN. R. Site 301.16.

The acceptance of this appeal will protect the Appellants from substantial and irreparable harm because, absent this Court's acceptance, the Appellants will have the Project, and the Project's acknowledged property value impacts, thrust upon them. The record strongly reflects that the Project will have an adverse impact on property values and that Mr. Magnusson's analysis was not convincing to dispel concerns to that effect. Absent this Court's acceptance of this appeal, numerous property owners that purchased property in and around Antrim's Rural Conservation Zone will have to experience an industrial use around their properties without any compensation for the reduction to their property values. These property value impacts constitute a substantial and irreparable harm to the Appellants.

Additionally, in accepting this appeal, the Court will have the opportunity to decide an issue of general importance in the administration of justice because the Court will be able to

adjudicate whether approval of a Certificate of Site and Facility was appropriate when the Subcommittee determined that AWE did not prove that the Project would not have an adverse effect on property values.[5] In adjudicating this matter, this Court can consider the proper balance to be applied between private property rights and the proposed uses of an applicant in the context of energy facility siting, a matter of considerable concern in the State at this time.

Accordingly, this Court should accept this appeal.

f. Suspension of the Subcommittee's Order

Upon accepting this appeal, this Court should suspend the Subcommittee's decision granting a Certificate of Site and Facility because justice requires such a suspension. RSA 541:18 permits this Court to order a suspension of any order pending the determination of an appeal of that order whenever, in the opinion of the Court, justice requires such a suspension.

Here, justice requires the suspension of the Subcommittee's decision because, in the absence of a suspension, AWE will be capable of commencing site preparation at the Project site, which may have the impact of altering the landscape. Based on the Preliminary Construction Schedule, submitted by AWE on March 31, 2017, AWE intends on clear-cutting and constructing laydown areas, access roads, and the ridgeline between mid-August and mid-October of 2017. As such, should this appeal be accepted, AWE has represented that it will be undertaken physical site work on the Property during a time during which this appeal would be pending.[6] These activities would frustrate the options of the parties and the Subcommittee

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[5] Indeed, had this matter been raised in the context of a zoning variance— which would be required in the absence of RSA chapter 162-H — the Project's impact to abutting property values would have been fatal. See RSA 674:33, II.

[6] Indeed, the grant of a stay is common in appeal of planning decisions. See RSA 677:15. The SEC is essentially akin to a municipal planning board (without certain limitations inherent to a planning board). The legislature has acknowledged that, by default, an appeal of a planning board decision stays the planning board's decision. The rationale of such a stay is to avoid frustrating the planning board and the parties' options on remand, should a

should this matter be remanded. Moreover, such activities would further result in significant changes to an environmentally sensitive area pursuant to an approval that may be subject to reversal. Therefore, this Court should accept this appeal and determine, pursuant to RSA 541:18, that the interest of justice are best served by suspending the SEC's grant of a Certificate of Site and Facility.

I. REQUEST FOR TRANSCRIPTS

Pursuant to RSA 541-A:31, the SEC has already prepared transcripts in this matter, and those transcripts are presently posted on the SEC's website. The Appellants hereby request that the SEC include the prepared transcripts as part of the Administrative Record in this matter.

J. STATEMENT OF PRESERVATION OF ISSUES

I hereby certify that every issue specifically raised has been presented to the administrative agency and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

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remand be ordered. See Town of Freedom v. Town of Ossipee and Ossipee Planning Board, Docket No. 212-2016-CV-00165 (Carrol Cnty. Super. Ct. March 29, 2017) (Ignatius, J.).

Similarly, the Subcommittee and the parties' options would be frustrated on remanded if AWE were to proceed with making physical alterations to the site such that the analysis of the Project's impacts to the site would be subject to change and amendment.

Respectfully submitted,

Mary Allen, Bruce Berwick, Barbara Berwick, Richard Block, Robert Cleland, Kenneth Henninger, Jill Fish, Annie Law, Janice Longgood, Brenda Schaefer, Mark Schaefer, the Stoddard Conservation Commission, and the Windaction Group

By their attorneys:

DONAHUE, TUCKER & CIANDELLA, PLLC

Dated: June 2, 2017

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, the Petition to Appeal from the Administrative Decision of the Site Evaluation Committee Pursuant to NH RSA 541:6 and Supreme Court Rule 10 and Request for Suspension of Site Evaluation Committee's Decision Granting Certificate of Site and Facility dated March 17, 2017 has been mailed this 2nd day of June, 2017, via U.S. first-class mail, postage prepaid, to all counsel and/or parties of record and the New Hampshire Site Evaluation Commission.

_____

Eric A. Maher, Esq.