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OF COUNSEL
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VIA FEDERAL EXPRESS

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

**Re: Appeal of Antrim Wind Opponents Group of the Application of
Antrim Wind Energy, LLC for a Certificate of Site and Facility
Case No. 2017-0313**

Dear Clerk Fox:

Enclosed for filing please find an original and eight (8) copies of Appellants' Objection to Antrim Wind Energy, LLC's Motion for Expedited Schedule dated August 11, 2017 in the above-captioned matter.

I hereby certify that copies of this letter and the enclosed Objection 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

Eric A. Maher, Esq.
emaher@dtclawyers.com

EAM/jlh
Enclosures

cc: Clients
Kelly Dowd, Esquire
Bill Glahn, Esquire
Barry Needleman, Esquire
Rebecca Walkley, Esquire
Justin Richardson, Esquire
Fred Ward
NH Site Evaluation Committee

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THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2017 TERM
SPRING SESSION

APPEAL OF MARY ALLEN & a.; & APPEAL OF FRED WARD

NO. 2017-0313

**APPELLANTS' OBJECTION TO ANTRIM WIND ENERGY, LLC's MOTION FOR
EXPEDITED SCHEDULE**

NOW COME Mary Allen, Bruce and Barbara Berwick, Richard Block, Robert Cleland, Kenneth Henninger, Jill Fish, Annie Law, Janice Longgood, Mark and Brenda Schaefer, Geoffrey Jones on behalf of the Stoddard Conservation Commission, and Lisa Linowes on behalf of the Windaction Group, (collectively "the Appellants") and hereby object to Antrim Wind Energy, LLC's ("AWE") Motion for Expedited Schedule ("AWE's Motion"). In support thereof, the Appellants state as follows:

1. This Court should deny AWE's Motion because the proper adjudication of this appeal requires that sufficient time be afforded by this Court to allow for the proper briefing and consideration of all issues associated with this appeal.

2. The proper adjudication of this appeal will likely require this Court to order a scheduling order which extends the typical timeframe permitted for the submission of briefs. Indeed, it has been the practice of this Court in other administrative appeals pertaining to complicated regulatory matters to first order a pre-hearing evaluation conference for the determination of issues and the proper scheduling in this matter, following which is a scheduling order that extends the typical timeframe for the submission of briefs. See Order on Scheduling

Conference, Appeal of Public Service Company of New Hampshire d/b/a Eversource Energy, Case No. 2015-0626 (decided March 8, 2016); Briefing Schedule, Appeal of Public Service Company of New Hampshire d/b/a Eversource Energy, Case No. 2015-0626 (decided March 25, 2016).

3. The Court should similarly order a pre-hearing evaluation conference in this matter to discuss the means by which to allow for the full discussion and consideration of the issues in this case. A pre-hearing evaluation conference is appropriate in this instance because, as AWE notes in its Motion, the record in this case is voluminous and includes over 220 exhibits, thirteen days of adjudicative hearings, extensive pleading practice, and three days of deliberation, with the resulting decisions of the SEC numbering in the hundreds of pages. The Appellants anticipate that full briefing and consideration of this appeal will require analyzing large portions of the administrative record in this case, which, as of the date of this Objection, has not yet been ordered for production by the Site Evaluation Committee.

4. The Court should reject AWE's argument that RSA 162-H compels an expedited appeal because, although the Legislature established that applications for certificates of site and facility be resolved within 365 days from the date of the application's acceptance, the Legislature also allows the SEC to extend that timeframe when extension is in the public interest. See RSA 162-H:14. It is notable that the SEC found the need to suspend the timeframe for consideration due to the issues associated with the Project. See October 19, 2016 Transcript at 10-14, attached hereto as Exhibit A. When the SEC raised that issue to AWE's counsel, particularly with regard to any detriments regarding the Production Tax Credit, AWE's counsel represented that a decision from the SEC was all that was required to relieve the financial pressures faced by AWE.

See October 19, 2016 Transcript at 10-14. SEC Member Clifford and AWE's Counsel had the following exchange regarding these pressures:

Mr. Clifford: Mr. Needleman, so, is the decision require – an unappealable decision required? In other words, must the appeals period pass for you to – to get the production tax credits.

Mr. Needleman: No.

Mr. Clifford: I'm just worried about, you know, deadlines and having an order issued and having it—

Mr. Needleman: I'm going to tell you what I think, and I'm going to look at my clients so they can yell at me if I'm wrong.
I believe if we had an oral decision from the Committee. So, if you deliberated and reached a decision, I believe that would be sufficient for their purposes.

Id.¹ Thereafter, the SEC that were present at that time voted to suspend that timeframe. Id.

5. Moreover, while, the Legislature established a timeframe for the SEC's consideration of applications, the Legislature did not suggest that this Court should expedite any appeal of an SEC decision. The Legislature stated that the siting of energy facilities requires properly balancing aesthetics and public and health and safety against the avoidance of "undue delay." See RSA 162-H:1. This appeal does not present an "undue" delay; rather, it is a necessary and proper delay for the full consideration of the significant public health and safety issues raised by the Appellants.² An expedited schedule does not serve the full consideration of these issues. Therefore, this Court should not read RSA 162-H:7 as requiring or suggesting that this Court expedite this appeal.

6. Additionally, AWE's argument that the financial viability of the Project is placed in jeopardy by the prospect of a lengthy appeal is contradicted by the procedural history of this

¹ The SEC's decision remains effective by virtue of this Court's denial of the Appellants' Motion to Suspend the SEC's decision.

² If this Court found the appeal unwarranted or undue, it would have declined to accept this appeal.

case. AWE has been seeking approvals for a wind farm on Tuttle Ridge in the Town of Antrim since 2011, when Antrim Wind first submitted its application for a Certificate of Site and Facility. Presumably, between 2011 and the Present, AWE had the required contractual commitments in place to become commercially operational and financially viable, and, it would be reasonable to assume that, in the six years that AWE has been attempting to obtain approval for this Project AWE has had to extend those commitments. There is no evidence or suggestion that AWE could not obtain those extensions (assuming it has not done so already and assuming AWE even needs an extension).

7. AWE admits that it envisioned an appeal of any SEC decision. The fact that AWE only accounted for some form of accelerated appeal schedule in a complex regulatory matter with a voluminous record involving a proposal that has been the subject of opposition in four separate dockets should not form the basis for the erosion of the Appellants' right to have this appeal briefed and considered pursuant to an appropriate time-frame. AWE's proposal is not an appropriate schedule, and this Court should deny AWE's motion.

8. Lastly, and most importantly, the Appellants have a right that this appeal be scheduled according to a timeframe that allows for a full and complete discussion and consideration of the issues. The Appellants have raised good faith concerns regarding the

Project's public health and safety impacts that will impact the Appellants personally.³ Due process requires that this Court's review of the various issues raised by the Appellants permit sufficient time for a full opportunity to brief the various issues in this case and for this Court to review the voluminous administrative record. The adoption of AWE's schedule will detrimentally impact the Appellants, particularly where the undersigned counsel will be on vacation during the weeks of August 14, 2017 (undersigned counsel is writing this Objection while on vacation) and August 21, 2017—thus, limiting the amount of time the undersigned counsel can draft the briefs in this appeal. This Court should schedule a pre-hearing evaluation conference no earlier than the week of August 28, 2017 where there can be a full discussion amongst all parties and the Court as to an appropriate timeframe to discuss these issues.

WHEREFORE, the Appellants respectfully request that this Honorable Court:

- A. Deny AWE's Motion;
- B. Order a scheduling conference no earlier than during the week of August 28, 2017 to allow for the discussion of an appropriate briefing schedule for this complicated matter; and
- C. Grant such further relief as may be just and equitable.

³ The Appellants want to note AWE's specious reasoning regarding Counsel for the Public and other intervenors' lack of participation in this appeal. That Counsel for the Public did not also appeal the SEC's decision does not mean that Counsel for the Public is now in favor of the Project or now agrees with the SEC's determination. The same is true for the fifteen of the twenty-nine intervenors that voiced opposition to the Project but chose not participate in this appeal.

The fact remains that Counsel for the Public challenged the Project throughout the adjudicative hearings and filed a motion for rehearing, certainly showing that Counsel for the Public disagreed with the Project.. That Counsel for the Public made a decision not to appeal the SEC's decision, particularly while the State is expending considerable resources adjudicating the Northern Pass matter presently before the SEC, should not be read as a tacit agreement with the SEC's decision.

Regardless, while several parties did not appeal, fourteen individuals and organizations have appealed the SEC's decision.

Respectfully submitted,

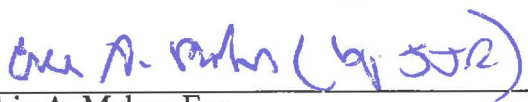
Mary Allen, Bruce Berwick, Barbara Berwick,
Richard Block, Robert Cleland, Kenneth Henninger,
Jill Fish, Annie Law, Janice Longgood, Brenda
Schaefer, Mark Schaefer, the Stoddard
Conservation Commission, and the Windaction
Group

By their attorneys:

DONAHUE, TUCKER & CIANDELLA, PLLC

Dated: August 18, 2017

By:


Eric A. Maher, Esq.
NHBA # 21185
PO Box 630
Exeter, NH 03833
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emahe@dtclawyers.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objection has been mailed this 18th day of August, 2017, via U.S. first-class mail, postage prepaid, to all counsel and/or parties of record and the New Hampshire Site Evaluation Commission.

 For Eric A. Maher
Eric A. Maher, Esq.