

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. _____

**PETITION FOR DECLARATORY RULING OF
THE ANTRIM WIND OPPONENTS**

MOTION TO WAIVE

NOW COME, the 104 individuals, commissions, and entities listed and identified in Exhibit 1 to this Motion (“the Petitioners”), by and through their attorneys, Donahue, Tucker, & Ciandella, PLLC, and, pursuant to New Hampshire Administrative Rule 202.15, respectfully move the New Hampshire Site Evaluation Committee (“SEC”) to waive the filing fee for the submission of the Petition for Declaratory Ruling of Antrim Wind Opponents (“Petition”) and further waive the provisions of Rule Site 202.22. In support, thereof, the Petitioners state as follows:

1. The Petitioners filed the Petition contemporaneously with the filing of this Motion to Waive, arguing that the SEC erred in the process employed to determine Antrim Wind Energy, LLC’s (“AWE”) compliance with a Certificate of Site and Facility with Conditions issued by the SEC on March 17, 2017.

2. The Petitioners are a group of individuals, advocacy groups, and municipal commissions all of whom seek to protect their own health, safety, and welfare, as well as that of the public.

3. As is reflected in the Petition, the Petitioners filed the Petition under protest, being unable to pursue an appeal of the SEC’s prior denial of the Petitioners’ requests for relief, but requiring redress. For that reason, the Petitioners believe that the \$3,000.00 filing fee that they are required to submit to seek redress for what they assert are substantive and procedural

errors and deprivations arising from a pre-existing docket is unjust and unreasonable. The Petitioners further assert that the imposition of such a filing fee under these circumstances acts to deprive them of a fundamental right and deprive them of their rights to seek redress under the New Hampshire Constitution. See N.H. CONST. Part I, Article 14; see also State v. Cushing, 119 N.H. 147 (1979).

4. Given the public interest being asserted and the basis of the relief sought, the Petitioners assert that this waiver is in the public interest and the waiver will not disrupt the orderly and efficient resolution of the SEC's consideration of this Petition. See N.H. CODE OF ADMIN. R. Site 202.15. The public interest is furthered by granting this waiver because the imposition of the \$3,000.00 filing fee on individuals would be onerous given the circumstances of the Petitioners.

5. For that reason, the SEC should grant the waiver sought in this Motion.

6. Additionally, to the extent Rule 202.22 requires the Petitioners to submit pre-filed testimony with the Petition, the Petitioners request a waiver of such rule and request that the deadline to supply such testimony be established by a procedural schedule to be issued by the SEC at a later date.

7. While it is questionable whether Rule 202.22 requires one to submit pre-filed testimony upon filing a petition for declaratory ruling, requiring the Petitioners to do so here would be onerous given the limited time to file the Petition and the availability of a reasonable alternative procedure through the establishment of a procedural schedule. The application of Rule 202.22 would be onerous because the Petitioners were informed in an order dated March 27, 2018 that the Petitioners would have ten days from the date of such order to file a petition for declaratory ruling. The Petitioners have, therefore, been unable to determine the extent to which

testimony will be required to support the relief sought in the Petition or who will provide that testimony.

WHEREFORE, the Petitioners respectfully request that this Honorable Commission:

- A. Grant this Motion to Waive;
- B. Waive the \$3,000.00 filing fee and accept the Petition for Declaratory Ruling of Antrim Wind Opponents without said filing fee;
- C. Waive Rule 202.22 and allow the Petitioners to submit pre-filed testimony in accordance with a procedural schedule established by the SEC; and
- D. Grant such relief as is just and equitable.

Dated this 6th day of April, 2018

Respectfully submitted,

The Petitioners identified in Exhibit 1
By and through their attorneys,

DONAHUE, TUCKER & CIANDELLA, PLLC

/s/ **Eric A. Maher**

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