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I would first like to thank the Commission, Mr. Wiesner, Mr. Iacopino, and the many members of the public who have participating in this process that has lasted well over a year. It is often said that one knows a rule is fair when all sides complain that it is unfair. To that end, I believe that the Draft Final Proposals are approaching this point. Developers of wind projects will point out that the rules more or less prevent wind development in many areas of the state, while those participants seeking heightened protections can point to aspects that they wish greater restrictions were imposed.

With both our lengthy history and limited remaining time in mind, I would like to respectfully offer several areas where the proposed final language appears to contain errors or might lead to unintended consequences in real-world implementation:

1. Sound Measurement Location – current language could require new roads to be built to roadless locations, solely for sound monitoring purposes
2. Sound Limits – new 40 dBA threshold is more stringent than New Hampshire precedent, or any other state standard
3. Photosimulation Standards – requirement is technically infeasible
4. Participating Landowner – may require disclosure of irrelevant private contracts
5. Notice Requirements - lack of clarity
6. Historic Sites – Rules may limit Commission's discretion
7. Public Health & Safety – new standard inappropriate as a universal requirement
8. Decommissioning Removal Depth – Doubling of removal depth is unjustified

1. SOUND MEASUREMENT LOCATION

Our primary concerns revolve around the sound requirements of Section 301.14 (f) (2)a. As written, the restrictions could be construed as limiting at the property line, rather than the structure of interest. Great care was taken to craft the measurement standards to be placed a certain distance from the surfaces of buildings as they may cause reflections, but the rule as written is unclear that the intention is for the sound standards to be applied near these structures, rather than at the property line.

As an example of the unintended harm that could come from measuring at the property line, Wagner Forest Management manages parcels within the state where neighboring landowners could be several miles from any building on our parcel, inhabited or not. The commission may not have intended that if our neighbor wanted to build a wind farm they would need to meet a noise standard at our property line, literally miles from any regular human activity. I agree completely that there is a need to protect neighbors against sound from wind projects, as we have seen several examples from other states where excessive noise at a house has created an unacceptable impact. However, since a property line could easily be substantial distances from any area of concern, it makes sense that the area of concern be the measurement point. If there were a specific scenario where the property line is the appropriate measurement point, it would seem to be within the Commission's

purview to impose this more stringent condition upon on the Certificate on a case by case basis.

On a more practical level, requiring measurement at the property boundary would create the unintended consequence of making effective monitoring nearly impossible. For a homeowner with even dozens of acres of property, the difference in sound level at the home vs the property line is almost certain to be negligibly small. However, for large tracts of land, there may literally be miles of separation. In addition, the property boundary may be the least accessible portion of the parcel, a substantial distance from the nearest road. It would be an odd unintended consequence for the SEC to necessitate the construction of a road in a previously roadless area, solely to allow the applicant to set up sound monitoring equipment.

I would suggest clarifying language similar to that which is found in the section on shadow flicker. Potential language could be (*changes in red*):

a. With respect to sound standards, the A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA above background levels (measured at the L-90 sound level) ~~between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40~~ *45* ~~dBA or 5 dBA above background levels (measured at the L-90 sound level) at all other times during each day~~, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, ~~on property that is used in whole or in part for permanent or temporary residential purposes~~ *at or within any residence, learning space, workplace, health care setting, public gathering area (outdoor and indoor), or other occupied building*;

2. Sound Limits

The rules rules in 301.14 (f) (2)a would require a sound limit of 40 dBA, which is beyond what has been required of the previous New Hampshire projects, and is stricter than limits imposed in neighboring states. In fact, I am unaware of ANY STATE that has a mandatory sound restriction as low as 40 dBA. As there have not been complaints with the 45 dBA standard at either the Groton or Lempster projects, it does not seem appropriate to arbitrarily tighten the standards beyond those of any other state in the nation – particularly since I cannot find evidence in the record of a scientific basis for the change to 40 dBA. Unlike the measurement protocols, there was certainly no consensus on this topic at any of the pre-rulemaking or other technical sessions. As such, the rules should reflect the 45 dBA standard that has served the state adequately to date, with the Commission retaining the

right to impose a stricter limit on a specific case basis (such as was done at campgrounds in the case of the Groton wind project).

3. PHOTOSIMULATION STANDARDS

Section 301.05(b)(7) lists the requirements for photosimulations. The proposed language requires

> "*photographs used in the simulation shall be taken at an equivalent focal length of 50 millimeters and represent the equivalent of what would be taken with a 75 millimeter focal length lens on a full-frame 35 millimeter camera.*"

This requirement appears contradictory – the photograph is to be taken with a 50 mm focal length, yet represent a 75 mm focal length. I believe there may have been an error in the transcription of the technical basis for this rule, as such a rendering is technically impossible to achieve without extraordinary digital manipulation of the photograph. The Commission should choose which focal length is being requested – 50 mm represents what is generally considered the normal human field of view, while 75mm represents a slight telephoto effect. As deliberations on the topic indicate that the intent was to represent, to the maximum extent possible, a person's view of the proposed project, it seems that a 50mm field focal length was intended. This intent could be achieved by a simple strike of the extraneous language:

> *"photographs used in the simulation shall be taken at an equivalent focal length of 50 millimeters ~~and represent the equivalent of what would be taken with a 75 millimeter focal length lens~~ on a full-frame 35 millimeter camera."*

4. PARTICIPATING LANDOWNER

There might need to be some clarification on section 301.03 (c) (8). As drafted with the current definition of "participating landowner," this section could require disclosure of and descriptions of confidential contracts which have no basis for being part of the Commission's proceedings.

There is clearly a rational purpose for disclosure of any agreements the applicant wishes the Commission to consider, for example demonstration of site control or a landowner waiving noise impact standards. However, the language of this section appears overly broad, and could ultimately encompass confidential contracts that need not be disclosed for the Commission to efficiently and effectively conduct its business. Perhaps acceptable language would be:

> *Identification of ~~all~~ participating landowners with respect to the proposed facility that the applicant wishes to be considered in the proceedings, and a description of the affected properties owned by such participating landowners and the scope of the waivers included in their participating landowner agreements, easements, or other contractual documents.*

5. Notice Requirements

The notice requirements under sections such as 201.01b have become quite expansive, and it is not clear to this non-legally trained reader which communities need to be provided notice. If, for example, a wind farm in the north country has an economic study which finds that equipment suppliers on the seacoast may be positively impacted, do communities on the seacoast need to be provided notice? The new language also requires noticing communities "identified… in studies included with or referenced in the application" (emphasis added). This seems to potentially create additional unintended consequences - if an application references a statewide survey of moose populations, would every community in the state need to be sent notice?

6. Historic Sites

301.06 (c) requires that an application include "Finding by the division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, of no historic properties affected, no adverse effect, or adverse effect to historic properties, if determined at the time of application." It would seem more consistent that the applicant present whatever findings are available, and that the Commission determine whether any finding of adverse effect be a sufficient adverse impact to warrant denial of a Certificate.

7. Public Health and Safety

301.08 (a)(4) has a new requirement for description of "probability of occurrence." This goes beyond what has been required in previous applications, and there have been no recorded incidents of actual or potential harm. We respectfully suggest that this new requirement be stricken, and the new requirement be imposed as an additional study if evidence in an application review warrants such an additional study.

8. Decommissioning removal depth

There were substantial revisions to the decommissioning requirements of 301.08 (8), even though to date there has been no actual or potential concerns raised by previously certificated projects. While most of the new requirements are common sense or found in previous certificates, details within 301.08 (8) (d) raise new precedents that did not arise out of consensus during the pre-rule making process or technical sessions.

301.08 (8) (d) imposes a requirement of removing infrastructure at depths of four feet. I cannot find any evidence in the record for the necessity of such a deep removal. In looking for precedent, I observe that the Granite Reliable certificate required removal to a depth of two feet. Without demonstration of harms to be protected against, it seems appropriate to default to the historical precedents. As with other matters, the Commission would have the

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ability to impose stricter conditions upon an individual Certificate if evidence was present in the specific case that such restrictions were warranted. We would suggest the language be amended as follows:

> *All underground infrastructure at depths less than ~~four~~ two feet below grade shall be removed from the site and all underground infrastructure at depths greater than ~~four~~ two feet below finished grade shall be abandoned in place; and*

Thank you for your consideration. We would like to thank the Commission and all participants for their thoughtful dedication throughout this entire process.

Sincerely,

Mike Novello

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