



#### STATEWIDE OFFICES

84 Silk Farm Road  
Concord, N.H. 03301  
PHONE 603-224-9909  
FAX 603-226-0902  
nha@nhaudubon.org  
www.nhaudubon.org

#### REGIONAL CENTERS

##### AMOSKEAG FISHWAYS LEARNING CENTER

Fletcher Street  
P.O. Box 330  
Manchester, N.H. 03105  
PHONE 603-626-3474  
FAX 603-644-4386  
*Managed by NHA in partnership  
with PSNH, the N.H. Fish and  
Game Department, and the U.S.  
Fish and Wildlife Service.*

##### MASSABESIC AUDUBON CENTER

26 Audubon Way  
Auburn, N.H. 03032  
PHONE 603-668-2045  
FAX 603-668-3796

##### McLANE CENTER

84 Silk Farm Road  
Concord, N.H. 03301  
PHONE 603-224-9909  
FAX 603-226-0902

##### NEWFOUND AUDUBON CENTER

290 North Shore Road  
Hebron, N.H. 03241  
PHONE 603-744-3516  
FAX 603-744-1090

New Hampshire Site Evaluation Committee  
c/o David K. Wiesner, Staff Attorney  
N.H. Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

23 March 2015

Dear Mr. Wiesner:

I am pleased to submit the following comments on the revised proposed Site Evaluation Committee rules as filed on 30 January 2015.

The Audubon Society of New Hampshire is a statewide, non-governmental organization dedicated to protecting New Hampshire's environment for wildlife and for people. Members of our staff have been actively involved in wind energy siting issues for a number of years. We hosted the Wind Energy Facility Siting Guidelines Working Group meetings during 2006 and 2007 during which the Proposed Windpower Siting Guidelines document was developed for subsequent forwarding to the NH Energy Policy Committee Wind Siting Subcommittee in May 2007. During the summer of 2007, staff biologists conducted breeding bird surveys for the Granite Reliable Power wind energy permit application in Coos County. More recently, a senior staff member participated in the Office of Energy and Planning's November 2013 focus group session for Environmental/Natural Resources stakeholders and co-lead the 2014 working group on Wildlife, Rare Plants, and Natural Communities during the pre-rulemaking process.

My staff has reviewed the proposed revisions to Sites 100, 201-204, 205, and 300. We recognize and appreciate the time and consideration that have been invested in preparing the rules proposal. The current draft goes a long way towards meeting the mandate presented in SB99. However, it is our belief that additional provisions are needed to adequately address that mandate.

#### **I. Comments on Criteria Relative to Findings of Unreasonable Adverse Effects**

As reflected in the recent collaborative letter from the Appalachian Mountain Club, the Conservation Law Foundation, the Society for Protection of New Hampshire Forests, the Nature Conservancy, and ourselves (collaborative letter), our primary concerns relate to the Criteria Relative to Findings of Unreasonable Adverse Effects (section 301.14 of

the proposed rules). SB99 mandated that the SEC “*adopt rules, pursuant to RSA 541-A, relative to criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV(b) and (c) have been met by the applicant for a certificate of site and facility.*” The requirement in RSA 162-H:16, IV(c) states that “*The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety,*” leading one to expect specific criteria relative to each of these five topics.

The draft language addressing unreasonable adverse effect on public health and safety provides specific criteria with respect to standards for sound, shadow flicker, and setbacks for wind energy systems (Site 301.14 (f) a, b, and c). However, no specific criteria are provided for the remaining topics, nor are public health and safety criteria provided for energy facilities other than wind energy systems. At minimum, the sound standards should apply to any energy facility involving turbines or other machinery creating noise. Consideration should be given to potential risks to public health and safety arising from operation of other types of energy facilities. We recognize that some issues may require a degree of subjective judgement to determine whether or not a standard has been met. However, we believe that providing criteria, rather than listing considerations, is critical to enabling the SEC to justify its decisions to applicants and the public, and to meeting the intent of SB99. While this issue is equally applicable to multiple sites in the proposed rules [e.g., 301.13(a)(1), Section 301.14(a), Section 301.14(b)], we will limit our specific comments to the issues addressed below.

**Section 301.14(c)** (criteria relative to unreasonable adverse effect on air quality)

We strongly recommend that the wording be revised to read or resemble the following:

*“For the committee to find that the proposed facility will not have an unreasonable adverse effect on air quality, the record must demonstrate that the proposed facility has met determinations of the New Hampshire Department of Environmental Services with respect to applications or permits identified in Site 301.03 and include any other relevant evidence submitted pursuant to Site 202.24.”*

**Section 301.14 (d)** (criteria relative to unreasonable adverse effect on water quality)

We strongly recommend that the wording be revised to read or resemble the following:

*“For the committee to find that the proposed facility will not have an unreasonable adverse effect on water quality, the record must demonstrate that the proposed facility has met the determinations of the New Hampshire Department of Environmental Services, the United States Army Corps of Engineers, and other state or federal agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and include a copy of the application for the agency’s review as described with respect to applications and permits identified in RSA 162-H:7, IV Site 301.03(d), and any other relevant evidence submitted pursuant to Site 202.24.”*

**Section 301.14(e)** (criteria relative to unreasonable adverse effect on the natural environment)  
We strongly recommend inclusion of the following as minimum criteria:

Site 301.14

- (e) For the committee to find that the proposed facility will not have an unreasonable adverse effect on the natural environment, the record must demonstrate that:
- (1) the proposed facility would not reduce the likelihood of persistence of a rare plant species within the ecological subsection in which the proposed facility is located;
  - (2) the proposed facility would not disturb a rare or exemplary natural community;
  - (3) the proposed facility would not eliminate, fragment or degrade critical wildlife habitat or a significant habitat resource utilized by a significant wildlife species;
  - (4) the proposed facility would not create a high risk of mortality to migrating or resident terrestrial or aquatic wildlife species that cannot be acceptably limited through the application of best practical measures;
  - (5) if a wind energy facility, the proposed facility is not located within 0.5 miles of a peregrine falcon or golden eagle aerie or active bald eagle nest, within 1.5 miles of a known bat maternity/nursery colony or hibernaculum, or within 0.25 miles of a known common nighthawk nest site;
  - (6) the application provides for post-construction monitoring, reporting and adaptive management approved by the NH Fish and Game Department as necessary to address potential adverse effects that cannot reliably be predicted at the time of the application.

**Site 301.14 (f) b** (relative to standards for shadow flicker)

We recommend that this standard be expanded to prohibit shadow flicker on any public road or highway, and on any public or private conservation lands open to public use.

**II. Comments on other sections of the proposed rules**

**A. Site 102 (Definitions)**

**Best practical measures**

We recommend the following definition: “Best practical measures” means available, effective and economically feasible on-site or off-site methods or technologies used during siting, design, construction and operation of an energy facility that control or reduce to the lowest practical level known or anticipated adverse impacts of the facility.”

**Section 301.03(h)(6)** (finding relative to the public interest)

We recommend inclusion of the following:

“For the committee to find that the proposed facility will serve the public interest, the record must demonstrate that the proposed facility:

- (1) Is consistent with federal, regional, state, and local policies (including but not limited to energy, economic and environmental policies); and
- (2) Either (a) meets a critical need related to energy supply, infrastructure or system reliability, or (b) provides net positive environmental and economic effects.

We respectively appreciate your consideration of our comments.

Sincerely,



Michael J. Bartlett  
President