

To: Mr David Wiesner (David.Wiesner@puc.nh.gov)
From: Joe Wilkas, Bridgewater, NH
September 14, 2015

New Hampshire Site Evaluation Committee
c/o David K. Wiesner, Staff Attorney
N.H. Public Utilities Commission

Subject: Site Control Rulemaking Language Improvements
New Hampshire Site Evaluation Committee Rulemaking, Docket No. 2014-04

Dear Mr Wiesner,

Current Rulemaking Site Control language:

PDF Page 7/30, Section 301.03 c6:

Evidence that the applicant has a current right, or an option or other legal right to acquire the right, to construct the facility on, over, or under the site, in the form of ownership, ground lease, easement, other contractual rights or interests, written license, or other permission from a federal, state, or local government agency, or through the simultaneous taking of other action that would provide the applicant with a right of eminent domain to acquire control of the site for the purpose of constructing the facility thereon;

Comments:

1. The above current statement seems unnecessarily complex for something that could simply say:

'Evidence that the applicant has a current legal right for all land needed to construct, operate, and transmit power to the grid from the proposed energy facility, including all structures, wiring, and buildings.'

Here are a few concerns that should be considered given the current Draft Rules language:

1.1. The site control issue is ambiguous as drafted. It should be straight forward and require undisputed ownership or an undisputed right (an option is OK) to own or lease the site or right of way.

1.2 If the SEC is going to treat options and rights as giving site control, this should be limited to real, practical, current situations.

1.3 The SEC has no condemnation power and should never be allowed to approve a project until after all eminent domain proceedings have been concluded.

1.4 If there is any dispute between a landowner and the applicant, that dispute cannot be adjudicated by the SEC since a landowner has a constitutional right to jury trial on any such dispute.

2. The need for adequate Site Control is evident from issues with the previous Wild Meadows project, whose application was deemed incomplete for several reasons, one of which was:

'The Application fails to clearly describe the legal relationship between the Applicant and the site or facility.'

(Ref: Wild Meadows 'January 13, 2014, ORDER DETERMINING APPLICATION TO BE INCOMPLETE', <http://www.nhsec.nh.gov/projects/2013-02/documents/140113order.pdf>

See PDF Pages 12/17 and 4/17, included below:

PDF Page 12/17:

C. Legal Relationship

The Application fails to clearly describe the legal relationship between the Applicant and the site or facility. NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES Site 301.03 (b)(6) requires an Application to include information about “[w]hether the applicant is the owner or lessee of the site or facility or has some legal or business relationship to it.” Section B.6 of the Application states that the Applicant will be the owner and operator of the Facility. That statement also asserts that the Applicant “has leases with the owners of the land where the project is proposed to be built.” However, a review of the entire Application, including the site plans filed with the Application, brings that statement into question. The Overview Plan Sheet Layout, Sheet C1.2 identifies an area within the “lease boundary line.” See General Notes, Legend, Site and Road Design Criteria, Sheet No. 1.3. A large portion of the overhead electric line proceeds outside the identified lease boundary area. The Application does not specify the legal relationship of the Applicant to that portion of the site and, if the plans are accurate, that portion would not appear to be leased by the Applicant. The Application is thus deemed incomplete for failure to clearly identify the legal relationship of the Applicant to the parcels implicated by the Facility. The Applicant shall identify the legal relationship of the Applicant and all parcels of land within the project site whether that relationship be as owner, lessee, or by way of easement or right of way.

PDF Page 4/17:

However, the Water Division advises the Committee that it has deemed the wetlands permit application to be incomplete. Specifically, the compensatory mitigation proposal contained within the wetlands permit application failed to identify a qualified easement holder for the proposed conservation easement on the 223 acre parcel known as the “Patten Brook parcel.” The Application identifies the Department of Resources and Economic Development as the easement holder. However, the Department of Resources and Economic Development has declined the opportunity to hold the conservation easement. Therefore, the wetlands application is incomplete due to the failure to provide appropriate compensatory mitigation.