NEW HAMPSHIRE
SUSTAINABLE ENERGY
ASSOCIATION

September 18, 2015

David K. Wiesner, Staff Attorney
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: Docket 2014-04 Site Evaluation Committee (SEC) Draft Final Rules

Dear Attorney Wiesner:

Thank you for the opportunity to submit comments regarding the proposed draft final rules in SEC Docket 2014-04. The NH Sustainable Energy Association is the largest member-based non-profit in NH that is solely dedicated to advancing energy efficiency, renewable energy, and clean technology for all residents and businesses of our state. NHSEA believes that the draft final rules do not reflect the intent of HB 1602, passed in 2014 to direct the SEC in setting criteria for the siting of wind (and other) facilities. NHSEA worked in good faith with diverse stakeholders, including environmental, business, utility, and labor groups, as well as with both political parties in order to create language that was reasonable and acceptable to differing interests, all of whom had what is best for New Hampshire as our top priority.

HB 1602, as passed by the General Court and signed by the Governor, RSA 162-H:10 was modified to read:

> I. *To meet the objectives of this chapter, and with due regard for the renewable energy goals of RSA 362-F, including promoting the use of renewable resources, reducing greenhouse gas and other air pollutant emissions, and addressing dependence on imported fuels, the general court finds that appropriately sited and conditioned wind energy systems subject to committee approval have the potential to assist the state in accomplishing these goals. Accordingly, the general court finds that it is in the public interest for the site evaluation committee to establish criteria or standards governing the siting of wind energy systems in order to* ***ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process.*** *When establishing any criteria, standard, or rule for a wind energy system or when specifying the type of information that a wind energy applicant shall provide to the committee for its decision-making, the committee shall rely upon the best available evidence.*

There are many appearances in the current draft final rules that use the term “adverse effects” but have dropped the important qualifying term of “unreasonable.”

For example, at 301.05(a), the proposed final rules read:

“Each application shall include a visual impact assessment of the proposed facility, prepared in a manner consistent with generally accepted professional standards by a professional trained or having experience

in visual impact assessment plans, regarding the effects of, or mitigating potential adverse effects of, the proposed facility on aesthetics."

And again at 301.05 (b):

"(9) A description of the best practical measures planned to avoid, minimize, or mitigate the potential adverse effects of the proposed facility, and of any visible plume that would emanate from the proposed facility, and any alternative measures considered but rejected by the applicant."

Very few, if any, projects (wind or otherwise) are perfect, with zero adverse effect or downside to the new development. Adverse effects, versus unreasonable adverse effects, is a critical difference, as the legislature intended it to be in order to balance the considerations of all projects. We ask the Committee to note and reinsert this critical difference into the final rules, in all places where applicable.

NHSEA is also concerned about the proposed rule language concerning the required consideration of local and municipal regulations. Given that NH RSA 674:17 states that one of the many purposes of local zoning ordinances is:

(j) To encourage the installation and use of solar, wind, or other renewable energy systems and protect access to energy sources by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum set back requirements, and limitations on type, height, and placement of vegetation;"

And furthermore, given that existing SEC rules already include consideration of local land use planning and local input, then why does 301.16(d) suggest that the Committee need further consider:

"(d) Whether the facility as proposed is consistent with municipal masterplans and land use regulations pertaining to (i) scenic, historic, and cultural resources. And (ii) public health and safety, air quality, economic development, and energy resources;"?

The SEC was precisely created to balance the needs of localities and the needs of the state as a whole. Creating rules that are either preempted by state statute or inconsistent with statutes governing local land use planning and regulations is not supported by the purpose of the SEC, as defined in RSA 162-H.

NHSEA is deeply concerned that these rules, as written, will create an unduly burdensome process for all future wind energy facility applicants, and perhaps go as far as to create a de facto moratorium on future wind development in the state of New Hampshire. Either scenario was absolutely not the legislative intent of HB 1602. In addition to the specific instances above, these rules appear unduly onerous on wind facilities with respect to sound requirements and to all facilities with respect to language around aesthetic and cumulative impacts. Wind energy is a technology that when properly sited, constructed, and operated offers significant benefits to our state, our economy, and our environment. NH has three wind facilities that have never proven to produce unreasonable adverse effects to the people, individual property rights, the landscape, the economy, or the public health. Why do these current draft rules imply that wind energy facilities do and must prove otherwise, using standards that are unsupported by professional practice, by past experience, or by legislative direction?

Sincerely,

Kate Epsen