



February 24, 2015

**BY ELECTRONIC MAIL** (David.Wiesner@puc.nh.gov)

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

**Re: New Hampshire Site Evaluation Committee Rulemaking, Docket No. 2014-04**

To Whom It May Concern:

On behalf of our respective organizations, we are pleased to provide the following joint comments on the initial proposals by the New Hampshire Site Evaluation Committee (the “SEC”) to adopt and amend administrative rules, N.H. Administrative Rules, chapters Site 100-300 (the “Initial Proposals”).<sup>1</sup>

The energy facility siting process and requirements are of great importance to our organizations’ collective commitment to protecting New Hampshire’s treasured natural resources and promoting a clean energy future for the state. We believe the process should promote robust public participation and be governed by clear rules that can be predictably applied by the SEC to ensure orderly and thorough review of the environmental and economic impacts of proposed energy projects.

As active participants in the legislative and stakeholder processes that preceded the Initial Proposals, our organizations appreciate the SEC’s diligent efforts to draft and advance comprehensive regulations that seek to implement RSA Ch. 162-H in accordance with the Legislature’s directions in Laws of 2013, Chapter 134 (Senate Bill 99), Laws of 2014, Chapter 217 (Senate Bill 245), and Laws of 2014, Chapter 310 (House Bill 1602). In particular, we recognize the deep attention to detail that was necessary to update and clarify the procedural regulations of the Committee to conform to the many recent statutory changes.

While we are grateful for the SEC’s hard work, we do not believe that the Initial Proposals provide sufficient detail or clarity to energy facility applicants and stakeholders with respect to the substantive elements of the rules—in particular, the “**specific criteria** to be applied in determining if the requirements of RSA 162-H:16, IV have been met by the applicant for a certificate of site and facility.” RSA 162-H:10, VII. It is our belief that the lack of specific criteria is inconsistent with the legislative intent of Senate Bill 99. More specifically, the

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<sup>1</sup> These comments are offered in addition and without prejudice to other individual or joint comments filed by our respective organizations in this rulemaking docket.

proposed rules do not provide adequate guidance for the SEC to apply the enumerated “consider[ations]” in deciding whether a project would have an unreasonable adverse effect on natural resources and aesthetics. *See* proposed Site 301.14(a)-(e). A list of considerations is of little use without some further direction regarding how the SEC should evaluate the information presented by an applicant and other stakeholders and reach determinations regarding the effects. Although some determinations—like sound, shadow flicker, and setbacks for wind energy facilities—are more amenable to numeric standards, the SEC should ensure that each consideration is phrased as a standard for the applicant to meet, even if qualitative and potentially requiring the SEC’s discretion and judgment. Our organizations offered potential language in this regard in our pre-rulemaking filing of October 15, 2014, and other formulations also could be workable.

Another glaring deficit of the Initial Proposals is the lack of *any* “specific criteria” for determining whether “issuance of a certificate will serve the public interest.” The Initial Proposals merely specify that an application for a certificate include “information describing how the proposed facility will be consistent with the public interest.” *See* proposed Site 301.03(h)(6). While it may not be possible to promulgate black-and-white standards that all projects must meet, the rules should provide guideposts to promote rigorous, consistent, and well-supported public interest determinations. As contemplated by Senate Bill 245 and the purpose statement of RSA Ch. 162-H, the public interest finding ensures that the SEC must weigh the benefits and adverse impacts of a proposed project and reach a judgment on whether the project will, on balance, benefit the citizens of New Hampshire.

Consistent with the list of public interest considerations our organizations included in our pre-rulemaking filing, we offer the following list of criteria to be included in the rule:

*(1) Whether the net environmental effects of the facility, considering both beneficial and adverse effects, serve the public interest.*

*(2) Whether the net economic effects of the facility, including but not limited to costs and benefits to energy consumers, property owners, state and local tax revenues, employment opportunities, and local and regional economies, serve the public interest.*

*(3) Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.*

*(4) Whether the facility as proposed is consistent with municipal master plans and land use regulations pertaining to (i) natural, historic, scenic, cultural resources and (ii) public health and safety, air quality, economic development, and energy resources.*

*(5) Such additional public interest criteria as may be deemed pertinent by the committee.*

We continue to believe that including specific criteria in the rule is required by Senate Bill 245, both to ensure that applicants submit relevant and useful information as part of their applications for certificates, and to provide a reasonable and clear basis for SEC public interest determinations. Other potential sources for public interest considerations include the SEC statutory purpose statement in RSA 162-H:1 and other energy-related statutes, including the

state's energy policy, RSA 378:37, the Renewable Portfolio Standard law, RSA 362-F:1, and the Electric Utility Restructuring law, RSA 374-F:1, and the statute governing utility investments in distributed generation, RSA 374-G:5, II. In conclusion, we believe that the public interest determination is a critical addition to the SEC's responsibilities, and that the rules need to provide as much specificity as possible to guide the SEC's evaluation.

We appreciate the SEC's consideration of these comments.

Sincerely,

Susan Arnold, Appalachian Mountain Club

Mike Bartlett, Audubon Society of New Hampshire

Christophe Courchesne, Conservation Law Foundation

Will Abbott, Society for the Protection of New Hampshire Forests

Jim O'Brien, The Nature Conservancy