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VIA EMAIL AND FEDERAL EXPRESS

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

RE: New Hampshire Site Evaluation Committee Rulemaking
(Docket No. 2014-04)

Dear Attorney Wiesner:

Nixon Peabody ("NP") respectfully submits the following comments in connection with the proposed rules for the New Hampshire Site Evaluation Committee ("SEC").

The SEC has heard from many applicants and other stakeholders on the importance of consistent and unambiguous rules for siting energy facilities in New Hampshire. As a firm that works with applicants, NP shares this view and requests that the SEC consider further refinements to the pending amendments to be consistent with existing law and to provide for cost-efficient parallel analysis and review by the state and federal regulators in their respective processes. We offer the following comments on specific aspects of the proposed rules:

1. Site 301.03: Contents of Application.

Section 301.03(c) provides that each application shall contain evidence that the applicant has legal access and control of the site or the "ability to acquire control of the site." If such control is not demonstrated by the applicant, this section implies that it is within the SEC's discretion to make a determination that the application is incomplete and refuse to consider its merits. This "control" provision is sufficiently ambiguous and, in addition to delaying the permitting process by effectively prohibiting simultaneous state and federal permitting filings, as written this language could unintentionally lead to other unlawful results.

There are great economies and benefits that would result from parallel state and federal processes. Because the applicable state agencies have similar obligations in both proceedings,

efficiency and conservation of scarce state resources suggests that contemporaneous work in both matters is beneficial. As currently written, the rules could be read to require completion of the federal process before pursuing the state process. This necessarily calls on the same resources to perform substantially similar work in two different time frames. Clarity in the rules would render this wasteful redundancy a nullity.

We believe that this language should be clarified and broadened to expressly authorize the acceptance of an application by the SEC when an applicant evidences that it is simultaneously taking additional federal or state action that could provide the applicant with the required access and/or control of the site. Specifically, two potential actions that, if successful, would give such control to an applicant include: (i) filing for a Federal Energy Regulatory Commission Certificate of Public Convenience and Necessity or (ii) commencing an eminent domain proceeding in state court. Due to this ambiguity, we suggest revising the language within Section 301.03(c) as set forth below:

> Evidence that the applicant has a current right of legal access to and control of ~~or the ability to acquire control of~~ the site, in the form of ownership, ground lease, easement, option, or other contractual right or interests. In the event such legal access and control has not yet been obtained, the applicant must evidence that it has used reasonable good faith efforts to obtain legal access and control. The simultaneous taking of any other state or federal action that could provide the applicant with legal access to and control of the site shall be conclusive evidence that the applicant has complied with the requirement set forth in this subsection.

2. Site 301.08(c)(2): Decommissioning Plan.

This section provides for "financial assurance in the form of an irrevocable standby letter of credit, performance bond or surety." The prospect of tying up and administering funds in the form of a bond or surety for, in some instances, fifty (50) plus years is overly burdensome given that applicants with certain demonstrated quantifiable financial strength and reliability might fulfill this obligation in another way. We suggest the incorporation of a new flexible standard whereby a bond or surety is not always required if the applicant meets reasonable financial benchmarks.

3. Site 301.12(d): Timeframe for Application Review.

This section authorizes the "SEC to temporarily suspend its deliberations and the time frames set forth in this section . . . if [the SEC] . . . finds that such suspension is in the public interest." As written, this language would impermissibly allow the SEC to postpone the issuance or denial of a certificate to an applicant beyond the 365 day period set forth in RSA 162-H:7, VI (d). The enabling statue does not similarly provide for such postponement and, therefore, the proposed

rule impermissibly attempts to change the statute. As this section is in conflict with existing law, it should be deleted.

4. Additional Thoughts: Supplemental Resources to Facilitate Analysis and Review

Because the siting process puts an added strain on limited agency resources, the SEC should consider a mechanism where applicants can fund the work and analysis of qualified third parties to aid an agency in its review of an application. Upon application by any participating agency in need of third party analysis to aid the agency in its review of an application, the SEC, after hearing from stakeholders, should have the authority to appoint such qualified third parties, as agreed upon by the SEC and the applicant, and order that all reasonable expenses be paid by the applicant. Such a mechanism would facilitate timely review of the SEC as required under the enabling statute and minimize the cost on the participating state agencies.

We appreciate the SEC's consideration of these comments.

Sincerely,

W. Scott O'Connell, Esq.
Partner

GJM/meb

cc: Gordon J. MacDonald, Esq.