



The Senate of the State of New Hampshire

107 North Main Street, Concord, N.H. 03301-4951

November 16, 2015

Martin P. Honigberg, Chair
NH Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301

Dear Chairman Honigberg:

This letter supplements our joint letter of October 27, 2015 concerning the proposed SEC rules that are now subject to a Preliminary Objection by the Joint Legislative Committee on Administrative Rules ("JLCAR").

We strongly encourage the SEC to stand by both Site 301.16 and Site 301.14(g) as you proposed these new rules to JLCAR. No refinements or modifications should be considered. We believe the SEC got these two proposals right the first time.

The idea that the SEC should be imprecise about how it is to arrive at the public interest finding defies common sense. Not only is it unfair to the public, whose interest the SEC is intended to serve, but also it is unfair to SEC applicants. All stakeholders in any SEC proceeding deserve to know ahead of time what considerations the SEC will use in reaching such a determination. As you eloquently testified before JLCAR on October 15, the SEC balances many considerations in carrying out its statutory charge. This new rule provides precisely the clarity that Administrative Rules are intended to provide. As presented, it is entirely consistent with the preamble and purpose of RSA 162-H:16 IV(e).

The claim being made by some that the Senate voted to reject language similar to that now proposed in Site 301.16 is not correct. We understand that the written record is subject to misinterpretation. The reason this language was dropped from the Senate passed version of SB 245 is because we, the co-sponsors, held a meeting with a large number of stakeholders shortly before SB 245 was acted on by the Senate Finance Committee. In the interest of reaching a broad consensus on the legislation, Senator Bradley asked the group if the group could agree to drop this guidance language (regarding the considerations by which the SEC would reach a determination on the new public interest finding). He specifically asked a representative of the conservation community if they could agree to drop the language. The response from a member of the conservation community was that yes, the advocates for the conservation community could agree to this as long as all present agreed that this issue would be addressed in the Administrative Rules. The group assented, including those of us co-sponsoring SB 245.

So, the notion that the Senate affirmatively dismissed this language, or that somehow the Senate concluded that any "net benefit" determination should not be in the Administrative Rules is a misreading of the full legislative history. If the SEC and JLCAR are going to ground their decisions regarding new rule language on the legislative history, which is entirely proper, then

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the SEC and JLCAR should consider the entire record. As co-sponsors, we agreed in March 2014 to drop this language from the bill with the understanding that clarifying language for this new public interest finding would be addressed in the rulemaking process.

The idea that the cumulative impacts of a proposed project should not be considered by the SEC (as proposed rule Site 301.14(g) provides) also defies common sense. We believe the SEC proposed rule Site 301.14(g) properly recognizes that multiple impacts can cumulatively have an adverse impact when individually these impacts may not.

We appreciate the extraordinary effort that the SEC has put into this rulemaking, and we strongly recommend that the SEC continues to vigorously defend these two proposed rules in its response to JLCAR's Preliminary Objections.

Sincerely,

Senator Jeanie Forrester

Senator Jeanie Forrester, Sponsor, SB 245

dm

Martha Fuller Clark (SF)

Senator Martha Fuller Clark, Co-Sponsor, SB 245

Representative Herbert Vadney (RM)

Representative Herbert Vadney, Co-Sponsor, SB 245

Representative Rick Ladd (RM)

Representative Rick Ladd, Co-Sponsor, SB 245

Representative Suzanne Smith

Representative Suzanne Smith, Co-Sponsor, SB 245

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Representative Susan Ford (dae)

Representative Susan Ford, Co-Sponsor, SB 245

Representative Gene Chandler (mrx)

Representative Gene Chandler, Co-Sponsor, SB 245