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BY E-MAIL

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**Subject: New Hampshire Site Evaluation Committee Rulemaking, Rulemaking Notice
2015-12
SEC Docket No. 2014-04**

Mr. Wiesner:

RENEW Northeast, Inc., (“RENEW”)¹ submits this letter concerning the Site Evaluation Committee’s (“SEC”) review of the Preliminary Objections issued by the Joint Legislative Committee on Administrative Rules (“JLCAR”) on the SEC’s Final Rules Proposals in the above-captioned matter that is on the agenda for the SEC’s November 18, 2015, public meeting. As noted by the Business and Industry Association (“BIA) in its October 14, 2015, letter to JLCAR, the Final Rules are “overly burdensome”. Like the BIA, RENEW seeks reconsideration of “specific rule provisions that create difficulties/burdens for project developers who wish to do business in New Hampshire.” RENEW respectfully requests the SEC reconsider the following obstacles in the Final Rules that are specific to wind energy facility development.

¹ The comments expressed herein represent the views of RENEW and not necessarily those of any particular member of RENEW.

1. Sound Standards – Site 301.14(f)(2)a

RENEW requests the SEC reassess the rules for wind turbine sound to address why the SEC decided to implement significantly more restrictive measures in the Final Rules than had been placed on now operating projects. The change in regulatory approach with the Final Rules is especially surprising given the lack of noise complaints regarding the three operating New Hampshire wind energy projects. RENEW is concerned that how sound is regulated in the Final Rules could effectively prohibit wind facility development in the state.

SEC Noise Limits by Project	
Lempster Wind	<ul style="list-style-type: none">• Town agreement differed from the SEC standard. Measured 300 feet from existing, occupied buildings. Different standard for the Goshen/Lempster school.• SEC standard triggered mitigation measures including installing Energy Star air-conditioners in bedrooms of non-participating homeowners if in-door noise levels exceeded the greater of 30 dBA or 5dBA above ambient.
Granite Reliable	<ul style="list-style-type: none">• No noise standards
Groton Wind	<ul style="list-style-type: none">• Daytime: Not to exceed 55 dBA or 5 dBA above ambient, whichever is greater.• Nighttime: Not to exceed 45 dBA or 5 dBA above ambient, whichever is greater.• Campground: Not to exceed 40 dBA or 5 dBA above ambient, whichever is greater.

Figure 1. Sound Limits Set by the SEC for Operating Wind Projects.

The SEC restrictions on the above projects are consistent with regulatory standards in other jurisdictions. Given's New Hampshire success at siting wind energy facilities that are free of sound complaints, RENEW urges the SEC to modify the Final Rules by making the most restrictive sound limit at residences (day or night) be no lower than 45 dBA. The World Health Organization ("WHO") has also recommended this limit for protecting people in their residences. According to the WHO, daytime outdoor living area sound levels at a residence should not exceed 55 dBA Leq to prevent "serious annoyance" while nighttime sound levels at the outside facades of the living spaces should not exceed 45 dBA Leq so that "people may sleep with bedroom windows open."² These WHO guidelines have proven effective in New Hampshire and should remain the standard.

² World Health Organization, *Guidelines for Community Noise* 4.3.1 (1999). See Decision Issuing Certificate of Site and Facility with Conditions, NHSEC Docket 2006-01, *Re: Application of Lempster Wind, LLC*, at 46 (June 28, 2007) (finding Section 4.3.1 of the WHO Guidelines "instructive").

2. Shadow Flicker Standards – Site 301.14(f)(2)b

RENEW also requests the SEC reconsider the decision to change the limit on shadow flicker from the 30 hours per year standard, which was the limit in the drafts throughout this rulemaking until the final day of the SEC’s deliberations, to 8 hours per year. As with the sound regulations, RENEW is concerned that how shadow flicker is regulated in the Final Rules could effectively prohibit wind facility development in the state. The rules in the Initial Proposal appropriately follow the National Association of Regulatory Utility Commissioners guidelines and are reflective of typical shadow flicker rules across jurisdictions in the United States.³ The 30 hours per year limit recommendation in those guidelines ensures residences are free of shadow flicker for 99.7 percent of the year.⁴ RENEW submits the limits on shadow flicker should be changed back to 30 hours per year.

3. Cumulative Impacts Definition – Site 102.18

The SEC should eliminate the burdensome provision in the Final Rules requiring the SEC assess the “cumulative impacts” of an applicant’s project against those of other proposed facilities. In Site 102.18 “cumulative impacts” is defined as “the totality of effects resulting from the proposed facility, all existing facilities, all energy facilities for which a certificate of site and facility has been granted, and all proposed energy facilities for which an application has been accepted.” Consideration of proposed energy facilities together with an applicant’s proposed facility will require the SEC to speculate about the effects of a proposed facility that may never be built or its final configuration. It places a heavy burden on wind energy facility to quantify its impacts while incorporating the many uncertainties involving other project proposals. This uncertainty invites legal challenges and is not in the public interest.

4. Criteria Relative to Finding of Public Interest – Site 301.16

The rule setting a public interest standard requires energy facilities be “consistent with . . . local plans and policies, including those identified in RSA 378:37 . . . and (d) municipal master plans and land use regulations.” The Final Rules should not require energy facilities to conform to the local plans and policies nor municipal master plans and land use regulations as the SEC process preempts local planning and zoning regulations. In Town of Hampton, 120 N.H. 68, 71 (1980), the New Hampshire Supreme Court held municipalities could not regulate facilities

³ National Association of Regulatory Utility Commissioners, *Wind Energy & Wind-Park Siting and Zoning Best Practices and Guidance for States* 31 (September, 2012).

⁴ *Id.* at 27.

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under the SEC's jurisdiction. The Final Rule therefore exceeds the SEC's authority where it gives municipalities the power over the siting of energy facilities through its land use laws. RENEW requests the Final Rules be amended by removing all references to consideration of municipal plans and rules.

Large-scale wind energy resources are the most competitive on price with larger wind energy projects having the lowest prices. Many companies are seeking to develop renewable energy projects in New Hampshire. They will create jobs and boost tax revenues to the state and host municipalities. These towns and the New Hampshire economy will benefit from further growth in renewable energy development. For New Hampshire to attain these benefits, RENEW urges the SEC to modify the Final Rules as requested in this letter. These changes will strike the right balance between the need for the development of low-priced, clean energy resources, and environmental impacts from the siting of these resources.

Thank you for your attention to RENEW's concerns and requests on wind energy facility siting under the Final Rules.

Respectfully submitted,



Francis Pullaro
Executive Director

Copy: Rep. Carol M. McGuire, Chair, Joint Legislative Committee on Administrative Rules
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