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April 7, 2016

VIA IN-HAND DELIVERY & E-MAIL

Pamela Monroe, Administrator
NH Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301
pamela.monroe@sec.nh.gov


RE: NH Site Evaluation Committee Docket No. 2015-06: Joint Application of Northern Pass Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility

Dear Ms. Monroe,

Enclosed for filing with the New Hampshire Site Evaluation Committee in the above captioned matter, please find:

1. International Brotherhood of Electrical Workers' Consolidated Objection to Council for the Public and the Forest Society's Respective Proposed Procedural Schedules;
2. "Exhibit 1"; and
3. Certificate of Service

On Behalf of the International Brotherhood
of Electrical Workers,



Alan Raff

Enclosures

Cc: Distribution List for Docket No. 2015-06

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

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| RE: |) |
| Northern Pass Transmission, LLC and |) |
| Public Service Company of New Hampshire |) |
| d/b/a Eversource Energy: |) |
| Joint Application for a Certificate of Site and |) |
| Facility for Construction of a New High Voltage |) |
| Electric Transmission Line in New Hampshire |) |
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SEC DOCKET No. 2015-06

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' CONSOLIDATED
OBJECTION TO COUNSEL FOR THE PUBLIC AND THE FOREST SOCIETY'S
RESPECTIVE PROPOSED PROCEDURAL SCHEDULES

NOW COMES the International Brotherhood of Electrical Workers ("IBEW"), as an intervenor in the above-captioned matter, and submits this objection to Society for the Protection of New Hampshire Forests (the "Forest Society") and Counsel for the Public's respective motions, in which they seek to implement a procedural schedule that runs contrary to the statutory scheme, and says:

Introduction

1. Having reviewed the motions submitted by both Counsel for the Public and the Forest Society, as well as the proposed schedules contained within each motion, the IBEW objects to their motions to extend the procedural schedule beyond the time frames imposed by RSA 162-H:7. As is evident from their filings, their proposed schedules are contrary to the plain language of the statute as well as the legislative intent of the statute. Furthermore, both Counsel for the Public and the Forest Society have failed to meet their burden of proving that it would be in the public interest to extend the deadlines beyond the 365-day time frame set forth in the statute and their request is premature at this stage in the proceeding. As a result, the IBEW

supports the Applicant's proposed procedural schedule, as it adheres to the plain language of the statutory scheme. See RSA 162-H:7.

Standard of Review

2. Pursuant to Site 202.19(a), "[t]he party asserting a proposition shall bear the burden of proving the proposition by a preponderance of the evidence." Thus, both Counsel for the Public and the Forest Society bear the burden of proving that they are entitled to the relief they seek in their motions. As detailed further below, they have both failed to carry their burden with respect to their motions and corresponding proposed procedural schedules.

Legal Argument

3. As a preliminary matter, Counsel for the Public's proposed schedule and the Forest Society's proposed schedule both run contrary to the plain language of RSA 162-H:7 and therefore should be rejected. RSA 162-H:7, VI-d provides that "[w]ithin 365 days of the acceptance of an application, the committee shall issue or deny a certificate for an energy certificate." Use of the word "shall" denotes Legislature's intent that the statutory time frame be mandatory. See Kibbe v. Town of Milton, 142 N.H. 288 (1997). Thus, there is an expectation, based on the plain language of the statute, that once an application has been accepted by the SEC, it will be evaluated by the SEC within the statutory time frame. This expectation coincides with the declared purpose of the statute, which states, *inter alia*, that "it is in the public interest . . . that undue delay in the construction of new energy facilities be avoided. . . ." RSA 162-H:1.

4. Here, the Applicant's application was accepted on December 18, 2015. By statute, the SEC must issue its decision on the application within 365 days of acceptance. The Applicant's proposed schedule adheres to the statutory language. However, Counsel for the Public's schedule provides an 18-month time frame for evaluating this application while the

Forest Society proposes roughly a 24-month time frame for evaluating this application. Counsel for the Public's and the Forest Society's schedules fail to adhere to the plain language of RSA 162-H:7 and, as a result, should be rejected.¹

5. Counsel for the Public and the Forest Society both assert that the statutory time frames in RSA 162-H:7 are insufficient for this particular project. However, their arguments are undermined by the legislative record associated with the time frames set forth in RSA 162-H:7.

6. In 2013, Senate Bill 99 mandated a stakeholder process to analyze and study of the SEC's organization, structure and process. As was noted in an April 8, 2014 letter by Senator Forrester, "[t]hat process, led by the Office of Energy and Planning, engaged the public, energy industry, state agencies, and the non-government organization community and culminated in a comprehensive report at the end of December, identifying a number of concerns about the structure of the SEC and how it functions and a number of possible solutions." This report is commonly referred to as the "Raab Report."² Research into the SEC process at that time demonstrated that the 9-month time frame contained in the statute was not always met and while the SEC could extend the deadline, such extension may create uncertainty for applicants and interested parties.³ Moreover, individuals and entities who are now part of the present docket—including Peter Roth, presently acting as Counsel for the Public, and Susan Arnold, on behalf of the Appalachian Mountain Club—participated in the stakeholder sessions discussing reforms to the SEC.

¹ Based on the same analysis, the Forest Society's attempt to alter the 150 day deadline contained in RSA 162-H:7, VI-b and the 240 day deadline contained in RSA 162-H:7, VI-c must also be rejected.

² This report and all appendices attached thereto can be found at the following website:
<https://www.nh.gov/oep/energy/programs/sb99.htm>

³ *New Hampshire Energy Facilities Siting Process, 2013*,
https://www.nh.gov/oep/energy/programs/documents/sb99nh_siting_process.pdf

7. Part of the research stemming from Senate Bill 99 also included a review of the siting process in seven states: New Hampshire, Connecticut, Maine, Massachusetts, Rhode Island, Vermont, and New York. This research is particularly instructive with respect to the time frames by which an application is processed. Massachusetts, New York, and Rhode Island each have a 12-month deadline by which a determination with respect to an application is made. Other states in the study require that an application be evaluated in less time. Connecticut has a 6-month time frame while Maine has a 185 day time frame for evaluating wind and pipeline projects.⁴

8. In 2014, Senate Bill 245 amended portions of RSA 162-H, thereby establishing RSA chapter 162-H in its present form.⁵ Senator Forrester, as sponsor of Senate Bill 245, stated that “many issues raised and solutions identified in the SB 99 report are addressed by SB 245” As part of those amendments, the Legislature expanded the time frame by which an application would be evaluated from 9 months to 365 days. At the time, both the Legislature and individuals involved in the legislative process were aware that the present application would come before the SEC. Many of the intervenors who are part of the present docket—including the Forest Society—were part of that legislative process and supported the language of the amendment, which included the 365-day time frame.

9. In fact, in an April 8, 2014 letter regarding Senate Bill 245, the Forest Society, along with Appalachian Mountain Club, Conservation Law Foundation, and the Nature Conservancy, stated that they supported Senate Bill 245 and believed that the bill would promote

⁴ https://www.nh.gov/oep/energy/programs/documents/sb99other_states_process.pdf

⁵ This filing makes certain references to the legislative history associated with Senate Bill 245, for ease of reference, the International Brotherhood of Electrical Workers has attached the relevant documents as “Exhibit 1” to the end of this filing.

the “public’s interest in an efficient but rigorous permitting process.” These parties also stated that Senate Bill 245 would make the SEC process “more efficient and less cumbersome.”

10. Lisa Linowes also supported the statutory time frame and stated: “I fully support extending the timeframe for a decision to 365 days as opposed to 9 months.” She proceeds to state: “No application has to take 365 days and many are resolved in much shorter time frames.”

11. At the time of the above mentioned bills, there is no dispute that individuals were aware that the present application would come before the SEC. If these individuals and organizations believed that more than 365 days were necessary to accommodate the evaluation of this project, they could have, at that time, requested a lengthier period of time for review. They chose not to do so and instead were supportive of the statutory time frames despite knowing that the proposed application would be in front of the SEC pursuant to this newly enacted statutory time frame. As a result, despite the Forest Society’s contention that “[t]he statutory timeframe is not suitable for the unprecedented scale of this project,” the legislative intent—and, notably, the Forest Society’s own position on Senate Bill 245—runs contrary to this assertion and supports the Applicant’s proposed procedural schedule. See SEC Docket 2015-06, Public Comment Tab 307, dated March 21, 2016. Indeed, given the concern associated with this particular project, it is reasonable to draw the inference that these amendments were caused, in part, by the present application.

12. The legislative record also demonstrates that the time frame in RSA 162-H:7, VI-d is not merely an arbitrary period of time as both Counsel for the Public and the Forest Society seem to suggest. Instead, the legislative record demonstrates that this time frame was a product of the research and effort underlying the legislative process associated with the amendments to this statute. The fact that a 365-day time frame, as proposed by Senator Forrester in Senate Bill

245, was chosen by the Legislature should not be perceived as a mere coincidence when compared to this research. Rather, the research associated with Senate Bill 99, including comparisons to other statutes from nearby states, coupled with wide-spread support of the various stakeholders was the cornerstone of the Legislature's decision to impose the time frames contained in the statute. Furthermore, part of the reason for expanding this time frame to 365 days was to avoid the unpredictability that exists when a party attempts to invoke RSA 162-H:14 in manner similar to what both Counsel for the Public and the Forest Society seek to accomplish in their present motion.

13. By moving to alter the statutory time frame at this point in time, Counsel for the Public and the Forest Society attempt to use an exception within the statutory scheme to rewrite the statute to impose a time frame that will unnecessarily and impermissibly delay review of the proposed application. Their attempts disregard the legislative history associated with the new time frame and undermine the thoughtful and lengthy efforts of those involved in that process. Given the language of RSA 162-H:7, VI-d as well as the legislative history associated with the statutory time frame, their attempts should be rejected.

14. Nevertheless, Counsel for the Public and the Forest Society cite to RSA 162-H:14 to support their position. RSA 162-H:14 states that “[i]f the site evaluation committee, at any time while an application is before it, deems it to be in the public interest, it may temporarily suspend its deliberations and time frame established under RSA 162-H:7.” Use of the word “may” indicates that this section of the statute is permissive and falls within the discretion of the SEC, as long as a proponent of this section meets its burden of proving by a preponderance of the evidence that delay or suspension of a time frame under RSA 162-H:7 is in the public interest.

15. Here, the Forest Society and Counsel for the Public have failed to meet their burden of proving that it would be in the public interest for the SEC to adopt a procedural schedule that is contrary to RSA 162-H:7, VI-d. Their proposed schedules and corresponding motions presuppose that the SEC cannot evaluate this project within the statutory time frame. However, neither party has made an effort to comply with the time frame in the statute, despite the fact that Counsel for the Public was appointed on October 29, 2015 and the Forest Society has been involved in the present docket since October 29, 2015. Their arguments that the SEC cannot evaluate this application within 365 days rest on speculation alone. Absent more, Counsel for the Public and the Forest Society cannot demonstrate that it would be in the public interest to suspend the time frame under RSA 162-H:7, VI-d.

16. Counsel for the Public attempts to bolster its position by stating that “a not insubstantial number of members of the public have already expressed genuine concern about whether the existing process is fair, transparent and being conducted on a level playing field. In light of these expressed concerns, the public interest demands that the process not be conducted in an artificially compressed and hurried way” Counsel for the Public’s Mot., dated April 1, 2016, at 6. However, Counsel for the Public’s argument is misplaced. It bears noting that the Applicant does not seek expedited treatment of its application. Rather, as is evident from its proposed procedural schedule, the Applicant seeks evaluation of its application within the statutory time frame. Furthermore and as discussed above, the amendments to the statutory scheme were enacted to improve the SEC and ensure that the process is fair and transparent. This requires the parties, including Counsel for the Public, to abide by the statutory scheme as well as the administrative rules.

17. Moreover, it would be contrary to the public interest if the evaluation of this project is delayed as both the Forest Society and Counsel for the Public propose. The declared purpose of the RSA 162-H states, in part, that “it is in the public interest . . . that undue delay in the construction of new energy facilities be avoided. . . .” RSA 162-H:1. Despite this declared purpose, Counsel for the Public and the Forest Society seek to delay the evaluation of this project by roughly 6 months and 12 months, respectively. This delay is not a minimal amount of time but instead leads to undue delay in the construction of a new energy facility, which is contrary to the purpose of the statute.

18. Additionally, the Forest Society’s and Counsel for the Public’s positions, if accepted, would set a dangerous precedent for future applications before the SEC. As discussed above, the statute provides a guidepost by which an applicant, as well as other interested parties, can reasonably believe that an application will be evaluated. Accepting both the Forest Society’s and Counsel for the Public’s positions would lead to uncertainty with respect to future projects before the SEC, which is exactly what the Legislature sought to avoid by amending the statute and expanded the time frame by which an application would be evaluated. For these reasons, it is not in the public interest to extend the deadlines as Counsel for the Public and the Forest Society propose.

19. Finally, the IBEW and the New Hampshire workers represented by the IBEW have interests that would be adversely impacted by the delay proposed by Counsel for the Public and the Forest Society. As discussed in its petition to intervene, the IBEW represents roughly 3000 electrical workers in New Hampshire. This project is estimated to create a minimum of 2,600 new jobs, and to create new career opportunities for hundreds of young workers through apprenticeship training programs. Any delay to this project will also delay and put these job

creation and apprenticeship training opportunities at risk. This will deprive thousands of electrical workers of badly needed employment opportunities, while severely impacting those workers' earning potential. A delay will also deprive the New Hampshire economy of the positive impact of increased consumer spending and other major increased economic activity in addition to depriving an increase in the number of New Hampshire workers on state-funded assistance programs due to a lack of employment opportunities. This will further harm the growth of the energy industry in New Hampshire as a whole. The deprivation of such economic development opportunities has wide-reaching effects across the entire State of New Hampshire. As such, it is imperative that this application be evaluated in a timely manner, pursuant to the time frames imposed by the statute. Delaying the proceedings beyond the statutory time frame would be contrary to the public interest because such delay would deprive New Hampshire workers of employment opportunities, deprive the New Hampshire economy of an estimated \$2 billion increase in the state Gross Domestic Product, and stymie the growth the electrical infrastructure industry.

Conclusion

20. Based on the foregoing, the IBEW requests that the SEC deny Counsel for the Public and the Forest Society's respective motions to extend the deadlines. As set forth more fully above, their schedules are inconsistent with both the plain language of the statute and the legislative intent of Senate Bill 245. Furthermore, neither of these parties has met their burden of proving that expanding the time frame for evaluating this application beyond the 365-day time frame is in the public interest. As a result, the IBEW respectfully requests that the SEC reject Counsel for the Public's and the Forest Society's proposed procedural schedules and approve and adopt the Applicant's proposed schedule, which follows the plain language of the statute.

WHEREFORE, the IBEW respectfully requests that the New Hampshire Site Evaluation Committee:

- A. Deny Counsel for the Public's motion and reject its proposed procedural schedule;
- B. Deny the Forest Society's motion and rejected its proposed procedural schedule;
- C. Approve and adopt the Applicant's proposed procedural schedule; and
- D. Grant such other and further relief as may be just.

Respectfully submitted,
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

By Its Attorney,

Dated: 4/7/2016

By: _____

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Certificate of Service

I hereby certify that on this day the International Brotherhood of Electrical Workers' Consolidated Objection to Council for the Public and the Forest Society's Respective Proposed Procedural Schedules were sent to the New Hampshire Site Evaluation Committee and to persons named on the SEC distribution list by electronic mail.

Dated: 4/7/2016

By: _____

Alan Raff

attached EXHIBIT 1

SENATOR JEANIE FORRESTER

April 8, 2014

Dear Chairman Borden & Members of the Science, Technology and Energy Committee:

~~As you are aware, the Senate passed SB 245, relative to procedures and authority of the site evaluation committee. I believe New Hampshire citizens and energy developers deserve an energy facility siting process that serves them more effectively than the process currently in place under RSA 162-H.~~

In the coming years, the Site Evaluation Committee (SEC) will hear numerous complex proposals for energy facilities, each with its own specific impacts to our state's environment and quality of life. SB 245 presents a framework of reform that will help New Hampshire meet this challenge.

Last session the General Court enacted SB 99, mandating a stakeholder process to examine the Site Evaluation Committee (SEC) and the tools it has to serve the public and project developers as it goes about its work. That process, led by the Office of Energy and Planning, engaged the public, energy industry, state agencies, and the non-government organization community and culminated in a comprehensive report at the end of December, identifying a number of concerns about the structure of the SEC and how it functions and a number of potential solutions.

Many of the issues raised and solutions identified in the SB 99 report are addressed by SB 245, as amended, including four key reforms:

- **The amended bill mandates that the SEC make a finding that a proposed project serves the public interest, after considering all environmental, social, and economic impacts and benefits.** This is a workable, common-sense requirement that recognizes that, even in a restructured energy market, all major energy projects should provide a strong package of public benefits – whether for our natural resources, for ratepayers and businesses, for public health, or for the state's economy, or for all of the above – and that these benefits must be weighed against the projects' potential adverse impacts. Other states, including Maine and Vermont, have such a requirement, ensuring that the greater good of the state and its communities is weighed as part of every siting decision.
- **The amended bill reconstitutes the SEC with a more manageable, cost-effective panel that includes well qualified members from around the state, while ensuring appropriate input from state agencies.** The current structure and membership of the SEC is cumbersome and a burden to the 15 key state officials who presently serve, as well as to applicants and other participants trying to navigate through the process. The unreimbursed costs to the state and affected agencies of these officials' time is estimated to run to the

hundreds of thousands of dollars, and those costs will increase as additional project applications are filed in the coming years. Under the amended bill, the SEC will gain the time and expertise of members of the public with the experience and capacity to serve. At the same time, all of our state agencies will continue to play important roles as they will still be charged with providing input and expertise to SEC decision-makers, but without the awkward constraints and extraordinary time commitments that now apply.

- **The amended bill enhances public participation in the SEC process.** Under current law, the SEC must hold one public hearing in each county where the proposed project will be located. We do not feel that this requirement is adequate to ensure that the public is well-informed and engaged. The amended bill provides a logical schedule that ensures project developers inform the public of the details of a project both before and after a proposed project's voluminous application is filed at the SEC, providing a more meaningful opportunity for well-informed public comment on the specifics of an application at the public hearing and during the adjudicatory process.
- **The amended bill provides staff and financial resources for the SEC to do its job, funded by reasonable application fees and agency cost savings.** As demands on the SEC continue to grow in the coming years, it is unrealistic for the State of New Hampshire to expect important and long lasting energy siting decisions to be made rigorously and efficiently when the SEC itself has no permanent staff or financial resources to do its work. The amended bill authorizes the SEC to collect application fees and allows the reconstituted SEC to realize significant cost savings over the current structure. These resources will provide the technical and administrative foundation that the SEC desperately needs to make prompt, well-informed decisions, and to make sure that the conditions placed on permits are met and adequately enforced.

As energy markets change and mature, and as the market-based development of energy generation and transmission facilities provide the opportunity to meet our energy needs with innovative and cleaner resources, the process by which New Hampshire makes the critical decisions about the siting of such facilities must also change with the times. Public trust and confidence in the SEC and its decisions will be well served by adopting the reforms proposed in Senate Bill 245.

Sincerely,



Jeanie Forrester
Chairman, Senate Finance
NH State Senate
District 2
107 N Main Street
Room 105
Concord, NH 03301
271-4980

Chairman Borden, Members of the Committee, thank you for this opportunity to provide comments on the current version of SB 245 regarding proposed revisions to the NH Site Evaluation Committee.

My name is Lisa Linowes. I am a resident of the State of New Hampshire and also executive director of the Windaction Group, which reports on the impacts and costs of industrial-scale wind energy development. I've been active in the SEC process since 2006 as a full intervenor in four (4) separate dockets before the Committee. In addition, I provided expert testimony in a fifth, the Timber Top Wind jurisdictional hearing and I am currently representing an intervenor group before the Committee in the Groton Wind enforcement proceeding (Docket No. 2010-01). For the record, I am not an attorney.

I understand the SEC process fairly well. It is a complex process that clearly has its strengths but there are several weaknesses. I support SB 245 and I am grateful to the many people who have worked very hard to bring the bill to this point. I am sensitive to Senator Bradley's plea that we not make the perfect the enemy of the good. But, at the same time, there have been so few opportunities to make changes to RSA 162h throughout its long history. It is important that we do what we can to ensure we get the best bill as possible.

General Comments

There are two general points that I would like to make relative to the SEC that I am concerned have been confused over time. I believe they are important to articulate after hearing some of the comments and testimony the preceded mine.

1) The first pertains to the question of NEED. Prior to a few years ago, the Findings Section of RSA 162h (:16) required that the SEC make a determination as to whether the proposed facility met the present and future need for electricity.

Over the last few years, there's been a systematic effort to undermine the 'need' provision of the statute, and in the latest draft of SB245, 'need' has been eliminated altogether. I respectfully disagree with Commissioner Burack's comment that 'need' is an outdated term that dates back to regulated markets and the role of the PUC making a finding of need. There is nothing in RSA 162h that suggests that actions of the PUC determine outcomes of the SEC. The reality is that in a deregulated market where you have many independent, profit-driven companies seeking to build facilities to serve a regional energy market, the question of need is more important today than years ago.

Not all energy facilities are needed. And it would be inappropriate for the legislature to assume that all projects proposed were needed.

2) Second, It is important that this Statute, and hence the SEC, remain fuel neutral to the largest extent possible. I have heard more than once that the SEC must ensure that more renewable energy facilities are built and built expeditiously to satisfy RPS mandates. The actions of the SEC are not governed under RSA 362-F. It is not the role of the SEC to ensure there are sufficient *Renewable Energy Credits* (RECs) to satisfy the state's RPS obligations. RECs are not 'needed' in the sense used in RSA 162-H:1. Further, there is already provision under the RPS statute to address shortfalls.

Specific Comments regarding SB245

I have specific comments regarding SB 245 that follow in the order in which the amendments appear in the statute.

A. RSA 162-H:1 Declaration of Purpose (page 1)

1) In the existing statute, the Declaration of Purpose includes this phrase: "Accordingly, the legislature finds that it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire; that undue delay in the construction of needed facilities be avoided..."

In the latest version of the bill, the word 'new' has replaced 'need'. I ask that 'need' be added back.

In addition, I ask that the committee strike the phrase that reads "that undue delay in the construction of needed [new] facilities be avoided..." . I have seen this phrase used as a hammer to try and squash petitions and motions by parties to the SEC process -- on both sides. The law already provides time limits for when certain actions by the SEC must occur. The chair is fully capable of ensuring order and that these schedules are heeded.

B. RSA 162-H:3 Site Evaluation Committee (page 1)

1) The Committee size is much too large and difficult to manage. Given the ad hoc nature of the SEC and the full-time responsibilities of its members outside of the SEC, I have tremendous respect for job the committee has done. The hearings are mentally and physically demanding. There is no question there is a strain. This is the case for the larger committee as well as when a subcommittee of nine members is convened to hear a renewable energy application.

The idea of one-stop shopping, in concept, makes sense. Each member of the SEC represents substantial knowledge that they can bring to the table. However, in practice, their experience is not utilized at the level you might think. For one, they hold high level positions in their respective agencies and may only have a cursory knowledge of the laws and procedures in their particular area. Second, they are not permitted to speak with their reports who might be working on permits for the application before them. With the possible exception of the PUC members on the Committee who deal with energy issues, and the representative for historic resources, I have not seen where individuals seated on the Committee have been able to bring the type of expertise that, in concept, you might expect.

I would favor a much smaller dedicated board of 5 members were created, including the two members from the public.

2) If the bill remains as it is, I see no reason for all three PUC commissioners to serve on the SEC. Please bear in mind that if the full PUC is seated, it is my understanding that the PUC must also seat an engineer, which adds another voting person to the committee.

Also, if the committee makeup is to remain as written I would discourage the delegation of duties to subordinates in the agencies. Seating the committee in this ad hoc manner does not allow for institutional knowledge to develop which, I have found is essential in ensuring we have continuity in the reviews if similar applications. SB 99 and SB 281 (if passed) will help to resolve some of this, but having experienced committee members is critical. Also, the skills and professional abilities that helped the members rise to the level that they have in state government are exactly what is needed on the SEC. In the instances when subordinates were seated, it was apparent that the same level of skill was notably missing.

C. RSA 162-H:4 V Powers of the Committee (page 4)

I fully support the role of the administrator to ensure continuity of the SEC when the Committee is not in session. However, it is not clear why there would be a separate title for public hearing officer. These may

be different roles, but perhaps filled by the same person. The Committee during the last year has appointed its outside counsel, Mike Iacopino to serve as the public hearing officer, and it has worked very well.

I would ask that the statute allow for parties to request an appearance before the full Committee if, for some reason, they are dissatisfied with the decisions or actions of the Administrator.

D. RSA 162-H:7 Application for Certificate (page 4)

1) There are material amendments to RSA 162-H:7 but no consideration of the same for renewable energy projects (RSA 162-H:6-a). Is that intentional or an oversight?

For example, the timeframes are different under the amended RSA 162-H:7 and existing RSA 162-H:6-a as is the role of the Chairman in determining application completeness. Also, RSA 162-H:6-a mandates a subcommittee be seated but this not the case for other project types. It is important for RSA 162-H:7 and RSA 162-H:6-a to be consolidated into a one provision of the bill to ensure consistency across all project types.

2) The word 'preliminary' on line 17 must be better defined and made consistent across all agencies. This could be something that can be resolve through rulemaking.

3) There is no apparent opportunity for any parties to object to the finding of application completeness by the committee. This is something that could become an issue as public scrutiny of these matters grows.

4) I ask that the application requirements for making a completeness determination be expanded. RSA 162-h:7 IV and V establish the contents of an Application submitted to the SEC but the burden for meeting the 'completeness' determination is low. This may take care of itself under SB99 (together with SB 281) but SB245 may need more teeth. For example, no definitions are provided in either the Statute or the Committee's rules which explain specific studies to be conducted by the Applicant in order to demonstrate, the impact of the proposed facility on the environment. No requirements address standards for conducting appropriate post-construction surveys.

Clarifying language from the Legislature will ensure the Committee conducts a thorough review of what components the application should include.

5) I fully support extending the timeframe for a decision to 365 days as opposed to 9 months. This needs to be the same for renewable energy projects. RSA 162-H:6-a sets a different deadline and I can tell you that new renewable energy applications are very time consuming. It's not because of opposition. It is due to the nature of the review. Renewable energy projects are typically located in areas that are environmentally sensitive, they are usually large and sprawling in size and pose impacts that can be experienced from miles away.

Beyond the deadlines listed in this section of the bill, I would discourage the legislature from adding other hard limits (with one exception that I cover later). No application has to take 365 days and many are resolved in much shorter time frames. As with any legal process, parties need the time to examine the information, conduct discovery, work with expert witnesses, prepare testimony. All of this is done with little involvement of the Committee. I would like to see this process go faster but forcing deadlines through statute only interferes with due process and risks decisions being made without all of the evidence.

E. RSA 162-H:7-a Role of the Agencies (page 5)

Each agency should be granted automatic intervenor status. The addition of 162-H:7-a which defines the role of the state agencies is very important. It makes no sense that the agencies are not expert witnesses for the State and subject to cross-examination by the applicant and other parties to the proceeding.

This would take additional time for state employees but it would be well worth it in terms of transparency and developing public confidence in the process.

As it stands, no party is permitted ready access to state employees who oversee the permit applications of projects before the SEC. Unfortunately, we learned the hard way in the Groton Wind application that the applicant cannot be relied on provide an honest assessment of what the agencies are telling him. I am very confident that we would not have had the failures at the Groton Wind site had the agencies played a more active role in the SEC process.

F. RSA 162-H:9 Counsel for the Public

1) Although apparently unchanged, the legislature should consider expanding the role of Counsel for the Public (RSA 162-H:9) to look beyond "protect[ing] the quality of the environment and in seeking to assure an adequate supply of energy."

G. RSA 162-H:10 Public Hearing; Studies; Rules (page 6)

1) Information meetings should be required in the host communities. This section of the bill only requires meetings in the county or counties where the project will be built. Will RSA 162-H:15 Informational Meetings be repealed in light of the new Public Hearing; Information Sessions; Studies; Rules?

2) I recommend that paragraph V be amended to allow the Committee to consider studies offered by interveners and for intervenors to be consulted before studies are affirmed between the SEC and Counsel for the Public.

3) There is no mechanism for state agencies to recover funding for studies they may deem necessary to test claims by project proponents. Nor has the SEC required funding to cover post-construction studies. Given limited agency manpower, such funding should allow for outside resources to be hired to oversee any studies and report the results to the Committee and the public. In the alternative, the SEC rules could establish the required studies (pre-application, pre-construction, and post-construction) and require project proponents to fund all studies as part of the application process. The results of ALL studies for specific projects must be made public in their entirety.

4) All evidence made available to the SEC and Counsel for the Public should equally be available to parties to the proceeding. Should the information be deemed protected under RSA 91a, the SEC should follow the necessary procedures to ensure the information is protected but it cannot withhold this information from parties who agree to abide by the protective procedures.

H. RSA 162-H:12 Enforcement (page 8)

This is the one section of the law that I would encourage the Committee to consider adding a hard deadline to this section. A determination of any violation needs to be made before action by the Committee can be taken and such determination must be made within a reasonable time not to exceed 90 days.

I. RSA 162-H:16 Findings and Certificate Issuance (page 9)

The draft bill offers a single amendment to the Findings provision of the bill, that an application "...serve the public interest". While that sounds useful, it's a statement that belongs in the Declaration of Purpose with further definition needed under Findings. For example, the project will serve the public interest if it satisfied:

- a need for capacity to generate electricity,
- a need for a greater supply of electricity, and/or
- ~~the need for more economic, reliable, or otherwise improved sources of either capacity or energy."~~

The finding of need was removed from RSA 162h:16 not too long ago and I encourage the legislature to put it back in.

J. RSA 162-H:16 Fund Established (page 9)

My final general comment has to do with \$1 million to establish the Site Evaluation Fund. It's very apparent that this is an uncomfortable issue for many, but I would like to add a different, perspective that bears being said.

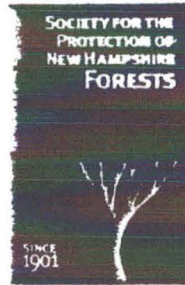
The legislature should recognize that there were (and will likely continue to be) fundamental problems with the RPS percentages that have resulted in significant overpayments to the fund. In 2011 and 2012 together, the fund collected over \$28 million in alternative compliance payments. Corrections were made but I think you will still see considerable excess payments for 2013 as well.

No one ever envisioned the renewable energy fund growing to the levels that it has.

We can debate whether the money was improperly allocated in the past to cover shortfalls in the general fund and we can debate if it is wrong to use the money to jump start the SEC fund. But the fact is, the ratepayers were overcharged. There is no mechanism to give the money back to the ratepayers but let's not tax the public more to fund the SEC. I would recommend making the transfer and not burdening the public further with repaying the fund back.

Thank you again for this opportunity. I am happy to answer any questions you might have.

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April 8, 2014

The Honorable David Borden, Chairman
House Science, Technology, and Energy Committee
Legislative Office Building, Room 304
Concord, NH 03301

Re: Senate Bill 245

Dear Chairman Borden and Members of the Committee:

Our organizations support Senate Bill 245. The bill provides meaningful reform of the state body that reviews proposals for new and modified energy facilities, the New Hampshire Site Evaluation Committee (SEC), and will help ensure that the SEC has the composition, authority, and resources to do its work and promote the public's interest in an efficient but rigorous permitting process. As the region's energy market undergoes a period of rapid transition and the number and complexity of energy proposals are increasing, a strong SEC is essential for New Hampshire to manage that transition, provide greater clarity to developers, address legitimate community concerns, and protect the state's treasured environment and natural resources.

The bill has a strong foundation in prior legislative efforts and the Senate Bill 99 stakeholder process that took place during the Fall of 2013. That process confirmed that many stakeholders shared the view that the status quo was unacceptable and that significant changes to the SEC were necessary. The final Senate Bill 99 report identified reforms with broad support, including making the SEC process more efficient and less cumbersome, increasing opportunities for public and community engagement before and during the process, and strengthening the SEC's authority to ensure that proposed projects benefit the public. Senate Bill 245, as passed by the Senate, includes statutory changes that will help achieve these objectives.

Our organizations played a significant role in working with Senators and other stakeholders to craft the bill before you. As with all major legislation reflecting consensus among diverse parties, the specific legislative language reflects a great deal of compromise on the part of all participants in the discussion, including our organizations. That said, the bill as passed by the Senate provides a reasonable and moderate set of reforms to the SEC's process and standards:

- The bill reduces the size of SEC from 15 to 9 members, including 7 state agency officials and two public members-at-large appointed by the Governor. This change in membership and the bill's authorizations for state agency members to delegate their duties to senior agency staff will allow for more orderly and timely consideration of energy proposals, while retaining state agency expertise on the SEC and adding the fresh, independent perspectives of two citizen members.
- The bill strengthens public participation by requiring project information sessions in host communities—both before and after a formal application for a project is submitted. This change will improve the public's ability to provide meaningful comments on an

application and should help developers understand and address any community concerns about a project early in the process.

- The bill provides initial funding for a professional staff and calls for a permanent funding plan to be developed and implemented during the next biennium, including development of a reasonable application fee. We strongly believe that the state gets what it pays for; for the SEC to function effectively and professionally, it needs the support of a dedicated staff and sufficient financial resources to do its work.
- Under the bill, all projects must be found to "serve the public interest." This is a crucial reform to ensure that the SEC looks rigorously at any public benefits of a project in the context of any adverse impacts on the state's resources.

Ultimately, the bill is designed to improve the SEC process for project applicants and for New Hampshire citizens. It makes fulfilling the public interest the paramount priority of the energy facility siting process. It makes the project review process more user friendly for the public. It reduces the burden on state agency heads. It provides financial resources for the SEC to conduct its work. And it retains the process's essential features: efficient one-stop shopping and a fair and rigorous adjudicative process.

We understand that this Committee will likely consider certain amendments to the bill, especially with respect to the provisions regarding funding. As Senator Bradley indicated during his presentation on April 1, funding is a subject on which total consensus and workable details were elusive within the timeframe of Senate discussions. Our organizations favor adding a provision to the bill that establishes the SEC's authority to recover state agency costs—including the value of the considerable time that agency members of the SEC spend reviewing applications and participating in hearings—from developers, at least during the interim period before a permanent funding plan and application fee is implemented. Our organizations also favor adding a requirement that the funding plan consider the potential for a state appropriation that could cover certain SEC costs, such as overhead and policy development, that may not be appropriate costs to recover through an application fee. There are also several technical improvements and corrections that could be made during the upcoming subcommittee review of the bill, and we would be happy to work with Committee members on such changes.

As energy markets change and mature, and as the market-based development of energy generation and transmission facilities provide the opportunity to meet our energy needs with innovative and cleaner resources, the process by which New Hampshire makes the critical decisions about the siting of such facilities must also change with the times. Public trust and confidence in the SEC and its decisions will be well served by adopting Senate Bill 245. Our organizations urge the Committee to recommend passage by the House.

Sincerely,

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