Richard M. Husband, Esquire
10 Mallard Court
Litchfield, NH 03052

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VIA E-MAIL (Pamela.Monroe@sec.nh.gov and rulemaking@sec.nh.gov)
Pamela G. Monroe, Administrator
N.H. Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: Rules Related to Certificates of Site and Facility, Site 300; Docket No. 2016-01

Dear Administrator Monroe:

This letter provides comments in response to the Site Evaluation Committee ("SEC")'s May 18, 2016 "Rulemaking Notice" ("Rulemaking Notice") concerning the above-referenced matter.

First of all, I want to commend the SEC for all of its hard, earnest efforts in developing the proposed rule amendments outlined in the Rulemaking Notice. Your work is a great public service.

However, I would urge some further amendments.

First, with respect to the comprehensive health impact assessment ("CHIA") required under proposed Site 301.08(c)(1), I urge the addition of the following language, in bold, to your proposed wording, to ensure that the SEC receives the most reliable, informative, health protective CHIA possible:

> "(c) For high pressure gas pipelines **and all associated facilities comprising its complete infrastructure, including, but not limited to, compressor stations, valve stations, metering stations and pigging stations (collectively, "high pressure gas pipeline infrastructure")**: (1) A comprehensive health impact assessment **("CHIA")** specifically designed to identify and evaluate potential human health impacts by identifying potential pathways for facility-related contaminants to harm human health, quantifying the cumulative risks posed by any contaminants, and recommending necessary avoidance, minimization, or mitigation. **The CHIA shall be paid for by the applicant but prepared by an independent, qualified person or firm with demonstrated knowledge and experience in similar CHIAs, which person or firm shall be selected by, and subject to the sole oversight of, a panel comprised of a duly designated member of the SEC and representatives of all municipalities reasonably likely to be impacted by the high pressure gas pipeline infrastructure, not the applicant. The CHIA shall specifically include short and long-term analyses of the health effects of all expected emissions and other releases from all proposed high pressure gas pipeline infrastructure during all construction, operational and decommissioning phases thereof, including, but not limited to, all health effects of emissions or other releases of those Regulated Toxic Air Pollutants listed in DES Env-A 1450.01 and its Table 1450-1, whether such emissions and other releases result from leaking, combustion, venting, blowdown events or otherwise. With regard to such analyses, the CHIA shall include a description of the modelling or other methodology used to derive the**

expected emissions and other releases and, where performance guarantees are available from equipment manufacturers, a description of the performance guarantees. The applicant shall provide all modeling, test results, guarantees, work papers and similar documents supporting the CHIA and its analyses. "

REASONS SUPPORTING AMENDMENTS:

As it now reads, proposed Site 301.08(c)(1) would not include CHIA analyses of the health effects of compressor stations and other related high pressure gas pipeline facilities comprising the complete high pressure gas pipeline infrastructure, such as valve stations, metering stations and pigging stations, as proposed Site 102.221 defines a "high pressure gas pipeline" to be just a "pipeline."[1] Today's high pressure gas pipelines do not transmit "natural" gas, but gas contaminated by the unnatural hydraulic fracturing process containing carcinogens and other hazardous chemicals, air pollutants, and other unhealthy impurities. *See*, *e.g.*, "California's Fracking Fluids: the Chemical Recipe," by Tasha Stoiber, et. al. (EWG; August 2015). Fracked gas releases resulting from pipeline leaks, compressor station and other infrastructure emissions, by combustion, venting or otherwise, cause health problems. *See*, *e.g.*, *id*., "Porter Ranch Gas Leak Triggers State of Emergency in California," January 7, 2016 CNN online news article; "Gas Compressors and Nose Bleeds: a New Study Connects Health Issues with Rural Gas Compressor Pollution," by Jessica Owen (Fall 2015)(concerning Minisink, New York study); "Potential Hazards of Air Pollutant Emissions from Unconventional Oil and Natural Gas Operations on the Respiratory Health of Children and Infants" by Ellen Webb, et. al. (2014; published in Reviews on Environmental Health, 2016); "Madison County, New York Department of Health Comments to the Federal Energy Regulatory Committee," prepared for Madison County Department of Health by Thimble Creek Research (September 30, 2014), pp. 14-28; "Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania," by Nadia Steinzor, et. al. (October 2012); "Human Health Impacts Associated with Chemicals and Pathways of Exposure from the Development of Shale Gas Plays," by Wilma Subra Subra Company (January 9, 2012). The short and long-term health effects of emissions and other high pressure gas pipeline infrastructure releases, particularly of Regulated Toxic Air Pollutants listed in DES Env-A 1450.01 and its Table 1450-1, whether resulting from the construction, operational or decommissioning phases, are obviously matters of great health concern and should be specifically included in the analyses required under any CHIA. The proposed amendments clarify that the CHIA should consider all such health effects of all such emissions and other releases caused by all proposed high pressure gas pipeline infrastructure, thereby ensuring its completeness and accuracy, such that the CHIA does not fail its essential important public purpose.

The requirement that CHIAs be "prepared by an independent, qualified person [or firm] with demonstrated knowledge and experience in similar [CHIAs]" is taken directly from the decommissioning plan requirements under proposed Site 301.08(c)(2), and is plainly an equally important requirement for CHIAs. To be credible and acceptable to impacted municipalities, all CHIAs should be free from any question of undue applicant influence, and subject to the voice of the municipalities. Such a voice would, ideally, include the oversight of representatives of all impacted municipalities, as well as the SEC; but, if the SEC deems this unwieldy or otherwise inappropriate, the relevant language could provide:

[1] It may be good to add a new definition for "high pressure gas pipeline infrastructure," as described within the proposed rule amendment, under Site 102, and change "high pressure gas pipeline" to "high pressure gas pipeline infrastructure," as appropriate, throughout the SEC rules, accordingly. Or, the definition of "high pressure gas pipeline" under proposed Site 102.221 could be revised to include all associated facilities comprising its complete infrastructure, including, but not limited to, all compressor stations, valve stations, metering stations and pigging stations.

"… which person or firm shall be selected by, and subject to the sole oversight of, the SEC or a subcommittee thereof giving due consideration to the input of representatives of the municipalities reasonably likely to be impacted by the high pressure gas pipeline infrastructure, not the applicant …"

Second, with respect to the decommissioning requirements under proposed Site 301.08(d)(2), I urge the addition of the following language, in bold, to your proposed wording, to ensure that the SEC receives the most reliable, informative, financially protective decommissioning plan possible:

> "(2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates, **which person or firm shall be selected by, and subject to the sole oversight of, a panel comprised of a duly designated member of the SEC and representatives of municipalities reasonably likely to be impacted by the facility (where applicable, to include all compressor stations and other associated facilities comprising the complete infrastructure of high pressure gas pipelines), not the applicant**; the decommissioning plan shall include each of the following:
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> a. A description of **all items to be decommissioned and the removal and disposal methods concerning each of the same, an environmental impact assessment of the effects of the decommissioning, a summary of interested and professional party consultations undertaken with respect to the decommissioning plan, proposed post-decommissioning monitoring, evaluation and compliance activities, the schedule and anticipated complete costs of decommissioning, and** sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials**, and supporting documentation respecting these items**;
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> b. The provision of **complete** financial assurance **that all decommissioning costs shall be met, with due regard to inflation and any other reasonably foreseeable potential increases in decommissioning costs,** in the form of an irrevocable standby letter of credit, **non-terminable** performance bond, **non-terminable** surety bond**, unconditionally payable escrow account or other surety of payment. The form and reliability of such surety must be established by the acceptable legal opinion of an attorney or law firm, chosen by the committee but paid for by the applicant, to not constitute property of the estate in any bankruptcy proceeding involving the facility owner, its parent company or successors, and to be otherwise available for decommissioning utilization under all reasonably foreseeable circumstances** …"

<u>REASONS SUPPORTING AMENDMENTS</u>:

Again, the decommissioning plan should be credible and acceptable to impacted municipalities, and therefore free from any question of undue applicant influence, and subject to the voice of such municipalities. Again, such a voice would, ideally, include the oversight of representatives of all impacted municipalities, as well as the SEC; but, if the SEC deems this unwieldy or otherwise inappropriate, the relevant language could provide:

"which person or firm shall be selected by, and subject to the sole oversight of, the SEC or a subcommittee thereof giving due consideration to the input of representatives of the municipalities reasonably likely to be impacted by the facility (where applicable, to include all compressor stations and other associated facilities comprising the complete infrastructure of high pressure gas pipelines), not the applicant …"

To ensure a comprehensive and complete decommissioning plan and therefore reasonable basis to determine likely decommissioning costs and the commensurate surety, its specific contents and requirements should be fleshed out as set forth in the proposed amendments above, with such reasonable proposed requirements being summarized from those provided in greater detail in a recent United Kingdom Department of Energy & Climate Change Decomissioning Program document.[2]

The proposed changes to the bonding or similar requirement attempts to better ensure complete, available decommissioning funds should the facility owner no longer exist at the time of decommissioning, be bankrupt or otherwise not financially capable of funding the decommissioning, or just be unwilling to pay, thus leaving the obligation and consequent debt to the impacted municipalities and/or the State Obviously, any accurate estimate of the costs of decommissioning must include regard for inflation and any other reasonably foreseeable increases in decommissioning expenses.

Normally, bonds should be non-terminable, with clear language pertaining to the same, to prevent their cancellation by bonding companies at the hint of applicant financial troubles or a potential bankruptcy. *See, e.g.*, The Impact of Bankruptcy on Terminating Surety and Fidelity Bonds, printed in the American Bankruptcy Institute Journal, Vol. XXVII (No. 8)(October 2008)("Sureties believe that their risk of exposure significantly increases when a principal becomes insolvent or files for bankruptcy protection. As a result, sureties often seek to terminate their surety or fidelity obligations upon the principal's insolvency or bankruptcy."). However, terminable bonds may become property of the facility owner's bankruptcy estate. *See*, *e.g.*, "Bankruptcy and the Competing Surety," by Patrick J. O'Connor, Jr., Esquire and Kim McNaughton, Liberty Mutual Surety (2009), p. 5 ("unfortunate circumstances can be avoided if the contract is fully terminated prior to the bankruptcy filing. A fully terminated contract has no value to the debtor and, accordingly, does not become property of the estate."); but *compare* "United States: Bankruptcy and Construction Projects: What you Need to Know," by Ralf R. Rodriguez, Esquire (last updated December 19, 2008)("Payment and performance bond claims are not treated as part of the bankruptcy estate proceedings …"). Thus, the legal opinion of an attorney or law firm chosen by the SEC confirming that whatever form of surety is used will not be treated as property of any bankruptcy estate of the facility owner, and will be otherwise available to utilize for decommissioning utilization under all reasonably foreseeable circumstances, is essential.[3]

I removed the current option for surety in the form of "unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating," as such surety may, likewise, mean nothing in the event of a bankruptcy (or just termination, or possibly merger or other change, of the parent company).

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[2] I could not find a United States counterpart to this document but, again, the British criteria are very reasonable and make a lot of sense.

[3] I have found no relevant information on the treatment of irrevocable standby letters of credit in bankruptcy; but, again, the potential use of the same, like any form of surety, should be subject to an acceptable legal opinion confirming its reliability and availability for decommissioning as a condition of any SEC certification of a project.

Third, with respect to the application requirement under current Site 301.10, I urge the addition of the following subsection (j):

> "(j) there shall be no recognized 'pre-filings,' of applications or otherwise. No docket shall be established for a potential energy project until a formal application has been submitted for consideration as such, and materials not submitted as part of a formal application, or subsequent thereto in relation to a formal application, shall be returned to the submitter or destroyed by the committee, at its discretion."

REASONS SUPPORTING AMENDMENTS:

There should be no "pre-filing" submissions accepted by the SEC as they are not contemplated by the rules, are very confusing to potentially impacted municipalities, citizens and others stakeholders, and result in the unnecessary expenditure of time, monies (for legal fees and other consequent costs) and other resources pertaining to trying to discern their possible effects and safeguard against the same. There were, for example, a number of ultimately pointless (but completely understandable) municipal pleading filings in SEC Docket No. 2015-08 due to "pre-filed" application documents, and citizens were generally befuddled throughout its "pendency" as to the purpose and any significance of the "proceedings," particularly as they may have impacted any 401 Water Quality Certificate application response deadline and the triggering of any other potentially applicable deadlines (including those of the SEC itself). By clouding applicable federal deadlines, such accepted filings may result in adverse legal decisions to the SEC and other state agencies pertaining to the same.

For example, the governing federal water quality certification statute provides:

> "If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) ***after receipt*** of such request, the certification requirements of this subsection shall be waived with respect to such Federal application."

See Section 404 of the Clean Water Act (Section 401 Certification)(emphasis added). Although my understanding is that the SEC and Department of Environmental Services did not consider the December 2015 "pre-filing" of the 401 Water Quality Certificate application relative to SEC Docket No. 2015-08 to trigger the running of the one-year response deadline under the federal statute, the Federal Energy Regulatory Commission and/or the courts could certainly consider its acceptance and/or filing to be "receipt" of the application under the statute. While the certificate was filed by letter stating that it was "understood" the certificate application would not be "reviewed" until after the SEC application had been filed, *see* December 28, 2015 filing letter, this would not preclude the argument that the one-year clock had nonetheless started running upon the "receipt" by acceptance and/or filing. There is no good reason to allow for such ambiguities and arguments that could be extremely detrimental to the State and citizens' rights.

Finally, I would urge the following addition, as subsection (j), to current Site 301.17:

> "(j) Every certificate holder pertaining to a high pressure natural gas pipeline, compressor station and/or their related facilities andinfrastructure shall be required to file an annual statement with the committee of the amount of gas that is lost or unaccounted for. Upon notice from the committee that the twelve-month rolling average of gas unaccounted for by the certificate holder appears to exceed the national average, as estimated by the Environmental Protection Agency, and if upon examination the committee determines that the actual amount unaccounted for does actually exceed such estimate, such certificate holder shall, within ninety (90) days of such determination, state in writing its plans for reducing this unaccounted for gas, and shall file a report every three (3) months thereafter of its progress in reducing that unaccounted for gas until the committee, by further Order, dispenses with this reporting requirement. Failure to reduce unaccounted for gas within three reporting periods shall constitute a violation under Site 302.01."

REASONS SUPPORTING AMENDMENTS:

The language of this proposed amendment mirrors similar language in Vermont's siting rules. *See* Vermont Public Service Board Rule 6.162. Particularly as health, safety and global warming concerns are involved, it is more than reasonable to hold gas energy facility certificate holders to the national average for leakage—especially as new and improved technology should make it very easy to satisfy such a minimum requirement.

Very truly yours,

By: //s// Richard Husband
Richard M. Husband
Tel. No. (603)883-1218