



The State of New Hampshire  
**Department of Environmental Services**



**Thomas S. Burack, Commissioner**

March 20, 2013

The Honorable Russell Prescott, Chairman  
Senate Energy and Natural Resources Committee  
Legislative Office Building, Room 304  
Concord, NH 03301

**RE: SB 99 An act relative to the acceptance of applications for new electric energy generating facilities or elective electric transmission facilities**

Dear Chairman Prescott and Members of the Committee:

Thank you for the opportunity to comment on SB 99 which would amend RSA 162-H, Energy Facility Evaluation, Siting, Construction and Operation. Pursuant to RSA 162-H:3, the Commissioner of the Department of Environmental Services serves as the statutory Chairperson of the Site Evaluation Committee (Committee or SEC). I offer the following thoughts regarding proposed amendment number 20013-1038s to SB 99:

With respect to Section 1, "Moratorium," please understand that the Site Evaluation Committee (SEC) has not requested a moratorium and that the SEC takes no position on whether a moratorium should or should not be enacted. Nevertheless, there are numerous technical and policy considerations that should be weighed when assessing the potential implementation and consequences of such an approach. From a technical standpoint, if the moratorium language were to be enacted, it would be essential that a statutory definition of the term "elective electric transmission facilities" be included, as well as a clarification as to whether a moratorium would apply to electric "reliability projects" as that term is used and applied by ISO-NE (the Independent System Operator for New England), and what impact the moratorium would have on projects pending before the SEC or previously issued certificates by the SEC. These issues are significant because there currently are a number of electric transmission projects that are under consideration or in the planning phases in New Hampshire. From a policy perspective, there are numerous potential unintended consequences to consider. First, a moratorium has the potential to create substantial uncertainty and unpredictability for all interested parties including members of the public, the regulated industry and local communities, and to disrupt parties' expectations of the orderly work of the SEC in accordance with the SEC's statutory purpose set out in RSA 162-H. In addition, such a measure could result in litigation regarding parties' rights, and could also result in the near-term filing of applications in anticipation of a moratorium. Moreover, regulatory uncertainty can result in energy market instability and price volatility.

With respect to Section 2, "Study and Report," please understand that the SEC does not have any paid staff (whether full-time or part-time), or any budget. Accordingly any effort to undertake such a study would require that funding be provided from some other source.

During the 2013 legislative session, the SEC process has been the subject of at least 7 House Bills that have already been heard and considered by the House Science, Technology and Energy (STE) Committee. All seven of these House Bills have been retained by the STE committee for further study. In fact, I appeared before the STE Subcommittee of the Whole on March 7 to assist with these efforts and I have committed to assisting with the review process as it moves forward. Such a process would be able to comprehensively review and understand all aspects of RSA 162-H and the role of the Committee in the siting determination process. With that understanding in mind, it may be easier to posit reforms that would not have unintended consequences and that would have the potential for improving the current review process. In addition, I would be pleased to work with your committee to arrange for a comprehensive briefing for interested legislators on RSA 162-H and the work of the Site Evaluation Committee. Based on such a briefing, your committee could determine what further steps may be appropriate.

In summary, the SEC is fully able at the current time and into the future to continue to perform its functions and to ensure that due process is provided in all matters in accordance with the purposes of RSA 162-H while at the same time the legislature undertakes a determination of whether there are new, better or different ways for the state to carry out these vital responsibilities.

Thank you for allowing me the opportunity to provide these thoughts. If you have any questions or require additional information, please contact me at 271-2958 or [Thomas.burack@des.nh.gov](mailto:Thomas.burack@des.nh.gov).

Sincerely,

A handwritten signature in dark ink that reads "Thomas S. Burack". The signature is written in a cursive style with a large, stylized initial "T".

Thomas S. Burack  
Commissioner

cc: Sponsors of SB 99