



March 12, 2014

Re: SB 245, relative to the siting of energy facilities; Issues relating to the structure of the Site Evaluation Committee

The Honorable State Senate  
State House  
Concord, NH 03301

Dear Senators:

We write in our respective capacities as the Chairman and the Vice Chairman of the Site Evaluation Committee established pursuant to RSA 162-H to provide background information that we believe will be helpful to your consideration of SB 245, relative to the siting of energy facilities. We are responsible under RSA 162-H for the administration of the review process for the siting of energy facilities in New Hampshire, and we are seeing rapid changes in the energy field that will place unprecedented levels of burden on the SEC that it is not equipped to handle. We believe it is vital that the State be proactive in making changes to a very important process.

### **Rapid Changes in the Energy Field**

The energy field is evolving rapidly due to a variety of factors, all of which, in combination, are expected to drive major change and require government review and oversight. These factors include, among others, reducing dependence on fuel or energy supplies that are subject to disruption due to global markets through the development of diversified energy sources, increasing access to domestic natural gas (principally shale gas) through expanded pipeline infrastructure, and reducing carbon dioxide (CO<sub>2</sub>) and other heat-trapping gas emissions through expansion of renewable energy.

Accordingly, within the next 5-10 years in New Hampshire and across the New England region, we can reasonably expect proposals for the following types of facilities among others:

- Natural gas pipelines
- Electric transmission lines
- Wind energy facilities
- Liquefied natural gas (LNG) facilities
- Propane, LNG or other fuel storage facilities
- Biomass-based energy facilities

- Solar powered facilities
- Other new technologies currently under development

### **Background on the Site Evaluation Committee**

It is an exciting and dynamic time in the energy field, but the regulatory structure is struggling to keep pace. RSA 162-H, entitled, “Energy Facility Evaluation, Siting, Construction and Operation,” has statutory roots dating back to 1974, and has been modified over the years to ensure state-level review of, and decisions on, the siting of a wide range of energy facilities, including pipelines, transmission lines, and electric energy generators. It relies upon an ad hoc committee, known as the Site Evaluation Committee or SEC, consisting of 15 high-ranking state agency officials, who come together when a new facility is proposed to serve essentially as a state-level planning and zoning board. The SEC has no budget and no staff, but instead for each separate matter must hire legal counsel and secretarial support that are paid for by the applicants, while the agencies participating on SEC panels must absorb their respective costs of participation within their already strained budgets.

For years there were relatively few cases – a single matter every year or two, and they tended to be resolved relatively quickly. Recent experience, however, demonstrates that we can now expect to see many more cases, most of which are vastly more complex and require tremendous time to adjudicate them fairly. As depicted on the attached graph, the SEC had never seen more than 2 matters filed in a given year from 1984 through 2007, but currently has 4 open matters including a rulemaking process, and we have a reasonable expectation of receiving as many as 5-10 more over the course of the next 1-24 months, including as many as 6 before the end of 2014.

### **Why SEC matters are Time-Consuming**

SEC matters are addressed in quasi-judicial proceedings that have many of the due process requirements of a trial or other court proceeding, making for a thorough but time consuming process. For example, consideration of an application for the siting of a wind energy facility typically consumes 20-25 days of committee time – full days that are spent by the committee members reviewing pleadings and application materials, conducting site visits, attending public hearings (typically in the evenings), participating in adjudicative hearings involving witness testimony, cross-examination by intervenors and questioning by the committee, deliberating in public session, reviewing and approving draft decision documents, and hearing and deliberating on motions for reconsideration. While some matters that involve modifications to existing facilities or requests for exemption from the SEC process may require only 1-5 days of committee time, other large matters such as the siting of a long-distance transmission line or natural gas pipeline, or construction of a new electrical generating plant could require 40-60 days of committee time.

Based on currently known projects, all of which are matters of public record, SEC members will likely be called upon to spend 75-100 or more work days over the next 12-24 months to address the caseload, and there are numerous additional projects in the development stage that may be brought forward as well. There are 250 work days in the average year so even 100 days spent on

SEC matters is the equivalent of some 5 months of time that can't be spent on the SEC member's primary job responsibilities in their own agency. Effectively these state officials are performing two jobs simultaneously and, while none of us shies away from hard work and extra hours, this approach is not sustainable given the volume of SEC cases on the immediate and longer-term horizon.

### **Ensuring a Timely, Efficient and Cost-Effective Structure for the SEC**

For all of these reasons we have been supportive of the general goals of SB 245 to restructure the Site Evaluation Committee to ensure that it will have the staff and membership necessary to carry out its statutory duties in a timely, efficient and cost-effective manner, in a way that ensures the long-term financial sustainability of the SEC, and in a manner that does not require state officials to have to set aside their agency duties to address energy facility cases. Moreover, state officials who serve on the SEC must stay out of meetings with applicants seeking underlying permits or agreements with their own departments in order to avoid participating in *ex parte* communications with applicants. If these officials were no longer required to sit on SEC panels, they could meet with the parties to address permitting or other issues of concern to their agency prior to the filing of a full project application with the SEC.

As currently drafted, SB 245 would replace the existing 15 member SEC with an independent committee of 7 members nominated by the Governor subject to approval by the Executive Council. While it is critical that this type of panel include qualified members who are free from real or perceived conflicts of interest, this approach could ensure that cases are dealt with expeditiously, and would also have the benefit of being a less costly approach, as the members would be paid on a per diem basis for the days they serve. Our calculations show that the true cost (including legal counsel and other support staff) of a day's proceedings in which all 15 SEC members participate is over \$14,000. When a subcommittee is authorized, the true cost is approximately \$11,500 per day. We calculate that the daily cost (including staff) under the independent SEC model would be under \$8,000 per day. Other means of staffing SEC panels could also be developed, including some form of hybrid between the existing structure and an independent body, although the costs of using state agency personnel for such panels would likely be higher than the cost of appointing independent members who are compensated on a per diem basis.

Regardless of how the SEC membership is ultimately structured under this legislation, it is vital to understand that the true costs of the current system are not readily seen because no one (including the applicant) is invoiced for the charges (and there are no application fees assessed), and that funds budgeted for agency personnel are being used to support the extensive workload of the SEC without any recovery of those costs from the applicants. Under SB 245 as currently drafted applicants would pay an application fee and facilities that fall under the SEC's jurisdiction would pay an annual operating fee to ensure the immediate availability of the SEC to address their certification needs and to fund the on-going oversight of facilities' compliance with the terms of their certificates.

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## Conclusion

We trust that this information will be helpful to you as you consider SB 245. As we have noted in our prior letters on this topic to the Senate Energy and Natural Resources Committee and the bill's sponsor, we are not writing on behalf of the full SEC membership, as the SEC has not had an opportunity to call a public meeting for purposes of holding discussions or deliberations regarding this legislation. Moreover, although we are pleased at the general direction of this legislation, in light of the quasi-judicial roles that we must fulfill under the existing law, we are not able to endorse specific elements of the bill, and we have endeavored to refrain from participating in discussions regarding potential changes to legal standards under the law other than to ask questions seeking clarifications. Based upon our involvement with this legislation to date, we recognize that there are further drafting matters that could improve on the terms of SB 245 and we are prepared to work with legislators and stakeholders to assist in further refining the language and reaching common ground. In light of the rapid changes occurring in the energy field and New Hampshire's need to ensure that it has the best possible energy facility siting process for years to come, this is work that we urge the legislature to complete this year.

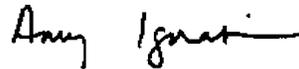
Should you have questions or need additional information, please contact Tom Burack at 271-2958 or [thomas.burack@des.nh.gov](mailto:thomas.burack@des.nh.gov), or Amy Ignatius at 271-2442 or [amy.ignatius@puc.nh.gov](mailto:amy.ignatius@puc.nh.gov).

Sincerely,



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Thomas S. Burack, Chairman  
Site Evaluation Committee,  
and Commissioner,  
Department of Environmental Services



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Amy Ignatius, Vice Chairman  
Site Evaluation Committee,  
and Chairman,  
Public Utilities Commission

Attachment