

To: Meredith Hatfield, Director, Office of Energy and Planning
Jonathan Raab, Raab Associates Ltd.

From: Appalachian Mountain Club, Audubon Society of New Hampshire, Conservation Law Foundation, EDP Renewables, Eolian Renewable Energy, Iberdrola Renewables, New Hampshire Sierra Club, New England Clean Energy Council, New Hampshire Sustainable Energy Association, Renewable Energy New England, Society for the Protection of New Hampshire Forests, The Nature Conservancy New Hampshire, and Wagner Forest Management

Re: *Ad hoc group recommendations relating to Senate Bill 99 study and rule-making*

Date: December 18, 2013

The individuals and organizations (the “Group”) above have been meeting on an ad hoc basis during the fall of 2013 to discuss the range of issues set forth in SB 99, with a specific focus on wind energy projects. The Group convened to discuss these issues because of a shared interest in the development of appropriately sited terrestrial wind power in New Hampshire that balances the need for new renewable energy with the conservation of significant natural and cultural values of the state’s landscape. The Group believes that the SEC siting process for wind and other energy projects can be improved.

This document recommends changes to improve the SEC process, and to bring needed clarity to the project application process. However, the recommendations below are by no means comprehensive, and many significant aspects of energy siting and SEC process are not addressed. Our group intends to continue our discussions on other issues set forth in SB99.

1. Reduce the Size of the SEC

The Group agreed that the size of the SEC should be reduced from its current 15 members, or 9 members for the renewable energy project subcommittee. There was general agreement that the appropriate range is 3 to 7 members. The Group was in agreement that the current size and membership is inefficient and a drain on the individuals involved, uses a lot of state resources in an already under-resourced agency environment, creates scheduling difficulties which slow the decision-making process, and raises concerns when all committee members cannot be present at hearings. Finally, to promote consistency in decision-making, the Group also recommends limiting the ability of SEC members to designate substitutes routinely, except in circumstances involving legal conflict.

The recommended change in membership should not be interpreted to mean that the state agencies removed from the SEC would no longer play an important role in the siting process. State agency officials are tasked with protecting the resources that they manage and are experts in their particular area and need to play an important role in the SEC’s adjudicative process.

2. Establish Professional Staff & Funding

The Group agreed that a professional staff, such as a hearing examiner and/or staff attorney, as well as other professionals with specific subject matter expertise, is needed. This Staff would be able to support the SEC in the adjudicative process and in post-permit oversight and monitoring. A permanent professional staff could assist the SEC in mediating and resolving conflict, clarifying and consolidating issues to be finally addressed by the Committee members, and reducing the amount of time, effort, and energy required for adjudication.

To support this professional staff, the Group recognizes that a revamped application fee-based funding structure, as well as general fund appropriations, will be required. Such a structure would permit the SEC to operate more consistently and without wholesale reliance on intermittent large projects and contract professionals, and would also provide more certainty to developers regarding the costs associated with an SEC application. Finally, the Group recognizes the critical importance to the State of the decisions rendered by the SEC, and believes that general fund support for the SEC in whatever form is an appropriate investment of state resources.

The Group discussed administratively attaching or housing the SEC staff within another state agency. One consideration discussed was the ability of the SEC to share resources with another agency in order to economize and maximize the staff available to the SEC during busy periods.

3. Better Define the Role of Public Counsel

The Group agreed that the role of Counsel for the Public should be better defined, including specific legal obligations, accountability, and transparency.

4. Define Required Elements of SEC Energy Project Applications

The Group agrees that, although the current SEC statute and regulations specify some requirements for SEC energy project applications, the process would benefit from greater specificity regarding required elements of applications. The purposes of better defining standard application elements are to improve the consistency of the studies and other materials provided to the SEC, to reduce disputes over the sufficiency of developer filings, and to enhance the SEC's ability to reach informed judgments in applying the statutory siting criteria.

The Group agrees that the SEC regulations should specify, as further defined in the rulemaking process, that applications should include:

- A Visual Impact Assessment (VIA), prepared in accordance with professional standards, that identifies the project's impacts on viewpoints within a certain geographic area around the project;
- Documentation (including, as appropriate, technical reports or surveys), developed in consultation with state resource agencies, addressing impacts with respect to wildlife species and the habitats on which they depend, rare plants, rare and exemplary natural communities; and,

- For wind energy projects, documentation (including, as appropriate, technical reports or surveys) addressing concerns such as shadow flicker, ice throw, noise, and air quality.

The Group believes that, through the rulemaking process, additional application elements could be productively defined with respect to other certification and siting criteria set forth in RSA 162-H:16, such as historic sites and orderly development of the region.

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