



Representative Richard Barry, Chair

House Science, Technology, and Energy Committee

LOB 305

Concord, NH 03301

February 1, 2017

Re: HB 462, relative to rules of the site evaluation committee

Chairman Barry and members of the Committee:

We are writing to express our strong opposition to HB 462, relative to rules of the site evaluation committee. As organizations who invested significant time and resources into the development and passage of SB 99 in 2013 and the subsequent public stakeholder and rule-making processes mandated by the legislation, we are concerned that this bill seeks to undermine both the stakeholder and JLCAR processes that developed these rules.

In 2013, the Legislature passed SB 99, which mandated that the SEC develop rules to more clearly articulate the criteria it would use to make findings regarding the siting of **all covered energy facilities**. After a lengthy public process, JLCAR considered the proposed rules in the fall of 2015 and made a Preliminary Objection which was not related to the issues called out in HB 462. The SEC then made revisions to address JLCAR's objections and the rules were subsequently approved by JLCAR and adopted by the SEC in December 2015.

If any claim was to be made about the SEC exceeding its statutory authority regarding the issues HB 462 addresses, surely such a claim could and should have been raised and considered during this JLCAR

process. Thus, not only does HB 462 raise specious objections, but its sponsors are untimely in making their argument.

The bill language alleges that the SEC exceeded its statutory authority during the rule-making process mandated by SB 99, now found at RSA 162-H:10, VII:

162-H:10 Public Hearing; Studies; Rules. – VI. *The site evaluation committee shall issue such rules to administer this chapter, pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required.*

VII. *As soon as practicable but no later than November 1, 2015, the committee shall adopt rules, pursuant to RSA 541-A, relative to the organization, practices, and procedures of the committee and criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV have been met by the applicant for a certificate of site and facility.*

This language is unambiguous: it requires the SEC to develop rules “for the siting of energy facilities,” not just some subset of energy facilities. And the language of RSA 162-H:16, I-IV is similarly unambiguous in the breadth of concerns the SEC is mandated to consider when making its determination about whether to issue a certificate of site and facility:

162-H:16 Findings and Certificate Issuance. –

I. *The committee shall incorporate in any certificate such terms and conditions as may be specified to the committee by any of the state agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate under this chapter if any of the state agencies denies authorization for the proposed activity over which it has permitting or other regulatory authority. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency.*

II. *Any certificate issued by the site evaluation committee shall be based on the record. The decision to issue a certificate in its final form or to deny an application once it has been accepted shall be made by a majority of the full membership. A certificate shall be conclusive on all questions of siting, land use, air and water quality.*

III. *The committee may consult with interested regional agencies and agencies of border states in the consideration of certificates.*

IV. *After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if issuance of a certificate will serve the objectives of this chapter. In order to issue a certificate, the committee shall find that:*

(a) The applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.

(b) The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.

(c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic

sites, air and water quality, the natural environment, and public health and safety.

(d) [Repealed.]

(e) Issuance of a certificate will serve the public interest. (Emphasis added)

The argument that the SEC exceeded its statutory authority has no basis in legislative history, nor in the plain language of RSA 162:H. The specific issues HB 462 seeks to address as exceeding the SEC's statutory authority clearly fall within what the SEC is required to consider under (c) above for any proposed energy facility.

We feel strongly that the SEC and the public deserve to have complete information on a project in order to make sound decisions. Throughout the legislative, stakeholder, and JLCAR processes, energy project developers agreed that any application to the SEC should contain relevant and complete information to ensure the SEC's decision-making is based on the full facts. We believe HB 462 would limit the type and extent of relevant information that the public and the SEC need to make informed decisions about large energy projects.

We strongly urge the Committee to recommend HB 462 Inexpedient to Legislate. Thank you for your consideration.

Sincerely,

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