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March 7, 2023

The Honorable Michael Vose, Chairman
Committee on Science, Technology and Energy
New Hampshire House of Representatives
Legislative Office Building, Room 304
Concord, NH 03301

Dear Chairman Vose and Members of the Committee:

Thank you for this opportunity to express the Forest Society's opposition to HB 609-legislation to replace New Hampshire's Site Evaluation Committee. While a periodic review of the regulatory law and rules can be appropriate, we do not believe the current SEC process requires the major overhaul envisioned in the bill. Because these proposed changes will undo the carefully crafted changes to the SEC 's laws and rules that came out of the broad stakeholder process in 2014 and 2015, we would ask the Committee to find HB 609 Inexpedient to Legislate.

We do not disagree that the permitting process should provide a predictable and not overly cumbersome process for meeting our energy infrastructure needs. However, it also must safeguard our state's important natural, community and cultural values. Those values are, after all, essential to the foundation of New Hampshire's economy and overall quality of life.

Unfortunately, we are concerned HB 609 does not meet that second purpose and therefore drives our two fundamental concerns with the bill. First, public participation and engagement in the decision-making is critical; it increases the public's trust in the integrity of the process and confidence that the outcome was reached fairly and objectively. Furthermore, public involvement that occurs prior to and during the process of developing the site plan can create trust in the decision-making process. Regulatory policies should promote this kind of outreach.

The bill would limit the public's ability to fully participate in the siting process bill. These specific points are driving our concerns on this topic:

- It eliminates public members from the body that decides whether to grant a certificate of site and facility. Including a public member on the SEC was one of the key improvements to the SEC process in 2014.
- It eliminates the requirement in current law that the Attorney General "shall" appoint a Public Counsel to fully participate in the administrative proceeding conducted by the PUC to review an application. The current law's Public Counsel provision is intended to provide an opportunity for the application before the SEC to be independently tested and probed by an agent whose only client is the public interest. This role is critical to maintaining public trust in the decision-making process.
- It eliminates appeal rights of public interveners by removing section RSA 162-H:4 V from current law. That section states "Undisputed petitions for intervention may be decided by the hearing officer and disputed petitions shall be decided by the presiding officer. Any party aggrieved by a decision

on a petition to intervene may within 10 calendar days request that the committee review such decision." We are unclear how HB 609 if passed would govern public intervention in the process.

- The public notification is inadequate. The bill only requires notice to the governing body of an affected municipality but it does not require an applicant to notify abutters and other impacted groups.

Second, critics of the current SEC believe its structure results in a lack of the expertise or continuity in institutional experience necessary to appropriately adjudicate an energy facility proposal. We disagree. The review of any large-scale energy facility involves the consideration of impacts to natural resources, historic sites, aesthetics, the economy and municipal planning. Accurately determining what those effects may be requires expertise in all those areas. That is precisely what the SEC provides.

The current SEC structure, which includes representatives from the Public Utilities Commission, Department of Transportation, Department of Natural and Cultural Resources, Department of Business and Economic Affairs and the public members, already provides the expertise and insight needed to make an appropriate decision on a project application.

This inclusive membership helps the SEC determine whether site and facility is in public interest and would not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.

In addition to those concerns, we oppose the proposed change to RSA 363 D:6, IX. This section would give an applicant veto power over the PUC's discretion to extend the length of the proceeding. While we understand that applicants prefer to know with certainty how long the regulatory process will take, legitimate reasons do occur that necessitate the need for a proceeding to be extended by the administrative entity empowered to conduct the proceeding. Providing the applicant the final discretion to determine how long the process will last tips the balance 162-H is striving to achieve.

In closing, in 2014 the Legislature approved legislation that reformed the SEC by adding two public members to the panel and by requiring more public participation in the decision-making process. The SEC subsequently amended its rules in 2015 that better defined what kind of information would be required in the application and provided clearer guidance on what factors must be considered in reaching a decision. We are concerned HB 609 moves the regulatory process away from the public engagement goal incorporated in 2014 and will constrain the ability of towns, landowners and other organizations to have a voice in the permitting of energy facilities in their communities. In short, public engagement should be the bedrock for New Hampshire's energy facilities siting law.

We would ask the Committee to find HB 609 as Inexpedient to Legislate. Thank you for considering this testimony.

Sincerely,

Matt Leahy, Public Policy Director
Society for the Protection of New Hampshire Forests