January 18, 2022

Chairman Michael Vose
House Science, Technology and Energy Committee
Legislative Office Building Room 304
Concord, NH 03301

RE: HB 1611, relative to rules of the site evaluation committee

Dear Chairman Vose and members of the Committee:

The Appalachian Mountain Club, Society for the Protection of New Hampshire Forests, NH Audubon, and The Nature Conservancy in New Hampshire present this joint testimony on HB 1611, "An act relative to the rules of the site evaluation committee". We oppose this legislation and urge you to find it Inexpedient to Legislate. We believe that it serves no legitimate purpose and is based on a faulty understanding of the Site Evaluation Committee's (SEC) authority.

Our organizations have a long history of interest and involvement in issues of energy facility siting in the state. We were actively (and often jointly) engaged in the extensive recent legislative and regulatory process that updated the SEC's structure, process, and rules. The process began with SB 99 in 2013, continued with several subsequent pieces of legislation in 2014 (SB 245, HB 1602, and SB 281), and culminated in the adoption of updated SEC rules in 2015. The process included two extensive information gathering and public engagement efforts facilitated by outside consultants, as well as stakeholder working groups that provided guidance on specific topics. Detailed information on this process is available at SB99 Pre-Rulemaking | Energy Division | NH Office of Strategic Initiatives. https://www.nh.gov/osi/energy/programs/sb99pre-rulemaking.htm

It is important to understand that the current SEC rules were developed after an exhaustive effort involving state agencies, outside experts, a wide range of stakeholder groups, and numerous members of the public who volunteered their time to help improve the rules. Legislation that alters these rules should be made with caution and only to address a clearly identified need. The proposed legislation does not meet this threshold.

We believe this legislation is based on a faulty premise. Specifically, HB 1611 incorrectly suggests the SEC exceeded its authority to amend or set certain sections of its rules. To the contrary, just because NH RSA 162-H sets forth certain requirements for certain types of projects (for example, a visual impact assessment for wind energy systems as addressed in Section 2.b), it in no way precludes the SEC from applying this requirement to other types of projects. The following sections of RSA 162-H provide the SEC this authority:

- NH RSA 162-H:16.4(c) (Findings and Issuance of Certificate) requires the SEC to find that "*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*."

- NH RSA 162-H:7 (Application for Certificate) does not specifically mention aesthetics (or any of the other factors to be considered under 162-H:16.4(c)), but contains the following provisions:

    - 162-H:7.III: "*Upon filing of an application, the committee shall expeditiously conduct a preliminary review to ascertain if the application contains sufficient information to carry out the purposes of this chapter. If the application does not contain such sufficient information, the committee shall, in writing, expeditiously notify the applicant of that fact and specify what information the applicant must supply*."

    - 162-H:7.V(d): "[*Each application shall also:] Describe in reasonable detail the applicant's proposals for studying and solving environmental problems*." In this context, "environmental" can reasonably be interpreted to include all aspects required to be addressed in 162-H:16.4(c).

    - 162-H:7.V(h): *"[Each application shall also:] Provide such additional information as the committee may require to carry out the purposes of this chapter*."

These provisions allow the SEC to require the information they believe to be necessary to make their findings, including a visual impact assessment for any type of energy project.[1] The fact that the SEC rules pro-actively require a visual impact assessment for all projects, which they are allowed to require for any project individually, in no way constitutes exceeding their authority.

In addition, SEC rules Site 302.05 allows the SEC to waive any provision of the rules, thus allowing them to avoid placing a burdensome requirement on an applicant if it is not necessary.

The SEC clearly has the power to impose any conditions to the certificate that they deem necessary, which could include a requirement for a fire protection or emergency response plans. (See 162-H:4.I(b) and 162-H:16.VI). Pro-actively requiring these plans for all projects does not exceed their authority.

What is most troubling about this bill is that it would shift the process for imposing certain requirements (whether for a visual impact assessment, a sound assessment, or a fire protection or emergency response plan) from "required unless waived" to "not required unless deemed necessary". This would have the effect of moving the burden of proof from the applicant (to demonstrate that a waiver is warranted) to the SEC (to demonstrate that the requirement is necessary). Such a fundamental change does not serve the public interest and sets an unwarranted precedent for future changes to the SEC statute.

Finally, we would note the draft rules underwent extensive review for legal sufficiency by the Joint Legislative Committee on Administrative Rules (JLCAR). JLCAR found no such issues, and, as you know, approved the rules.

In conclusion, we question the purpose of this legislation and are troubled by its ramifications if it were to pass. The legislation erroneously implies that if 162-H specifically imposes a certain requirement on

[1] The draft application requirements developed by the SB99 aesthetics working group co-chaired by *AMC Senior Staff Scientist* Dr. David Publicover (many of which were conceptually adopted in the final rules) included the following note: "*Unless otherwise specified, these criteria are intended to be applicable to all energy facilities under the jurisdiction of the Site Evaluation Committee (the 'Committee'), though they are most applicable to facilities having impact over broad areas (such as wind energy facilities and transmission lines)*."

one type of energy project, then the SEC is prohibited from imposing this same requirement on other types of projects. Accepting that assumption as correct would seem to mean that a visual impact assessment cannot be required for a large transmission line, or a fire protection plan for a natural gas generating plant.

We urge the committee to quickly reject this bill that serves no legitimate purpose and is not in the public interest. Thank you again for the opportunity to present this testimony.

Susan Arnold
Interim President/Vice-President for Conservation
Appalachian Mountain Club

Doug Bechtel, President
NH Audubon

Jim O'Brien, Director of External Affairs
The Nature Conservancy in New Hampshire

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