

September 18, 2015

Mr. David K. Wiesner  
Staff Attorney  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301

Re: SEC Docket No. 2014-04, Rulemaking  
Comments on Draft Final Proposed Rules

Dear Mr. Wiesner:

Enclosed are the comments and proposed revisions of Eversource Energy, National Grid, Public Service Company of New Hampshire, Iberdrola, and Cate Street Capital regarding the Site Evaluation Committee's (SEC or Committee) Draft Final Proposed Rules. We recognize the extensive effort by the members of the Committee, Mr. Wiesner, and Mr. Iacopino in bringing the rules to this juncture. We recognize as well the difficulty in drafting such a lengthy and complex set of rules, especially in light of the compressed timeframe allotted. We explain below our continuing concerns in a number of areas, including the legal underpinning of certain provisions and the practical implications of others. We also propose changes in some areas that we hope clarify the meaning or intent of the rule.

### **1. Public Interest**

The Draft Final Proposed Rules set forth criteria relative to a finding of public interest at Site 301.16 that are contrary to law. The proposed rule essentially adopts the approach proposed by the Appalachian Mountain Club (AMC) and others for determining whether a proposed facility would serve the public interest. Subsections (a) and (b) reflect a net benefits test despite the clear legislative intent not to adopt such a test during the consideration of Senate Bill 245, which instituted the public interest finding. In addition, subsection (c) resurrects a requirement for consistency with state energy policy that the Legislature repealed in 2009, while subsection (d) requires the Committee to consider consistency with municipal land use regulation, which is inconsistent with the Supreme Court's finding that the Legislature preempted local authority in creating the SEC. *PSNH v. Town of Hampton*, 120 NH 68 (1980). Finally, subsection (e) indicates that additional criteria will be developed during the proceeding, which violates due process by depriving an applicant of notice of the criteria that might be applied.

In its consideration of Senate Bill 245 during the 2014 legislative session, the House and Senate considered many proposals to amend RSA Chapter 162-H. The legislative history of SB 245 demonstrates that the net benefits approach was considered and rejected. During the Senate Energy Committee hearing on February 19, 2014, for instance, Senator Bradley expressly asked Attorney Susan Geiger about the net public benefit standard and he observed that the public interest standard was much more defined in terms of case law and legal implications. Furthermore, the net benefits criteria proposed by AMC *et al.* is nearly identical to language offered as an amendment dated March 6, 2014, which was not enacted by the Legislature. Ultimately, the public interest standard was enacted as RSA 162-H:16, IV (e) instead of the net benefit standard.

It is fair to conclude that the Legislature intended the Committee to exercise some additional judgment when it added the finding that a proposed facility will serve the public interest. It is not fair to conclude, however, that the Legislature intended the Committee to implement the public interest finding in such a way that it would adopt rules defining the public interest contrary to legislative history, express legislative action, the interpretation of the Supreme Court, and, fundamental due process.

Under the pre-existing findings in RSA 162-H:16, IV (a), (b), and (c) the focus was on the applicant's capabilities, and whether the facility would have unreasonable adverse effects or unduly interfere with the orderly development of the region. The logical conclusion about the purpose for adding the requirement that a facility will serve the public interest is that now a facility must not only avoid specified unreasonable or undue harms but that it must also provide some cognizable benefit. Such benefits, however, are not net benefits as weighed against some adverse effects or interference, but benefits viewed independently. Under the previous statutory regime, there was no requirement to demonstrate benefits and a certificate could be issued so long as the effects were not unreasonably adverse and there was no undue interference with the orderly development of the region. Under the new statutory regime, an applicant must now show, and the Committee must find, that a project will also serve the public interest by providing some benefit.

We propose that Site 301.03 (h) (6) require applicants to file information describing the extent to which the proposed facility will benefit or promote one or more of the following: the economy; the environment; the stability, reliability or security of energy supply or delivery; or state, regional, or national policy. Correspondingly, we propose that Site 301.16 require the Committee to consider the effects of the facility on one or more of those areas in determining whether a proposed project serves the public interest.

## **2. RSA 162-H:10-a**

The Draft Final Proposed Rules include the concepts of “best practical measures” and “cumulative impacts.” Best practical measures are defined at Site 102.09, while cumulative impacts are defined at Site 102.15. House Bill 1602, codified as RSA 162-H:10-a, requires the Committee to *address* certain items when adopting rules for wind energy systems. Among other things, the Committee must address best practical measures (BPM) to avoid, minimize, or mitigate adverse effects, and cumulative impacts (CI) to natural, scenic, recreational and cultural resources. The proposed rules do not confine the concepts to wind energy systems but appear to apply them to all facilities.

### **a. BPM and CI as Criteria**

Including the concepts of best practical measures and cumulative impacts in the Committee’s rules regarding criteria for determining unreasonable adverse effects may create fundamental and potentially irreconcilable conflicts. RSA 162-H:16, IV establishes four findings the Committee must make in order to issue a certificate of site and facility. These four findings comprise the statutory standard or test that all applicants must pass. The focus of the findings, except for the applicant’s capabilities, is on the effects of the facility, or the end results. Best practical measures, however, focus on methods or means to an end. At the same time, cumulative impacts, as applied, appear to accumulate effects from different categories, rather than from different projects, which is the thrust of the statute.

It is not clear from Site 301.14 (g) what the Committee intends when it considers best practical measure to avoid, minimize or mitigate unreasonable adverse effects and cumulative impacts. Is the Committee creating a new test based on results? Does one override the other, and under what circumstances? It is not clear how the two approaches could be compatible. If a project uses best practical measures is the result *per se* reasonable?

Similarly, it is not clear from Site 301.14 (h) what the Committee intends when it considers cumulative impacts to natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, which expands the list of resources set forth in the statute. Is the Committee creating a new test that accumulates effects from different categories? Could the Committee find that there is no unreasonable adverse effect in each of the categories set forth in RSA 162-H:16, IV (c), but conclude that the cumulative impacts with respect to its expanded definition constitutes a separate basis for denying a certificate?

Based on these concerns, we urge the Committee to delete Site 301.14 (g) and (h) and to not use the concepts in the criteria for determining whether a facility causes unreasonable adverse effects. To the extent the Committee addresses best practical measures and cumulative

impacts, it is better done in Site 301.05 through 301.07, in the context of the type of information to be included in an application.

#### **b. BPM and CI as Information to be Filed**

Cumulative impacts are first mentioned in Site 301.03 (h) (6). In this section, the Committee expands the types of resources set forth in RSA 162-H:10-a, II and inserts references to aspects of visual impact analyses regarding aesthetics. This section is problematic in a number of regards. First, the underlying definition of cumulative impacts, which includes facilities that may be only at the stage of acceptance, would require an applicant to provide information about projects that are yet to be built, including projects that have not even received a certificate, the confines or reality of which are still to be determined by the SEC. We recommend that the Committee delete the references to projects for which an application has been accepted and those that have been granted a certificate. Second, it expands the scope of cumulative impacts beyond the statute. In this aspect, we recommend that the rules use the statutory language. Third, requiring an applicant to provide information in a separate section of the application, when it is already required to provide such information in other sections of the rules, is, at best, duplicative and, at worst, an impossible burden given the current definition.

The concept of cumulative impacts appears to have been imported from the National Environmental Policy Act (NEPA). In an Environmental Impact Statement (EIS) a federal agency basically identifies potential impacts or spots possible issues for others to decide in separate forums. NEPA can be viewed as a process statute, focused on gathering information, as opposed to a substantive statute, focused on decision making. This is a critical distinction for purposes of applying the concept to the SEC's rules.

Insofar as the Committee addresses cumulative impacts in its rules, it is important to keep in mind that it is conducting an adjudication when it reviews an application and that its requirements about the type of information or evidence an applicant must produce should reflect the practical limitations involved in producing such evidence. How, for instance, could an applicant provide evidence about the impacts of an unrelated facility whose application has just been accepted when such impacts are speculative and not generally foreseeable. The same analysis applies to a considerable degree with respect to projects that may have been certificated but which have not begun construction. Therefore, while it is appropriate for the SEC to require an applicant to incorporate existing facilities in its assessment of aesthetics, historic sites, and the natural environment, respectively, Site 301.05, 301.06, and 301.07 (c), requiring information about projects that are yet to be built imposes substantial evidentiary hurdles.

Best practical measures are first mentioned in Site 301.05 (b) (9), which requires a description of best practical measures planned to avoid, minimize, or mitigate potential adverse

effects. Similar references are made in Site 301.06 (d) and 301.07 (c) (4). In each instance, a better formulation would require a description of all measures, including best practical measures for wind energy systems. In this way, the Committee fulfills its requirement under RSA 162-H:10-a, while avoiding a potential conflict with RSA 162-H:16, IV.

It should also be noted that Site 301.05 (b) (9) includes a requirement that the applicant describe alternative means it considered and rejected. This requirement fundamentally misapprehends the applicant's burden of proof and the Committee's adjudicatory role. The applicant must demonstrate by a preponderance of the evidence that its proposed facility meets the standards in RSA 162-H:16, IV. The Committee must weigh the evidence and make the required findings. The statutory scheme does not require the applicant to provide alternative approaches for satisfying the elements of its case and it does not authorize the Committee to require a different approach if the proposed approach is reasonable.

### **c. Recommendation**

The Committee has only been directed to "address" best practical measures and cumulative impacts for wind energy systems in its rules. There is no basis for concluding that it has been authorized to alter the findings it must make under RSA 162-H:16, IV. Accordingly, in order to implement the new statute in a way that does not conflict with the substantive requirements of the existing statute, which an agency is obliged to do, the Committee should avoid application of the concepts to its criteria for making findings and apply the concepts solely to the types of information an applicant is required to file for wind energy systems.

Doing so will promote the orderly and efficient conduct of proceedings by obviating the potential for an entire subset of litigation about whether a particular measure constitutes a best practical measure. Furthermore, there is a real question as to whether the Committee has been authorized to apply best practical measures and cumulative impacts to non-wind facilities. Given the complexity of the issues, and the fact that the Legislature confined best practical measures and cumulative impacts to wind energy systems, the Committee might be better served if the proposed rules implemented the statute and did not go beyond it.

### **3. Decommissioning**

Site 301.08 (c) (2) requires that an applicant include a decommissioning plan "prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates." The section also prohibits the recognition of salvage value (a well-established accounting concept) in the decommissioning plan and narrowly limits the types of financial assurances that may be employed.

From a purely drafting standpoint, there is too much going on in this one section. Furthermore, since section 301.08 deals with the information an applicant must submit, a cleaner, clearer approach would be to just use the statutory language from RSA 162-H:7, V (g), which requires that an application “[d]escribe in reasonable detail the elements of and financial assurances for facility decommissioning.”

The rule as drafted, moreover, predetermines substantive outcomes without permitting the applicant to make its case, overlooking the adjudicative nature of the proceedings. Inasmuch as an applicant has the burden of proving its case by a preponderance of the evidence, it should be permitted the opportunity to make its case. Limiting an applicant’s options in the section detailing the type of information it must supply flies in the face of the structure the Committee has otherwise adopted. This goes to the notion of salvage value, which may provide the Committee with useful information, as well as the types of assurances. It is also worth noting, as it was at the hearing on September 15, 2015 by Mr. Rielly from National Grid, that this is one of those sections of the rules where the outcomes and underlying concerns may differ substantially by industry. Accordingly, the Committee may wish to consider an approach that affords it greater flexibility and collects the information needed to make a well informed decision.

#### **4. Participating Landowners**

Site 301.03 (c) (8) requires the identification of all “participating landowners,” a description of the properties they own, and the scope of any waivers to which they have agreed. It is not clear from the rules what such information would be used for or what protections would be afforded such landowners, in terms of confidentiality or recognizing their contractual, property, and other rights. It appears that this provision migrated from Site 301.14 (f) (2) (d) in the initial proposed rules, dealing with the public health and safety of wind systems in the context of sound, setbacks, and shadow flicker. Elevation of this provision to a general requirement for all facilities, without context, fails to meet basic rulemaking drafting requirements of clarity and specificity and does not seem to address any particular Committee goal or purpose.

#### **5. Site Information and Mapping**

Site 301.03 (c) (2) through (5) purport to address site information, but they require a considerable amount of information beyond the site. There has been some uncertainty about how to interpret the term “adjacent” in the existing rules, whether it pertains to the entire abutting property or is limited to physical contact with the site boundaries, which has very practical implications for an applicant. Section (c) is clearly focused on the site, and requiring an applicant to provide information on a map showing buildings, wetlands, and other resources makes sense and it is done routinely in applications. The issues arise, however, when going

beyond the site, which often will involve property where an applicant does not have rights. One issue concerns how far outside the site the applicant is expected to provide information and the other concerns how and even whether it may be able to acquire the information.

Some information, such as the location of buildings beyond the site may be available through sources like Google Earth. At the same time, however, the presence or absence of some above-ground resources, such as wetlands, on adjacent property may be able to be provided only in a general way. However, for subsurface resources like archeological artifacts, an applicant may not be able to provide the information at all.

The proposed language in subsections (3), (4), and (5) may have been intended to clarify the meaning of adjacent but the revisions cause problems because, as written, they talk about abutting property or within 100 feet, which can be very different things, and they do not consider how an applicant would obtain the information. One thing to recall about this section, in addition to it being focused on the site, is that there are numerous new additions to the Committee's rules that require an applicant to provide information about the effects of a facility on aesthetics, historic sites, and the natural environment, etc. Therefore, this original section of the rules could be revised to require mapping of the site alone, which would clarify the provision and recognize the practical implications to an applicant, while not diminishing the information that the Committee would receive from an applicant.

## **6. Historic Sites**

Site 102.20 defines historic sites as historic properties as defined in 36 CFR 800.16 (l) (1) and RSA 227-C:1, VI and then says it may include rural, designed, traditional, and natural landscapes. The federal and state definitions cited do not include rural, designed, traditional, and natural landscapes. The federal definition mentions only "properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization." Consequently, we suggest removing the added phrase.

Site 301.06 (c) refers to a "finding" by the Division of Historical Resources (DHR). A finding is a term of art under RSA 162-H:16, IV and it does not appear that DHR makes a finding or issues a decision that, for instance, no historic properties are affected. We suggest use of the term "determination" instead.

Site 301.06 (f) requires an applicant to provide the Committee information about the status of its consultations with the "consulting parties." An applicant consults with the DHR in its role as the State Historic Preservation Officer; it does not "consult" in the same sense with the consulting parties. To the extent the Committee seeks information about the status of what

consulting parties are doing with DHR, an applicant may not have such information available to it unless it's part of the public record. This reasoning applies as well to Site 301.14 (b) (5).

Site 301.14 (b) has been revised in ways that are unclear and which may raise drafting concerns with the Joint Legislative Committee on Administrative Rules (JLCAR). First, with respect to subsection (1), the phrase about consultation is unnecessary; all that is required is whether the application identifies the sites and resources, not how it did it. Second, subsection (4) simply employs a number of synonyms in an attempt to define what is unreasonably adverse. Subsection (4) also appears to create the type of checklist the Committee said it wanted to avoid during its July 9, 2015 deliberations. (Tr. pp. 69-74.)

The better approach here may be to follow the model used in Site 301.14 (e) for the natural environment. Subsections (1) and (2) of that section talk about the significance of the resources as well as the extent, nature, and duration of the effects of a facility on those resources. That approach is equally applicable to historic sites and appears to capture the essence of the proposed subsection (4).

## **7. Orderly Development**

The preface to Site 301.09 requires an applicant to include the written views of municipalities, including master plans and zoning ordinances. RSA 162-H:16, IV (b) requires the Committee to give due consideration to the views of municipalities. Surely, the Committee will not be relying solely on what an applicant files about municipal views in making its orderly development finding. Requiring an applicant to file such views, which it may or may not be aware of, would seem to serve no real purpose, especially given the history of municipalities making their views known to the Committee without the applicant having to bring them forward.

With respect to subsections (a) and (b), the Committee, in seeking to clarify the scope of an applicant's estimates of the effects of its facility on land use and the economy, may have muddied the waters. This looks like a situation where less would be more.

As for subsection (a), land use in the region, section (1) could simply require a description of the effects on the prevailing land uses in the host communities. This term comes from RSA 162-H:2, XI and is well understood. Actual effects on land uses from a facility, moreover, are limited and likely confined to the boundaries of the site itself and therefore the host communities.

As for subsection (b), subsections (1) and (2) could be combined to require a description of the effects on the economy of the region by including an assessment of economic activity during construction and operation without reference to host municipalities, etc. The additional

language is confusing, unnecessarily limiting, and could be misinterpreted as well to require a town-by-town economic analysis, which is not feasible. In addition, references to “regional” in subsections (4) and (6) could be deleted as redundant.

## **8. Adaptive Management**

Site 102.03 defines adaptive management. Site 301.14 (e) (7) sets forth the applicable considerations for determining whether a facility will have an unreasonable adverse effect on the natural environment, providing that the Committee will consider whether a condition should be imposed for “post-construction monitoring and reporting to address potential adverse effects that cannot reliably be predicted at the time of application.” The impetus for this overly broad provision appears to be the Committee’s past practice with respect to wind energy systems and avian mortality studies. It would be more direct to delete adaptive management as a defined term and refashion this provision to the circumstances, and we propose language to do so. In addition, because this provision deals with a condition, it should be moved to Site 301.17.

## **9. Financial Capability**

Site 301.04 (a) (4) requires an applicant to provide an explanation of how its financing plan compares to plans for similar projects. We suggest that the provision be amended to require a description of plans the applicant itself has employed for other energy facilities. As written, it would appear that an applicant would be required to compare its plan to other projects elsewhere in the region or possibly the country, which is impractical in scope and in terms of whether an applicant could even obtain such, likely confidential, information.

## **10. Site Control**

Site 301.03 (c) (6) is confusing as written. We suggest breaking it into subparts that will more clearly lay out the acceptable forms of rights. There were numerous references to site control at the SEC hearing on September 15, some of which referred to “complete control.” It is not clear what that phrase is intended to convey, but the important issue for applicants is the Committee’s recognition of the entirely proper mechanism of acquiring permission from a government agency as part of site control. Similarly, with respect to Site 301.03 (c) (7), we suggest that the Committee recognize that there may be private properties outside the boundaries of the site or public properties that are effectively part of the site for which an applicant does not have a right of access for a site visit.

## **11. Scenic Resources**

Site 102.41 defines scenic resources to include areas designated by national, state, or municipal authorities. We propose that municipalities not be included in this provision because it creates an incentive for those bodies to designate resources as part of a strategy to prevent construction of a project. Such action, moreover, would be tantamount to a municipality exercising authority reserved to the SEC. The better course would be to limit the definition to state and federal authorities, which would be consistent with the SEC's exclusive jurisdiction over the siting of energy facilities.

## **12. Agency Liaisons**

Site 202.05 pertains to participation by Committee and Agency Staff. Section (c) addresses the new role of agency liaison created by RSA 162-H:7-a, IV, which permits the presiding officer to request the attendance of a designated agency liaison at an SEC session if it "could materially assist the committee in its examination or consideration of a matter." It appears from sections III and IV of the statute that such a liaison would come from an agency that did not have regulatory or other permitting authority and was thus required to effectively intervene in the proceeding. In such a circumstance, and to avoid any *ex parte* concerns, procedural fairness would require that any liaison, especially, if he or she is going to testify or comment about an issue, should be subject to examination by the applicant, counsel for the public, and any intervenors.

## **13. Miscellaneous**

### **a. Site 301.06 (e)**

Subsection (e) is deleted because it appears to be redundant inasmuch as subsection (d) already requires an evaluation of the measures.

### **b. Site 301.07 (c) (5)**

"Consultation" is a term of art used in the context of historic site reviews. Consequently, the term "discussion" has been substituted. Also, "permitting and other regulatory authority" has a specific meaning. The requirement has therefore been written more generically.

### **c. Site 301.08 (b)**

Use of the term "current" scientific knowledge could be interpreted to mean the latest report or study regardless of its reliability. Accordingly the term "established" has been substituted.

**d. Site 301.14 (a) (1)**

Because the area of potential visual impact is a defined term, the remainder of the section has been deleted.

**e. Site 301.14 (e) (4)**

Listing the agencies suggests that they may have a role whether they seek to participate pursuant to RSA 162-G:7-a or not. Accordingly the generic term “agencies” has been substituted. This approach corresponds with Site 301.07 (c) (5).

Respectfully submitted,

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**Readopt with amendments Site 100, effective 6-17-08 (Document #9182), to read as follows:**

CHAPTER Site 100 ORGANIZATIONAL RULES

PART Site 101 PURPOSE AND APPLICABILITY

Site 101.01 Purpose. The purpose of these rules of the site evaluation committee is to:

(a) Describe the requirements and procedures of the site evaluation committee in reviewing and acting upon applications to construct energy facilities, requests for modification of facilities, determinations of jurisdiction and exemption, and similar or related business before the committee or any designated subcommittee; and

(b) Describe the organization of the site evaluation committee and any designated subcommittee.

Site 101.02 Applicability. These rules of the site evaluation committee shall apply to:

(a) Any person who constructs or operates, or proposes to construct or operate an energy facility in New Hampshire;

(b) Any person who participates in public information sessions scheduled by the applicant or adjudicative or informational public hearings conducted by the committee, or a designated subcommittee, concerning an energy facility; and

(c) Any person or organization appearing as a party, an intervenor, or a public commenter before the committee or any designated subcommittee.

PART Site 102 DEFINITIONS

Site 102.01 “Abutting property” means any property that is contiguous to or directly across a road, railroad, or stream from property on, under or above which an energy facility is located or proposed to be located.

Site 102.0~~2~~<sup>4</sup> “Acceptance” means “acceptance” as defined in RSA 162-H:2, I, namely, “a determination by the committee that it finds that an application is complete and ready for consideration.”

~~Site 102.0<sup>3</sup>2 “Adaptive management” means a system of management practices based on specified desired outcomes, monitoring to determine if management actions are meeting the desired outcomes, and, if not, provisions for management changes designed to ensure that the desired outcomes are met or are re-evaluated.~~

Site 102.0~~4~~<sup>3</sup> “Adjudicatory hearing” means “adjudicative proceeding” as defined in RSA 541-A:1, I, namely, “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.”

Site 102.0~~5~~<sup>4</sup> “Administrator” means “administrator” as defined in RSA 162-H:2, I-a, namely, “the administrator of the committee.” as established by RSA 162-H.

Site 102.0~~6~~<sup>5</sup> “Applicant” means any person seeking to construct and operate any energy facility within this state.

Site 102.076 “Application” means the written document filed with the committee seeking the issuance of a Certificate of Site and Facility.

Site 102.087 “Area of potential visual ~~impact~~effect” means a geographic area from which a proposed facility would be visible, and would result in potential visual impacts, ~~subject to the limitations in Site 301.05(b)(4).~~

Site 102.098 “Best practical measures” means available, effective, and economically feasible on-site or off-site methods or technologies used during siting, design, construction, and operation of an wind energy facility that~~actions that utilize available technology and~~ have been demonstrated to the committee to effectively avoid, minimize, or mitigate relevant ~~facility~~ impacts.

Site 102.109 “Certificate” or “certificate of site and facility” means “certificate” or “certificate of site and facility” as defined in RSA 162-H:2, II-a, namely “the document issued by the committee, containing such terms and conditions as the committee deems appropriate, that authorizes the applicant to proceed with the proposed site and facility.” “Certificate” includes the document issued by a subcommittee, containing such conditions as the subcommittee deems appropriate, that authorizes the applicant to proceed with the proposed renewable energy facility.

Site 102.110 “Combined observation” means a viewer sees multiple energy facilities from a stationary point within a typical cone of vision.

Site 102.124 “Commission” means the New Hampshire public utilities commission.

Site 102.132 “Committee” means the site evaluation committee established under RSA 162-H ~~and these rules.~~

Site 102.143 “Critical wildlife habitat” means, for a federally listed threatened or endangered species:

\_\_\_\_\_ (a) ~~T~~he designated and mapped specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, 16 U.S.C. §-1533, on which are found those physical or biological features:

(1) ~~E~~ssential to the conservation of the species; and

(2) ~~W~~hich ~~can~~may require special management considerations or protection; and

\_\_\_\_\_ (b) ~~S~~pecific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, 16 U.S.C. § 1533, upon a determination by the Secretary of the United States Department of the Interior that such areas are essential for the conservation of the species.

Site 102.154 “Cumulative impacts” means the totality of effects resulting from the proposed wind energy facility, and all existing energy facilities, ~~all energy facilities for which a certificate of site and facility has been granted, and all proposed energy facilities for which an application has been accepted.~~

Site 102.165 “Energy facility” means “energy facility” as defined in RSA 162-H:2, VII, namely

(a) any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network.;

(b) electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts or more.;

(c) an electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility under subparagraph (b), over a route not already occupied by a transmission line or lines.;

(d) an electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length, over a route not already occupied by a transmission line.;

(e) a new electric transmission line of design rating in excess of 200 kilovolts.;

(f) a renewable energy facility.;

(g) any other facility and associated equipment that the committee determines requires a certificate, consistent with the findings and purposes of RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI.”

Site 102.17 “Energy transmission pipeline” means a pipeline used to transport natural gas, oil, or other source of energy.

Site 102.186 “Exemplary natural community” means “exemplary natural community” as defined in RSA 217-A:3, VII, namely, “a viable occurrence of a rare natural community type or a high quality example of a more common natural community type as designated by the New Hampshire Natural Heritage Bureau based on community size, ecological condition, and landscape context.”

Site 102.19 “Fragmentation” means the loss of habitat that results from the division of relatively large, continuous habitats into smaller, more isolated remnants.

Site 102.2017 “Historic sites” means “historic property,” as ~~such term is~~ defined in 36 C.F.R. §800.16(l)(1) and RSA 227-C:1, VI, and may include rural, designed, traditional and natural landscapes.

Site 102.21 “Investment grade credit rating” means a current rating for senior unsubordinated debt of AAA, AA, A, or BBB, as issued by Standard and Poor’s Corporation, or Aaa, Aa, A, or Baa, as issued by Moody’s Investors Service, Inc.

Site 102.2218 “Key observation point” means a viewpoint that receives regular public use and from which the scenic resource that has the greatest number of proposed facility would be prominently visible structures or components potentially visible, where the greatest amount of public use is anticipated, ~~and at which access to the scenic resource is most easily or likely achieved.~~

Site 102.2319 “Landscape” means the characteristic, visible features of an area including landforms, water forms, vegetation, historic and cultural features and all other objects and aspects of natural and human origin.

Site 102.240 “Motion” means a request made to the committee or the presiding officer after the commencement of a contested proceeding for an order or ruling directing some act to be done in favor of the party making the motion, including a statement of justification or reasons for the request.

Site 102.254 “Natural community” means “natural community” as defined in RSA 217-A:3, XI, namely, “a recurring assemblage of plants and animals found in a particular physical environments.” as classified by the New Hampshire Natural Heritage Bureau.

Site 102.26 “Natural heritage bureau” means the natural heritage bureau administered within the division of forests and lands of the department of resources and economic development.

Site 102.27 “Participating landowner” means the owner of a property who or which has agreed in writing to waive setbacks or other restrictions, conditions or requirements that would otherwise be applicable to the owner’s property under these rules or the certificate issued to an energy facility.

Site 102.282 “Party” means “party” as defined by RSA 541-A:1, XII, namely, “each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.” The term “party” includes all intervenors in a proceeding, subject to any limitations established pursuant to RSA 541-A:32, III.

Site 102.293 “Person” means “person” as defined by RSA 162-H:2, IX, namely, “any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization.”

Site 102.3024 “Petition” means:

(a) A request to the committee to rule on the applicability of this chapter to a particular proposed energy facility;

(b) A petition for intervention made pursuant to RSA 541-A:32; or

(c) Any other initial filing that requests the committee to take action with respect to a matter within its jurisdiction or to determine whether it has jurisdiction over a matter.

Site 102.3125 “Petitioner” means

(a) For a petition as defined in Site 102.3024(a), “petitioner” as defined in RSA 162-H:2, XI, namely, “a person filing a petition meeting any of the following conditions:

~~(a)~~ A petition endorsed by 100 or more registered voters in the host community or host communities;

~~(b)~~ A petition endorsed by 100 or more registered voters from abutting communities;

~~(c)~~ A petition endorsed by the governing body of a host community or 2 or more governing bodies of abutting communities; or

(d4) A petition filed by the potential applicant;"

(b) For a petition as defined in Site 102.3024(b), a person who files a petition for intervention pursuant to RSA 541-A:32; or

(c) For a petition as defined in Site 102.3024(c), a person who files the petition with the committee.

Site 102.3226 "Photosimulations" means computer-enhanced images generated using professionally accepted software that illustrate the visible effects anticipated from a proposed facility.

Site 102.3327 "Presiding officer" means "presiding officer" as defined in RSA 541-A:1, XIV, namely, "that individual to whom the agency has delegated the authority to preside over a proceeding, if any; otherwise, it shall mean the head of the agency."

Site 102.3428 "Proof by a preponderance of the evidence" means that what is sought to be proved is determined to be more probable than not.

Site 102.3529 "Public information hearing" means a hearing scheduled pursuant to RSA 162-H:10, I-c where the applicant presents information to the ~~site evaluation~~ committee and other agencies that have permitting or other regulatory authority over the subject matter and to the public about the proposed facility.

Site 102.360 "Public information session" means a public meeting held before or after the filing of an application at which the applicant presents information to the public regarding the proposed facility, as provided for in RSA 162-H:10, I and I-a.

~~Site 102.31 "Public utility" means any electric utility engaged in the production, distribution, sale, delivery or furnishing of electricity, including municipalities, cooperatives, regulated electric companies, agencies or any combination thereof.~~

Site 102.372 "Rare natural community" means a natural community ranked by the ~~New Hampshire Natural~~ ~~h~~Heritage ~~b~~Bureau as S1 (critically imperiled), S2 (imperiled), or S3 (very rare and local).

Site 102.383 "Rare plant" means any species included on the most recent version of the "Rare Plant List for New Hampshire" maintained by the ~~New Hampshire n~~Natural ~~h~~Heritage ~~b~~Bureau.

Site 102.394 "Renewable energy facility" means "renewable energy facility" as defined in RSA 162-H:2, XII, namely, "electric generating station equipment and associated facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 megawatts and powered by wind energy, geothermal energy, hydrogen derived from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas, biomass technologies, solar technologies, or hydroelectric energy. "Renewable energy facility" shall also include electric generating station equipment and associated facilities of 30 megawatts or less nameplate capacity but at least 5 megawatts which the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI."

Site 102.4035 “Scenic quality” means a reasonable person’s perception of the intrinsic beauty of landforms, water features, or vegetation in the landscape, as well as any visible human additions or alterations to the landscape.

Site 102.4136 “Scenic resources” means resources to which the public has a legal right of access that are:

(a) resources—dDesignated pursuant to applicable statutory authority by national, or state, or municipal authorities for their scenic quality and to which the public has a legal right of access;

(b) Conservation lands or easement areas that possess a scenic quality and to which the public has a legal right of access;

(c) Lakes, ponds, rivers, parks, scenic drives and rides, and other tourism destinations that possess a recognized by the New Hampshire Division of Travel and Tourism as having scenic quality and to which the public has a legal right of access;

(d) Recreational trails, parks, or areas that possess a scenic quality established, protected or maintained in whole or in part with public funds;

(e) Historic sites that possess a scenic quality; and

(f) Town and village centers that possess a scenic quality.

Site 102.4237 “Sequential observation” means a viewer is capable of seeings multiple energy facilities from different viewpoints as the viewer travels along a particular route such as a hiking-trail, river, scenic byway, or on a lake.

Site 102.4338 “Service list” means a list maintained by the committee containing the names and addresses of all parties and intervenors in a proceeding and all other interested persons or groups who request to be included on the service list.

Site 102.4439 “Shadow flicker” means the alternating changes in light intensity that can occur when the rotating blades of a wind turbine are back-lit by the sun and cast moving shadows on the ground or on structures.

Site 102.450 “Significant habitat resource” means habitat used by a wildlife species for critical life cycle functions.

Site 102.461 “Significant wildlife species” means:

(a) Any species listed as threatened or endangered, or which is a candidate for such listing, by the United States fish and wildlife service; or

(b) Any species listed as threatened, endangered, or of special concern by the New Hampshire department of fish and game.

Site 102.472 “Subcommittee” means any subcommittee established under RSA 162-H:4-a for the purpose of reviewing an application for an energy facility or to exercise any other authority or perform any other duty of the committee, subject to the limitations set forth in RSA 162-H:4-a, I.

Site 102.483 “Successive observation” means a viewer sees multiple energy facilities from a particular viewpoint, but not within the same viewing arc, by changing the viewer’s cone of vision.

Site 102.494 “Visibility analysis” means a spatial analysis conducted using computer software to determine the potential visibility of a proposed facility.

Site 102.5045 “Visual impact assessment” means the process for determining the degree of change in scenic quality resulting from construction of a proposed facility.

Site 102.5146 “Wildlife” means “wildlife” as defined ~~in~~ ~~under~~ RSA 207:1, XXXV, namely, “all species of mammals, birds, fish, mollusks, crustaceans, amphibians, invertebrates, reptiles or their progeny or eggs which, whether raised in captivity or not, are normally found in a wild state.”

#### PART Site 103 COMMITTEE DESCRIPTION

##### Site 103.01 Committee Membership and Responsibilities.

(a) The ~~site evaluation~~ committee consists of the following 9 persons, except as otherwise provided in (b) below:

- (1) The commissioners of the commission;
- (2) The commissioner of the department of environmental services;
- (3) The commissioner of the department of resources and economic development;
- (4) The commissioner of the department of transportation;
- (5) The commissioner of the department of cultural resources or the director of the division of historical resources as designee; and
- (6) Two members of the public appointed pursuant to RSA 162-H:3, I (f), except in any matter for which an alternate public member is appointed pursuant to RSA 162-H:3, XI.

(b) If at any time a member who is a state employee must recuse himself or herself on a matter, or is not otherwise available for good reason, such member shall designate a senior administrative employee or a staff attorney from his or her agency to sit on the committee.

(c) The committee shall be responsible for the following:

- (1) Evaluation and issuance of any certificate for an energy facility under RSA 162-H and these rules;
- (2) Determination of the terms and conditions of any certificate issued under RSA 162-H and these rules;
- (3) Adjudication and determination of any petition filed under RSA 162-H and these rules;
- (4) Monitoring of the construction and operation of any energy facility issued a certificate under RSA 162-H and these rules to ensure compliance with such certificate;

(5) Enforcement of the terms and conditions of any certificate issued under RSA 162-H and these rules; and

(6) Assistance to the public in understanding the requirements of RSA 162-H and these rules.

Site 103.02 Committee Chairperson and Vice-Chairperson and Authority.

(a) The chairperson of the commission shall be chairperson of the committee.

(b) The commissioner of the department of environmental services shall be the vice-chairperson of the committee.

(c) The chairperson shall serve as the chief executive of the committee and shall have the authority to do the following:

(1) Delegate to other members the duties of presiding officer;

(2) Perform administrative actions for the committee;

(3) Establish the budgetary requirements of the committee, with the consent of the committee;

(4) Hire or engage the administrator and other personnel to provide services to the committee;

(5) In the absence of an administrator, and with approval of the committee, engage independent contractors or additional personnel to provide technical, legal, or administrative support to fulfill the functions of the committee; and

(6) Form subcommittees pursuant to RSA 162-H:4-a and Site 103.03.

Site 103.03 Subcommittee Formation and Authority.

(a) ~~Pursuant to RSA 162-H:4-a, I, the chairperson may establish a~~ subcommittee ~~may be established~~ to consider and make a decision on an application, including the issuance of a certificate, or to exercise any other authority or perform any other duty of the committee under this chapter, except that no subcommittee shall:

(1) Approve the budgetary requirements of the committee;

(2) Approve any support staff positions paid for through the site evaluation committee fund;

(3) Propose the committee funding plan under RSA 162-H:21; or

(4) Adopt initial or final rulemaking proposals.

(b) For purposes of executing its regulatory functions under RSA 162-H and these rules, a subcommittee shall assume the role of and be considered the committee with all of its associated powers and duties in order to execute the charge given the subcommittee upon its formation.

(c) When considering the issuance of a certificate or a petition of jurisdiction, a subcommittee shall have no fewer than 7 members, provided that:

(1) The 2 public members shall serve on each subcommittee with the remaining 5 or more members selected by the chairperson from among the state agency members of the committee;

(2) Pursuant to RSA 162-H:4-a, II, e Each selected member may designate a senior administrative employee or staff attorney from his or her respective agency to sit in his or her place on the subcommittee; and

(3) The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible.

(d) Pursuant to RSA 162-H:4-a, III, i In any matter not covered under (c) above, the chairperson may establish a subcommittee of 3 members, consisting of 2 state agency members and one public member, provided that:

(1) Pursuant to RSA 162-H:4-a, III, e Each state agency member may designate a senior administrative employee or staff attorney from his or her agency to sit in his or her place on the subcommittee; and

(2) The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible.

(e) Any party whose interests may be affected shall have the right to may object to a matter being assigned to a 3-person subcommittee pursuant to (d) above not less than 14 days before the first hearing before such subcommittee.

(f) If an objection as described in (e) above is received by the committee, the chairperson shall remove the matter from the 3-person subcommittee and either assign it to a subcommittee formed under (c) above or have the full committee decide the matter.

Site 103.04 Quorum.

~~—(a) For purposes of conducting a hearing, voting on motions, or conducting other business of the committee, a quorum shall be 7 members of the committee.~~

~~—(b) For purposes of conducting the business of a subcommittee established under Site 103.03(c), 5 members of the subcommittee shall constitute a quorum.~~

~~—(c) For purposes of conducting the business of a subcommittee established under Site 103.03(d), 2 members of the subcommittee shall constitute a quorum.~~

~~—(d) If a quorum of the committee or a subcommittee is lacking, the members present shall adjourn until a quorum is present.~~

Site 103.04<sup>5</sup> Committee Administrator and Staff.

(a) Administrative services for the Committee shall be provided by the administrator.

(b) The administrator shall monitor the construction or operation of any energy facility issued a certificate under RSA 162-H and these rules, if and to the extent such monitoring duties are delegated to the administrator pursuant to RSA 162-H:4, III.

(c) The administrator shall specify the use of any technique, methodology, practice, or procedure approved within a certificate, if and to the extent such duty is delegated to the administrator pursuant to RSA 162-H:4, III-a.

(d) The administrator shall specify minor changes in route alignment to the extent that such changes are authorized by a certificate for those portions of a proposed electric transmission line or energy transmission pipeline, for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate, if and to the extent such authority is delegated to the administrator pursuant to RSA 162-H:4, III-a.

(e) The administrator, with committee approval, shall engage additional technical, legal, or administrative support to fulfill the functions of the committee as are deemed necessary, provided that any such person to be hired by the administrator shall be approved by the chairperson.

(f) The chairperson or the administrator shall appoint counsel to conduct all prehearing conferences, if such appointment would promote the orderly conduct of the proceeding.

Site 103.0~~5~~<sup>6</sup> Counsel for the Public. Pursuant to RSA 162-H:9, the attorney general shall appoint an assistant attorney general as counsel for the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.

#### PART Site 104 PUBLIC REQUESTS FOR INFORMATION

##### Site 104.01 Requests for Committee Public Records.

(a) Requests for access to the public files and records of the committee shall be directed to the administrator, or to the chairperson of the committee if no administrator has been appointed, as follows:

Administrator [Chairperson]  
Site Evaluation Committee  
c/o New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429  
Tel. (603) 271-2431  
Fax (603) 271-3878  
TDD Access Relay N.H. 1-800-735-2964

(b) Any member of the public may request photocopies of minutes and records of the committee in any proceeding or in any other matter before the committee pursuant to (a) above upon a determination by the presiding officer, in the case of a proceeding, or the chairperson, with respect to all other committee matters, that such requested documents are not exempt from disclosure pursuant to RSA 91-A:5.

(c) The committee shall provide the requested documents to the person requesting such documents upon payment of the cost of copying such documents pursuant to (b) above and (d) and (e) below.

(d) Copies shall be free for requests of 10 pages or less.

(e) A charge of \$0.10 per page shall be assessed for every copy over the first 10 pages.

(f) The committee shall post public information on its website at [www.nhsec.nh.gov](http://www.nhsec.nh.gov).

**Readopt with amendments Site 201 – 204, effective 6-17-08 (Document #9183-A), cited and to read as follows:**

CHAPTER Site 200 PRACTICE AND PROCEDURE RULES

PART Site 201 PUBLIC INFORMATION SESSIONS AND HEARINGS

Site 201.01 Public Information Sessions Prior to Application.

(a) ~~Not less than~~~~At least~~ 30 days prior to filing an application for a certificate, the applicant shall hold ~~not less than~~~~at least~~ one public information session in each county in which the proposed facility is to be located, at which session the applicant shall present information regarding the project and ~~receive~~ provide an opportunity for comments and questions from the public to be addressed by the applicant.

(b) The applicant shall publish a public notice not less than 14 days before each such session in one or more newspapers having a regular circulation in the county in which the session is to be held. ~~This, which~~ notice shall describe the nature and location of the proposed facility. The applicant shall mail a copy of this notice to the proposed facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and unincorporated places, and other municipalities and unincorporated places that are the subject of or covered by studies included with or referenced in the application.

(c) Not less than 10 days before each such session, the applicant shall provide to the chairperson of the committee a copy of the public notice published pursuant to (b) above.

(d) The applicant shall arrange for a transcript of such session to be prepared and shall include the transcript in its application for a certificate.

Site 201.02 Public Information Sessions After Application.

(a) Within 45 days after acceptance of an application for a certificate pursuant to Site 301.10, the applicant shall hold ~~not less than~~~~at least~~ one public information session in each county in which the proposed facility is to be located, at which session the applicant shall present information regarding the proposed energy facility described in the application and provide an opportunity for comments and questions from the public to be addressed by the applicant.

(b) The applicant shall publish a public notice not less than 14 days before each such session in one or more newspapers having a regular circulation in the county in which the session is to be held, describing the nature and location of the proposed facility. The applicant shall mail a copy of this notice to the proposed facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and unincorporated places, and other municipalities and unincorporated places that are the subject of or covered by studies included with or referenced in the application.

(c) Not less than 10 days before each such session, the applicant shall provide to the presiding officer of the committee a copy of the public notice published pursuant to (b) above.

(d) The administrator, or a designee of the presiding officer of the committee, shall act as presiding officer of the public information session, and shall explain to the attendees at such session the process to be used by the committee to review the application for the proposed facility.

Site 201.03 Public Hearings in Host Counties.

(a) Within 90 days after acceptance of an application for a certificate pursuant to Site 301.10, the committee shall hold ~~not less than~~at least one public hearing in each county in which the proposed facility is to be located.

(b) Each public hearing held under (a) above shall be a joint hearing with representatives of any agencies that have permitting or other regulatory authority over the subject matter, and shall be in lieu of and deemed to satisfy all initial requirements for public hearings under the statutes requiring permits relative to environmental impact applicable to the proposed facility.

(c) Notwithstanding (b) above, if any agency that has permitting or other regulatory authority over the subject matter does not otherwise have authority to conduct hearings, such agency may not join in the public hearing, provided that the ability or inability of any such state agency to join in the public hearing shall not affect the composition of the committee or the ability of any member of the committee to act in accordance with RSA 162-H and these rules.

(d) The committee shall publish a public notice not less than 14 days before each such public hearing in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facility. The committee shall mail a copy of this notice to the proposed facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and unincorporated places, and other municipalities and unincorporated places that are the subject of or covered by studies included with or referenced in the application.

Site 201.04 Additional Information Sessions. Pursuant to RSA 162-H:10, I-b, u~~Upon~~ request of the governing body of a municipality or unincorporated place in which the proposed energy facility is to be located, or on the committee's own motion, the committee ~~may shall have the authority to~~ order the applicant to provide such additional public information sessions as are reasonable to inform the public regarding the proposed energy facility. At each such additional public information session, the applicant shall present information regarding the project and provide an opportunity for comments and questions from the public to be addressed by the applicant.

PART Site 202 ADJUDICATIVE PROCEEDINGS

Site 202.01 Adjudicative Hearing. Except for petitions to intervene, which shall be governed by Site 202.11, the committee shall conduct an adjudicative proceeding regarding an application or petition, or when determining whether to suspend or revoke a certificate, in accordance with the administrative procedure act, RSA 541-A, and these rules.

Site 202.02 Presiding Officer and Hearing Officer.

(a) The chairperson of the committee shall preside over adjudicative hearings conducted before the full committee or shall designate the vice-chairperson or another member as presiding officer for such proceedings. In the case of any adjudicative proceeding to be conducted before a subcommittee, the chairperson shall designate one member or designee to be the presiding officer, who shall be an attorney whenever possible.

(b) In the absence of the designated presiding officer, the members of the committee or subcommittee, as applicable, who are present shall select by majority vote a member of such committee or subcommittee to serve as presiding officer.

(c) In adjudicative proceedings, the presiding officer shall:

- (1) Facilitate informal resolution of contested issues;
- (2) Conduct any hearing in a fair, impartial and efficient manner;
- (3) Decide any disputed petitions for intervention;
- (4) Admit relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;
- (5) Provide opportunities for the parties and committee members to question any witness;
- (6) Receive public statements; and
- (7) Cause a complete record of any hearing to be made.

(d) In any matter before the committee or any subcommittee, the presiding officer, or a hearing officer designated by the presiding officer, shall hear and decide procedural matters that are before the committee, including the following:

- (1) Procedural schedules for proceedings;
- (2) Discovery schedules for proceedings;
- (3) Discovery motions in proceedings;
- (4) Consolidation of parties having substantially similar interests;
- (5) Decisions on undisputed petitions for intervention; and
- (6) Identification of significant disputed issues for hearing and decision by the committee.

Site 202.03 Withdrawal of Committee or Subcommittee Member.

(a) Upon his or her own initiative, or upon the motion of any party, a member of the committee or any subcommittee shall, for good cause, withdraw from a proceeding to consider an application or petition.

(b) Good cause shall exist if a committee or subcommittee member has:

- (1) A direct interest in the outcome of the proceeding, including, but not limited to, a financial or family relationship within the third degree of relationships, with any party or representative; ~~or~~
- (2) Made statements or engaged in behavior which a reasonable person would believe indicates that he or she has prejudged the facts of the case; or
- (3) Personally believes he or she cannot fairly judge the facts of the case.

(c) Mere knowledge of the issues, the parties, counsel, consultants, representatives or any witness shall not constitute good cause for withdrawal.

Site 202.04 Appearances and Representation. A party or the party's representative shall file an appearance that includes the following information:

- (a) A brief identification of the matter;
- (b) A statement as to whether or not the representative is an attorney and, if so, whether the attorney is licensed to practice in New Hampshire; and
- (c) The party or representative's daytime address, telephone number, e-mail address, and other basic contact information.

Site 202.05 Participation of Committee and Agency Staff.

(a) The administrator and committee staff designated by the chairperson shall participate in adjudicative proceedings on an advisory basis.

(b) The commissioner or director of each state agency that intends to participate in a committee proceeding shall advise the presiding officer of the name of the individual on the agency's staff designated to be the agency liaison for the proceeding.

(c) The presiding officer ~~shall~~ may request the attendance of a participating state agency's designated liaison at a session of the committee or any subcommittee, if that person could materially assist the committee or subcommittee in its examination or consideration of a matter. The applicant, counsel for the public, or any party to a proceeding may examine the agency liaison with respect to any matter for which the agency liaison's attendance has been requested.

(d) Within 30 days of receipt of notification of a committee proceeding, a state agency not having permitting or other regulatory authority but seeking to participate in the proceeding shall advise the presiding officer of the committee in writing of such intent to participate.

(e) The presiding officer shall permit the participation of a state agency in a committee proceeding pursuant to a request submitted under (d) above if the presiding officer finds that the agency has demonstrated a material interest in the proceeding and its participation conforms with the procedural rules of the committee.

(e) All communications between the committee and state agencies regarding a pending committee proceeding shall be included in the official record of the proceeding and shall be publicly available.

Site 202.06 Format of Documents.

(a) All correspondence, pleadings, motions, petitions or other documents filed under these rules shall:

- (1) Include the title and docket number of the proceeding, if known;
- (2) Be typewritten or clearly printed on paper 8 ½ by 11 inches in size;
- (3) Be signed by the party or proponent of the document, or if the party appears by representative, by the representative; and

(4) Include a statement certifying that the document has been served on all parties to the proceeding.

(b) The signature on a document filed with the committee or subcommittee, as applicable, shall constitute certification that:

(1) The signer has read the document;

(2) The signer is authorized to file the document;

(3) To the best of the signer's knowledge, information and belief, there are good and sufficient grounds to support the document; and

(4) The document has not been filed for purposes of delay.

Site 202.07 Service of Documents.

(a) All petitions, motions, exhibits, memoranda, comments, correspondence or other documents filed by any party to a proceeding governed by these rules shall be served by that party upon all other parties on the service list.

(b) All notices, orders, decisions or other documents issued by the committee or subcommittee, as applicable, pursuant to these rules shall be served by the presiding officer upon all parties on the service list.

(c) Service of all documents relating to a proceeding shall be made by electronic mail, unless a party or person listed on the service list has indicated an inability to receive service by electronic mail, in which case service shall be made by first class mail, postage prepaid, in the United States mail.

(d) If a party serving any document does not have the ability to serve such document by electronic mail, service shall be made by first class mail, postage prepaid, in the United States mail.

(e) Notwithstanding paragraphs (a) through (c), when a party appears by a representative, service shall be upon the representative by electronic mail, unless the representative has indicated an inability to receive service by electronic mail, in which case service shall be made by first class mail, postage prepaid, in the United States mail at the address stated in the appearance filed by the representative.

Site 202.08 Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Site 202.09 Notice of Hearing. A notice of an adjudicative hearing issued by the committee or subcommittee, as applicable, shall contain the information required by RSA 541-A:31, III and a description of the nature and location of the proposed energy facility.

Site 202.10 Prehearing Conference.

(a) Prehearing conferences shall be conducted in accordance with RSA 541-A:31.

(b) The committee or subcommittee shall designate counsel or the administrator to serve as the presiding officer for a prehearing conference when it is necessary to assure the orderly process of the proceeding.

(c) Following the prehearing conference, the presiding officer shall issue in writing to the parties and intervenors a procedural schedule for the proceeding, including a schedule for the conduct of discovery.

Site 202.11 Intervention.

(a) Persons seeking to intervene in a proceeding shall file petitions with the committee or subcommittee, as applicable, with copies served on all parties identified in the committee or subcommittee notice of hearing or prehearing conference.

(b) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall grant a petition to intervene if:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the order of notice of the hearing or prehearing conference, ~~not less than~~ ~~at least~~ 3 days before the hearing or prehearing conference;

(2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law, including a state agency pursuant to RSA 162-H:7-a, VI; and

(3) The presiding officer or hearing officer, as applicable, determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

(c) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall grant one or more late-filed petitions to intervene pursuant to RSA 541-A:32, II, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

(d) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall impose conditions upon an intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time, including the following conditions, if such conditions promote the efficient and orderly process of the proceeding:

(1) Limitation of such intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limitation of such intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring 2 or more such intervenors to combine their presentations of evidence and argument, cross-examination and other participation in the proceedings.

(e) Limitations imposed in accordance with paragraph (d) shall not be so extensive as to prevent such an intervenor from protecting the interest that formed the basis of the intervention.

(f) Any party aggrieved by a decision on a petition to intervene may within 10 days request that the decision be reviewed by the committee or subcommittee, as applicable.

Site 202.12 Discovery.

(a) The applicant or petitioner, the public counsel, and any person granted intervenor status shall have the right to conduct discovery in an adjudicative proceeding pursuant to this rule and in accordance with an applicable procedural order.

(b) ~~Unless inconsistent with an applicable procedural order, a~~ Any person entitled to conduct discovery pursuant to (a) above shall have the right to serve upon any party data requests, which may consist of a written interrogatory or request for production of documents.

(c) Data requests shall identify with specificity the information or materials sought.

(d) A person or group of persons who or which are voluntarily or by order participating in the proceeding together may serve more than one set of data requests on a party, but the total number of data requests served by each person or group, as the case may be, shall not exceed 50, unless otherwise permitted ~~for good cause shown~~ by ruling of the presiding officer or any hearing officer designated by the presiding officer, upon request of the person and a finding that the proposed number of data requests is necessary to address the complexity of relevant issues and would not adversely affect the conduct of the proceeding.

(e) In determining what constitutes a data request for the purpose of applying the number limitation set forth in (d) above, each question shall be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another question, and however the questions may be grouped, combined, or arranged.

(f) A copy of each data request, each objection to data requests, and each response to data requests shall be served upon every person designated for discovery filings on the committee's official service list for the proceeding.

(g) Responses to data requests and objections to data requests shall not be filed with the committee or subcommittee.

(h) A response to a data request shall be made within 10 days of the date of receipt or in accordance with a procedural schedule established by the presiding officer or any hearing officer designated by the presiding officer in order to permit the timely and efficient conduct of the proceeding.

(i) Objections to data requests shall:

(1) Be served in writing on the propounder of the requests within 10 days following receipt of the request unless a different time period is specified in an applicable procedural order; and

(2) Clearly state the grounds on which the objections are based.

(j) Failure to object to a data request or requests for documents within 10 days of its receipt without good cause shall be deemed a waiver of the right to object.

(k) Motions to compel responses to data requests shall:

- (1) Be made pursuant to Site 202.14;
- (2) Be made within 10 days of receiving the applicable response or objection, or the deadline for providing the response, whichever is sooner;
- (3) Specify the basis of the motion; and
- (4) Certify that the movant has made a good-faith effort to resolve the dispute informally.

(l) The presiding officer or any hearing officer designated by the presiding officer shall authorize other forms of discovery, including technical sessions, requests for admission of material facts, depositions, and any other discovery method permissible in civil judicial proceedings before a state court, when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding.

(m) When a party has provided a response to a data request, and prior to the issuance of a final order in the proceeding, the party shall have a duty to reasonably and promptly amend or supplement the response if the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time the party served the response.

Site 202.13 Site Inspections.

(a) The committee or subcommittee, as applicable, and public counsel shall conduct a site visit of any property which is the subject of a proceeding if requested by a party, or on its own motion, if the committee or subcommittee determines that the site visit will assist the committee or subcommittee in reaching a determination in the proceeding.

(b) The presiding officer shall determine who may attend any site visit conducted pursuant to (a) above and shall specify the conditions and restrictions applicable to the site visit.

(c) The applicant shall provide full access to the site of its proposed energy facility for any site visit conducted pursuant to (a) above at reasonable times and subject to reasonable conditions.

Site 202.14 Motions and Objections.

(a) Motions shall be in writing and filed with the committee unless made in response to a matter asserted for the first time at a hearing.

(b) Oral motions and any contemporaneous objection to such motions shall be recorded in full in the record of the hearing.

(c) The presiding officer or any hearing officer designated by the presiding officer shall direct the moving party to submit the motion in writing, with supporting information, by the deadline established by the presiding officer or hearing officer if the presiding officer or hearing officer finds that the motion requires additional information in order to be fully and fairly considered. The presiding officer or hearing officer designated by the presiding officer shall establish a deadline that promotes the efficient and orderly process of the proceeding.

(d) The moving party shall make a good faith effort to obtain concurrence with the relief sought from other parties, if the relief sought involves a postponement or extension of time.

(e) The caption of a motion shall state whether it is assented-to or contested, and shall identify within the body of the motion those parties that:

- (1) Concur in the motion;
- (2) Take no position on the motion;
- (3) Object to the motion; and
- (4) Could not be reached despite a good faith effort to do so, if the motion requests a postponement or extension of time.

(f) Objections to written motions shall be filed within 10 days after the date of the motion, unless a different time period is prescribed by the presiding officer or any hearing officer designated by the presiding officer.

(g) Failure by an opposing party to object to a motion shall not in and of itself constitute grounds for granting the motion.

(h) The presiding officer or any hearing officer designated by the presiding officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion.

Site 202.15 Waiver of Rules.

(a) The committee or subcommittee, as applicable, shall waive any of the provisions of these rules, except where precluded by statute, on its own motion or upon request by an interested party, if the committee or subcommittee finds that:

- (1) The waiver serves the public interest; and
- (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

(b) In determining the public interest, the committee or subcommittee shall waive a rule if:

- (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or
- (2) The purpose of the rule would be satisfied by an alternative method proposed.

(c) Any interested party seeking a waiver shall make a request in writing, except as provided in (d) below.

(d) The committee or subcommittee, as applicable, shall accept for consideration any waiver request made orally during a hearing or prehearing conference.

(e) A request for a waiver shall specify the basis for the waiver and the proposed alternative, if any.

(f) Other parties shall be provided the opportunity to comment on any waiver request before the committee.

Site 202.16 Postponements.

(a) A party requesting postponement of a hearing shall file a written request with the committee or subcommittee, as applicable, ~~not less than~~at least 7 days prior to the date of the hearing.

(b) The party requesting postponement shall make a good faith attempt to seek the concurrence of the other parties with the request.

(c) The committee or subcommittee, as applicable, shall grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the proceeding.

(d) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record.

(e) If the later date, time and place are not known at the time of the hearing that is being postponed, the committee shall issue a written order stating the date, time and place of the postponed hearing as soon as practicable.

Site 202.17. Continuances.

(a) The applicant or any other party may make an oral or written motion at hearing that the hearing be continued to a later date or time, stating good cause for such requested continuance.

(b) A motion for continuance shall be granted if the presiding officer or any hearing officer designated by the presiding officer determines that the moving party has stated a valid basis for the proposed~~good cause exists to grant the~~ continuance and the continuance could assist in resolving the case fairly.

(c) If the later date, time and place are known when the hearing is continued, the information shall be stated on the record.

(d) If the later date, time and place are not known when the hearing is continued, the presiding officer or the designated hearing officer, as applicable, shall issue a written scheduling order stating the date, time and place of the continued hearing.

Site 202.18 Record of the Hearing. A record shall be kept of hearings and transcripts shall be made available in accordance with RSA 541-A:31.

Site 202.19 Burden and Standard of Proof.

(a) The party asserting a proposition shall bear the burden of proving the proposition by a preponderance of the evidence.

(b) An applicant for a certificate of site and facility shall bear the burden of proving facts sufficient for the committee or subcommittee, as applicable, to make the findings required by RSA 162-H:16.

(c) In a hearing held to determine whether a certificate, license, permit or other approval that has already been issued should be suspended, revoked or not renewed, the committee or subcommittee, as applicable, shall make its decision based on a preponderance of the evidence in the record.

Site 202.20 Order of Proceeding. Unless otherwise determined by the presiding officer upon a finding that a different order would facilitate the conduct of the proceeding fairly and expeditiously,

evidence shall be offered in the following order at any proceeding before the committee or subcommittee, as applicable:

- (a) The applicant or other party bearing the overall burden of proof;
- (b) Intervenors; and
- (c) Counsel for the public.

Site 202.21 Testimony. All testimony shall be under oath or affirmation, and shall be subject to cross-examination by parties or their representatives and to questioning by members of the committee or subcommittee, as applicable.

Site 202.22 Prefiled Testimony.

(a) An ~~original and 10 copies of an~~ applicant's prefiled testimony and exhibits shall be filed with its application.

(b) Prefiled testimony and exhibits from other parties or rebuttal testimony from the applicant or any other party shall be filed as determined by a procedural order issued by the presiding officer.

(c) One copy of prefiled testimony and exhibits shall also be forwarded by the applicant to each party and to each person listed on the service list, through electronic mail distribution unless otherwise specified in a procedural order issued by the presiding officer.

Site 202.23 Filings and Applications.

(a) All applications, petitions and filings shall be made to the following address:

Site Evaluation Committee  
c/o N.H. Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301-2429

(b) Each person filing a document shall, in addition to any required paper filing, electronically file the document, to the extent practicable, in an electronic file format compatible with the computer system of the commission.

(c) The committee shall maintain a list on its website of the types of electronic file formats compatible with the computer system of the commission.

Site 202.24 Evidence.

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A:33.

(b) All documents, materials and objects offered as exhibits shall be admitted into evidence, unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.

(c) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.

(d) Transcripts of testimony and documents or other materials admitted into evidence shall be public records, unless the presiding officer determines that all or part of a transcript or document is exempt from disclosure under RSA 91-A:5, as interpreted by case law.

Site 202.25 Public Statements.

(a) Members of the public who do not have intervenor status in a proceeding but have an interest in the subject matter shall be provided with an opportunity at a hearing or prehearing conference to state their positions.

(b) The committee shall require members of the public desiring to make oral statements at a hearing or prehearing conference to so indicate by providing their names, contact information, and parties represented on a roster made available for this purpose prior to the commencement of the hearing or prehearing conference. Individuals who do not wish to speak in public may submit a statement to be read by a person of their choice.

(c) Statements by members of the public shall be unsworn and shall not be subject to cross-examination.

(d) Any written information or reports submitted by members of the public pursuant to RSA 162-H:10, III shall be presented prior to the close of the record of the proceeding.

(e) Members of the public providing written information or reports pursuant to RSA 162-H:10, III shall provide copies of the written materials to the applicant.

(f) Records shall be maintained of all submittals of information and reports by members of the public and of all other actions, proceedings, and correspondence of or before the committee.

(g) The committee shall post on its website all written documents submitted in connection with an adjudicative proceeding, including those submitted by members of the public, except as provided in 202.24(d).

Site 202.26 Closing the Record.

(a) At the conclusion of a hearing, the record shall be closed and no other evidence, testimony, exhibits, or arguments shall be allowed into the record, except as allowed by (b) below.

(b) Prior to the conclusion of the hearing, a party may request that the record be left open to accommodate the filing of evidence, exhibits or arguments not available at the hearing.

(c) If the other parties in the proceeding do not object, or if the presiding officer determines that such evidence, exhibits or arguments are necessary for a full consideration of the issues raised in the proceeding, the presiding officer shall specify a date no later than 30 days after the conclusion of the hearing for the record to remain open to receive the evidence, exhibits or arguments.

(d) If any other party in the proceeding requests time to respond to the evidence, exhibits or arguments submitted, the presiding officer shall specify a date no later than 30 days following the submission for the filing of a response.

(e) If any other party in the proceeding requests the opportunity to cross-examine on the additional evidence, exhibits or arguments submitted, the presiding officer shall specify a date no later than 30 days following the submission for a hearing at which cross-examination on the additional evidence, exhibits or arguments submitted shall be allowed.

Site 202.27 Reopening the Record.

(a) A party may request by written motion that the record in any proceeding be re-opened to receive relevant, material and non-duplicative testimony, evidence or argument.

(b) If the presiding officer determines that additional testimony, evidence or argument is necessary for a full consideration of the issues presented in the proceeding, the record shall be reopened to accept the offered testimony, evidence or argument.

(c) The presiding officer shall specify a date no later than 30 days from the date of receiving the additional testimony, evidence or argument by which other parties shall respond to or rebut the newly submitted testimony, evidence or argument.

Site 202.28 Issuance or Denial of Certificate.

(a) The committee or subcommittee, as applicable, shall make a finding regarding the criteria stated in RSA 162-H:16, IV, and Site 301.13 through 301.176, and issue an order pursuant to RSA 541-A:35 issuing or denying a certificate.

(b) The committee shall keep ~~a~~ written decision or order and all filings related to an application on file in its public records for not less than 5~~at least 10~~ years following the date of the final decision or order or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

Site 202.29 Rehearing.

(a) The rules in this section are intended to supplement RSA 541, which requires or allows a person to request rehearing of an order or decision of the committee prior to appealing the order or decision.

(b) The rules in this section shall apply whenever any person has a right under applicable law to request a rehearing of an order or decision prior to filing an appeal of the order or decision with the court having appellate jurisdiction.

(c) A motion for rehearing shall be filed within 30 days of the date of a committee decision or order.

(d) A motion for rehearing shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary, unreasonable or capricious;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

~~(e) A motion for rehearing in a case subject to appeal under RSA 541 shall be granted in writing if it demonstrates that the committee's order or decision is unlawful, unjust or unreasonable.~~

(f) The committee shall grant or deny a motion for rehearing, or suspend the order or decision pending further consideration, within 10 days of the filing of the motion for rehearing.

Site 202.30 Ex Parte Communications Prohibited.

(a) Committee members shall not communicate directly or indirectly with any person or party about the merits of an application or petition, unless all parties are given notice of the communication and are afforded an opportunity to participate.

(b) Communications between or among committee members, or between committee members and their attorneys, the administrator or committee staff, or between or among the presiding officer and one or more personal assistants or support staff personnel are not prohibited under this section.

PART Site 203 DECLARATORY RULINGS

Site 203.01 Declaratory Rulings.

(a) Any person may submit a petition for declaratory ruling from the committee on matters within its jurisdiction by filing an original written petition and 10 copies with the committee.

(b) A petition for declaratory ruling shall set forth the following information:

- (1) The exact ruling being requested; and
- (2) The statutory and factual basis for the requested ruling, including any supporting affidavits or memoranda of law.

Site 203.02 Action on Requests.

(a) The person filing a petition to request a declaratory ruling shall provide such further information or participate in such evidentiary or other proceedings as the committee shall direct after reviewing the petition and any objections or other replies received with respect to the petition.

(b) Upon review and consideration, the committee shall issue a written ruling either granting or denying the petition, including an explanation of the factual and legal basis for granting or denying the petition, within 90 days of receipt of the petition.

(c) The committee may dismiss a petition for declaratory ruling that:

- (1) Fails to set forth factual allegations that are definite and concrete;
- (2) Involves a hypothetical situation or otherwise seeks advice as to how the committee would decide a future case;
- (3) Does not implicate the legal rights or responsibilities of the petitioner; or
- (4) Is not within the committee's jurisdiction.

PART Site 204 RULEMAKING

Site 204.01 How Adopted.

(a) A rule of the committee or any amendment or repeal thereof shall be adopted by the committee after notice and opportunity for hearing in accordance with this part.

(b) Rules may be proposed by any person or by the committee.

Site 204.02 Manner for Adoption.

(a) The committee shall commence a rulemaking proceeding by drafting a proposed rule or by accepting as a proposed rule the draft of a rule proposed by any person.

(b) With respect to any proposed rule, the committee shall conduct rulemaking and adoption proceedings pursuant to RSA 541-A.

Site 204.03 Requests to Committee for Rulemaking. A request from an interested person proposing the adoption, amendment or repeal of a rule shall be submitted, received and resolved in the following manner:

(a) Requests shall be submitted to the committee by letter addressed to the chairperson;

(b) Requests shall contain the following:

(1) The date of the request;

(2) The name, address and telephone number of the person making the request; and

(3) The name and address of any other person or organization represented by the person making the request;

(c) The person making the request shall sign the request;

(d) The request shall be typed or printed in a legible fashion;

(e) The person making the request shall cite the rule and its provisions and specify any changes desired if repeal or amendment is sought, and, if possible, shall provide the text of the proposed rule if promulgation is sought;

(f) The person making the request shall include a detailed and complete statement of the reasons offered in support of the requested action;

(g) If the committee determines that any rulemaking request is deficient in any respect, the committee shall, within 15 days of receipt of said request, notify the person making the request in writing of the specific deficiencies and allow such person to amend the request;

(h) Within 30 days of receipt of a request or amended request for rulemaking, the committee shall take one of the following actions:

(1) Initiate the requested rulemaking procedures, in accordance with this part; or

(2) Deny the request, in writing, stating the reasons for denial;

(i) The committee shall grant the rulemaking request if the request is consistent with statute and case law and will assist the committee with its statutory duties.

Site 204.04 Request for Notice of Intended Rulemaking Action. Pursuant to the provisions of RSA 541-A:6, III, the committee shall maintain a current listing of all persons having made a request for advance notice of rulemaking proceedings.

Site 204.05 Public Hearing.

(a) If the committee initiates rulemaking proceedings under RSA 541-A, or if rulemaking is initiated pursuant to a request for rulemaking, the committee shall hold not less than~~at least~~ one public hearing pursuant to RSA 541-A:11.

(b) Notice shall be given not less than~~at least~~ 20 days prior to the public hearing pursuant to RSA 541-A:6, I.

(c) The committee shall limit the time allowed at hearing for each person's comments when necessary to allow all persons who wish to make oral comments a reasonable opportunity to do so.

(d) The committee shall require persons desiring to make oral comments to so indicate by providing their names, contact information, and parties represented on a roster made available for this purpose prior to the commencement of the public hearing.

(e) The committee shall permit persons to submit written comments in any rulemaking proceeding for a period of time ending not less than 5 days following the close of the public hearing.

**Readopt Site 205, effective 6-17-08 (Document #9183-B), to read as follows:**

Site 205 EXPLANATION OF PROPOSED RULE

Site 205.01 Explanation of Proposed Rule.

(a) If requested by an interested person at any time before 30 days after final adoption of a rule, the committee shall issue a written explanation of the rule pursuant to RSA 541-A:11, VII.

(b) An explanation issued pursuant to this section shall include:

- (1) A concise statement of the principal reasons for and against the adoption of the rule in its final form; and
- (2) An explanation of why the committee overruled the arguments and considerations against the rule.

**Readopt with amendments Site 300, effective 6-17-08 (Document #9183-B), to read as follows:**

CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY

PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES

Site 301.01 Filing.

(a) Each applicant for a certificate for an energy facility shall file with the committee one original and 15 paper copies of its application and an electronic version of its application in PDF format, unless otherwise directed by the chairperson or the administrator, after consultation with state agencies that are required to be provided a copy of the application under this chapter, in order to permit the timely and efficient review and adjudication of the application.

(b) The committee or the administrator shall:

(1) Acknowledge receipt of an application filed under Site 301.01(a) in writing directed to the applicant;

(2) Forward a copy of the application and acknowledgment to each member of the committee; ~~and~~

(3) Forward a copy of the application to each state agency required to receive a copy under Site 301.10(a) and (b); and

~~(4)~~ Post a copy of each application on the committee's website.

Site 301.02 Format of Application.

(a) ~~Paper copies of a~~Applications shall be prepared on standard 8 ½ x 11 inch sheets, and plans shall be folded to that size. Electronic copies of applications shall be submitted through electronic mail, on compact discs, or in an electronic file format compatible with the computer system of the commission.

(b) Each application shall contain a table of contents.

(c) All information furnished shall follow the numbering systems set forth in Site 301.03 through 301.09.

(d) If any numbered item is not applicable or the information is not available, an appropriate comment shall be made so that no numbered item shall remain unanswered.

(e) To the extent practicable, copies of applications shall be double-sided.

Site 301.03 Contents of Application.

(a) Each application for a certificate of site and facility for an energy facility shall be signed and sworn to by the person, or by an authorized executive officer of the corporation, company, association or other organization, making such application.

(b) Each application shall include the information contained in this ~~sub~~paragraph, and in (c) through (h) below, as follows:

(1) The name of the applicant;

- (2) The applicant's mailing address, telephone and fax numbers, and e-mail address;
- (3) The name and address of the applicant's parent company, association or corporation if the applicant is a subsidiary;
- (4) If the applicant is a corporation:
  - a. The state of incorporation;
  - b. The corporation's principal place of business; and
  - c. The names and addresses of the corporation's directors, officers and stockholders;
- (5) If the applicant is a limited liability company:
  - a. The state of the company's organization;
  - b. The company's principal place of business; and
  - c. The names and addresses of the company's members, managers and officers;
- (6) If the applicant is an association, the names and addresses of the residences of the members of the association; and
- (7) Whether the applicant is or will be the owner or lessee of the proposed facility or has or will have some other legal or business relationship to the proposed facility, including a description of that relationship.

(c) Each application shall contain the following information with respect to the site of the proposed energy facility and alternative locations the applicant considers available for the proposed facility:

- (1) The location and address of the site of the proposed facility;
- (2) Site acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map;
- (3) The location, shown on a map, of with property lines, of residences, industrial buildings, and other structures and improvements within the site; on abutting property with respect to the site, or within 100 feet of or adjacent to the site;
- (4) ~~Identification~~ The location, shown on a map, of wetlands and surface waters of the state within the site; on abutting property with respect to the site, or within 100 feet of or adjacent to the site;
- (5) ~~Identification~~ The location, shown on a map, of natural, historic, cultural, and other resources at or within the site; on abutting property with respect to the site, or within 100 feet of or adjacent to the site; and
- (6) Evidence that the applicant has a current right, of legal access to and control of or an option, or other legal basis ~~right~~ the ability to acquire the right, to construct the facility on, over, or under ~~control of~~ the site, in the form of:
  - a. Ownership, ground lease, easement, or option, or other contractual rights or interests;
  - b. written A license, permit, easement, or other permission from a federal, state, or local government agency; or

~~c. through~~ The simultaneous taking of other action that would provide the applicant with a right of eminent domain to acquire control of the site for the purpose of constructing the facility thereon;

(7) Evidence that the applicant has a current or conditional right of access to private property within the boundaries of the proposed site sufficient to accommodate a site visit by the committee, and the performance of any required pre-construction monitoring or studies; and

~~(8) Identification of all participating landowners with respect to the proposed facility and a description of the affected properties owned by such participating landowners and the scope of the waivers included in their participating landowner agreements, easements, or other contractual documents.~~

(d) Each application shall include information about other required applications and permits as follows:

(1) Identification of all other federal and state government agencies having permitting or other regulatory authority, under federal or state law, to regulate any aspect of the construction or operation of the proposed energy facility;

(2) Documentation that demonstrates compliance with the application requirements of all such agencies;

(3) A copy of the completed application form for each such agency; and

(4) Identification of any requests for waivers from the information requirements of any state agency or department having permitting or other regulatory authority whether or not such agency or department is represented on the committee.

(e) If the application is for an energy facility, including an energy transmission pipeline, that is not an electric generating facility or, an electric transmission line, ~~or an energy transmission pipeline~~, the application shall include:

(1) The type of facility being proposed;

(2) A description of the process to extract, produce, manufacture, transport or refine the source of energy;

(3) The facility's size and configuration;

(4) The ability to increase the capacity of the facility in the future;

(5) Raw materials used or transported, as follows:

a. An inventory, including amounts and specifications;

b. A plan for procurement, describing sources and availability; and

c. A description of the means of transportation;

(6) Production information, as follows:

a. An inventory of products and waste streams;

b. The quantities and specifications of hazardous materials; and

c. Waste management plans; ~~and~~

(7) A map showing the entire facility, including, in the case of an energy transmission pipeline, the location of each compressor station, pumping station, storage facility, and other ancillary facilities associated with the facility.

(f) If the application is for an electric generating facility, the application shall include the following information:

- (1) Make, model and manufacturer of each turbine and generator unit;
- (2) Capacity in megawatts, as designed and as intended for operation;
- (3) Type of turbine and generator unit, including:
  - a. Fuel utilized;
  - b. Method of cooling condenser discharge; and
  - c. Unit efficiency;
- (4) Any associated new substations, generator interconnection lines, and electric transmission lines, whether identified by the applicant or through a system impact study conducted by or on behalf of the interconnecting utility or ISO New England, Inc.; ~~and~~

(5) Copy of system impact study report for interconnection of the facility as prepared by or on behalf of ISO New England, Inc. or the interconnecting utility, if available at the time of application;

~~(6)~~ Construction schedule, including start date and scheduled completion date; ~~and~~

(7) Description of anticipated mode and frequency of operation of the facility.

(g) If the application is for an electric transmission line or an electric generating facility with an associated electric transmission line, the application shall include the following information:

(1) Location shown on U.S. Geological Survey Map;

(2) A map showing the entire electric transmission line project, including the height and location of each pole or tower, the distance between each pole or tower, and the location of each substation, switchyard, converter station, and other ancillary facilities associated with the project;

~~(3)~~ Corridor width for:

- a. New route; or
- b. Widening along existing route;

~~(4)~~ Length of line;

~~(5)~~ Distance along new route;

~~(6)~~ Distance along existing route;

~~(7)~~ Voltage (design rating);

~~(8)~~ Any associated new electric generating unit or units;

(98) Type of construction (described in detail);

(109) Construction schedule, including start date and scheduled completion date; ~~and~~

(110) ~~reliability~~ Copy of any proposed plan application or other system study request documentation required to be submitted to ISO New England, Inc. in connection with construction and operation of the proposed facility; and ~~Impact on system stability and reliability.~~

(12) Copy of system impact study report for the proposed electric transmission facility as prepared by or on behalf of ISO New England, Inc. or the interconnecting utility, if available at the time of application.

(h) Each application for a certificate for an energy facility shall include the following:

(1) A detailed description of the type and size of each major part of the proposed facility;

(2) Identification of the applicant's preferred ~~choice~~ location and ~~other~~ any alternatives ~~locations~~ it considers available for the site and configuration of each major part of the proposed facility and the reasons for the preferred choice;

(3) Documentation that the applicant has held at least one public information session in each county where the proposed facility is to be located at least 30 days prior to filing its application, pursuant to RSA 162-H:10, I and Site 201.01;

(4) Documentation that written notification of the proposed facility, including copies of the application, has been given to the governing body of each municipality in which the facility is proposed to be located;

(5) ~~Each application shall include~~ The information described in Sections 301.04 through 301.09;

~~(6) Information regarding the cumulative impacts of the proposed energy facility on natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including, with respect to aesthetics, the potential impacts of combined observation, successive observation, and sequential observation of energy facilities by the viewer;~~

~~(7) Each application shall include~~ Information describing how the proposed facility will be consistent with the public interest, including the specific criteria set forth in Site 301.16(a) (d) how the proposed facility will serve the public interest, including benefits the facility will provide to: the economy; the environment; the stability, reliability, or security of energy supply or delivery; or state, regional, or national energy policy; and; ~~and~~

~~(8) Each application shall include~~ Pre-filed testimony and exhibits supporting the application.

Site 301.04 Financial, Technical and Managerial Capability. Each application shall include a detailed description of the applicant's financial, technical and managerial capability to construct and operate the proposed facility, as follows:

(a) Financial information shall include:

(1) A description of the applicant's experience financing other energy facilities;

- (2) A description of the corporate structure of the applicant, including a chart showing the direct and indirect ownership of the applicant;
- (3) A description of the applicant's financing plan for the proposed facility, including the amounts and sources of funds required for the construction and operation of the proposed facility;
- (4) An explanation of how the applicant's financing plan compares with financing plans it has employed for ~~other~~ energy facilities that are similar in size and type to the proposed facility, including any increased risks or costs associated with the applicant's financing plan; and
- (5) Current and pro forma statements of assets and liabilities of the applicant;

(b) Technical information shall include:

- (1) A description of the applicant's qualifications and experience in constructing and operating energy facilities, including projects similar to the proposed facility; and
- (2) A description of the experience and qualifications of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time of application;

(c) Managerial information shall include:

- (1) A description of the applicant's management structure for the construction and operation of the proposed facility, including an organizational chart for the applicant;
- (2) A description of the qualifications of the applicant and its executive personnel to manage the construction and operation of the proposed facility; and
- (3) To the extent the applicant plans to rely on contractors or consultants for the construction and operation of the proposed facility, a description of the experience and qualifications of the contractors and consultants, if known at the time of application.

Site 301.05 Effects on Aesthetics. ~~Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating any unreasonable adverse effects of, the proposed facility on aesthetics:~~

(a) Each application shall include a visual impact assessment of the proposed facility, prepared in a manner consistent with generally accepted professional standards by a professional trained or having experience in visual impact assessment procedures, regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed facility on aesthetics.;

(b) The visual impact assessment shall contain the following components:

- (1) A description and map depicting the locations of the proposed facility and all associated buildings, structures, roads, and other ancillary components, and all areas to be cleared and graded, that would be visible from any scenic resources, based on both bare ground conditions using topographic screening only and with consideration of screening by vegetation or other factors;

(2) A description of how the applicant identified and evaluated the scenic quality of the landscape and potential visual impacts, including cumulative impacts for wind energy systems;

(3) A narrative and graphic description, including maps and photographs, of ~~both~~ the physiographic, ~~and historical and~~ cultural features of the landscape surrounding the proposed facility to provide the context for evaluating any visual impacts;

~~(4)~~ A computer-based visibility analysis to determine the area of potential visual ~~impact~~effect, which, for proposed:

a. ~~W~~ind energy systems, shall extend to a 10-mile radius from each wind turbine in the proposed facility; ~~and,~~

b. ~~for E~~lectric transmission lines longer than 1 mile, shall extend to a ½ mile radius if located within any ~~in~~ urbanized area;s;

c. Electric transmission lines longer than 1 mile shall extend to a 21 miles radius if located within any urban cluster; ~~in suburban, rural residential, and village areas;~~

d. Electric transmission lines longer than 1 mile shall extend to a 32 miles radius if located within a rural area; ~~in lightly developed or undeveloped landscapes where the line follows an existing transmission corridor;~~ and

e. Electric transmission lines longer than 1 mile shall extend to a 5 miles radius if located within a rural area; ~~in lightly developed or undeveloped landscapes where the line would be located in a new transmission corridor; and~~

f. Electric transmission lines longer than 1 mile, an “urbanized area” and an “urban cluster” are as designated by the U.S. Census Bureau, and a “rural area” is any geographic area that is not located within either an urbanized area or an urban cluster as so designated;

~~(4)~~(5) Identification of all scenic resources within the area of potential visual ~~impact~~effect and a description of those scenic resources from which the proposed facility would be visible;

~~(5)~~(6) Characterization of the potential visual impacts of the proposed facility, and of any visible plume that would emanate from the proposed facility, on identified scenic resources as high, medium, or low, based on consideration of the following factors:

- a. The expectations of the typical viewer;
- b. The effect on future use and enjoyment of the scenic resource;
- c. The extent of the proposed facility, including all structures and disturbed areas, visible from the scenic resource;
- d. The distance of the proposed facility from the scenic resource;
- e. The horizontal breadth or ~~(visual arc)~~ of the visible elements of the proposed facility;
- f. The scale of the proposed facility relative to surrounding topography and existing structures;

- g. The duration and direction of the typical view of elements of the proposed facility; and
- h. The presence of intervening topography between the scenic resource and elements of the proposed facility;

(7) Photosimulations from representative key observation points, ~~and~~ from other scenic resources for which the potential visual impacts are characterized as “high” pursuant to (6) above, ~~and, to the extent feasible, from a sample of private property observation points within the area of potential visual impact,~~ to illustrate the potential change in the landscape that would result from construction of the proposed facility and associated infrastructure, including land clearing and grading and road construction, ~~and from any visible plume that would emanate from the proposed facility; photographs used in the simulation shall be taken at an equivalent focal length of 50 millimeters and represent the equivalent of what would be taken with a 75 millimeter focal length lens on a full-frame 35 millimeter camera and printed at 15.3 inches by 10.2 inches, or 390 millimeters by 260 millimeters; at least one set of photosimulations shall represent winter season conditions without the presence of foliage typical of other seasons;~~

(8) If the proposed facility is required by Federal Aviation Administration regulations to install aircraft warning lighting, a description and characterization of the potential visual impacts of this lighting, including the number of lights visible from key observation points; and

(9) A description of the ~~best practical~~ measures, ~~including any best practical measures for wind energy systems,~~ planned to avoid, minimize, or mitigate ~~the potential adverse effects visual impacts~~ of the proposed facility, ~~and of any visible plume that would emanate from the proposed facility, and any alternative measures considered but rejected by the applicant.~~

Site 301.06 Effects on Historic Sites. Each application shall include the following information regarding the ~~identification of historic sites effects of,~~ and plans for avoiding, minimizing, or mitigating ~~any unreasonable potential~~ adverse effects of, the proposed facility on historic sites:

(a) ~~Demonstration~~ that project review of the proposed facility has been initiated for purposes of compliance with ~~Section 106 of~~ the National Historic Preservation Act, ~~5416~~ U.S.C. §~~306108470~~, or RSA 227-C:9, as applicable;

~~(b) Identify all areas of potential archaeological sensitivity located in the proposed facility area;~~

~~(be) Identification of~~ all historic ~~sites and areas of potential archaeological sensitivity resources~~ located ~~in the proposed facility area or~~ within the area of potential effects, as defined in 36 C.F.R. §800.16(d);

~~(c) Finding Determination by the division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, of no historic properties affected, no adverse effect, or adverse effect to historic properties, if determined at the time of application.~~

~~(d) Description and evaluation of~~ ~~Identify~~ the ~~best practical~~ measures, ~~including any best practical measures for wind energy systems,~~ planned to avoid, minimize, or mitigate potential adverse effects on ~~historic sites and~~ archaeological ~~and historic~~ resources;

~~(e) Description of~~ the applicant's plans to implement any measures identified pursuant to (d) above; ~~and~~

(f) ~~Description of~~ ~~be~~ the status of the applicant's consultations with the ~~New Hampshire D~~ ~~ivision~~ of ~~H~~ ~~istorical R~~ ~~esources of the department of cultural resources~~, and, if applicable, with the lead federal agency; ~~and consulting parties, as such term is defined in 36 C.F.R. §800.2(e).~~

Site 301.07 Effects on Environment. Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating ~~any unreasonable~~ potential adverse effects of, the proposed facility on air quality, water quality, and the natural environment:

(a) Information including the applications and permits filed pursuant to Site 301.03(d) regarding issues of air quality;

(b) Information including the applications and permits filed pursuant to Site 301.03(d) regarding issues of water quality;

(c) Information regarding the natural environment, including the following:

(1) ~~Description of~~ ~~be~~ how the applicant identified significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility, including communications with and documentation received from the New Hampshire ~~d~~ ~~epartment of~~ ~~f~~ ~~ish and~~ ~~g~~ ~~ame~~, the New Hampshire ~~n~~ ~~atural~~ ~~h~~ ~~eritage~~ ~~b~~ ~~ureau~~, the United States Fish and Wildlife Service, and any other federal or state agencies having permitting or other regulatory authority over fish, wildlife, and other natural resources;

(1) Identification of significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility;

(2) Identification of critical wildlife habitat and significant habitat resources potentially affected by construction and operation of the proposed facility;

(3) Assessment of potential impacts, including cumulative impacts for wind energy systems, of construction and operation of the proposed facility on significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and on critical wildlife habitat and significant habitat resources, including fragmentation or other alteration of terrestrial or aquatic significant habitat resources;

(4) ~~Description of~~ ~~be~~ the ~~best practical~~ measures, including any best practical measures for wind energy systems, planned to avoid, minimize, or mitigate potential adverse impacts of construction and operation of the proposed facility on wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and on critical wildlife habitat and significant habitat resources; and

(5) ~~Description of~~ ~~be~~ the status of the applicant's consultations discussions, if any, with ~~the New Hampshire d~~ ~~epartment of~~ ~~f~~ ~~ish and~~ ~~g~~ ~~ame~~, ~~the New Hampshire n~~ ~~atural~~ ~~h~~ ~~eritage~~ ~~b~~ ~~ureau~~, ~~the United States Fish and Wildlife Service~~, and ~~any other~~ federal or state agencies authorized to identify and manage significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities ~~having permitting or other regulatory authority over fish, wildlife, and other natural resources~~.

Site 301.08 Effects on Public Health and Safety. Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating ~~any unreasonable potential~~ adverse effects of, the proposed facility on public health and safety:

(a) For proposed wind energy systems:

(1) ~~Include a~~ A sound impact assessment prepared in accordance with professional standards by an expert in the field, which assessment shall include the reports of a preconstruction sound background study and a sound modeling study, as specified in Site 301.18; ~~follows:~~

~~a. The preconstruction sound background study shall:~~

- ~~1. Use measurement procedures that are consistent with the most recent versions of ANSI S12.18 and ANSI S12.9, Part 3 (with or without an observer present) guidelines;~~
- ~~2. Include measurements taken using a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter; and~~
- ~~3. Be conducted in locations that are representative of nearby sound receptors, including occupied permanent residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings;~~

~~b. The preconstruction sound background study report shall:~~

- ~~1. Include a map showing proposed wind turbine locations and all permanently occupied residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings located within the study area;~~
- ~~2. Indicate topography, temperature, weather conditions, sources of ambient sound, and prevailing wind direction for the monitoring period; and~~
- ~~3. Describe the test locations with GPS coordinates or a similar level of detail that permits others to identify the specific test locations;~~

~~c. The sound modeling study shall:~~

- ~~1. Be performed based on the most recent version of International Organization for Standards ISO 9613-2; and~~
- ~~2. Use wind turbine sound power levels determined according to the most recent version of International Electrotechnical Commission Standard IEC 61400, Part 11;~~

~~d. The sound modeling study report shall:~~

- ~~1. Include the results of the modeling described in (c) above as well as a map with sound contour lines showing dBA sound emitted from the proposed wind energy system at 5 dBA intervals;~~
- ~~2. Include locations out to the 35 dBA sound contour line or 2 miles from any wind turbine included in the proposed facility, whichever is closer to the nearest wind turbine; and~~

~~3. Show proposed wind turbine locations and all occupied permanent residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings located within the study area;~~

(2) ~~Include a~~ An assessment that identifies the astronomical maximum as well as the anticipated hours per year of shadow flicker expected to be perceived at each residence, learning space, workplace, health care setting, public gathering area (outdoor and indoor), other occupied building, and roadway, that falls within 1 mile of any turbine, based on shadow flicker modeling that assumes an impact distance of 1 mile from each of the turbines; "astronomical maximum" means the theoretical maximum number of hours that shadow flicker will be produced at a location assuming the sun is shining all day from sunrise to sunset, the rotor-plane of the turbine is always perpendicular to the sun, and the turbine is always operating- ~~report evaluating the shadow flicker expected to be perceived at all buildings occupied or used for another purpose, which report shall be based upon computer modeling programs and input data defining the most conservative case scenario, including the astronomical maximum shading duration;~~

(3) Description of ~~be~~ planned setbacks that indicate the distance between each wind turbine and the nearest ~~nonparticipating~~ landowner's existing occupied building and property line, and between each wind turbine and the nearest public road and overhead utility line, and explain why the indicated distances are adequate to protect the public from risks associated with the operation of the proposed wind energy facility;

(4) ~~Include a~~ An assessment of the risks of ice throw, blade shear, and tower collapse on public safety, including a description of the probability of occurrence of such events under varying conditions, the distances at which such events may have an impact, and the best practical measures taken or planned to avoid or minimize the occurrence of such events, if necessary;

(5) Description of ~~be~~ the lightning protection system planned for the proposed facility;

(6) Description of ~~be~~ any determination made by the Federal Aviation Administration regarding whether any hazard to aviation is expected from any of the wind turbines included in the proposed facility, and describe the Federal Aviation Administration's lighting, turbine color, and other requirements for the wind turbines;

(7) ~~Include a~~ A decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in wind generation projects and cost estimates, which plan shall provide for removal of all structures and restoration of the facility site with a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating; and that describes in detail the elements of and financial assurances for facility decommissioning.

(8) The decommissioning plan required under (7) above shall include each of the following:

a. All turbines, including the blades, nacelles and towers, shall be disassembled and transported off-site;

b. All transformers shall be transported off-site;

c. The overhead power collection conductors and the power poles shall be removed from the site;

d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place; and

e. Areas where subsurface components are removed shall be filled, graded to match adjacent contours, reseeded, stabilized with an appropriate seed and allowed to re-vegetate naturally; and

(9) ~~Include a~~ plan for fire protection for the proposed facility prepared by or in consultation with a fire safety expert.;

(b) For electric transmission facilities, an assessment of electric and magnetic fields generated by the proposed facility and the potential impacts of such fields on public health and safety, based on current established scientific knowledge.;

~~Include an assessment of electric and magnetic fields and the potential impacts of such fields on public health and safety; and~~

~~Include an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 dBA or more over ambient levels at the edge of the right-of-way, or at the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant;~~

(c) For all energy facilities:

(1) Include a~~Except as otherwise provided in (a)(1) above, an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 decibel A-weighted (dBA) or more over background levels (measured at the L-90 sound level) at the property boundary of the proposed facility site or, in the case of an electric transmission line or an energy transmission pipeline, at the edge of the right-of-way or the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant, except as provided elsewhere herein;~~

(2) Include a~~A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates, which plan shall includewith a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating that describes in detail the elements of and financial assurances for facility decommissioning;~~

(3) Include a~~A plan for fire safety prepared by or in consultation with a fire safety expert;~~

(4) Include a~~A plan for emergency response to the proposed facility site; and~~

- (5) ~~Include a~~ description of any additional plans or measures to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility.

Site 301.09 Effects on Orderly Development of Region. Each application shall include information regarding the effects of the proposed facility on the orderly development of the region, ~~including the views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility, if such views have been expressed in writing, and master plans and zoning ordinances of the proposed facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and unincorporated places, and other municipalities and unincorporated places that are the subject of or covered by studies included with or referenced in the application,~~ and the applicant's estimate of the effects of the construction and operation of the facility on:

- (a) Land use in the region, including the following:

(1) A description of the prevailing land uses in the ~~host communities, proposed facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and unincorporated places, and other municipalities and unincorporated places that are the subject of or covered by studies included with or referenced in the application~~ host communities and communities abutting the proposed facility; and

(2) A description of how the proposed facility is consistent with such land uses and identification of how the proposed facility is inconsistent with such land uses;

- (b) The economy of the region, including an assessment of:

(1) The ~~economic~~ effect of the facility on ~~the proposed facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and unincorporated places, and other municipalities and unincorporated places that are the subject of or covered by studies included with or referenced in the application~~ host communities and communities abutting the proposed facility;

(2) ~~The economic effect of the proposed facility on in-state~~ economic activity during construction and operation periods;

(3) The effect of the proposed facility on State and local tax revenues;

(4) The effect of the proposed facility on ~~regional~~ real estate values;

(5) The effect of the proposed facility on tourism and recreation ~~in the proposed facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and unincorporated places, and other municipalities and unincorporated places that are the subject of or covered by studies included with or referenced in the application~~ host communities and communities abutting the facility; and

(6) The effect of the proposed facility on community services and ~~regional~~ infrastructure;

- (c) Employment in the region, including an assessment of:

(1) The number and types of full-time equivalent local jobs expected to be created, preserved, or otherwise affected by the construction of the proposed facility, including direct construction employment and indirect employment induced by facility-related wages and expenditures; and

(2) The number and types of full-time equivalent jobs expected to be created, preserved, or otherwise affected by the operation of the proposed facility, including direct employment by the applicant and indirect employment induced by facility-related wages and expenditures.

Site 301.10 Completeness Review and Acceptance of Applications for Energy Facilities.

(a) Upon the filing of an application for an energy facility, the committee shall forward to each of the other state agencies having permitting or other regulatory authority ~~and to other state agencies identified in administrative rules~~, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, a copy of the application for the agency's review as described in RSA 162-H:7, IV.

(b) The committee also shall forward a copy of the application to the department of fish and game, the department of health and human services, the division of historical resources of the department of cultural resources, the natural heritage bureau, the governor's office of energy and planning, and the division of fire safety of the department of safety, unless any such agency or office has been forwarded a copy of the application under (a) above.

~~(cb)~~ Upon receiving an application, the committee shall conduct a preliminary review to ascertain if the application contains sufficient information for the committee to review the application under RSA 162-H and these rules.

~~(de)~~ Each state agency having permitting or other regulatory authority shall have 45 days from the time the committee forwards the application to notify the committee in writing whether the application contains sufficient information for its purposes~~the agency to begin its review~~.

~~(ed)~~ Within 60 days after the filing of the application, the committee shall determine whether the application is administratively complete and has been accepted for review.

~~(fe)~~ If the committee determines that an application is administratively incomplete, it shall notify the applicant in writing, specifying each of the areas in which the application has been deemed incomplete.

~~(gf)~~ If the applicant is notified that its application is administratively incomplete, the applicant may file a new and more complete application or complete the filed application by curing the specified defects within 10 days of the applicant's receipt of notification of incompleteness.

~~(hg)~~ If, within the 10-day time frame, the applicant files a new and more complete application or completes the filed application, in either case curing the defects specified in the notification of incompleteness, the committee shall, no later than 14 days after receipt of the new or completed application, accept the new or completed application.

~~(ih)~~ If the new application is not complete or the specified defects in the filed application remain uncured, the committee shall notify the applicant in writing of its rejection of the application and instruct the applicant to file a new application.

Site 301.11 Exemption Determination.

~~(a) The committee shall have the authority to exempt an applicant from the approval and certificate provisions of RSA 162-H and the rules of the committee according to this section.~~

(ab) Within 60 days of acceptance of an application or the filing of a petition for exemption, the committee shall exempt the applicant from the approval and certificate provisions of RSA 162-H and these rules, if the committee finds that:

(1) Existing state or federal statutes, state or federal agency rules or municipal ordinances provide adequate ~~consideration and~~ protection of the objectives set forth in RSA 162-H:1;

(2) Consideration of the proposed energy facility by only selected agencies represented on the committee is required and the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;

(3) Response to the application or request for exemption from the general public, provided through written submissions or in the adjudicative proceeding provided for in (b) below, indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and

(4) All environmental impacts or effects are adequately regulated by other federal, state, or local statutes, rules, or ordinances.

(be) The committee shall make the determination described in (ab) above after conducting an adjudicative proceeding that includes a public hearing held in a county where the energy facility is proposed to be located.

#### Site 301.12 Timeframe for Application Review.

(a) Pursuant to RSA 162-H:7, VI-b, each state agency having permitting or other regulatory authority over the proposed energy facility shall report its progress to the committee within 150 days after application acceptance, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision on the parts of the application that relate to its permitting or other regulatory authority;

(b) Pursuant to RSA 162-H:7, VI-c, each state agency having permitting or other regulatory authority over the proposed energy facility shall make and submit to the committee a final decision on the parts of the application that relate to its permitting and other regulatory authority, no later than 240 days after application acceptance.

(c) Pursuant to RSA 162-H:7, VI-d, tThe committee shall issue or deny a certificate for an energy facility within 365 days after application acceptance.

(d) Pursuant to RSA 162-H:14, I, tThe committee shall temporarily suspend its deliberations and the time frames set forth in this section at any time while an application is pending before the committee, if it finds that such suspension is in the public interest.

#### Site 301.13 Criteria Relative to Findings of Financial, Technical, and Managerial Capability.

(a) In determining whether an applicant has the financial capability to construct and operate the proposed facility, the committee shall consider:

(1) The applicant's experience in securing funding to construct and operate energy facilities similar to the proposed facility;

- (2) The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;
  - (3) The applicant's statements of current and pro forma assets and liabilities; and
  - (4) Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.
- (b) In determining whether an applicant has the technical capability to construct and operate the proposed facility, the committee shall consider:
- (1) The applicant's experience in designing, constructing, and operating energy facilities similar to the proposed facility; and
  - (2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time.
- (c) In determining whether an applicant has the managerial capability to construct and operate the proposed facility, the committee shall consider:
- (1) The applicant's experience in managing the construction and operation of energy facilities similar to the proposed facility; and
  - (2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide managerial support for the construction and operation of the proposed facility, if known at the time.

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects.

- (a) In determining whether a proposed energy facility will have an unreasonable adverse effect on aesthetics, the committee shall consider:
- (1) The existing character of the area of potential visual ~~impact~~~~effect in the proposed facility host municipalities or unincorporated places~~~~community and in municipalities or unincorporated places~~~~communities abutting or in the vicinity of the proposed facility;~~
  - (2) The significance of affected scenic resources and their distance from the proposed facility;
  - (3) The extent, nature, and duration of public uses of affected scenic resources;
  - (4) The scope and scale of the change in the landscape visible from affected scenic resources;
  - (5) The evaluation of the overall visual impacts of the facility as described in the visual impact assessment submitted by the applicant and other relevant evidence submitted pursuant to Site 202.24;
  - (6) Whether the proposed facility would be a dominant feature of a landscape in which existing human development is not already a prominent feature as viewed from affected scenic resources;
  - (7) Whether the visibility of the proposed facility would offend the sensibilities of a reasonable person during daytime or nighttime periods; and

(8) The effectiveness of the ~~best practical~~ measures planned by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics.

(b) In determining whether a proposed energy facility will have an unreasonable adverse effect on historic sites, the committee shall consider:

~~(1) Whether the application has identified all historic sites and archaeological resources potentially affected by the proposed facility and any anticipated potential adverse effects on such sites and resources, in consultation with the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the federal lead agency. Consider the nature and significance of the historic and archaeological resources identified by the applicant;~~

~~(2) The significance of the affected historic sites and archeological resources;~~

~~(3) The extent, nature, and duration of the potential effects on the historic sites and archeological resources;~~

~~(4) The effectiveness of the measures proposed by the applicant undertaken or planned to avoid, minimize, or mitigate unreasonable potential adverse effects on historic sites and archaeological resources; and~~

~~Consider t~~

~~(5) The status of the applicant's consultations with the New Hampshire dDivision of hHistorical rResources of the department of cultural resources and, if applicable, the federal lead agency, and consulting parties, as such term is defined in 36 C.F.R. §800.2(e); and-~~

~~(3) Whether the proposed facility will adversely affect historical sites and archaeological resources to an unusual or disproportionate degree, such as:~~

~~a. Adversely affecting a large number of historic sites or archaeological resources, given the scale of the facility; or~~

~~b. Adversely affecting historic sites or archaeological resources that have been demonstrated to be of a rare or unique nature or of national significance.~~

(c) In determining whether a proposed energy facility will have an unreasonable adverse effect on air quality, the committee shall consider the determinations of the New Hampshire ~~d~~Department of ~~e~~Environmental ~~s~~Services with respect to applications or permits identified in Site 301.03(d) and other relevant evidence submitted pursuant to Site 202.24.

(d) In determining whether a proposed energy facility will have an unreasonable adverse effect on water quality, the committee shall consider the determinations of the New Hampshire ~~d~~Department of ~~e~~Environmental ~~s~~Services, the United States Army Corps of Engineers, and other state or federal 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, with respect to applications and permits identified in Site 301.03(d), and other relevant evidence submitted pursuant to Site 202.24.

(e) In determining whether construction and operation of a proposed energy facility will have an unreasonable adverse effect on the natural environment, including wildlife species, rare plants, rare natural communities, and other exemplary natural communities, the committee shall consider:

(1) The significance of the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities, including the size, prevalence, dispersal, and viability of the populations in the area;

(2) The nature, extent, and duration of the potential effects on the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(3) The nature, extent, and duration of the potential fragmentation or other alteration of terrestrial or aquatic significant habitat resources;

(4) The ~~analyses and recommendations~~ views of ~~participating the New Hampshire Department of Fish and Game, the New Hampshire Natural Heritage Bureau, the United States Fish and Wildlife Service, and other~~ agencies authorized to identify and manage significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(5) The ~~best practical~~ measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(6) The ~~best practical~~ measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on terrestrial or aquatic significant habitat resources; and

~~(7) Whether conditions should be included in the certificate for post construction monitoring and reporting and for adaptive management to address potential adverse effects that cannot reliably be predicted at the time of application.~~

(f) In determining whether a proposed energy facility will have an unreasonable adverse effect on public health and safety, the committee shall:

(1) For all energy facilities, consider the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24;

(2) For wind energy systems, apply the following standards:

a. ~~With respect to Ssound Sstandards, the-~~ A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA above ~~backgroundambient~~ levels (measured at the L-90 sound level) between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above ~~backgroundambient~~ levels (measured at the L-90 sound level) at all other times during each day, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, on property at the exterior wall of any existing permanently occupied building on a non-participating landowner that is used in whole or in part for permanent or temporary residential purposes's property, or at the non-participating landowner's property line if it is less than 300 feet from an existing occupied building, and these sound levels shall not be exceeded for more than 3 minutes within any 60 minute period;

b. ~~With respect to Sshadow Flicker, the Standard-~~ Sshadow flicker created by the applicant's energy facility during operations shall not occur more than 30 hours per year or 30 minutes per day at or within any residence, learning space, workplace,

~~health care setting, public gathering area (outdoor and indoor), or other occupied building~~occupied permanent residence of a non-participating landowner; and

c. ~~With respect to S setbacks, Standards:~~ The setback distance between a wind turbine tower and an ~~non-participating landowner's~~ existing ~~permanently~~occupied building shall be no less than 3 times the turbine tower height as measured from the center of the wind turbine base to the nearest point of the foundation of the ~~permanently~~occupied building, the setback distance between a wind turbine tower and ~~another non-participating~~ landowner's property line shall be no less than 1.1 times the turbine tower height as measured from the center of the wind turbine base, and the setback distance between a wind turbine tower and the nearest public road shall be no less than 1.5 times the turbine tower height as measured from the center of the wind turbine base to the right-of-way line of the public road, in each case with the turbine tower height measured from the base of the turbine foundation to the tip of the blade in the vertical position; and

~~d. Participating Landowners: The applicant's energy facility may exceed the sound, shadow flicker, and setback requirements set forth in a., b., and c. above with respect to any residence, occupied building, or other property if the owner thereof has agreed in writing to waive those requirements.~~

~~(g) In determining whether a proposed energy facility will have unreasonable adverse effects, the committee shall consider the best practical measures to avoid, minimize, or mitigate any potential adverse effects of the proposed facility.~~

~~(h) In determining whether to grant a certificate of site and facility for a proposed energy facility, the committee shall consider cumulative impacts to natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including aesthetic impacts and sound impacts, and, with respect to aesthetics, the potential impacts of combined observation, successive observation, and sequential observation of energy facilities by the viewer.~~

Site 301.15 Criteria Relative to a Finding of Undue Interference. In determining whether a proposed energy facility will unduly interfere with the orderly development of the region, the committee shall consider:

(a) The extent to which the siting, construction, and operation of the proposed facility will affect land use, employment, and the economy of the county or counties in which the facility is proposed to be located;

(b) The provisions of § and financial assurances for § the proposed decommissioning plan for the proposed facility; and

(c) The views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility.

~~Site 301.16 Additional Criteria Relative to Wind Energy Systems. In addition to the criteria set forth in Site 301.13 through 301.15, in determining whether to grant a certificate of site and facility for a proposed wind energy system, the committee shall consider:~~

~~(a) Cumulative impacts to natural, scenic, recreational, and cultural resources, including with respect to aesthetics the potential impacts of combined observation, successive observation, and sequential observation of energy facilities by the viewer; and~~

~~(b) Best practical measures to avoid, minimize, or mitigate adverse effects of the proposed wind energy system.~~

Site 301.16 Criteria Relative to Finding of Public Interest. In determining whether a proposed energy facility will serve the public interest, the committee shall consider whether the facility will benefit or promote one or more of the following:

~~(a) The economy. Whether the environmental effects of the facility, considering both beneficial and adverse effects, serve the public interest;~~

~~(b) The environment. Whether the beneficial and adverse economic effects of the facility, including the costs and benefits to energy consumers, property owners, state and local tax revenues, employment opportunities, and local and regional economies, serve the public interest;~~

~~(c) The stability, reliability or security of energy supply or delivery. Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies, including those specified in RSA 378:37 and RSA 362-F:1; or,~~

~~(d) State, regional, or national energy policy. Whether the facility as proposed is consistent with municipal master plans and land use regulations pertaining to (i) natural, scenic, historic, and cultural resources, and (ii) public health and safety, air quality, economic development, and energy resources; and~~

~~(e) Additional public interest criteria as are developed through the record in the proceeding.~~

Site 301.17 Conditions of Certificate. In determining whether a certificate shall be issued for a proposed energy facility, the committee shall consider whether the following conditions should be included in the certificate:

(a) A requirement that the certificate holder promptly notify the committee of any proposed or actual change in the ownership or ownership structure of the holder or its affiliated entities and request approval of the committee of such change;

(b) A requirement that the certificate holder promptly notify the committee of any proposed or actual material change in the location, configuration, design, specifications, construction, operation, or equipment components of the energy facility subject to the certificate and request approval of the committee of such change;

(c) A requirement that the certificate holder continue consultations with the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the federal lead agency, and comply with any agreement or memorandum of understanding entered into with the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the federal lead agency;

(7) A requirement in the certificate for a wind energy system for post-construction monitoring and reporting to address potential adverse effects identified by avian mortality studies;

(d) Delegation to the administrator or another state agency or official of the authority to monitor the construction or operation of the energy facility subject to the certificate and to ensure that related terms and conditions of the certificate are met;

(e) Delegation to the administrator or another state agency or official of the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within the certificate

and with respect to any permit, license, or approval issued by a state agency having permitting or other regulatory authority;

(f) Delegation to the administrator or another state agency or official of the authority to specify minor changes in route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate;

(g) Other conditions necessary to ensure construction and operation of the energy facility subject to the certificate in conformance with the specifications of the application; and

(h) Any other conditions necessary to serve the objectives of RSA 162-H or to support findings made pursuant to RSA 162-H:16.

Site 301.18 Sound Study Methodology.

(a) The methodology for conducting a preconstruction sound background study for a wind energy system shall include:

(1) Adherence to the ANSI/ASA S12.9-2013 Part 3 standard, a standard that requires short-term attended measurements;

(2) Long-term unattended monitoring shall be conducted in accordance with the ANSI S12.9- 992 2013 Part 2 standard, provided that audio recordings are taken in order to clearly identify and remove transient noises from the data, with frequencies above 1250 hertz 1/3 octave band to be filtered out of the data;

(3) Measurements shall be conducted at the nearest properties from the proposed wind turbines that are representative of all residential properties within 2 miles of any turbine; and

(4) Sound measurements shall be omitted when the wind velocity is greater than 4 meters per second at the microphone position, when there is rain, or with temperatures below instrumentation minima; following ANSI S12.9-2013 Part 3 protocol, microphones shall be placed 1 to 2 meters above ground level, and at least 15 feet from any reflective surface; a windscreen of the type recommended by the monitoring instrument's manufacturer must be used for all data collection; microphones should be field-calibrated before and after measurements; and an anemometer shall be located within close proximity to each microphone.

(b) Pre-construction sound reports shall include a map or diagram clearly showing the following:

(1) Layout of the project area, including topography, project boundary lines, and property lines;

(2) Locations of the sound measurement points;

(3) Distance between any sound measurement point and the nearest wind turbine;

(4) Location of significant local non-turbine sound and vibration sources;

(5) Distance between all sound measurement points and significant local sound sources;

(6) Location of all sensitive receptors including schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, and elderly care facilities;

(7) Indication of temperature, weather conditions, sources of ambient sound, and prevailing wind direction and speed for the monitoring period; and

(8) Final report shall provide A-weighted and C-weighted sound levels for L-10, Leq, and L-90.

(c) The predictive sound modeling study shall:

(1) Be conducted in accordance with ISO 9613-2 1996-12-15 standards and specifications;

(2) Include an adjustment to the Leq sound level produced by the model applied in order to adjust for turbine manufacturer uncertainty, such adjustment to be determined in accordance with the most recent release of the IEC 61400 Part 11 standard (Edition 3.0 2012-11); this standard anticipates that the analysis of wind turbine acoustical emissions shall also consider sound power level and tonality for a batch of wind turbines as opposed to a single machine, pursuant to IEC 61400 Part 14 (First Edition 2005-03);

(3) Include predictions to be made at all properties within 2 miles from the project wind turbines for the wind speed and operating mode that would result in the worst case wind turbine sound emissions during the hours before 8:00 a.m. and after 8:00 p.m. each day; and

(4) Incorporate other corrections for model algorithm error to be disclosed and accounted for in the model.

(d) The predictive sound modeling study report shall:

(1) Include the results of the modeling described in (c)(3) above as well as a map with sound contour lines showing dBA sound emitted from the proposed wind energy system at 5 dBA intervals;

(2) Include locations out to 2 miles from any wind turbine included in the proposed facility; and

(3) Show proposed wind turbine locations and the location of all sensitive receptors, including schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, and elderly care facilities;

(e) Post-construction noise compliance monitoring shall include:

(1) Adherence to the ANSI/ASA S12.9-2013 Part 3 standard that requires short-term attended measurements to ensure transient noises are removed from the data; measurements shall include at least one nighttime hour where turbines are operating at full sound power with winds less than 3 meters per second at the microphone;

(2) Unattended long-term monitoring shall also be conducted;

(3) Sound measurements shall be omitted when there is rain, or when temperatures are below instrumentation minima; microphones shall be placed 1 to 2 meters above ground level and at least 15 feet from any reflective surface, following ANSI/ASA S12.9-2013 Part 3 protocols; proper microphone screens shall be required; microphones shall be field-calibrated before and after measurements; and an anemometer shall be located within close proximity to each microphone;

(4) Monitoring shall involve measurements being made with the turbines in both operating and non-operating modes, and supervisory control and data acquisition system data shall be used to record hub height wind speed and turbine power output;

(5) Locations shall be pre-selected where noise measurements will be taken; measurements shall be performed at night with winds above 4.5 meters per second at hub height and less than 3 meters per second at ground level;

(6) All sound measurements during post-construction monitoring shall be taken at 0.125-second intervals measuring both fast response and Leq metrics; and

(7) Post-construction monitoring surveys shall be conducted once within 3 months of commissioning, and once during each season thereafter for the first year; additional surveys shall be conducted at the request of the committee or the administrator; adjustments to this schedule shall be permitted subject to review by the committee or the administrator.

(f) Post-construction sound monitoring reports shall include a map or diagram clearly showing the following:

(1) Layout of the project area, including topography, project boundary lines, and property lines;

(2) Locations of the sound measurement points;

(3) Distance between any sound measurement point and the nearest wind turbine;

(4) For each sound measurement period during post-construction monitoring, reports shall include each of the following measurements:

a. LAeq, LA-10, and LA-90; and

b. LCeq, LC-10, and LC-90;

(5) Noise emissions shall be free of audible tones, and if the presence of a pure tone frequency is detected, a 5 dB penalty shall be added to the measured dBA sound level; and

(6) Validation of noise complaints submitted to the committee shall require field sound surveys conducted under the same meteorological conditions as occurred at the time of the alleged exceedance that is the subject of the complaint.

## SITE 302 ENFORCEMENT OF TERMS AND CONDITIONS

### Site 302.01 Determination of Certificate Violation.

(a) Whenever the committee or the administrator as designee determines, on its own or in response to a complaint, that any term or condition of an issued certificate is being violated, it shall give written notice to the person holding the certificate of the specific violation and order the person to immediately terminate the violation.

(b) The person holding the certificate shall provide full access to the site of the energy facility subject to the certificate for purposes of inspection and monitoring by the administrator or another authorized representative of the committee, ~~at reasonable times and subject to reasonable conditions.~~

~~(c) Except in the case of an emergency or when the chairperson or the administrator has determined based on credible information that a violation has occurred and is or may be ongoing, the chairperson or the administrator shall provide 5 days prior written notice of any inspection to be conducted pursuant to (b) above to the holder of the certificate.~~

(cd) If the person holding the certificate has failed or neglected to terminate a specified violation within 15 days after receipt of the notice and order issued pursuant to (a) above, the committee shall commence a proceeding to suspend the person's certificate.

(de) Except in the case of an emergency, the committee shall give written notice of its consideration of suspension and of its reasons for consideration of suspension ~~therefor~~ and shall provide an opportunity for an adjudicative hearing pursuant to Site 201 with respect to the proposed suspension.

(ef) Except in the case of an emergency, the committee shall provide 14 days prior written notice of the hearing referred to in (de) above to the holder of the certificate and to the complainant, if any.

(fg) Pursuant to RSA 162-H:12, I, i If the committee determines following the adjudicative hearing that a certificate violation has occurred and is continuing, the committee may issue an order that suspends the holder's certificate until such time as the violation has been corrected.

#### Site 302.02 Determination of Misrepresentation or Non-Compliance.

(a) If the committee determines that a person has made a material misrepresentation in the application or in any supplemental or additional statements of fact or studies required of the applicant, or if the committee determines that the person has violated the provisions of RSA 162-H or the rules of the committee, the committee shall commence an adjudicative proceeding to suspend the certificate held by such person.

(b) Except in the case of an emergency, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide an opportunity for an adjudicative hearing pursuant to Site 201 with respect to the proposed suspension.

(c) Except in the case of an emergency, the committee shall provide 14 days prior written notice of the hearing referred to in (b) above to the holder of the certificate.

(d) Pursuant to RSA 162-H:12, II, i If the committee determines following the adjudicative hearing that a material misrepresentation or violation of RSA 162-H or its rules has occurred, the committee may issue an order that suspends the holder's certificate until such time as the holder has corrected and mitigated the consequences of such misrepresentation or violation.

(e) If the holder's certificate is suspended by order of the committee, then the holder shall cease construction or operation of the energy facility subject to the certificate as of the time specified in the order, and shall not resume construction or operation of the facility until such time as the suspension is lifted by further order of the committee.

#### Site 302.03 Revocation of Certificate.

(a) The committee shall have the authority to revoke a certificate according to this section.

(b) If the committee has suspended a certificate pursuant to Site 302.01 or Site 302.02 and the holder has failed to correct and mitigate the consequences of the violation or misrepresentation that was the basis for the suspension within the period of time specified in the suspension order, the committee shall initiate an adjudicative proceeding to revoke the suspended certificate.

(c) The committee shall provide 90 days prior written notice to the holder of the certificate that the committee intends to revoke the certificate and stating the reasons for the intended revocation.

~~(d) Except for emergencies, the committee shall conduct an adjudicative hearing prior to revocation of a certificate.~~

~~(d)~~ (e) If the holder's certificate is revoked by order of the committee, then the holder shall permanently cease construction or operation of the energy facility subject to the certificate as of the time specified in the order and shall commence and complete decommissioning of the facility within the time period specified in the order.

Site 302.04 Emergencies.

(a) For the purposes of this part, "emergency" means an event which jeopardizes public health and safety.

(b) With respect to emergencies, the committee shall provide 5 days prior written notice of an adjudicative hearing to the holder of a certificate.

Site 302.05 Waiver of Rules.

(a) The committee or subcommittee, as applicable, shall waive any of the provisions of this chapter, except where precluded by statute, on its own motion or upon request by an interested party, if the committee or subcommittee finds that:

(1) The waiver serves the public interest; and

(2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

(b) In determining the public interest, the committee or subcommittee shall waive a rule if:

(1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or

(2) The purpose of the rule would be satisfied by an alternative method proposed.

(c) Any interested party seeking a waiver shall make a request in writing, except as provided in (d) below.

(d) The committee or subcommittee, as applicable, shall accept for consideration any waiver request made orally during a hearing or prehearing conference.

(e) A request for a waiver shall specify the basis for the waiver and the proposed alternative, if any.