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Final Proposal No. 2015-11

Date Filed 10-2-15

10/12

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APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2015-11 Rule Number Site 100 and Site 201-204

<p>1. Agency Name & Address: Site Evaluation Committee c/o N. H. Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 162-H:10, VI and VII</u> <u>RSA 541-A:16, I(a), (b)-(d)</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action: <input type="checkbox"/> Adopt <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal <input type="checkbox"/> Readoption <input checked="" type="checkbox"/> Readoption w/amendment</p>
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Substantive comments p. 2, 5, 8, 11, 12, 20, and 23.

5. Short Title: Organizational and Practice and Procedure Rules

6. Contact person for copies and questions:

Name:	David K. Wiesner, Esq.	Title:	NHPUC Staff Attorney
Address:	NH Public Utilities Commission 21 South Fruit Street, Suite 10 Concord NH 03301-2429	Phone #:	603-271-2431

7. Yes No Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on **February 5, 2015**.

9. Yes N/A Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING: (optional to number correspondingly)

10. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

13. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the "Rulemaking Notice Form" (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

The agency shall then indicate, by checking the appropriate box on Item 7, whether it is requesting that it receive and respond to comments of the Committee legal staff prior to the Committee meeting that is at least 28 days, but not more than 60 days, after the proposal is filed. In effect, this would be a request for postponement of Committee action. See RSA 541-A:12, I-a and Section 2.14 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules (Manual).

In Item 8 the agency shall list the full date, by month, day, and year, on which the "Rulemaking Notice Form" was published in the Rulemaking Register.

In Item 9 the agency shall indicate, by checking either the "Yes" box or the "N/A" (not applicable) box, whether it had notified the House and Senate policy committees, or the House Speaker and Senate President, pursuant to RSA 541-A:10, I because the Initial Proposal was the first time the rule or its amendments had been proposed to implement newly-enacted state authority.

Items 10 through 13 all relate to required attachments to the "Final Proposal Cover Sheet". PROVIDE ONE COPY OF EVERYTHING SUBMITTED. IT IS OPTIONAL TO NUMBER THEM ACCORDINGLY. Item 10 is required in every filing, and therefore is listed without a check-box. Items 11 through 13 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the "Yes" box to indicate that the document is required and has been attached or the "N/A" box if the document is not required and therefore not applicable:

- Item 10. The "Final Proposal—Fixed Text," required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 11. An "Incorporation by Reference Statement" (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

LBAO
FIS 15:006
01/20/15

Fiscal Impact Statement for Site Evaluation Committee rules governing Organizational and Procedural Rules. [Site 100 and Site 201.01-204.05]

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

1. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

2. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None

B. To State citizens and political subdivisions:

None

C. To independently owned business:

None

OCT 07 2015

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

- 1. Name of Agency. **New Hampshire Site Evaluation Committee**
- 2. Person who has reviewed the material to be incorporated into the agency's rules:

Name:	David K. Wiesner, Esq.	Title:	NHPUC Attorney
Address:	c/o NHPUC, 21 South Fruit Street, Suite 10 Concord, NH 03301	Phone #:	603-271-2431

- 3. Specific rule number where the material is incorporated: **Site 102.23**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) or, if the material is undated Internet content, the date the material was accessed and printed, and the title of the entity that created or promulgated the material.

5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.

6. How the material incorporated can be obtained by the public (include cost and the address of the unrelated third party which published the material, and the Internet source URL if it appears in the rule, for example if the material is Internet content only available online).

7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: October 7, 2015

Signature: 

Name: Martin P. Honigberg

Title: Chairman

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

ATTACHMENT TO APPENDIX II-H
INCORPORATION BY REFERENCE STATEMENT

Rulemaking Notice No. 2015-11
Site 100 and Site 201-204, Organizational Rules and Rules
of Practice and Procedure of the Site Evaluation Committee
Final Proposal

Site 102.23

4) 36 C.F.R. §800.16(l)(1) (2014).

5) The agency did not modify the text.

6) A copy of 36 C.F.R. §800.16(l)(1) (2014) can be obtained at no cost from the U.S. Government Publishing Office, <http://www.gpo.gov>, 732 North Capitol Street, NW, Washington, DC 20401-0001, Tel. No. (202) 512-1800.

7) The Committee chose not to reproduce the incorporated materials because of their length.

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 the 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. The 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 102.02 “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 102.03 “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 102.04 “Adjudicative hearing” means a public hearing held by the committee in an adjudicative proceeding.

Site 102.05 “Adjudicative proceeding” 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 102.06 “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 102.07 “Affected Communities” means the proposed energy 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 expected to be affected by the proposed facility, as indicated in studies included with the application submitted with respect to the proposed facility.

Site 102.08 “Applicant” means any person seeking to construct and operate any energy facility within this state.

Site 102.09 “Application” means the written document filed with the committee seeking the issuance of a Certificate of Site and Facility.

Site 102.10 “Area of potential visual impact” means a geographic area from which a proposed facility would be visible, and would result in potential visual impacts, subject to the areal limitations specified in Site 301.05(b)(4).

Site 102.11 “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.

Site 102.12 “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 energy facility that effectively avoid, minimize, or mitigate relevant impacts.

Site 102.13 “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 102.14 “Combined observation” means a viewer sees multiple energy facilities from a stationary point within a typical cone of vision.

Site 102.15 “Commission” means the New Hampshire public utilities commission.

Site 102.16 “Committee” means the site evaluation committee established under RSA 162-H.

Site 102.17 “Critical wildlife habitat” means, for a federally listed threatened or endangered species:

(a) The 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) Essential to the conservation of the species; and
- (2) Which can require special management considerations or protection; and

(b) Specific 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 102.18 “Cumulative impacts” means the totality of effects resulting from the proposed facility, 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 102.19 “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 102.20 “Energy transmission pipeline” means a pipeline used to transport natural gas, oil, or other source of energy.

Site 102.21 “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 natural heritage bureau based on community size, ecological condition, and landscape context.”

Site 102.22 “Fragmentation” means the loss of habitat that results from the division of relatively large, continuous habitats into smaller, more isolated remnants.

Site 102.23 “Historic sites” means “historic property,” as 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 102.24 “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.

↑
Edit: “includes”.

↑
Unclear: 36 CFR §800.16 and RSA 227-C:1, VI define historic property differently. This issue could be addressed by defining the term and then stating what it includes, as the SEC has in Site 102.31.

Site 102.25 “Key observation point” means a viewpoint that receives regular public use and from which the proposed facility would be prominently visible.

Site 102.26 “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 102.27 “Migration corridors” means routes travelled by fish or wildlife when travelling between seasonal habitats that are necessary to maintain sustainable fish and wildlife populations.

Site 102.28 “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 102.29 “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 environment.”

Site 102.30 “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 102.31 “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 102.32 “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 102.33 “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 102.34 “Petitioner” means

(a) For a petition as defined in Site 102.33(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
- (d) A petition filed by the potential applicant;”

(b) For a petition as defined in Site 102.33(b), a person who files a petition for intervention pursuant to RSA 541-A:32; or

(c) For a petition as defined in Site 102.33(c), a person who files the petition with the committee.

Site 102.35 “Photosimulations” means computer-enhanced images generated using professionally accepted software that illustrate the visible effects anticipated from a proposed facility.

Site 102.36 “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 102.37 “Proof by a preponderance of the evidence” means that what is sought to be proved is determined to be more probable than not.

Site 102.38 “Public information hearing” means a hearing scheduled pursuant to RSA 162-H:10, I-c where the applicant presents information to the committee and other agencies that have permitting or other regulatory authority over the subject matter and to the public about the proposed facility.

Site 102.39 “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 102.40 “Rare natural community” means a natural community ranked by the natural heritage bureau as S1 (critically imperiled), S2 (imperiled), or S3 (very rare and local).

Site 102.41 “Rare plant” means any species included on the most recent version of the “Rare Plant List for New Hampshire” maintained by the natural heritage bureau.

Edit: “also includes”.

Site 102.42 “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 102.43 “Rural area” means any geographic area in the State of New Hampshire that is not included within an urbanized area or an urban cluster.

Site 102.44 “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 102.45 “Scenic resources” means resources to which the public has a legal right of access that are:

Unclear: Although difficult to define, a “reasonable person’s perception” of “intrinsic beauty” is not sufficient to allow for uniform, consistent application of the rules. § 3.8 of Chapter 4 of the *Manual* makes it clear that even when an agency seeks to give itself discretion it must give criteria or factors it will consider to aid consistent application. This should be addressed in Site 300, as definitions should not contain substantive requirements.

(a) Designated pursuant to applicable statutory authority by national, state, or municipal authorities for their scenic quality;

(b) Conservation lands or easement areas that possess a scenic quality;

(c) Lakes, ponds, rivers, parks, scenic drives and rides, and other tourism destinations that possess a scenic quality;

(d) Recreational trails, parks, or areas established, protected or maintained in whole or in part with public funds;

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

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

Site 102.46 “Sequential observation” means a viewer is capable of seeing multiple energy facilities from different viewpoints as the viewer travels along a particular route such as a trail, river, scenic byway, or on a lake.

Site 102.47 “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 102.48 “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 102.49 “Significant habitat resource” means habitat used by a wildlife species for critical life cycle functions.

Site 102.50 “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 102.51 “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 102.52 “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 102.53 “Urban cluster” means an “urban cluster” as designated by the U.S. Census Bureau.

Site 102.54 “Urbanized area” means an “urbanized area” as designated by the U.S. Census Bureau.

Site 102.55 “Visibility analysis” means a spatial analysis conducted using computer software to determine the potential visibility of a proposed facility.

Site 102.56 “Visual impact assessment” means the process for determining the degree of change in scenic quality resulting from construction of a proposed facility.

Site 102.57 “Wildlife” means “wildlife” as defined in 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 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 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, 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

Unclear under what circumstances "shall" a subcommittee be established. Use "shall" and describe circumstances and criteria. See § 3.8 of Ch. 4 of the *Manual*.

Unclear: Use shall and describe circumstances and criteria. See § 3.5 of Ch. 4 of the *Manual*.

(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, 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:

Edit: Because “may” has a particular definition in the *Manual*, use “might” to describe potentialities like this one.

(1) Pursuant to RSA 162-H:4-a, III, 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 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.

Edit: “may”.

(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 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 103.05 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.

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 30 days prior to filing an application for a certificate, the applicant shall hold not less than 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 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 notice shall describe the nature and location of the proposed facility. The applicant shall mail a copy of this notice to each of the affected communities by first class mail and to each owner of abutting property by certified mail.

(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 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 each of the affected communities by first class mail.

(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 one public hearing in each county in which the proposed facility is to be located.

Unclear what procedures govern these hearings, which seem to be non-adjudicative. See sample of Env-C 205 (attached) from the Department of Environmental Services.

Unclear what procedures govern these hearings, which seem to be non-adjudicative. See sample of Env-C 205 (attached) from the Department of Environmental Services.

(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 each of the affected communities by first class mail.

Site 201.04 Additional Information Sessions. Pursuant to RSA 162-H:10, I-b, 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 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;

Unclear: While this provision mimics RSA 162-H:10, I-b, the Commission must interpret the statute to aid uniform enforcement. What factors will the Commission consider in determining if additional sessions are reasonable?

- (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;
- (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 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.

(b) The presiding officer shall 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.

(c) 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.

(d) The presiding officer shall permit the participation of a state agency in a committee proceeding pursuant to a request submitted under (c) 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 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) 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

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 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.

Unclear: This language was changed from the initial proposal, apparently in response to an OLS comment that "good cause", the previous standard, was unclear. It is still unclear on what basis this is decided, as it is unclear what makes a basis "valid."

(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 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 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 301.17, 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 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.



Edit: It appears that a manual, rather than rules, is adopted pursuant to RSA 5:40.

Unclear: “Unreasonable” appears twice, and it looks like most of the list after the first “unreasonable” are ways in which the prior finding could be made, i.e. a decision would be “unlawful” if it was illegal in respect to jurisdiction, and “unjust or unreasonable” if it were an abuse of discretion or capricious.

(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) 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 one public hearing pursuant to RSA 541-A:11.

(b) Notice shall be given not less than 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.

APPENDIX A

Rule	Statute
Site 101.01-02	RSA 162-H:3, 4, and 10,VI and VII; RSA 541-A:16, I(a)
Site 102.01-57	RSA 162-H:2 and 10,VI and VII
Site 103.01	RSA 162-H:3, 4, and 10,VI and VII; RSA 541-A:16, I(a)
Site 103.02	RSA 162-H:3 and 10,VI and VII; RSA 541-A:16, I(a)
Site 103.03	RSA 162-H:4-a and 10,VI and VII; RSA 541-A:16, I(a)
Site 103.04	RSA 162-H:3-a, 4, and 10,VI and VII; RSA 541-A:16,I(a)
Site 103.05	RSA 162-H:9 and 10,VI and VII; RSA 541-A:16, I(a)
Site 104.01	RSA 162-H:10,VI and VII, 13; RSA 541-A:16, I(a)
Site 201.01	RSA 162-H:10,I, VI and VII
Site 201.02	RSA 162-H:10,I-a, VI and VII
Site 201.03	RSA 162-H:10,I-c, VI and VII
Site 201.04	RSA 162-H:10,I-b, VI and VII
Site 202.01	RSA 162-H:10,VI and VII; RSA 541-A:30-a
Site 202.02	RSA 162-H:4, 4-a, 10,VI and VII; RSA 541-A:30-a
Site 202.03	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (k)
Site 202.04	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.05	RSA 162-H:7-a, 10,VI and VII; and RSA 541-A:30-a,III
Site 202.06-07	RSA 162-H:10,VI and VII; and RSA 541-A:30-a,III
Site 202.08	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (f)
Site 202.09	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III and 31, III
Site 202.10	RSA 162-H:10,VI and VII; RSA 541-A:31,V(c)
Site 202.11	RSA 162-H:4,V, 10,VI and VII; RSA 541-A:32
Site 202.12-14	RSA 162-H:10,VI and VII; RSA 541-A:30-a
Site 202.15	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (j)
Site 202.16	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.17	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (h)
Site 202.18	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.19	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (d) and (e)
Site 202.20-23	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.24-25	RSA 162-H:10,VI and VII; RSA 162-H:10, III
Site 202.26	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.27	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (i)
Site 202.28	RSA 162-H:10,VI and VII, 16, IV; RSA 541-A:35
Site 202.29	RSA 162-H:10,VI and VII; RSA 541
Site 202.30	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 203.01-02	RSA 162-H:10,VI and VII; RSA 541-A:16,I(d)
Site 204.01-05	RSA 162-H:10,VI and VII; RSA 541-A:16,I(c)

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

RULE	TITLE/CITATION (DATE)	SOURCE
Site 102.23	36 C.F.R. §800.16(l)(1) (2014)	Available from U.S. Government Publishing Office, http://www.gpo.gov

Env-C 204.26 Roles in Disciplinary and Enforcement Proceedings. In any adjudicative proceeding, the following persons shall have the role(s) indicated:

- (a) Intervenors shall participate as specified in the presiding officer's order issued pursuant to RSA 541-A:32, V;
- (b) The individual designated to represent the department shall present testimony, evidence, and argument and otherwise serve as the department's point of contact for the proceeding;
- (c) Other department staff shall present testimony and evidence only if called as a witness by a participant; and
- (d) Complainants shall present testimony and evidence only if called as a witness by a participant.

Source. #8851-A, eff 3-25-07

PART Env-C 205 NON-ADJUDICATIVE PROCEEDINGS

Env-C 205.01 Applicability. These rules shall apply to proceedings conducted by the department to:

- (a) Adopt, readopt, amend, or repeal rules;
- (b) Review applications for licenses and issue decisions thereon;
- (c) Review requests filed under RSA 72:12-a and issue decisions thereon; or
- (d) Provide information and receive public comment in any other matter that is not an adjudicative proceeding covered by Env-C 204.

Source. #5860, eff 7-1-94; ss by #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 205.02 Presiding Officer.

- (a) The presiding officer for a non-adjudicative proceeding shall be the commissioner or designee.
- (b) The presiding officer in a non-adjudicative proceeding shall:
 - (1) Receive relevant information and public comments;
 - (2) Cause a complete record of the proceeding to be made; and
 - (3) Take any other action consistent with applicable statutes and rules necessary to conduct the proceeding and complete the record in a fair and timely manner.

Source. #5860, eff 7-1-94; ss by #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 205.03 Non-Adjudicative Oral Public Hearings.

- (a) The department shall conduct an oral public hearing in a non-adjudicative proceeding:
 - (1) When proposing to adopt, readopt, amend, or repeal rules;
 - (2) To receive oral public comment on a license application if required by the statute or rules specific to such applications;
 - (3) For any matter for which the department is required by law or by these rules to hold an oral hearing in a proceeding that is not an adjudicative proceeding pursuant to Env-C 204.01; and

(4) For any other non-adjudicative matter for which the law does not require the department to hold an oral hearing but for which the department believes an oral public hearing would be of benefit.

(b) For any case in which an oral hearing is not required pursuant to (a), above, the department shall proceed with a record hearing.

Source. #5860, eff 7-1-94; ss by #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 205.04 Notice. Notice of the date, time, and place of an oral public hearing shall be given as follows:

(a) For a rulemaking hearing held pursuant to RSA 541-A:3, IV, by publication as specified in RSA 541-A:6;

(b) For an oral public hearing held on a license application, as specified in the department's rules specific to such license; or

(c) For any other oral public hearing, by such means as the commissioner determines will notify those persons likely to be interested in the most cost-effective manner.

Source. #5860, eff 7-1-94; ss by #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 205.05 Record of Non-Adjudicative Proceedings.

(a) The record of a non-adjudicative proceeding in which an oral public hearing is not held shall comprise:

(1) The application or request, together with all supporting or supplemental information, filed by the applicant;

(2) All correspondence between the department and the applicant or between the department and any other interested person(s) regarding the application or request;

(3) A copy of the draft license, if one is required to be prepared and circulated for public comment by the departmental rules specific to the license; and

(4) Any other information relevant to the application or request that is considered by the department in reaching a decision.

(b) The record of a non-adjudicative proceeding for which an oral public hearing is held shall comprise:

(1) All information specified in (a), above;

(2) Copies of all notices of the oral public hearing that were published or otherwise distributed by the department;

(3) Any exhibits or written testimony received pursuant to Env-C 205.07;

(4) For rulemaking proceedings, a copy of all documents prepared and filed under RSA 541-A; and

(5) Subject to (c), below, a tape recording or other method that provides a verbatim record of the oral public hearing or notes of the hearing prepared by the presiding officer or designee.

(c) If no member of the public attends an oral public hearing for which notice in accordance with Env-C 205.04 was given, the record of the oral hearing shall consist of a memo from the presiding officer stating that no member of the public was present.

(d) The record of a non-adjudicative proceeding shall be available for inspection by any person in accordance with Env-C 210.05.

Source. #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 205.06 Opening an Oral Public Hearing.

(a) The presiding officer shall open an oral public hearing by describing in general terms the purpose of the hearing and procedures governing its conduct.

(b) If the purpose of the hearing is to provide information to the public, the presiding officer, department staff, or such other person as the presiding officer designates shall then present such information.

(c) After the opening statement and presentation of information, if any, the presiding officer shall open the hearing to receive comments and questions from the persons attending the hearing.

Source. #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 205.07 Testimony at an Oral Public Hearing.

(a) Any individual wishing to submit exhibits or written testimony at an oral public hearing shall do so to the presiding officer, provided the individual signs and dates such testimony or exhibit(s).

(b) Any individual wishing to testify at an oral public hearing shall submit his/her name, address, and whom s/he represents, if anyone, in writing to the presiding officer. The presiding officer shall call each individual to present his/her testimony. The presiding officer shall encourage individuals who plan to testify orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.

(c) At the conclusion of testimony of each individual, the individual shall remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.

(d) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Source. #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 205.08 Closing the Hearing and the Record.

(a) The presiding officer shall close the oral public hearing when s/he determines that no one has further questions or comments that are relevant to the subject of the hearing.

(b) At an oral public hearing other than a rulemaking hearing, if additional time is requested to submit written testimony as specified in Env-C 205.07(b) or supplemental information which the presiding officer determines to be relevant to the subject of the hearing, the presiding officer shall designate a specific time period for the record to remain open to receive such information.

(c) For rulemaking hearings, the record shall remain open until the date specified in the notice published pursuant to Env-C 205.04(a).

Source. #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 205.09 Continuances.

(a) Hearings on proposed rules shall be continued only in accordance with RSA 541-A.

(b) At any oral public hearing other than a hearing on proposed rules, if anyone requests a continuance and the presiding officer determines that the public will be best served by continuing the hearing and that any prejudice caused to any person as a result of the continuance is outweighed by the benefit to the public of granting the continuance, the presiding officer shall order that the hearing be continued to a later date, time, and place.

(c) If such later date, time, and place are known at the time of the hearing that is being continued, the presiding officer shall state the date, time, and place on the record.

(d) If such later date, time, and place are not known at the time of the hearing that is being continued, the presiding officer shall state how notice will be given of the date, time, and place of the continued hearing.

Source. #8851-A, eff 3-25-07

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, that require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 206.03 Time for Filing. Any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a department decision shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Legal Unit
Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

(b) For purposes of this section, a “department decision” means a decision that is signed by the commissioner, by the assistant commissioner on behalf of the commissioner, or by a division director, alone or in any combination.

Source. #6960, eff 3-25-99; ss by #8851-A, eff 3-25-07

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

(a) The exact legal name of each person requesting reconsideration and the mailing address of the person and, if available, a fax number and e-mail address for the person;

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 162-H

ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

Section 162-H:4-a

162-H:4-a Subcommittees. –

I. The chairperson may establish subcommittees to consider and make decisions on applications, including the issuance of certificates, or to exercise any other authority or perform any other duty of the committee under this chapter, except that no subcommittee may approve the budgetary requirements of the committee, approve any support staff positions, or adopt initial or final rulemaking proposals. For purposes of statutory interpretation and executing the regulatory functions of this chapter, the 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 it by the chairperson.

II. When considering the issuance of a certificate or a petition of jurisdiction, a subcommittee shall have no fewer than 7 members. 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. 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. The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible. Five members of the subcommittee shall constitute a quorum for the purpose of conducting the subcommittee's business.

III. In any matter not covered under paragraph II, the chairperson may establish subcommittees of 3 members, consisting of 2 state agency members and one public member. 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. The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible. Two members of the subcommittee shall constitute a quorum. Any party whose interests may be affected may object to the matter being assigned to a 3-person subcommittee no less than 14 days before the first hearing. If objection is received, the chairperson shall remove the matter from the 3-person subcommittee and either assign it to a subcommittee formed under paragraph II or have the full committee decide the matter.

Source. 2014, 217:11, eff. July 1, 2014. 2015, 219:9, eff. July 8, 2015.

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 162-H

ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

Section 162-H:10

162-H:10 Public Hearing; Studies; Rules. –

I. At least 30 days prior to filing an application for a certificate, an applicant shall hold at least one public information session in each county where the proposed facility is to be located and shall, at a minimum, publish a public notice not less than 14 days before 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. At such 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. Not less than 10 days before such session, the applicant shall provide a copy of the public notice to the chairperson of the committee. The applicant shall arrange for a transcript of such session to be prepared and shall include the transcript in its application for a certificate.

I-a. Within 45 days after acceptance of an application for a certificate, pursuant to RSA 162-H:7, the applicant shall hold at least one public information session as described in paragraph I in each county in which the proposed facility is to be located and shall, at a minimum, publish a public notice not less than 14 days before said 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. Not less than 10 days before such session, the applicant shall provide a copy of the public notice to the presiding officer of the committee. The administrator, or a designee of the presiding officer of the committee, shall act as presiding officer of the information session. The session shall be for public information on the proposed facility with the applicant presenting the information to the public. The presiding officer shall also explain to the public the process the committee will use to review the application for the proposed facility.

I-b. Upon request of the governing body of a municipality or unincorporated place in which the proposed facility is to be located, or on the committee's own motion, the committee may order the applicant to provide such additional public information sessions as described in paragraph I as are reasonable to inform the public of the proposed project.

I-c. Within 90 days after acceptance of an application for a certificate, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one public hearing in each county in which the proposed facility is to be located and shall publish a public notice not less than 14 days before such session 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 facilities. The public hearings shall be joint hearings, with representatives of the agencies that have permitting or other regulatory authority over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. Notwithstanding any other provision of law, the hearing shall be a joint hearing with the other state agencies and shall be in lieu of all hearings otherwise required by any of the other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of the other state agencies to join shall not affect the composition

of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter.

II. Subsequent public hearings shall be in the nature of adjudicative proceedings under RSA 541-A and shall be held in the county or one of the counties in which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site evaluation committee. The committee shall give adequate public notice of the time and place of each subsequent hearing.

III. The site evaluation committee shall consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings but prior to the closing of the record of the proceeding. The committee shall consider, as appropriate, prior committee findings and rulings on the same or similar subject matters, but shall not be bound thereby.

IV. The site evaluation committee shall require from the applicant whatever information it deems necessary to assist in the conduct of the hearings, and any investigation or studies it may undertake, and in the determination of the terms and conditions of any certificate under consideration.

V. The site evaluation committee and counsel for the public shall conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee. The site evaluation committee and counsel for the public are further authorized to assess the applicant for all travel and related expenses associated with the processing of an application under this chapter.

VI. The site evaluation committee shall issue such rules to administer this chapter, pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required.

VII. As soon as practicable but no later than November 1, 2015, the committee shall adopt rules, pursuant to RSA 541-A, relative to the organization, practices, and procedures of the committee and criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV have been met by the applicant for a certificate of site and facility. Prior to the adoption of such rules, the office of energy and planning shall hire and manage one or more consultants to conduct a public stakeholder process to develop recommended regulatory criteria, which may include consideration of issues identified in attachment C of the 2008 final report of the state energy policy commission, as well as others that may be identified during the stakeholder process. Except for the cases where the adjudicatory hearing has commenced, applications pending on the date rules adopted under this paragraph take effect shall be subject to such rules. Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If the rules require the submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information while the processing of the application continues.

Source. 1991, 295:1. 1997, 298:27. 2007, 364:7. 2009, 65:14. 2013, 134:2, eff. June 26, 2013. 2014, 217:16, eff. July 1, 2014. 2015, 219:11, eff. July 8, 2015; 268:3, eff. July 20, 2015.

TITLE XIX

PUBLIC RECREATION

CHAPTER 227-C

HISTORIC PRESERVATION

General Provisions

Section 227-C:1

227-C:1 Definitions. – As used in this chapter, the following words and terms shall have the following meanings unless a contrary meaning shall appear in the context:

I. "Commissioner" means the commissioner of the department of cultural resources or his designee.

II. "Council" means the state historical resources council.

III. "Department" means the department of cultural resources.

IV. "Field investigation" means the search for, identification of, and evaluation of historic resources, and the study of the traces of human culture at any land or underwater historic property, by means of inspection, surveying, digging, excavating, or removing surface or subsurface objects, or going onto a site with that intent.

V. "Historic preservation" means the research, excavation, protection, restoration and rehabilitation of buildings, structures, objects, districts, areas and sites significant in the history, architecture, archeology, or culture of this state, its communities, or the nation.

VI. "Historic property" means any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of this state, its communities, or the nation.

VII. "Historic resource" means:

(a) Any historic property which has been listed in the New Hampshire state register of historic places or has been determined eligible for the New Hampshire state register of historic places by the division of historical resources or which has been listed in the National Register of Historic Places or has been determined by the keeper of the register to be eligible for the National Register using the criteria for evaluation in 36 C.F.R. section 60.4;

(b) Any object, or group of objects, located in or associated with an historic property or that enhances an understanding and appreciation of New Hampshire history;

(c) Skeletal remains of humans that would not be subject to the provisions of RSA 611-B and which fall under the provisions of RSA 227-C:8, VI; skeletal remains of other vertebrate animals; and other fossils within a cultural context that constitutes, or may constitute, the whole or part of an historic property;

(d) Any object, or group of objects, and the district, area, or site they define, which may yield significant data but whose value and significance has yet to be determined by the division of historical resources; or

(e) Any significant data that may be used to answer research questions about an historic property, and events and processes of the human past, provided by the fields of archeology, history, architecture and such supplemental sciences as ethnography, paleoecology, and related sciences.

VII-a. "Human remains" or "remains" means any part of the body of deceased human being in any stage of decomposition, together with any artifacts or other materials known or reliably assumed to have been on or interred with the deceased human being.

VIII. "Office" means the state historic preservation office, also known as the division of historical

resources, department of cultural resources.

VIII-a. "Skeletal analyst" means the member of the professional staff or another professional person designated by the director of the division of historical resources with the approval of the commissioner having:

- (a) A postgraduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology, or other relevant aspects of physical anthropology or medicine;
- (b) A minimum of one year's experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity; and
- (c) Designed and executed a skeletal analysis, and presented the written results and interpretations of such analysis.

IX. "State archeologist" means the member of the professional staff designated by the director of the division of historical resources with the approval of the commissioner to develop, supervise and coordinate activities necessary to discharge and integrate the powers and duties of the office in the field of archeology as mandated by federal and state laws and procedures.

IX-a. "State curator" means the member of the professional staff, designated by the director of the division of historical resources with the approval of the commissioner, charged with the identification, evaluation, protection, and interpretation of objects of historic significance.

X. "Unmarked human burial" means any interment of human remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

Source. 1974, 32:1. 1981, 90:2; 504:1. 1983, 422:3. 1985, 345:3. 1986, 80:2-4. 1988, 201:1, 2. 1990, 73:1. 1998, 363:3. 2007, 324:12, eff. Sept. 14, 2007. 2012, 58:1, eff. July 13, 2012.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 5

DEPARTMENT OF STATE

Archives and Records Management

Section 5:40

5:40 Procedures Manual. – The director, under the supervision of the secretary of state, shall establish a manual of uniform procedures necessary and proper to effectuate the purpose of this subdivision. Such procedures and any subsequent revisions, when approved by the governor and council, shall be binding upon all officers and employees of the state.

Source. 1987, 353:1. 2006, 275:5, eff. June 15, 2006.

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of October 8, 2015

Title 36 → Chapter VIII → Part 800 → Subpart C → §800.16

Title 36: Parks, Forests, and Public Property
PART 800—PROTECTION OF HISTORIC PROPERTIES
Subpart C—Program Alternatives

§800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day or days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

* (l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement

Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with §800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) *Senior policy official* means the senior policy level official designated by the head of the agency pursuant to section 3(e) of Executive Order 13287.

[65 FR 77725, Dec. 12, 2000, as amended at 69 FR 40555, July 6, 2004]

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