

OCT 07 2015

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ATM

Final Proposal No. 2015-12

Date Filed. 10-1-15

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2015-12 Rule Number Site 205 and Site 300

<p>1. Agency Name &amp; Address: <b>Site Evaluation Committee</b> c/o N. H. Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, NH 03301</p>	<p>2. RSA Authority: <b>RSA 162-H:10, VI and VII</b></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:  <input type="checkbox"/> Adopt  <input type="checkbox"/> Amendment  <input type="checkbox"/> Repeal  <input checked="" type="checkbox"/> Readoption  <input checked="" type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **Explanation of Proposed Rule and Certificates of Site and Facility Rules**

6. Contact person for copies and questions:

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

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 15:007  
01/20/15

Fiscal Impact Statement for Site Evaluation Committee rules governing Explanation of Proposed Rule and Certificates of Site and Facility. [Site 205 and Site 300]

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

When compared to the existing rules, the proposed rules will have an indeterminable impact on costs to independently owned businesses.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. 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 businesses:**

To the extent it is necessary for an independently owned business to work with the site evaluation committee, the proposed rules will have an indeterminable impact on costs. An independently owned business may incur greater costs in preparation of application materials but decreased costs during the course of review and adjudication of the application.

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

Site 205 EXPLANATION OF PROPOSED RULE

Site 205.01 Explanation of Proposed Rule.

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

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

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

<p>Note to JLCAR: These will be non-expiring rules, unlike Site 300.</p>
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**Readopt with amendments Site 300, effective 6-17-08 (Document #9183-B), to read as follows:**

CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY

PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES

Site 301.01 Filing.

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

(b) The committee or the administrator shall:

- (1) Acknowledge receipt of an application filed under Site 301.01(a) in writing directed to the applicant;
- (2) Forward a copy of the application and acknowledgment to each member of the committee;
- (3) Forward a copy of the application to each state agency required to receive a copy under Site 301.10(a) and (b); and
- (4) Post a copy of each application on the committee's website.

Site 301.02 Format of Application.

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

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

(c) All information furnished shall appear in the same order as the requirements to provide that information appear in Site 301.03 through 301.09.

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

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

Site 301.03 Contents of Application.

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

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

- (1) The name of the applicant;
- (2) The applicant's mailing address, telephone and fax numbers, and e-mail address;

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

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

- (1) The location and address of the site of the proposed facility;
- (2) Site acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map;
- (3) The location, shown on a map, of property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property;
- (4) Identification of wetlands and surface waters of the state within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;
- (5) Identification of natural, historic, cultural, and other resources at or within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;
- (6) Evidence that the applicant has a current right, an option, or other legal basis to acquire the right, to construct, operate, and maintain the facility on, over, or under the site, in the form of:
  - a. Ownership, ground lease, easement, or other contractual right or interest;

b. A license, permit, easement, or other permission from a federal, state, or local government agency, or an application for such a license, permit, easement, or other permission from a state governmental agency that is included with the application; or

c. The simultaneous filing of a federal regulatory proceeding or taking of other action that would, if successful, provide the applicant with a right of eminent domain to acquire control of the site for the purpose of constructing, operating, and maintaining the facility thereon; and

(7) Evidence that the applicant has a current or conditional right of access to private property within the boundaries of the proposed energy facility site sufficient to accommodate a site visit by the committee, which private property, with respect to energy transmission pipelines under the jurisdiction of the Federal Energy Regulatory Commission, may be limited to the proposed locations of all above-ground structures and a representative sample of the proposed locations of underground structures or facilities.

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

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

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

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

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

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

(1) The type of facility being proposed;

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

(3) The facility's size and configuration;

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

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

a. An inventory, including amounts and specifications;

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

c. A description of the means of transportation;

(6) Production information, as follows:

a. An inventory of products and waste streams;

- b. The quantities and specifications of hazardous materials; and
- c. Waste management plans; and

(7) A map showing the entire energy facility, including, in the case of an energy transmission pipeline, the location of each compressor station, pumping station, storage facility, and other ancillary facilities associated with the energy facility, and the corridor width in the case of a proposed new route or widening along an existing route.

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

- (1) Make, model, and manufacturer of each turbine and generator unit;
- (2) Capacity in megawatts, as designed and as intended for operation;
- (3) Type of turbine and generator unit, including:
  - a. Fuel utilized;
  - b. Method of cooling condenser discharge; and
  - c. Unit efficiency;
- (4) Any associated new substations, generator interconnection lines, and electric transmission lines, whether identified by the applicant or through a system impact study conducted by or on behalf of the interconnecting utility or ISO New England, Inc.;
- (5) Copy of system impact study report for interconnection of the facility as prepared by or on behalf of ISO New England, Inc. or the interconnecting utility, if available at the time of application;
- (6) Construction schedule, including start date and scheduled completion date; and
- (7) Description of anticipated mode and frequency of operation of the facility.

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

- (1) Location shown on U.S. Geological Survey Map;
- (2) A map showing the entire electric transmission or distribution line project, including the height and location of each pole or tower, the distance between each pole or tower, and the location of each substation, switchyard, converter station, and other ancillary facilities associated with the project;
- (3) Corridor width for:
  - a. New route; or
  - b. Widening along existing route;
- (4) Length of line;
- (5) Distance along new route;

- (6) Distance along existing route;
- (7) Voltage design rating;
- (8) Any associated new electric generating unit or units;
- (9) Type of construction described in detail;
- (10) Construction schedule, including start date and scheduled completion date;
- (11) Copy of any proposed plan application or other system study request documentation required to be submitted to ISO New England, Inc. in connection with construction and operation of the proposed facility; and
- (12) Copy of system impact study report for the proposed electric transmission facility as prepared by or on behalf of ISO New England, Inc. or the interconnecting utility, if available at the time of application.

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

- (1) A detailed description of the type and size of each major part of the proposed facility;
- (2) Identification of the applicant's preferred choice and other alternatives it considers available for the site and configuration of each major part of the proposed facility and the reasons for the preferred choice;
- (3) Documentation that the applicant has held at least one public information session in each county where the proposed facility is to be located at least 30 days prior to filing its application, pursuant to RSA 162-H:10, I and Site 201.01;
- (4) Documentation that written notification of the proposed facility, including copies of the application, has been given to the governing body of each municipality in which the facility is proposed to be located, and that written notification of the application filing, including information regarding means to obtain an electronic or paper version of the application, has been sent by first class mail to the governing body of each of the other affected communities;
- (5) The information described in Sections 301.04 through 301.09;
- (6) Information regarding the cumulative impacts of the proposed energy facility on natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including, with respect to aesthetics, the potential impacts of combined observation, successive observation, and sequential observation of energy facilities by the viewer;
- (7) Information describing how the proposed facility will be consistent with the public interest, including the specific criteria set forth in Site 301.16(a)-(d); and
- (8) Pre-filed testimony and exhibits supporting the application.

See attached comment re: Legislative Intent, appearing immediately after the last page of the rules.

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

(a) Financial information shall include:

Edit: The SEC should choose whether it is going to include articles "a," "an," and "the" in lists such as this, but whichever choice it makes it should apply that approach consistently.

- ↓
- (1) A description of the applicant's experience financing other energy facilities;
  - (2) A description of the corporate structure of the applicant, including a chart showing the direct and indirect ownership of the applicant;
  - (3) A description of the applicant's financing plan for the proposed facility, including the amounts and sources of funds required for the construction and operation of the proposed facility;
  - (4) An explanation of how the applicant's financing plan compares with financing plans employed by the applicant or its affiliates, or, if no such plans have been employed by the applicant or its affiliates, then by unaffiliated project developers if and to the extent such information is publicly available, for energy facilities that are similar in size and type to the proposed facility, including any increased risks or costs associated with the applicant's financing plan; and
  - (5) Current and pro forma statements of assets and liabilities of the applicant;
- (b) Technical information shall include:
- (1) A description of the applicant's qualifications and experience in constructing and operating energy facilities, including projects similar to the proposed facility; and
  - (2) A description of the experience and qualifications of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time of application;
- (c) Managerial information shall include:
- (1) A description of the applicant's management structure for the construction and operation of the proposed facility, including an organizational chart for the applicant;
  - (2) A description of the qualifications of the applicant and its executive personnel to manage the construction and operation of the proposed facility; and
  - (3) To the extent the applicant plans to rely on contractors or consultants for the construction and operation of the proposed facility, a description of the experience and qualifications of the contractors and consultants, if known at the time of application.

Site 301.05 Effects on Aesthetics.

- (a) Each application shall include a visual impact assessment of the proposed energy facility, prepared in a manner consistent with generally accepted professional standards by a professional trained or having experience in visual impact assessment procedures, regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed facility on aesthetics.
- (b) The visual impact assessment shall contain the following components:
- (1) A description and map depicting the locations of the proposed facility and all associated buildings, structures, roads, and other ancillary components, and all areas to be cleared and graded, that would be visible from any scenic resources, based on both bare ground conditions

using topographic screening only and with consideration of screening by vegetation or other factors;

(2) A description of how the applicant identified and evaluated the scenic quality of the landscape and potential visual impacts;

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

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

a. Wind energy systems shall extend to a minimum of a 10-mile radius from each wind turbine in the proposed facility;

b. Electric transmission lines longer than 1 mile shall extend to a ½ mile radius if located within any urbanized area;

c. Electric transmission lines longer than 1 mile shall extend to a 2 mile radius if located within any urban cluster;

d. Electric transmission lines longer than 1 mile if located within any rural area shall extend to:

1. A radius of 3 miles if the line would be located within an existing transmission corridor and neither the width of the corridor nor the height of any towers, poles, or other supporting structures would be increased; or

2. A radius of 10 miles if the line would be located in a new transmission corridor or in an existing transmission corridor if either or both the width of the corridor or the height of the towers, poles, or other supporting structures would be increased;

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

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

a. The expectations of the typical viewer;

b. The effect on future use and enjoyment of the scenic resource;

c. The extent of the proposed facility, including all structures and disturbed areas, visible from the scenic resource;

d. The distance of the proposed facility from the scenic resource;

e. The horizontal breadth or visual arc of the visible elements of the proposed facility;

- f. The scale, elevation, and nature of the proposed facility relative to surrounding topography and existing structures;
- g. The duration and direction of the typical view of elements of the proposed facility; and
- h. The presence of intervening topography between the scenic resource and elements of the proposed facility;

(7) Photosimulations from representative key observation points, from other scenic resources for which the potential visual impacts are characterized as “high” pursuant to (6) above, and, to the extent feasible, from a sample of private property observation points within the area of potential visual impact, to illustrate the potential change in the landscape that would result from construction of the proposed facility and associated infrastructure, including land clearing and grading and road construction, and from any visible plume that would emanate from the proposed facility; photographs used in the simulation shall be taken at high resolution and contrast, using a full frame digital camera with a 50 millimeter fixed focal length lens or digital equivalent that creates an angle of view that closely matches human visual perception, under clear weather conditions and at a time of day that provides optimal clarity and contrast, and shall avoid if feasible showing any utility poles, fences, walls, trees, shrubs, foliage, and other foreground objects and obstructions; photosimulations shall be printed at high resolution at 15.3 inches by 10.2 inches, or 390 millimeters by 260 millimeters; at least one set of photosimulations shall represent winter season conditions without the presence of foliage typical of other seasons; photosimulations shall meet the following additional requirements:

**Edit:** Here, and elsewhere throughout the rules, the SEC has drafted provisions that do not comply with the editorial requirements of the manual.

There are several internal semicolons in this rule. This is not permitted unless it is quoting statutory text. This provision should be broken up to aid readability and comply with the editorial requirements in the *Manual*.

- a. Field conditions in which a viewpoint is photographed shall be recorded including:
  - 1. Global Position System (GPS) location points with an accuracy of at least 3 meters for each simulation viewpoint to ensure repeatability;
  - 2. Camera make and model and lens focal length;
  - 3. All camera settings at the time the photograph is taken; and
  - 4. Date, time and weather conditions at the time the photograph is taken;
- b. When simulating the presence of proposed wind turbines, the following shall apply:
  - 1. Turbines shall be placed with full frontal views and no haze or fog effect applied;
  - 2. Turbines shall reasonably represent the shape of the intended turbines for a project including the correct hub height and rotor diameter;
  - 3. Turbine blades shall be set at random angles with some turbines showing a blade in the 12 o'clock position; and
  - 4. The lighting model used to render wind turbine elements shall correspond to the lighting visible in the base photograph;

(8) If the proposed facility is required by Federal Aviation Administration regulations to install aircraft warning lighting or if the proposed facility would include other nighttime lighting, a

description and characterization of the potential visual impacts of this lighting, including the number of lights visible and their distance from key observation points; and

(9) A description of the measures planned to avoid, minimize, or mitigate potential adverse effects of the proposed facility, and of any visible plume that would emanate from the proposed facility, and the alternative measures considered but rejected by the applicant.

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

(a) Demonstration that project review of the proposed facility has been initiated for purposes of compliance with Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108, or RSA 227-C:9, as applicable;

Edit: ", available as noted in Appendix B"

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

(c) Finding or determination by the division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, that no historic properties would be affected, that there would be no adverse effects, or that there would be adverse effects to historic properties, if such a finding or determination has been made prior to the time of application.

(d) Description of the measures planned to avoid, minimize, or mitigate potential adverse effects on historic sites and archaeological resources, and the alternative measures considered but rejected by the applicant; and

(e) Description of the status of the applicant's consultations with the division of historical resources of the department of cultural resources, and, if applicable, with the lead federal agency, and, to the extent known to the applicant, any consulting parties, as defined in 36 C.F.R. §800.2(c).

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

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

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

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

(1) Description of how the applicant identified significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility, including communications with and documentation received from the New Hampshire department of fish and game, the New Hampshire natural heritage bureau, the United States Fish and Wildlife Service, and any other federal or state agencies having permitting or other regulatory authority over fish, wildlife, and other natural resources;

- (2) Identification of significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility;
- (3) Identification of critical wildlife habitat and significant habitat resources potentially affected by construction and operation of the proposed facility;
- (4) Assessment of potential impacts of construction and operation of the proposed facility on significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and on critical wildlife habitat and significant habitat resources, including fragmentation or other alteration of terrestrial or aquatic significant habitat resources;
- (5) Description of the measures planned to avoid, minimize, or mitigate potential adverse impacts of construction and operation of the proposed facility on wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and on critical wildlife habitat and significant habitat resources, and the alternative measures considered but rejected by the applicant; and
- (6) Description of the status of the applicant's discussions with the New Hampshire department of fish and game, the New Hampshire natural heritage bureau, the United States Fish and Wildlife Service, and any other federal or state agencies having permitting or other regulatory authority over fish, wildlife, and other natural resources.

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

(a) For proposed wind energy systems:

Edit: "outdoor or indoor public gathering area".

- (1) A sound impact assessment prepared in accordance with professional standards by an expert in the field, which assessment shall include the reports of a preconstruction sound background study and a sound modeling study, as specified in Site 301.18;
- (2) An assessment that identifies the astronomical maximum as well as the anticipated hours per year of shadow flicker expected to be perceived at each residence, learning space, workplace, health care setting, public gathering area (outdoor and indoor), other occupied building, and roadway, within a minimum of 1 mile of any turbine, based on shadow flicker modeling that assumes an impact distance of at least 1 mile from each of the turbines;
- (3) Description of planned setbacks that indicate the distance between each wind turbine and the nearest landowner's existing building and property line, and between each wind turbine and the nearest public road and overhead or underground energy infrastructure or energy transmission pipeline within 2 miles of such wind turbine, and explain why the indicated distances are adequate to protect the public from risks associated with the operation of the proposed wind energy facility;
- (4) An assessment of the risks of ice throw, blade shear, and tower collapse on public safety, including a description of the measures taken or planned to avoid or minimize the occurrence of such events, if necessary, and the alternative measures considered but rejected by the applicant;
- (5) Description of the lightning protection system planned for the proposed facility;

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

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

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

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

b. All transformers shall be transported off-site;

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

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

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

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

(10) An assessment of the risks that the proposed facility will interfere with the weather radars used for severe storm warning or any local weather radars.

(b) For electric transmission facilities, an assessment of electric and magnetic fields generated by the proposed facility and the potential impacts of such fields on public health and safety, based on established scientific knowledge, and an assessment of the risks of collapse of the towers, poles, or other supporting structures, and the potential adverse effects of any such collapse.

(c) For all energy facilities:

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

Edit: “, measured at the L-90 sound level,”

located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant;

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

a. All transformers shall be transported off-site; and

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

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

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

(5) A description of any additional measures taken or planned to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility, and the alternative measures considered but rejected by the applicant.

Site 301.09 Effects on Orderly Development of Region. Each application shall include information regarding the effects of the proposed energy facility on the orderly development of the region, including the views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility, if such views have been expressed in writing, and master plans of the affected communities and zoning ordinances of the proposed facility host municipalities and unincorporated places, and the applicant's estimate of the effects of the construction and operation of the facility on:

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

(1) A description of the prevailing land uses in the affected communities; and

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

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

(1) The economic effect of the facility on the affected communities;

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

(3) The effect of the proposed facility on State and tax revenues and the tax revenues of the host and regional communities;

(4) The effect of the proposed facility on real estate values in the affected communities;

- (5) The effect of the proposed facility on tourism and recreation; and
  - (6) The effect of the proposed facility on community services and infrastructure;
- (c) Employment in the region, including an assessment of:
- (1) The number and types of full-time equivalent local jobs expected to be created, preserved, or otherwise affected by the construction of the proposed facility, including direct construction employment and indirect employment induced by facility-related wages and expenditures; and
  - (2) The number and types of full-time equivalent jobs expected to be created, preserved, or otherwise affected by the operation of the proposed facility, including direct employment by the applicant and indirect employment induced by facility-related wages and expenditures.

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

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

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

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

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

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

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

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

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

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

Site 301.11 Exemption Determination.

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

- (1) Existing state or federal statutes, state or federal agency rules or municipal ordinances provide adequate protection of the objectives set forth in RSA 162-H:1;
- (2) Consideration of the proposed energy facility by only selected agencies represented on the committee is required and the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;
- (3) Response to the application or request for exemption from the general public, provided through written submissions or in the adjudicative proceeding provided for in (b) below, indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and
- (4) All environmental impacts or effects are adequately regulated by other federal, state, or local statutes, rules, or ordinances.

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

Site 301.12 Timeframe for Application Review.

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

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

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

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

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

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

- (1) The applicant's experience in securing funding to construct and operate energy facilities similar to the proposed facility;
- (2) The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;
- (3) The applicant's statements of current and pro forma assets and liabilities; and
- (4) Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.

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

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

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

- (1) The applicant's experience in managing the construction and operation of energy facilities similar to the proposed facility; and
- (2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide managerial support for the construction and operation of the proposed facility, if known at the time.

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects.

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

- (1) The existing character of the area of potential visual impact;
- (2) The significance of affected scenic resources and their distance from the proposed facility;
- (3) The extent, nature, and duration of public uses of affected scenic resources;
- (4) The scope and scale of the change in the landscape visible from affected scenic resources;
- (5) The evaluation of the overall daytime and nighttime visual impacts of the facility as described in the visual impact assessment submitted by the applicant and other relevant evidence submitted pursuant to Site 202.24;

(6) The extent to which the proposed facility would be a dominant and prominent feature within a natural or cultural landscape of high scenic quality or as viewed from scenic resources of high value or sensitivity; and

(7) The effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics, and the extent to which such measures represent best practical measures.

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

(1) All of the historic sites and archaeological resources potentially affected by the proposed facility and any anticipated potential adverse effects on such sites and resources;

(2) The number and significance of any adversely affected historic sites and archeological resources, taking into consideration the size, scale, and nature of the proposed facility;

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

(4) Findings and determinations by the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, of the proposed facility's effects on historic sites as determined under Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108, or RSA 227-C:9; and

(5) The effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on historic sites and archaeological resources, and the extent to which such measures represent best practical measures.

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

(d) In determining whether a proposed energy facility will have an unreasonable adverse effect on water quality, the committee shall consider the determinations of the New Hampshire department of environmental services, the United States Army Corps of Engineers, and other state or federal agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, with respect to applications and permits identified in Site 301.03(d), and other relevant evidence submitted pursuant to Site 202.24.

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

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

- (2) The nature, extent, and duration of the potential effects on the affected resident and migratory fish and wildlife species, rare plants, rare natural communities, and other exemplary natural communities;
- (3) The nature, extent, and duration of the potential fragmentation or other alteration of terrestrial or aquatic significant habitat resources or migration corridors;
- (4) The analyses and recommendations, if any, of the department of fish and game, the natural heritage bureau, the United States Fish and Wildlife Service, and other agencies authorized to identify and manage significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities;
- (5) The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and the extent to which such measures represent best practical measures;
- (6) The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on terrestrial or aquatic significant habitat resources, and the extent to which such measures represent best practical measures; and
- (7) Whether conditions should be included in the certificate for post-construction monitoring and reporting and for adaptive management to address potential adverse effects that cannot reliably be predicted at the time of application.

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

(1) For all energy facilities, consider the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24, the potential adverse effects of construction and operation of the proposed facility on public health and safety, the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

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

Edit: “, measured at the L-90 sound level,”

a. With respect to sound standards, the A-weighted equivalent sound levels produced by the applicant’s energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA above background levels (measured at the L-90 sound level) between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above background levels (measured at the L-90 sound level) at all other times during each day, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, on property that is used in whole or in part for permanent or temporary residential purposes, at a location between the nearest building on the property used for such purposes and the closest wind turbine; and

Edit: “outdoor or indoor public gathering area”.

b. With respect to shadow flicker, the shadow flicker created by the applicant’s energy facility during operations shall not occur more than 8 hours per year at or within any residence, learning space, workplace, health care setting, public gathering area (outdoor and indoor), or other occupied building;

(3) For wind energy systems, consider the proximity and use of buildings, property lines, public roads, and overhead and underground energy infrastructure and energy transmission pipelines, the risks of ice throw, blade shear, tower collapse, and other potential adverse effects of facility operation, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures; and

(4) For electric transmission lines, consider the proximity and use of buildings, property lines, and public roads, the risks of collapse of towers, poles, or other supporting structures, the potential impacts on public health and safety of electric and magnetic fields generated by the proposed facility, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures.

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

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

(a) The extent to which the siting, construction, and operation of the proposed facility will affect land use, employment, and the economy of the region;

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

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

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

(a) The beneficial and adverse environmental effects of the facility, including effects on air and water quality, wildlife, and natural resources;

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

(c) The extent to which construction and operation of the facility will be consistent with federal, regional, state, and local plans and policies, including those specified in RSA 378:37 and RSA 362-F:1;

(d) The municipal master plans and land use regulations pertaining to (i) natural, scenic, historic, and cultural resources, and (ii) public health and safety, air quality, economic development, and energy resources; and

See attached comment Re: Legislative Intent.

Unclear: The rule does not specify under what circumstances these conditions will be imposed, nor does it state what factors and criteria the SEC will assess when it makes these decisions.

(e) The extent to which siting, construction, and operation of the facility will have impacts on and benefits to the welfare of the population, the location and growth of industry, historic sites, aesthetics, the use of natural resources, and public health and safety, consistent with RSA 162-H:1.

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

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

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

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

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

(e) Delegation to the administrator or another state agency or official of the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within the certificate and with respect to any permit, license, or approval issued by a state agency having permitting or other regulatory authority;

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

(g) A requirement that the energy facility be sited subject to setbacks or operate with designated safety zones in order to avoid, mitigate, or minimize potential adverse effects on public health and safety;

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

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

Site 301.18 Sound Study Methodology.

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

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

(2) Long-term unattended monitoring shall be conducted in accordance with the ANSI S12.9-1992 2013 Part 2 standard, provided that audio recordings are taken in order to clearly identify and remove transient noises from the data, with frequencies above 1250 hertz 1/3 octave band to be filtered out of the data;

Edit: ", available as noted in Appendix B"

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

(4) Sound measurements shall be omitted when the wind velocity is greater than 4 meters per second at the microphone position, when there is rain, or with temperatures below instrumentation minima; following ANSI S12.9-2013 Part 3 protocol, microphones shall be placed 1 to 2 meters above ground level, and at least 7.5 meters from any reflective surface; a windscreen of the type recommended by the monitoring instrument's manufacturer must be used for all data collection; microphones should be field-calibrated before and after measurements; and an anemometer shall be located within close proximity to each microphone.

Edit: See comment to Site 301 05(b)(7).

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

- (1) Layout of the project area, including topography, project boundary lines, and property lines;
- (2) Locations of the sound measurement points;
- (3) Distance between any sound measurement point and the nearest wind turbine;
- (4) Location of significant local non-turbine sound and vibration sources;
- (5) Distance between all sound measurement points and significant local sound sources;
- (6) Location of all sensitive receptors including schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, and elderly care facilities;
- (7) Indication of temperature, weather conditions, sources of ambient sound, and prevailing wind direction and speed for the monitoring period; and
- (8) Final report shall provide A-weighted and C-weighted sound levels for L-10, Leq, and L-90.

(c) The predictive sound modeling study shall:

- (1) Be conducted in accordance with ISO 9613-2 1996-12-15 standards and specifications;
- (2) Include an adjustment to the Leq sound level produced by the model applied in order to adjust for turbine manufacturer uncertainty, such adjustment to be determined in accordance with the most recent release of the IEC 61400 Part 11 standard (Edition 3.0 2012-11);
- (3) Include predictions to be made at all properties within 2 miles from the project wind turbines for the wind speed and operating mode that would result in the worst case wind turbine sound emissions during the hours before 8:00 a.m. and after 8:00 p.m. each day; and

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

(d) The predictive sound modeling study report shall:

- (1) Include the results of the modeling described in (c)(3) above as well as a map with sound contour lines showing dBA sound emitted from the proposed wind energy system at 5 dBA intervals;
- (2) Include locations out to 2 miles from any wind turbine included in the proposed facility; and
- (3) Show proposed wind turbine locations and the location of all sensitive receptors, including schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, and elderly care facilities;

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

- (1) Adherence to the ANSI/ASA S12.9-2013 Part 3 standard that requires short-term attended measurements to ensure transient noises are removed from the data; measurements shall include at least one nighttime hour where turbines are operating at full sound power with winds less than 3 meters per second at the microphone;
- (2) Unattended long-term monitoring shall also be conducted;
- (3) Sound measurements shall be omitted when there is rain, or when temperatures are below instrumentation minima; microphones shall be placed 1 to 2 meters above ground level and at least 7.5 meters from any reflective surface, following ANSI/ASA S12.9-2013 Part 3 protocols; proper microphone screens shall be required; microphones shall be field-calibrated before and after measurements; and an anemometer shall be located within close proximity to each microphone;
- (4) Monitoring shall involve measurements being made with the turbines in both operating and non-operating modes, and supervisory control and data acquisition system data shall be used to record hub height wind speed and turbine power output;
- (5) Locations shall be pre-selected where noise measurements will be taken and shall be the same locations at which predictive sound modeling study measurements were taken pursuant to subsection (c) above; measurements shall be performed at night with winds above 4.5 meters per second at hub height and less than 3 meters per second at ground level;
- (6) All sound measurements during post-construction monitoring shall be taken at 0.125-second intervals measuring both fast response and Leq metrics; and
- (7) Post-construction monitoring surveys shall be conducted once within 3 months of commissioning, and once during each season thereafter for the first year; additional surveys shall be conducted at the request of the committee or the administrator; adjustments to this schedule shall be permitted subject to review by the committee or the administrator.

Edit: See comment to Site 301.05(b)(7).

Edit: “, available as noted in Appendix B”

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

- (1) Layout of the project area, including topography, project boundary lines, and property lines;
- (2) Locations of the sound measurement points; and
- (3) Distance between any sound measurement point and the nearest wind turbine.

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

- (1) LAeq, LA-10, and LA-90; and
- (2) LCeq, LC-10, and LC-90.

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

(i) Validation of noise complaints submitted to the committee shall require field sound surveys, except as determined by the administrator to be unwarranted, which field studies shall be conducted under the same meteorological conditions as occurred at the time of the alleged exceedance that is the subject of the complaint.

#### SITE 302 ENFORCEMENT OF TERMS AND CONDITIONS

##### Site 302.01 Determination of Certificate Violation.

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

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

Authority and Legislative Intent: During its 2015 session, in *Patel v. City of Los Angeles*, the United States Supreme Court ruled that searches of the business premises of most industries requires an opportunity for precompliance review in order to be constitutionally valid under the 4<sup>th</sup> amendment. One exception to this rule comes in the form of heavily regulated industries. While the Court did articulate a test for finding whether an industry falls into this category, it is apparent that a Court would find the facilities that the SEC approves to be heavily regulated. If an industry is heavily regulated, then the Court ruled that a search is valid if 1) there is a substantial government interest, 2) warrantless inspections are necessary to further that interest; and 3) the regulatory scheme has a "certainty and regularity requirements ... constitutionally adequate substitute for a warrant." *Id.* at 16. In this proposal, the SEC removed the requirement that such searches be "reasonable." Therefore, by penalizing a certificate holder for not immediately complying with a search, this rule violates the 4<sup>th</sup> amendment of the United States Constitution.

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

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

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

Unclear: RSA 162-H:12, I and II grant discretion to the SEC to act by using the phrase "may suspend. But it is improper to use "may" because in the rulewriting context it has a different meaning; as written, a violation could occur and an order might not be issued, and there are no indications on what basis the SEC will decide not to suspend a certificate. See § 3 8 of Ch. 4 of the *Manual*.

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

Site 302.02 Determination of Misrepresentation or Non-Compliance.

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

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

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

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

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

Site 302.03 Revocation of Certificate.

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

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

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

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

Site 302.04 Emergencies.

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

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

Site 302.05 Waiver of Rules.

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

(1) The waiver serves the public interest; and

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

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

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

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

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

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

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

## APPENDIX A

Rule	Statute
Site 205.01	RSA 162-H:10,VI and VII; RSA 541-A:11, VII
Site 301.01-02	RSA 162-H:7,II, 10,VI and VII
Site 301.03	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.04	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.05	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.06	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.07	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.08	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.09	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.10	RSA 162-H:7,IV and VI, 10,VI and VII
Site 301.11	RSA 162-H:4, IV, 10,VI and VII
Site 301.12	RSA 162-H:7, VI-b, VI-c and VI-d, 10,VI and VII, 14, I
Site 301.13	RSA 162-H:10,VI and VII, 16, IV(a)
Site 301.14	RSA 162-H:10,VI and VII, 10-a, 16, IV(c)
Site 301.15	RSA 162-H:10,VI and VII, 16, IV(b)
Site 301.16	RSA 162-H:10,VI and VII, 16, IV(e)
Site 301.17	RSA 162-H:10, VI and VII
Site 301.18	RSA 162-H:7, V, 10, VI and VII
Site 302.01-04	RSA 162-H:10,VI and VII, 12
Site 302.05	RSA 162-H:10,VI and VII; RSA 541-A:22, IV

*Edit: (e).***APPENDIX B: INCORPORATION BY REFERENCE INFORMATION**

<b>RULE</b>	<b>TITLE/CITATION (DATE)</b>	<b>SOURCE</b>
Site 301.06(b)	36 C.F.R. §800.16(d) (2014)	Available from U.S. Government Publishing Office, <a href="http://www.gpo.gov">http://www.gpo.gov</a>
Site 301.06(f)	36 C.F.R. §800.2(c) (2014)	Available from U.S. Government Publishing Office, <a href="http://www.gpo.gov">http://www.gpo.gov</a>
Site 301.18(a)(1), (a)(4), (e)(1), and (e)(3)	ANSI/ASA S12.9-2013 Part 3 Quantities and Procedures for Description and Measurement of Environmental Sound – Part 3: Short-term Measurements with an Observer Present	Published by American National Standards Institute, 25 West 43 <sup>rd</sup> Street, 4 <sup>th</sup> Floor, New York, NY 10036 Hard copy or electronic copy can be purchased for \$115.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>
Site 301.18(a)(2)	ANSI/ASA S12.9-1992 2013 Part 2, Quantities and Procedures for Description and Measurement of Environmental Sound. Part 2: Measurement of long-term, wide-area sound	Published by American National Standards Institute, 25 West 43 <sup>rd</sup> Street, 4 <sup>th</sup> Floor, New York, NY 10036 Hard copy or electronic copy can be purchased for \$100.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>
Site 301.18(c)(1)	ISO 9613-2 1996-12-15, Acoustics - Attenuation of sound during propagation outdoors - Part 2: General method of calculation	Published by International Organization for Standardization, Case Postale 56, CH-1211, Geneve 20, Switzerland Hard copy or electronic copy can be purchased for \$123.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>
Site 301.18(c)(2)	IEC 61400 Part 11 (Edition 3.0 2012-11), Wind turbines – Part 11: Acoustic noise measurement techniques	Published by International Electrotechnical Commission, 3, rue de Varembe, CH-1211, Geneva 20, Switzerland Hard copy or electronic copy can be purchased for \$303.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>
Site 301.18(c)(2)	IEC 61400 Part 14 (First Edition 2005-03), Wind turbines – Part 14: Declaration of apparent sound power level and tonality values	Published by International Electrotechnical Commission, 3, rue de Varembe, CH-1211, Geneva 20, Switzerland Hard copy or electronic copy can be purchased for \$55.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>

*Edit: This IEC Standard is NOT in 301.18(c)(2).*

## **Comments on Potential Bases for an Objection on Legislative Intent:**

### **I. Introduction:**

In Site 301.16, the Site Evaluation Committee (SEC) defines the criteria it will use when it considers whether an energy project “will serve the public interest” pursuant to RSA 162-H:16, IV(e). The criteria that the rule lists closely resemble criteria that the Senate initially included in legislative changes made to RSA 162-H:16 in Senate Bill 245 (SB 245) in 2014 bill, but which it ultimately removed.

It will be up to the Joint Legislative Committee on Administrative Rules (Committee) to assess the legislative record of SB 245 and reach a final determination. Committee staff expects significant public testimony regarding the proper interpretation of the legislative record. The comments below outline the findings the Committee would need to make to form a legally sufficient basis for a legislative intent objection.

If the Committee finds that the criteria in Site 301.16 revive standards that the legislature considered, but chose not to adopt in favor of a different standard, thereby defeating it, then the Committee could object pursuant to Committee Rule 402.01(a). Committee Rule 402.01(a) states that “a proposed rule shall be considered contrary to legislative intent if the Committee determines that the rule attempts to implement a bill which the Legislature defeated, unless there is evidence that the bill was defeated at least in part because its content could be implemented with existing rulemaking authority.”

Alternatively, if the Committee finds that the phrases “public interest” is a distinct phrase with a meaning that conflicts with the SEC’s proposed criteria, and that in choosing to adopt “public interest” it expressed its preference for that standard, then the Committee could object that the rule “violates or otherwise conflicts with a specific state... statutory provision,” pursuant to Committee rule 402.02(a).

If the Committee does not make such findings, then the rule would not be objectionable pursuant to legislative intent.

### **II. Legislative History:**

**A. During the 2014 session in SB 245, the New Hampshire Legislature made substantial changes to the make up of the SEC, and incorporated new requirements into what the SEC must consider before it grants a certificate:**

In 2014, the New Hampshire Legislature made substantial changes to the make up and structure of the SEC. Part of that process involved changes to the conditions on which the SEC grants certificates. In the final version of SB 245, the Legislature made the following change, highlighted in bold below, to RSA 162-H:16, IV:

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

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

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

*(c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.*

*(d) [Repealed.]*

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

**B. In legal effect, the SEC's rule implements several requirements that the Senate considered, but ultimately removed:**

In the current proposal, the SEC attempts to define public interest using the following language:

*Site 301.16 Criteria Relative to Finding of Public Interest. In determining whether a proposed energy facility will serve the public interest, the committee shall consider:*

*(a) The beneficial and adverse environmental effects of the facility, including effects on air and water quality, wildlife, and natural resources;*

*(b) The beneficial and adverse economic effects of the facility, including the costs and benefits to energy consumers, property owners, state and local tax revenues, employment opportunities, and local and regional economies;*

*(c) The extent to which construction and operation of the facility will be consistent with federal, regional, state, and local plans and policies, including those specified in RSA 378:37 and RSA 362-F:1;*

*(d) The municipal master plans and land use regulations pertaining to (i) natural, scenic, historic, and cultural resources, and (ii) public health and safety, air quality, economic development, and energy resources; and*

*(e) The extent to which siting, construction, and operation of the facility will have impacts on and benefits to the welfare of the population, the location and growth of industry, historic sites, aesthetics, the use of natural resources, and public health and safety, consistent with RSA 162-H:1.*

This language describes public interest by referring to several different criteria. While these criteria do not include the phrase “net,” criteria (a) and (b) apparently do refer to net requirements. For example, it would appear that in comparing “the beneficial and adverse environmental effects of the facility” the SEC would not make a finding of public interest if it determined that, in the aggregate, the effect of the facility on the environment would be negative. Additionally, criteria (c) and (d) almost quote the language the Senate removed from SB 245.

**C. The Senate Energy and Natural Resources Committee heard testimony regarding “public interest” and “net benefit” during Committee hearings related to an amendment to the original SB 245, and chose to adopt the net benefit language when it sent it to the Senate as a whole:**

In its February 19, 2014 hearing on SB 245 and its amendments, the New Hampshire Senate reviewed SB 245 and received testimony about “public interests” and “net benefits.” Later, the Senate Energy and Natural Resources Committee (Energy Committee) voted 4-1 in favor of SB 245, reporting it to the full Senate with a recommendation of Ought to Pass with Amendment. Please find the specific amendment, #2014-0921s.

In #2014-0921s, the following changes, identified in bold lettering, were added to RSA 162-H:16, VI:

*IV. The site evaluation committee, after having considered available alternatives, **including reasonable alternative not described in the application**, and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that [~~the site and facility~~]:*

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

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

*(c) **The site and facility will not have an unreasonable adverse effect, including unreasonable adverse cumulative effects, on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.***

*(d) [Repealed.]*

*(e) The site and facility will serve the public interest when taking into account:*

*(1) The net environmental effects of the facility, considering both beneficial and adverse effects.*

*(2) The net economic effects of the facility, including but not limited to costs and benefits to energy consumers, property owners, state and local tax revenues, employment opportunities, and local and regional economies.*

*(3) Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.*

*(4) Whether the facility as proposed is consistent with municipal master plans and land use regulations pertaining to (i) natural, historic, scenic, cultural resources and (ii) public health and safety, air quality, economic development, and energy resources.*

*(5) Such additional public interest considerations as may be deemed pertinent by the committee.*

*(f) The site and facility will be consistent with the state energy strategy established in RSA 4-E:1. (Attached 25-26).*

In its hearing, the Energy Committee considered the oral and written testimony of several different parties, many of whom testified regarding “public interest” and “net criteria.”

The Energy Committee’s meeting minutes reflect that the Committee heard oral testimony from individuals and corporations. In favor of the bill, Sheryl Lewis supported the amendment. (Attached 40). The minutes reflect that she testified to the necessity for a “balance between different aspects” presented to the Committee. In opposition, as representative of EBP Renewables, Susan Geiger testified that “her first concern is in regard to the first section and facilities that provide a net public benefit.” In response to her testimony, Senator Bradley asked whether the “net public benefit standard is less defined than no adverse impact,” to which Attorney Geiger responded “whether a project is in the public interest is certainly something the PUC can view.” (Attached 41).

In addition to the oral testimony, the Energy Committee received written testimony regarding public interest and net benefit.

Several letters were written in support of the amendment. In their capacities as then Chair and Vice Chair of the SEC, Commissioners Thomas Burack and Amy Ignatius testified that:

*The amendment then creates a new test of "net public benefits". Guidance as to what such a test should weigh would be beneficial to applicants, intervenors and the SEC. We recognize that the language on Page 8, lines 24-27 provides some further definition of "net public benefits," but should be further expanded in order to help avoid the possibility of multiple conflicting interpretations arising. (Attached 51)*

In support of the amendment, four environmental groups, the Society for the Protection of NH Forests, The Appalachian Mountain Club, the Conservation Law Foundation, and the Nature Conservancy wrote the following:

*First, the purpose of the state's current siting statute – to balance environmental protection with the need for new energy – would be better served if the SEC were required to make a determination that a proposed project serves the public interest. The SEC makes no such determination under current law; rather, the siting board is only required to determine that there is no "unreasonable adverse effects" on such things as aesthetics and the environment.*

*Senator Forrester's amendment requires that the SEC make a finding that a proposed project results in net public benefits, after considering all environmental, social, and economic cost and benefits – whether for our natural resources, for ratepayers and businesses, for public health, or for the state's economy, or for all of the above – and that these benefits outweigh a project's potential adverse impacts. Other states, including Maine and Vermont, have such a requirement ensuring that the greater good of the state and its communities is weighed as part of every siting decision. (Attached 57-58)*

The Nature Conservancy of New Hampshire wrote further, stating that:

*As noted above, a public interest standard derived from weighing a proposed project's benefits and costs is not new to energy facility siting. And in New Hampshire, the state continues to play an important role in energy regulation.*

...

*However, before the PUC authorizes the utility's recovery of its investments in distributed energy resources, the PUC must determine that the utility's investment and recovery of that investment (through increased electricity rates) are in the public interest. A determination of the public factors must include giving balanced consideration and equal weight to the following nine factors:*

- (a) The effect on the reliability, safety, and efficiency of electric service.*
- (b) The efficient and cost-effective realization of the purposes of the state's renewable portfolio standards and the state's restructuring policy principles.*

- (c) The energy security benefits of the investment to the state of New Hampshire.*
- (d) The environmental benefits of the investment to the state of New Hampshire.*
- (e) The economic development benefits and liabilities of the investment to the state of New Hampshire.*
- (f) The effect on competition within the region's electricity markets and the state's energy services market.*
- (g) The costs and benefits to the utility's customers, including but not limited to a demonstration that the company has exercised competitive processes to reasonably minimize costs of the project to ratepayers and to maximize private investment in the project.*
- (h) Whether the expected value of the economic benefits of the investment to the utility's ratepayers over the life of the investment outweigh the economic costs to the utility's ratepayers.*
- (i) The costs and benefits to any participating customer or customers. (Attached 66-67)*

The New Hampshire Sierra Club (NHSC) testified that:

*NHSC urges the members of this committee to be specific in the application section of the statute. If more information is needed in the application, the specifically add that information to RSA 162-H:7-r(sp), or word in such a way that it will direct future rulemaking. Studies, lists of pre-application meetings, emissions savings, costs associated with leases, decommissioning commitments and many other ideas could be required in the application. Secondly, it is important that the application requirements in RSA 162-H-7 correlate with findings in RSA 162-H:16 because the application supplies the information to make the findings and ultimately the final decision. The amendment proposal expands the findings with a new requirement, a so called "net benefit" requirement, but does not add corresponding documentation in the application. NHSC suggests that the Committee **define** the new finding requirement and include those elements in its application. (Attached 70)*

Finally, Marc Brown of the New England Ratepayers Association opposed the bill in its then current form, stating:

*In our opinion, the language in SB 245 is extremely vague and will likely excessively restrict the development of new energy projects, not to mention the potential legal morass that the current language will provoke:*

*Page 1, Line 15-16 "...facilities that provide net public benefits..." Is benefit based on reduced cost to ratepayers? Jobs for the communities in which they are sited? Tax benefits? Environmental? A combination of those and/or others? (Attached 72)*

The bill was considered by the full Senate on March 13, 2014. There, the Senate voted to adopt the Committee Amendment, and then ordered the bill to the Committee on Finance pursuant to Senate Rule 4-5. (Attached 16).

**D. The Senate Finance Committee removed the “cumulative impact” language, and the “net” criteria, the references to compliance with other law, and compliance with master plans from the statute and included the term “public interest”:**

On March 20, 2014, the Senate Finance Committee amended the bill in #2014-1125s to remove the reference to specific criteria and instead added the phrase “public interest” into RSA 162-H:16, IV, and added a single new subparagraph, RSA 162-H:16, IV(e), which adds a consideration of whether the site and facility “will serve the public interest.” (Attached 34). It then reported it to the full senate as Ought to Pass with Amendment.

**E. No subsequent official record exists regarding the change from “net” criteria to “public interest”:**

From that point forward the issue of “public interest” versus “net benefit” does not feature in any official part of the legislative record to which Committee staff had access when it analyzed the record, but staff has since learned that it apparently was discussed before the House Science, Technology, and Energy Committee. Neither House Calendar dealing with the bill addresses the issue, nor does the subsequent Senate Journal. The current text of RSA 162-H:16, IV matches the relevant text proposed in #2014-1125s.

**F. The decision whether the facts support an objection on legislative intent properly belongs to the Committee after consideration of the record and the testimony:**

The Committee may choose whether to object to a rule, and it does so at this stage by determining, pursuant to Committee Rule 303.01(b)(3), that, “the final proposal or amended final proposal falls into any of the 4 categories listed in RSA 541-A:13, IV.” One of those bases is that the rule is contrary to legislative intent. The Committee has further interpreted this basis by adopting Committee Rule 402. Two rules in Committee Rule 402 may apply: 402.01(a), and 402.02(a).

Committee Rule 402.01(a) states that “a proposed rule shall be considered contrary to legislative intent if the Committee determines that the rule attempts to implement a bill which the Legislature defeated, unless there is evidence that the bill was defeated at least in part because its content could be implemented with existing rulemaking authority.”

Committee Rule 402.02(a) states that “The Committee may object to a proposed rule as contrary to legislative intent if the Committee determines that the rule violates or otherwise conflicts with a specific state or federal statutory provision or federal regulation.”

In order for the basis to exist pursuant to Committee Rule 402.01(a), the Committee would first have to determine that an amendment to SB 245 which removed the other amendment on “net benefit” and included “public interest” constituted a “defeat” of that language on its merits and not because the issue was better suited to rulemaking. If the Committee makes this determination, then a basis would exist because there is no

evidence indicating that the language was defeated because its content could be implemented within existing rulemaking authority.

In order for the basis to exist pursuant to Committee Rule 402.02(a), the Committee would have to find that “public interest” and “net benefit,” or its equivalent as represented in the current Site 302.16, are contradictory terms. If it made such a finding, then adopting the proposed criteria would conflict with the statute, meaning the Committee may conclude that they were contrary to legislative intent.

Finally, if the Committee makes neither such finding, then a basis for objection would not exist.

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:	<b>Kathryn M. Bailey</b>	Title:	<b>Committee Member</b>
Address:	<b>c/o NHPUC, 21 South Fruit Street, Suite 10 Concord, NH 03301</b>	Phone #:	<b>603-271-2431</b>
3. Specific rule number where the material is incorporated: **Site 301.18(a)(1), (a)(4), (e)(1), and (e)(3)**

**\*\*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. 2015-12  
Site 205 and 300, Explanation of Proposed Rule and Certificates  
of Site and Facility Rules of the Site Evaluation Committee  
Final Proposal

Site 301.18(a)(1), (a)(4), (e)(1), and (e)(3)

4) ANSI/ASA S12.9-2013 Part 3 (“Quantities and Procedures for Description and Measurement of Environmental Sound – Part 3: Short-term Measurements with an Observer Present”), is prepared by and published by the American National Standards Institute.

5) The agency did not modify the text.

6) A copy of ANSI/ASA S12.9-2013 Part 3 can be obtained in hard copy or in electronic copy from the American National Standards Institute for \$115.00. A copy can be purchased on-line at <http://webstore.ansi.org> or by mailing a request to the American National Standards Institute, 25 West 43<sup>rd</sup> Street, 4<sup>th</sup> Floor, New York, NY 10036, Telephone No. 1-212-642-4900.

7) The Committee chose not to reproduce the incorporated materials because the document is protected by copyright.

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- 2. Person who has reviewed the material to be incorporated into the agency's rules:
 

Name:	<b>Kathryn M. Bailey</b>	Title:	<b>Committee Member</b>
Address:	<b>c/o NHPUC, 21 South Fruit Street, Suite 10 Concord, NH 03301</b>	Phone #:	<b>603-271-2431</b>
- 3. Specific rule number where the material is incorporated: **Site 301.18(a)(2)**

**\*\*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.
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Final Proposal

Site 301.18(a)(2)

4) ANSI/ASA S12.9-1992 2013 Part 2 (“Quantities and Procedures for Description and Measurement of Environmental Sound. Part 2: Measurement of long-term, wide-area sound”), is prepared by and published by the American National Standards Institute.

5) The agency did not modify the text.

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Address:	<b>c/o NHPUC, 21 South Fruit Street, Suite 10 Concord, NH 03301</b>	Phone #:	<b>603-271-2431</b>
- 3. Specific rule number where the material is incorporated: **Site 301.18(c)(1)**

**\*\*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.
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Title: Chairman

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Final Proposal

Site 301.18(c)(1)

4) ISO 9613-2 1996-12-15 (“Acoustics - Attenuation of sound during propagation outdoors - Part 2: General method of calculation”), is prepared by and published by the International Organization for Standardization.

5) The agency did not modify the text.

6) A copy of ISO 9613-2 1996-12-15 can be obtained in hard copy or in electronic copy from the American National Standards Institute for \$123.00. A copy can be purchased on-line at <http://webstore.ansi.org> or by mailing a request to the American National Standards Institute, 25 West 43<sup>rd</sup> Street, 4<sup>th</sup> Floor, New York, NY 10036, Telephone No. 1-212-642-4900.

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Address:	<b>c/o NHPUC, 21 South Fruit Street, Suite 10 Concord, NH 03301</b>	Phone #:	<b>603-271-2431</b>
- 3. Specific rule number where the material is incorporated: **Site 301.18(c)(2)**

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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. 2015-12  
Site 205 and 300, Explanation of Proposed Rule and Certificates  
of Site and Facility Rules of the Site Evaluation Committee  
Final Proposal

Site 301.18(c)(2)

4) IEC 61400 Part 11 (Edition 3.0 2012-11) (“Wind turbines – Part 11: Acoustic noise measurement techniques”), is prepared by and published by the International Electrotechnical Commission.

5) The agency did not modify the text.

6) A copy of IEC 61400 Part 11 (Edition 3.0 2012-11) can be obtained in hard copy or in electronic copy from the American National Standards Institute for \$303.00. A copy can be purchased on-line at <http://webstore.ansi.org> or by mailing a request to the American National Standards Institute, 25 West 43<sup>rd</sup> Street, 4<sup>th</sup> Floor, New York, NY 10036, Telephone No. 1-212-642-4900.

7) The Committee chose not to reproduce the incorporated materials because the document is protected by copyright.

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:	<b>Kathryn M. Bailey</b>	Title:	<b>Committee Member</b>
Address:	<b>c/o NHPUC, 21 South Fruit Street, Suite 10 Concord, NH 03301</b>	Phone #:	<b>603-271-2431</b>
- 3. Specific rule number where the material is incorporated: **Site 301.18(c)(2)**

**\*\*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. 2015-12  
Site 205 and 300, Explanation of Proposed Rule and Certificates  
of Site and Facility Rules of the Site Evaluation Committee  
Final Proposal

Site 301.18(c)(2)

4) IEC 61400 Part 14 (First Edition 2005-03) ("Wind turbines - Part 14: Declaration of apparent sound power level and tonality values"), is prepared by and published by the International Electrotechnical Commission.

5) The agency did not modify the text.

6) A copy of IEC 61400 Part 14 (First Edition 2005-03) can be obtained in hard copy or in electronic copy from the American National Standards Institute for \$55.00. A copy can be purchased on-line at <http://webstore.ansi.org> or by mailing a request to the American National Standards Institute, 25 West 43<sup>rd</sup> Street, 4<sup>th</sup> Floor, New York, NY 10036, Telephone No. 1-212-642-4900.

7) The Committee chose not to reproduce the incorporated materials because the document is protected by copyright.



# TITLE XII

## PUBLIC SAFETY AND WELFARE

### CHAPTER 162-H

#### ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

##### Section 162-H:4

###### 162-H:4 Powers and Duties of the Committee. –

###### I. The committee shall:

- (a) Evaluate and issue any certificate under this chapter for an energy facility.
- (b) Determine the terms and conditions of any certificate issued under this chapter.
- (c) Monitor the construction and operation of any energy facility granted a certificate under this chapter to ensure compliance with such certificate.
- (d) Enforce the terms and conditions of any certificate issued under this chapter.
- (e) Assist the public in understanding the requirements of this chapter.

II. The committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate.

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate under this chapter to the administrator or such state agency or official as it deems appropriate, but shall ensure that the terms and conditions of the certificate are met. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.

III-a. The committee may delegate to the administrator or such state agency or official as it deems appropriate the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter, or the authority to specify minor changes in the route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

III-b. The committee may not delegate its authority or duties, except as provided under this chapter.

IV. In cases where the committee determines that other existing statutes provide adequate protection of the objectives of RSA 162-H:1, the committee may, within 60 days of acceptance of the application, or filing of a request for exemption with sufficient information to enable the committee to determine whether the proposal meets the requirements set forth below, and after holding a public hearing in a county where the energy facility is proposed, exempt the applicant from the approval and certificate provisions of this chapter, provided that the following requirements are met:

(a) Existing state or federal statutes, state or federal agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1;

(b) A review of the application or request for exemption reveals that consideration of the proposal by only selected agencies represented on the committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;

(c) Response to the application or request for exemption from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and

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

V. In any matter before the committee, the presiding officer, or a hearing officer designated by the presiding officer, may hear and decide procedural matters that are before the committee, including procedural schedules, consolidation of parties with substantially similar interests, discovery schedules and motions, and identification of significant disputed issues for hearing and decision by the committee. Undisputed petitions for intervention may be decided by the hearing officer and disputed petitions shall be decided by the presiding officer. Any party aggrieved by a decision on a petition to intervene may within 10 calendar days request that the committee review such decision. Other procedural decisions may be reviewed by the committee at its discretion.

**Source.** 1991, 295:1. 1997, 298:26. 2007, 364:5. 2008, 348:7. 2009, 65:6-8, eff. Aug. 8, 2009. 2014, 217:8-10, eff. July 1, 2014.

# 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:12

###### 162-H:12 Enforcement. –

I. Whenever the committee, or the administrator as designee, determines that any term or condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the person holding the certificate of the specific violation and order the person to immediately terminate the violation. If, 15 days after receipt of the order, the person has failed or neglected to terminate the violation, the committee may suspend the person's certificate. Except for emergencies, prior to any suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing.

II. The committee may suspend a person's certificate if the committee determines that the person has made a material misrepresentation in the application or, in the supplemental or additional statements of fact or studies required of the applicant, or if the committee determines that the person has violated the provisions of this chapter or any rule adopted under this chapter. Except for emergencies, prior to any suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide an opportunity for a prompt hearing.

III. The committee may revoke any certificate that is suspended after the person holding the suspended certificate has been given at least 90 days' written notice of the committee's consideration of revocation and of its reasons therefor and has been provided an opportunity for a full hearing.

IV. Notwithstanding any other provision of this chapter, each of the other state agencies having permitting or other regulatory authority shall retain all of its powers and duties of enforcement.

V. The full amount of costs and expenses incurred by the committee in connection with any enforcement action against a person holding a certificate, including any action under this section and any action under RSA 162-H:19, in which the person is determined to have violated any provision of this chapter, any rule adopted by the committee, or any of the terms and conditions of the issued certificate, shall be assessed to the person and shall be paid by the person to the committee. Any amounts paid by a person to the committee pursuant to this paragraph shall be deposited in the site evaluation committee fund established in RSA 162-H:21.

**Source.** 1991, 295:1. 2009, 65:15, eff. Aug. 8, 2009. 2014, 217:17, 18, eff. July 1, 2014. 2015, 219:6, eff. July 8, 2015.

# TITLE XII

## PUBLIC SAFETY AND WELFARE

### CHAPTER 162-H

#### ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

#### Section 162-H:16

##### **162-H:16 Findings and Certificate Issuance. –**

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

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

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

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

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

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

(c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.

~~\*~~ (d) [Repealed.]

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

V. [Repealed.]

VI. A certificate of site and facility may contain such reasonable terms and conditions, including but not limited to the authority to require bonding, as the committee deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such certificates, when issued, shall be final and subject only to judicial review.

VII. The committee may condition the certificate upon the results of required federal and state agency studies whose study period exceeds the application period.

**Source.** 1991, 295:1. 2009, 65:18-21, 24, IX, eff. Aug. 8, 2009. 2014, 217:20-22, eff. July 1, 2014. 2015, 264:2, eff. July 20, 2015.

## New Hampshire General Court - Bill Status System

**Docket of SB245**

Docket Abbreviations

**Bill Title:** (New Title) relative to the siting of energy facilities.*Official Docket of SB245:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
12/20/2013	S	<b>Introduced</b> 1/8/2014 and Referred to Energy and Natural Resources
2/13/2014	S	Hearing: 2/19/14, Room 101, LOB, 9:00 a.m.; <b>SC7</b>
3/6/2014	S	Committee Report: Ought to Pass with Amendment <b>#2014-0921s</b> , 3/13/14; <b>SC9</b>
3/13/2014	S	Committee Amendment 0921s, NT, AA, VV
3/13/2014	S	<b>Ought to Pass with Amendment</b> 0921s, NT, MA, VV; Refer to Finance Rule 4-5; <b>SJ 7</b>
3/20/2014	S	Committee Report: Ought to Pass with Amendment <b>#2014-1125s</b> , 3/27/14; <b>SC11</b>
3/27/2014	S	Committee Amendment 1125s, AA, VV
3/27/2014	S	<b>Ought to Pass with Amendment</b> 1125s, MA, VV; OT3rdg; <b>SJ 8</b>
4/1/2014	H	Introduced (In Recess, 3/26/2014) and Referred to Science, Technology and Energy
4/2/2014	H	Public Hearing: 4/8/2014 2:15 PM LOB 301-303
4/2/2014	H	Subcommittee Work Session: 4/9/2014 1:00 PM LOB 304
4/2/2014	H	Subcommittee Work Session: 4/15/2014 10:00 AM LOB 304
4/2/2014	H	Subcommittee Work Session: 4/16/2014 10:00 AM LOB 304
4/2/2014	H	===CANCELLED=== Subcommittee Work Session: 4/16/2014 10:00 AM LOB 304
4/8/2014	H	Subcommittee Work Session: 4/10/2014 10:00 AM LOB 304
4/8/2014	H	Executive Session: 4/16/2014 2:00 PM LOB 304
4/17/2014	H	Committee Report: Ought to Pass with Amendment <b>#2014-1442h</b> (Vote 16-1; RC); <b>HC 31</b>
4/23/2014	H	Amendment <b>#2014-1442h</b> AA VV
4/23/2014	H	<b>Ought to Pass with Amendment #2014-1442h</b> MA Div 227-69
4/23/2014	H	Refer to Finance
4/24/2014	H	Division I Work Session: 4/29/2014 1:30 PM LOB 212
4/29/2014	H	Division I Work Session: 5/1/2014 2:45 PM LOB 212
4/29/2014	H	Division I Work Session: 5/6/2014 10:00 AM LOB 212
5/1/2014	H	==RESCHEDULED== Work Session: 5/6/2014 9:00 AM LOB 212
5/2/2014	H	Executive Session: 5/8/2014 10:00 AM LOB 210-211
5/6/2014	H	Division I Work Session: 5/8/2014 9:00 AM LOB 212
5/8/2014	H	Committee Report: Ought to Pass with Amendment <b>#2014-1795h</b> (Vote 20-3; RC); <b>HC 35</b>
5/14/2014	H	Amendment <b>#2014-1795h</b> AA VV
5/14/2014	H	<b>Ought to Pass with Amendment #1795h</b> MA VV

5/22/2014	S	Sen. Prescott Concurs with House Amendments #1795h, MA, VV; <b>SJ 14</b>
6/3/2014	H	Enrolled Bill Amendment #14-2006eba Adopted, VV (In recess of 5/15/2014)
6/4/2014	S	Enrolled Bill Amendment <b>#2014-2006e</b> Adopted
6/4/2014	S	Enrolled
6/17/2014	H	Enrolled (In recess of 6/4/2014)
7/18/2014	S	Signed by the Governor on 07/11/14; Chapter 0217
7/18/2014	S	I. Section 24, 25 & RSA 162-H:21, III as inserted by section 23 Effective 07/11/14
7/18/2014	S	II. Remainder Effective 07/01/14

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NH House

NH Senate

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## Energy and Natural Resources

March 6, 2014

2014-0921s

06/10

## Amendment to SB 245-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to the siting of energy facilities.

Amend the bill by replacing all after the enacting clause with the following:

1 Energy Facility Evaluation and Siting, Construction and Operation. Amend RSA 162-H:1 to read as follows:

162-H:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy facilities, including the routing of high voltage transmission lines and energy transmission pipelines, ~~[with]~~ *may* have ~~[a]~~ significant ~~[impact upon]~~ **impacts and benefits on the following**: the welfare of the population, **property values**, the location and growth of industry, the overall economic growth of the state, the environment of the state, ~~[and]~~ **historic sites, aesthetics, air and water quality**, the use of natural resources, **and public health and safety**. Accordingly, the legislature finds that it is in the public interest to maintain a balance between ~~[the environment]~~ **those potential significant impacts** and the need for new energy facilities in New Hampshire; that undue delay in the construction of needed facilities be avoided and that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion, all to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

2 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Participating State Agency. Amend RSA 162-H:2 by inserting after paragraph VIII the following new paragraph:

VIII-a. "Participating state agency" means each state agency having regulatory or other jurisdiction over, or interest in, an energy facility, including any aspect of construction, operation, or impacts of such facility, or a state agency that is consulted by an applicant for an energy facility certificate.

3 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Staff Director. Amend RSA 162-H:2 by inserting after paragraph XII the following new paragraph:

XIII. "Staff director" means the staff director of the committee established by this chapter.

4 Site Evaluation Committee. RSA 162-H:3 is repealed and reenacted to read as follows:

162-H:3 Site Evaluation Committee Established.

I. There is hereby established a committee to be known as the New Hampshire site evaluation committee to evaluate petitions for certificates for site and facility, exemption from jurisdiction, and declaratory rulings; to oversee the operations of certificated facilities to ensure they are meeting the conditions of their certificates; to assist the public in understanding the requirements of this chapter; and to engage in rulemaking as needed.

II. The committee shall consist of 7 members, who shall be appointed by the governor, with the consent of the council, one of whom shall be designated as chairman by the governor. All members shall be residents of the state of New Hampshire. No committee member nor any member of his or her family shall receive income from energy facilities within the jurisdiction of the committee. All members shall refrain from ex parte communications regarding any matter pending before the committee. All members shall comply with RSA 15-A and RSA 15-B.

III. Members shall serve 4 year terms and until their successors are appointed and qualified, provided that, for the initial appointments, one shall be appointed to a one year term, 2 shall be appointed to 2 year terms, 2 shall be appointed to 3 year terms, and 2 shall be appointed to 4 year terms.

IV. Any member chosen to fill a vacancy occurring other than by expiration of term shall be appointed for the unexpired term of the member who is to be succeeded.

V. Three of the members shall be appointed based on geographic regions of the state such that one shall reside in Coos, Carroll, Grafton, or Belknap county; one shall reside in Sullivan, Cheshire, or Hillsborough county; and one shall reside in Merrimack, Strafford, or Rockingham county. The remaining 4 members shall be appointed based on their expertise or experience, to represent each of the following disciplines:

(a) Environmental protection or natural resource conservation, or both.

(b) Energy facility design, construction, operation, or management.

(c) Community and regional economic development.

(d) Regional planning.

VI. Five members of the committee shall constitute a quorum for the purpose of conducting the committee's business, with the exception of administrative actions which may be taken by the chairman, or designated presiding officer, or procedure rulings which may be made by a hearing officer.

VII. Any member of the committee may be removed by the governor and council for inefficiency, neglect of duty, or misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard.

VIII. The committee shall be administratively attached to the public utilities commission pursuant to RSA 21-G:10.

IX. Committee members shall be compensated at a per diem rate for any day involving more than 7 hours spent on committee matters and 1/2 the per diem rate for any day involving 7 hours or fewer spent on committee matters. The per diem rate shall be at a rate equal to the daily salary rate for a commissioner of the public utilities commission at the initial step.

X. The Chairman may:

- (a) Serve as the chief executive of the committee.
- (b) Delegate to other members the duties of presiding officer, as appropriate.
- (c) Establish, with the consent of the panel, the budgetary requirements of the agency.
- (d) Engage personnel in accordance with this chapter.

XI. Each application or petition shall be considered by the full committee. In the event that fewer than 5 members are available to sit, the governor shall appoint one or more alternates with the consent of the executive council.

XII. The committee shall have a full time staff director who, with committee approval, may engage additional technical, legal, or administrative support to fulfill the functions of the committee as necessary.

5 New Section; Staff Director. Amend RSA 162-H by inserting after section 3 the following new section:

162-H:3-a Staff Director. The site evaluation committee shall establish the position of staff director. The staff director shall be a classified state employee at labor grade 34. The salary of the staff director shall be paid from the site evaluation committee fund established in RSA 162-H:21.

6 Powers of the Committee. Amend RSA 162-H:4, III and III-a to read as follows:

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate under this chapter to *the staff director or* such state agency or official represented on the committee as it deems appropriate, but, subject to RSA 162-H:10, it may not delegate authority to hold hearings, issue certificates, determine the terms and conditions of a certificate, or enforce a certificate. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.

III-a. The committee may delegate to *the staff director or* an agency or official represented on the committee the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter, or the authority to specify minor changes in the route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

7 Powers of Committee. RSA 162-H:4, V is repealed and reenacted to read as follows:

V. Once an energy facility application has been accepted, the staff director may designate a hearing officer to hear and decide procedural matters that are before the committee, including procedural schedules, petitions for intervention, consolidation of parties with substantially similar interests, discovery schedules and motions, and identification of disputed issues for decision by the committee.

8 New Paragraph; Application for Certificate. Amend RSA 162-H:7 by inserting after paragraph I the following new paragraph:

I-a. At least 30 days prior to filing an application, an applicant for a certificate shall hold at least one public information session open to the public in a municipality where the energy facility is located or will be located. The applicant 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 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 receive comments from the public. The applicant shall notify the chairperson of the committee in advance of the time and place of such session and arrange for a transcript of the session to be prepared.

9 Application for Certificate. Amend RSA 162-H:7, IV through VI-e to read as follows:

IV. Each application shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency's completed application forms. Upon the filing of an application, the committee shall expeditiously forward a copy to the *participating* state agencies [~~having jurisdiction~~] **and to other state agencies that may have comments or information requests regarding the application.** Upon receipt of a copy, each agency shall conduct a preliminary review to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of the *participating* state agencies [~~having jurisdiction~~], that agency shall, in writing, notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by this section, any application made under this section shall be deemed not accepted either by the committee or by any of the *participating* state agencies [~~having jurisdiction~~] if the applicant is [~~seasonably~~] **reasonably** notified that it has not supplied sufficient information for any of the *participating* state agencies having jurisdiction in accordance with this paragraph.

V. Each application shall also:

- (a) Describe in reasonable detail the type and size of each major part of the proposed facility.
- (b) Identify both the preferred choice and any other choices for the site of each major part of the proposed facility.
- (c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment for each site proposed.
- (d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems.
- (e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility.
- (f) Document that written notification of the proposed project, including appropriate copies of the application, has been given to the appropriate governing body of each community in which the facility is proposed to be located.
- (g) ***Provide the transcript of the pre-application public information session and a statement from the applicant regarding any changes made to the proposed project in response to such session.***
- (h) ***In the case of projects proposing overhead transmission facilities, present underground alternatives and site alternatives.***

(i) Provide such additional information as the committee may require to carry out the purposes of this chapter.

***V-a. Each application shall be accompanied by an application fee under RSA 162-H:21, II.***

VI. The committee shall decide whether or not to accept the application within 60 days of filing. If the committee rejects an application because it determines it to be administratively incomplete, the applicant may choose to file a new and more complete application or cure the defects in the rejected application within 10 days of receipt of notification of rejection.

VI-a. Within 30 days after acceptance of the application, the committee shall hold at least one public ~~[hearing]~~ ***information session*** in each county in which the proposed facility is to be located, in accordance with RSA 162-H:10. ***Within 30 days after the last public information session, the committee shall hold at least one public hearing in each county in which the proposed facility is to be located, in accordance with RSA 162-H:10.***

VI-b. All participating state agencies shall report their progress to the committee within ~~[5 months]~~ ***150 days*** of the acceptance of the application, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision.

VI-c. All participating state agencies shall make and submit to the committee a final decision on the parts of the application that relate to its jurisdiction, no later than ~~[8 months]~~ ***240 days*** after the application has been accepted.

VI-d. Within ~~[9 months]~~ ***365 days*** of the acceptance of an application, the committee shall issue or deny a certificate for an energy facility.

VI-e. Notwithstanding any other provision of this chapter, the committee shall employ the time frames specified under RSA 162-H:6-a to any proposal for the upgrade of the transmission system considered part of the Coos county loop.

***VI-f. All state agencies not having regulatory jurisdiction that elect to be participating state agencies shall comply with the provisions of RSA 162-H:7-a.***

***VI-g. For each application for a certificate, each participating state agency and each state agency otherwise providing input to the committee shall designate a staff liaison responsible for providing timely reports, comments, and submissions to the committee.***

10 New Section; Role of State Agencies. Amend RSA 162-H by inserting after section 7 the following new section:

162-H:7-a Role of Participating State Agencies.

I. Participating state agencies shall participate in committee proceedings as follows:

(a) Receive proposals or permit requests within the agency's jurisdiction, expertise, or both; determine completeness of elements required for their permitting or other programs; and report on such issues to the committee;

(b) Review proposals or permit requests and submit recommended draft permit terms and conditions to the committee;

(c) Identify issues of concern on the proposal or permit request or notify the committee that the application raises no issues of concern;

(d) For those agencies identifying issues of concern, appear before the committee at a hearing to provide input and answer questions of parties and committee members; and

(e) Review and comment on proposed certificate conditions or rulings to confirm the proposed rulings are in conformity with the laws and regulations applicable to the project and state whether they conclude that the certificate or ruling is appropriate in light of their respective statutory responsibilities.

II. The commissioner or director of each participating agency shall advise the chairperson of the name of the individual on the participating agency staff designated to be the participating agency representative on the docket for each docketed proceeding. The committee chairman may request the attendance of an agency's designated representative or designee at a session of the committee if that person's availability could materially assist the committee in its examination or consideration of a matter.

III. All communications between the committee and participating agencies regarding a pending committee matter shall be included in the official record and be publicly available.

IV. Each participating agency has the right to rehearing and appeal of a certificate or other decision of the committee.

11 Counsel for the Public. Amend RSA 162-H:9, I to read as follows:

I. Upon notification that an application for a certificate has been filed with the committee in accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a counsel for the public. The counsel shall represent the public in seeking to ~~[protect the quality of the environment and in seeking to assure an adequate supply of energy]~~ **assure that the committee has acquired all necessary information to make its decision and has fulfilled all other requirements of this chapter.** The counsel shall be accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action and shall serve until the decision to issue or deny a certificate is final.

12 Public Hearing; Studies; Rules. Amend RSA 162-H:10 to read as follows:

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

I. Within 30 days after acceptance of an application for a certificate of site and facility, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one ~~joint~~ public ~~hearing~~ **information session** in each county in which the proposed facility is to be located and shall publish a public notice not less than 14 days before said ~~hearing~~ **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 session shall be for public information on the proposed facilities with the applicant presenting the information to the site evaluation committee and to the public.**

***I-a. Within 30 days after the last public information session pursuant to paragraph I, the site evaluation committee shall hold at least one joint 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 ~~[other agencies that have jurisdiction over the subject matter]~~ **participating state agencies** and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. ~~[The hearings shall be for public information on the~~

~~proposed facilities with the applicant presenting the information to the site evaluation committee and to the public.]~~ 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. Except for informational ~~[hearings]~~ **meetings**, subsequent hearings shall be in the nature of adjudicative proceedings under RSA 541-A and may 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 session. ***In lieu of the full committee, a hearing officer designated by the staff director may preside at hearings concerning procedural matters before the committee and the identification of significant disputed issues for consideration by the full committee. The full committee shall preside at all hearings regarding the significant disputed issues identified by the hearing officer.***

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. The committee shall grant free access to records and reports in its files to members of the public during normal working hours ~~[and]~~, shall permit copies of such records and reports to be made by interested members of the public at their expense, ***and shall post all such records and reports regarding pending applications for certificates on a website.***

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 jointly 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.

***V-a. The site evaluation committee may use funds collected through application fees to employ a consultant or consultants, legal counsel, hearing officers, staff responsible for public and municipal engagement with committee matters, and other staff in furtherance of the duties imposed by 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. No later than January 1, 2015, the committee shall adopt rules, pursuant to RSA 541-A, relative to criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV(b) and (c) 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. The office of energy and planning shall submit a report based on the findings of the public stakeholder process to the committee by January 1, 2014.

13 Enforcement. Amend RSA 162-H:12, I to read as follows:

I. Whenever the committee, *or the staff director as designee*, determines that any term or condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the person holding the certificate of the specific violation and order the person to immediately terminate the violation. If, 15 days after receipt of the order, the person has failed or neglected to terminate the violation; the committee may suspend the person's certificate. Except for emergencies, prior to any suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing.

14 Informational Meetings. Amend RSA 162-H:15 to read as follows:

162-H:15 Informational Meetings. Upon request of the governing body of a community in which the proposed facility is to be located, or upon request of the committee, the applicant shall provide informational meetings to inform the public of the proposed project *in addition to the required public information sessions required by RSA 162-H:7 and RSA 162-H:10.*

15 Findings and Certificate Issued. Amend RSA 162-H:16, IV to read as follows:

IV. The site evaluation committee, after having considered available alternatives, *including reasonable alternative not described in the application*, and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that ~~[the site and facility]~~:

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

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

(c) *The site and facility* will not have an unreasonable adverse effect, *including unreasonable adverse cumulative effects*, on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.

(d) [Repealed.]

(e) *The site and facility will serve the public interest when taking into account:*

(1) *The net environmental effects of the facility, considering both beneficial and adverse effects.*

(2) *The net economic effects of the facility, including but not limited to costs and benefits to energy consumers, property owners, state and local tax revenues, employment opportunities, and local and regional economies.*

(3) *Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.*

*(4) Whether the facility as proposed is consistent with municipal master plans and land use regulations pertaining to (i) natural, historic, scenic, cultural resources and (ii) public health and safety, air quality, economic development, and energy resources.*

*(5) Such additional public interest considerations as may be deemed pertinent by the committee.*

*(f) The site and facility will be consistent with the state energy strategy established in RSA 4-E:1.*

16 New Sections; Fees; Applicability; Transitional Responsibilities. Amend RSA 162-H by inserting after section 20 the following new sections:

162-H:21 Fund Established; Fees.

I. There is hereby established in the office of the state treasurer a nonlapsing fund to be known as the site evaluation committee fund. All moneys in such fund shall be continually appropriated to the site evaluation committee for the purposes of the committee. The fund shall be established with an advance from the renewable energy fund established in RSA 362-F:10 in an amount not to exceed \$500,000. Repayment of the initial renewable energy fund advance shall be made over time, whenever the site evaluation committee fund shall exceed 2 years of committee operations.

II. Any entity seeking an application for a certificate of site and facility, an amendment to a certificate of site and facility, a ruling for exemption from the committee's requirements, or a declaratory or other ruling shall be accompanied by an application fee. The application fee shall be paid upon filing. Application fees shall be established by the committee through rules, based on a number of factors, including but not limited to:

(a) Nameplate capacity.

(b) Capacity and length of transmission lines or pipelines.

(c) Capacity for processing fuels.

(d) Anticipated time required before the committee for the application or petition to be acted upon.

III. An annual operating fee shall be assessed on all energy facilities as defined by RSA 162-H:2, VII that are currently operating within the state. The formula for the assessment of the operating fee shall be set forth in administrative rules. The operating fee shall collect sufficient revenues to enable the committee to oversee and ensure compliance with respect to all such facilities, and shall be available to the committee to hear and consider all applications or petitions filed with the committee.

IV. All fees shall be deposited to the site evaluation committee fund. The site evaluation committee fund shall always maintain a balance sufficient to cover 2 years of committee operations. The committee may waive assessments of operating fees if the balance of the site evaluation committee fund is sufficient in the view of the committee to meet committee needs in the next biennium.

162-H:22 Applicability.

I. The provisions of this chapter shall apply to any application or petitions received on or after June 1, 2014.

II. Matters pending prior to July 1, 2014 shall be governed by the standards in place prior to the enactment of this section and shall be addressed by the committee in effect at the time the matters were

filed.

III. The committee in existence prior to July 1, 2014 shall cease to exist when all matters pending as of July 1, 2014 have been resolved, through ruling on requests for rehearing or reconsideration.

162-H:23 Transitional Responsibilities. Any matter filed after June 1, 2014 shall be reviewed by the committee; all time frames shall be tolled until the committee is established and staffed.

17 Repeal. The following are repealed:

I. RSA 162-H:6-a, relative to time frames for review of renewable energy facilities.

II. RSA 4-C:6, II(e), relative to energy facility evaluation committee.

III. RSA 162-H:7, VI-e, relative to upgrades of transmission systems that are part of the Coos county loop.

18 Effective Date. This act shall take effect July 1, 2014.

Senate Finance

March 20, 2014

2014-1125s

06/01

Amendment to SB 245-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Energy Evaluation and Siting. RSA 162-H:1 is repealed and reenacted to read as follows:

162-H:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy facilities, including the routing of high voltage transmission lines and energy transmission pipelines, may have significant impacts and benefits on the following: the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety. Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in the siting, construction and operation of new energy facilities in New Hampshire; that undue delay in the construction of new energy facilities be avoided and that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion, all to assure that new energy facilities are sited, constructed, and operated in conformance with sound environmental principles. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

2 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Administrator. Amend RSA 162-H:2 by inserting after paragraph I the following new paragraph:

I-a. "Administrator" means the administrator of the committee established by this chapter.

3 Site Evaluation Committee. RSA 162-H:3 is repealed and reenacted to read as follows:

I. There is hereby established a committee to be known as the New Hampshire site evaluation committee to evaluate applications for certificates of site and facility and petitions for exemption from jurisdiction and declaratory rulings; to oversee the operations of certificated facilities to ensure they are meeting the conditions of their certificates; to assist the public in understanding the requirements of this chapter; and to engage in rulemaking as needed. The committee shall consist of 9 members, as follows:

(a) The commissioners of the public utilities commission, the chairman of which shall be the chairman of the committee;

(b) The commissioner of the department of environmental services, who shall be the vice-chairman of the committee;

(c) The commissioner of the department of resources and economic development;

(d) The commissioner of the department of transportation;

(e) The director of the division of historic resources; and

(f) Two members of the public, appointed by the governor, with the consent of the council, at least one of whom shall be an attorney licensed to practice in New Hampshire, and both of whom shall be residents of the state of New Hampshire with expertise or experience in one or more of the following areas: public deliberative or adjudicative proceedings; business management; environmental protection; natural resource protection; energy facility design, construction, operation, or management; or community and regional planning or economic development.

II. The public members shall serve 4 year terms and until their successors are appointed and qualified. Any public member chosen to fill a vacancy occurring other than by expiration of term shall be appointed for the unexpired term of the member who is to be succeeded.

III. No public member nor any member of his or her family shall receive income from energy facilities within the jurisdiction of the committee. The public members shall comply with RSA 15-A and RSA 15-B.

IV. All members shall refrain from ex parte communications regarding any matter pending before the committee.

V. Seven members of the committee shall constitute a quorum for the purpose of conducting the committee's business, with the exception of administrative actions that may be taken by the chairman or designee as presiding officer, or procedural rulings that may be made by a hearing officer.

VI. Any public member of the committee may be removed by the governor and council for inefficiency, neglect of duty, or misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard.

VII. The committee shall be administratively attached to the public utilities commission pursuant to RSA 21-G:10.

VIII. Public members of the committee shall be compensated at on a pro rata basis, based upon a rate equal to the daily salary rate for a commissioner of the public utilities commission at the initial step.

IX. The chairman may:

(a) Serve as the chief executive of the committee.

(b) Delegate to other members the duties of presiding officer, as appropriate.

(c) Establish, with the consent of the committee, the budgetary requirements of the committee.

(d) Engage personnel in accordance with this chapter.

X. The committee may exercise its powers through subcommittees of no fewer than 7 members established at any time by the chairperson. The 2 public members shall serve on each subcommittee so established. The remaining 5 or more members shall be selected from among the members of the committee, or their designees, including the senior administrator positions of the department of environmental services, the public utilities commission, the department of resources and economic development, division of historic resources, and the department of transportation. At least one member of

a subcommittee shall be an attorney licensed to practice in New Hampshire. For purposes of statutory interpretation and executing the regulatory functions of this chapter, the subcommittee shall assume the role and be considered the committee, with all of its associated powers and duties. Five members of the subcommittee shall constitute a quorum for the purpose of conducting the committee's business, with the exception of administrative actions that may be taken by the chairperson of the subcommittee or designee as presiding officer, or procedural rulings that may be made by a hearing officer.

4 New Section; Site Evaluation Committee; Administrator. Amend RSA 162-H by inserting after section 3 the following new section:

162-H:3-a Administrator. The site evaluation committee may establish the position of administrator. The administrator shall be a classified state employee at labor grade 34, or an independent consultant, hired at the discretion of the chairperson through a competitive bid process. The salary of the administrator shall be paid from the site evaluation committee fund established in RSA 162-H:21. The administrator, with committee approval, may engage additional technical, legal, or administrative support to fulfill the functions of the committee as necessary.

5 Powers of the Committee. Amend RSA 162-H:4, III and III-a to read as follows:

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate under this chapter to **the administrator or** such state agency or official [~~represented on the committee~~] as it deems appropriate, but, subject to RSA 162-H:10, it may not delegate authority to [~~hold hearings,~~] issue certificates, determine the terms and conditions of a certificate, or enforce a certificate. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.

III-a. The committee may delegate to [~~an~~] **the administrator or such state** agency or official [~~represented on the committee~~] **as it deems appropriate** the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter, or the authority to specify minor changes in the route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

6 Powers of Committee. RSA 162-H:4, V is repealed and reenacted to read as follows:

V. Once an energy facility application has been accepted, the administrator may designate a hearing officer to hear and decide procedural matters that are before the committee, including procedural schedules, petitions for intervention, consolidation of parties with substantially similar interests, discovery schedules and motions, and identification of significant disputed issues for hearing and decision by the committee.

7 Application for Certificate. Amend RSA 162-H:7, IV and V to read as follows:

IV. Each application shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency's completed application forms. Upon

the filing of an application, the committee shall expeditiously forward a copy to the state agencies having jurisdiction *and to other state agencies identified in committee rules*. Upon receipt of a copy, each agency shall conduct a preliminary review to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of the state agencies having jurisdiction, that agency shall, in writing, notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by this section, any application made under this section shall be deemed not accepted either by the committee or by any of the state agencies having jurisdiction if the applicant is ~~seasonably~~ *reasonably* notified that it has not supplied sufficient information for any of the state agencies having jurisdiction in accordance with this paragraph.

V. Each application shall also:

- (a) Describe in reasonable detail the type and size of each major part of the proposed facility.
- (b) Identify both the *applicant's* preferred choice and ~~[any other choices]~~ *other alternatives it considers available* for the site *and configuration* of each major part of the proposed facility, *and the reasons supporting the applicant's preferred choice*.
- (c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment for each site proposed.
- (d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems.
- (e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility.
- (f) Document that written notification of the proposed project, including appropriate copies of the application, has been given to the appropriate governing body of each community in which the facility is proposed to be located.
- (g) Provide such additional information as the committee may require to carry out the purposes of this chapter.

8 Application for Certificate. Amend RSA 162-H:7, VI-a through VI-d to read as follows:

VI-a. ~~[Within 30 days after acceptance of the application, the committee shall hold at least one public hearing in each county in which the proposed facility is to be located,]~~ *Public information sessions shall be held* in accordance with RSA 162-H:10.

VI-b. All ~~[participating]~~ state agencies *having jurisdiction* shall report their progress to the committee within ~~[5 months]~~ *150 days* of the acceptance of the application, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision *on the parts of the application that relate to its jurisdiction*.

VI-c. All ~~[participating]~~ state agencies *having jurisdiction* shall make and submit to the committee a final decision on the parts of the application that relate to its jurisdiction, no later than ~~[8 months]~~ *240 days* after the application has been accepted.

VI-d. Within ~~[9 months]~~ *365 days* of the acceptance of an application, the committee shall issue or deny

a certificate for an energy facility.

9 New Section; Role of State Agencies. Amend RSA 162-H by inserting after section 7 the following new section:

162-H:7-a Role of State Agencies.

I. State agencies having jurisdiction may participate in committee proceedings as follows:

(a) Receive proposals or permit requests within the agency's jurisdiction, expertise, or both; determine completeness of elements required for such agency's permitting or other programs; and report on such issues to the committee;

(b) Review proposals or permit requests and submit recommended draft permit terms and conditions to the committee;

(c) Identify issues of concern on the proposal or permit request or notify the committee that the application raises no issues of concern;

(d) When issues of concern are identified, appear before the committee at a hearing to provide input and answer questions of parties and committee members; and

(e) Review and comment on proposed certificate conditions or rulings to confirm that such conditions or rulings are in conformity with the laws and regulations applicable to the project and state whether the conditions or rulings are appropriate in light of the agency's statutory responsibilities.

II. When initiating a proceeding for a committee matter, the committee shall expeditiously notify state agencies having jurisdiction or that are identified in committee rules.

III. Within 30 days of receipt of a notification of proceeding, a state agency not having jurisdiction but wishing to participate in the proceeding shall advise the chairperson of the committee.

IV. The commissioner or director of each state agency that intends to participate in a committee proceeding shall advise the chairperson of the name of the individual on the agency's staff designated to be the agency liaison for the proceeding. The committee chairman may request the attendance of an agency's designated liaison or designee at a session of the committee if that person's availability could materially assist the committee in its examination or consideration of a matter.

V. All communications between the committee and participating agencies regarding a pending committee matter shall be included in the official record and be publicly available.

VI. A state agency may intervene as a party in any committee proceeding in the same manner as other persons under RSA 541-A. An intervening agency shall have the right to rehearing and appeal of a certificate or other decision of the committee.

10 Public Hearing; Information Sessions; Studies; Rules. Amend RSA 162-H:10 to read as follows:

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

***I. At least 30 days prior to filing an application for a certificate of site and facility, an applicant shall hold at least one public information session open to the public in each county where 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 session is to be held, describing the nature and location of the proposed facilities. At such session, the applicant shall present information regarding the project and receive comments from the public. Not less than 10 days before said session, the applicant shall provide a copy of the public notice to the chairman of the committee. The applicant shall arrange for a transcript of said session to be prepared and shall include the transcript in its application for a certificate.*

*I-a. Within [30] 45 days after acceptance of an application for a certificate of site and facility, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one [joint] public [hearing] **information session** in each county in which the proposed facility is to be located and shall publish a public notice not less than 14 days before said [hearing] **session** in one or more newspapers having a regular circulation in the county in which the [hearing] **session** is to be held, describing the nature and location of the proposed facilities. **Not less than 10 days before said session, the applicant shall provide a copy of the public notice to the chairman of the committee. The session shall be for public information on the proposed facilities with the applicant presenting the information to the public.***

*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 informational meetings as are reasonable to inform the public of the proposed project in addition to the required public information sessions required by RSA 162-H:10.*

*I-c. Within 90 days after acceptance of an application for a certificate of site and facility, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one joint 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 other agencies that have jurisdiction over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. ~~[The hearings shall be for public information on the proposed facilities with the applicant presenting the information to the site evaluation committee and to the public.]~~ 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. Except for informational [hearings] **meetings**, subsequent hearings shall be in the nature of adjudicative proceedings under RSA 541-A and may 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 session. **In lieu of the full committee or subcommittee, a hearing officer designated by the administrator may preside at hearings concerning procedural matters before the committee pursuant to RSA 162-H:4, V. The full committee or subcommittee shall preside at all hearings regarding the significant disputed issues identified by the hearing officer.**

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 a proceeding.** The committee shall grant free access to records and reports in its files to members of the public during normal working hours ~~[and]~~, shall permit copies of such records and reports to be made by interested

members of the public at their expense *and shall post all such records and reports regarding pending applications for a certificate on a website.*

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 jointly 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. No later than January 1, 2015, the committee shall adopt rules, pursuant to RSA 541-A, relative to *the reorganizing of the committee and to* criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV(b) and (c) 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. The office of energy and planning shall submit a report based on the findings of the public stakeholder process to the committee by January 1, 2014.

11 Enforcement. Amend RSA 162-H:12, I to read as follows:

I. Whenever the committee, *or the administrator as designee*, determines that any term or condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the person holding the certificate of the specific violation and order the person to immediately terminate the violation. If, 15 days after receipt of the order, the person has failed or neglected to terminate the violation, the committee may suspend the person's certificate. Except for emergencies, prior to any suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing.

12 Findings and Certificate Issuance. Amend the introductory paragraph of RSA 162-H:16, IV to read as follows:

IV. The site evaluation committee, after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the ~~[objectives of this chapter]~~ **public interest** would be best served by the issuance of the certificate, must find that the site and facility:

13 New Subparagraph; Findings and Certificate Issuance. Amend RSA 162-H:16, IV by inserting after subparagraph (d) the following new subparagraph:

(e) Will serve the public interest.

14 New Sections; Fund Established; Funding Plan; Applicability; Transitional Responsibilities. Amend RSA 162-H by inserting after section 20 the following new sections:

162-H:21 Fund Established; Funding Plan.

I. There is hereby established in the office of the state treasurer a nonlapsing fund to be known as the site evaluation committee fund. All moneys in such fund shall be continually appropriated to the site evaluation committee for the purposes of the committee. The fund shall be established with an advance from the renewable energy fund established in RSA 362-F:10 in an amount not to exceed \$1,000,000. Repayment of the initial renewable energy fund advance shall be made over a period of not more than 10 years.

II. By December 1, 2014, the committee shall submit a permanent funding plan, including recommendations for legislation, to the governor and to the chairpersons of the house and senate finance committees. The committee shall consider potential funding sources, including but not limited to the imposition of reasonable application fees and other funding sources. The plan shall describe the costs of the ongoing administration of the committee's duties, including state agency expenses associated with processing an application under this chapter. The plan shall include recommendations for the ongoing funding of the committee's operations, including reimbursement for the hearing and review time of members of the committee and state agency staff. The plan shall make recommendations for funding sources to meet those needs, except that such funding sources shall not include annual operating fees imposed on energy facilities. The plan shall provide an estimate of revenues from application fees and additional funding sources.

162-H:22 Applicability.

I. The provisions of this chapter shall apply to any application or petitions received on or after July 1, 2014.

II. Pending matters for which a public hearing was held prior to July 1, 2014 shall be governed by the standards in place prior to the enactment of this section and shall be addressed by the committee in effect at the time the matters were filed.

III. The committee in existence prior to July 1, 2014 shall cease to exist when all matters for which a public hearing was held prior to July 1, 2014 have been resolved, through ruling on requests for rehearing or reconsideration.

162-H:23 Transitional Responsibilities.

I. Any pending matter for which a public hearing was not held prior to July 1, 2014, and all matters filed after July 1, 2014 shall be reviewed by the committee as re-organized under this chapter. The parties in any pending matter for which a public hearing was not held prior to July 1, 2014 shall have a reasonable opportunity to supplement filings under the provisions of this chapter as effective July 1, 2014.

II. The re-organization of the committee, including the appointment of a administrator and public members, shall occur no later than November 1, 2014.

III. All time frames under this chapter shall be tolled until the date that committee is re-organized.

IV. Notwithstanding any other provision of this chapter, the committee in existence prior to July 1, 2014 shall continue the process of adopting rules pursuant to RSA 162-H:10, VII, until such time as the re-organized committee is established. Notwithstanding any other provision of law, the actions of the

committee in existence prior to July 1, 2014 shall be deemed the actions of the committee for the purposes of appointing an administrator and of adopting rules pursuant to RSA 162-H:10, VII.

V. Any application for approval of a transfer pursuant to RSA 162-H:5, I shall be reviewed and decided by the committee in existence prior to July 1, 2014 provided such application is filed no later than December 31, 2014.

15 New Subparagraph; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (316) the following new subparagraph:

(317) Moneys deposited in the site evaluation committee fund established in RSA 162-H:21, I.

16 Repeal. The following are repealed:

I. RSA 4-C:6, II(e), relative to energy facility evaluation committee.

II. RSA 162-H:6-a, relative to time frames for review of renewable energy facilities.

III. RSA 162-H:7, VI-e, relative to time frames for applications for certificates.

IV. RSA 162-H:15, relative to informational meetings.

17 Effective Date. This act shall take effect July 1, 2014.

2014-1125s

#### AMENDED ANALYSIS

This bill:

I. Modifies the membership and duties of the site evaluation committee.

II. Modifies requirements for energy facility certificates.

# Committee Minutes

**SENATE CALENDAR NOTICE  
ENERGY AND NATURAL RESOURCES**

Senator Russell Prescott Chairman  
 Senator Bob Odell V Chairman  
 Senator Jeb Bradley  
 Senator Martha Fuller Clark  
 Senator Jeff Woodburn

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: February 13, 2014

**HEARINGS**

**Wednesday**

**2/19/2014**

**ENERGY AND NATURAL RESOURCES**

**LOB 101**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

9:00 AM	SB245-FN	relative to procedures and authority of the site evaluation committee.
9:15 AM	SB200-FN-A	relative to energy infrastructure development.

**Sponsors:**

**SB245-FN**

Sen. Jeanie Forrester  
 Rep. Herbert Vadney  
 Rep. Gene Chandler

Sen. Jeb Bradley  
 Rep. Rick Ladd

Sen. Jeff Woodburn  
 Rep. Suzanne Smith

Sen. Martha Fuller Clark  
 Rep. Susan Ford

**SB200-FN-A**

Sen. Jeb Bradley  
 Sen. Martha Fuller Clark  
 Rep. Susan Ford

Sen. Jeanie Forrester  
 Rep. Suzanna Smith  
 Rep. Gene Chandler

Sen. Jeff Woodburn  
 Rep. Rick Ladd

Sen. Jim Rausch  
 Rep. Herbert Vadney

**SENATE ENERGY COMMITTEE**

*Chris Cote, Legislative Aide*

**SB 245, AN ACT relative to procedures and authority of the site evaluation committee.**

**Hearing Date:** February 19, 2014

**Time Opened:** 9:00 AM

**Time Closed:** 10:30 AM

**Members of the Committee Present:**

Senator Odell, Senator Fuller Clark, Senator Prescott, Senator Bradley, Senator Woodburn

**Members of the Committee absent:** none

**Bill Analysis:** This bill:

I. Adds to the duties of the site evaluation committee.

II. Modifies requirements for energy facility certificates.

**Sponsors:** Sen. Forrester, Dist 2; Sen. Bradley, Dist 3; Sen. Woodburn, Dist 1; Sen. Fuller Clark, Dist 21; Rep. Vadney, Belk 2; Rep. Ladd, Graf 4; Rep. Suzanne Smith, Graf 8; Rep. Ford, Graf 3; Rep. G. Chandler, Carr 1

**Who supports the bill:** Rep. Suzanne Smith, Kris Pastoriza, Nancy Martland, Andy Smith, Roy Stevens, Pamela Martin, Rep. Gene Chandler, Will Abbot SNHF, Susan Arnold AMC, Jim O'Brien The Nature Conservancy, Cheryl Lewis,

**Who opposes the bill:** Doug Patch Wagner Forest Management, Susan Geiger EDPR, Tom Getz PSNH, Michael Licata BIA, Huck Montgomery IBEW, Marc Brown NE Rate Payers,

**Neutral:** Amy Ignatius PUC Chair, Kevin Onnela, Susan Geiger, Glen Normandeau NHFG, Ms. McFall, Beth Muzzy, Catherine Corkery,

**Summary of testimony presented in support:**

Sen. Forrester introducing her bill as a response to SB99 study committee. The final report of the study committee served as a foundation to improve the public process. The amendment to this bill seeks to improve the public process, provide adequate funding, and ensure projects improve net community benefit. There is more work to do with this bill, please do not act on this bill because changes are forthcoming.

Rep. Susanne Smith testified in support of the amendment for this bill. It is a work in progress. SB99 study process was long and inclusive, well vetted, and developers and industry as well as the public was involved. There will be people who say that we will be rushing things, but the study was very helpful and beneficial to this process. This is not a rush process, these energy projects impact my district and others and change is needed. Q: Sen. Fuller Clark, how are you sharing this info with your constituents? A: Very well, some of them are here today to testify.

Amy Ignatius, chairperson of the PUC, here in support of the concept of the bill. Here on behalf of Tom Burack NHDES, and is also in support. Thanks to Sen. Forrester and everyone's hard

work on this issue. This will improve the process and give us greater support. This amendment will make the site location committee more responsive and more efficient. Within our letter we raised issues in the interest of further improving the language moving forward and stand ready to assist the committee in any way to bring about those changes. This letter is not directly from the Site evaluation committee because there was not an official vote. Q: Sen. Clark, we heard at BIA meeting that a level of expertise might be lost by reducing membership? A: that is a challenging issue, we do lose some valuable input officially, but there are other ways of doing this process. We are still working to ensure consistency and efficiency. Q: Sen. Prescott, would it be appropriate to bring to the amendment to budget office to get as fiscal note? A: Sen. Forrester wanted more time, but I am not sure of your time constraints.

Jim O'Brien testified as the director of Nature Conservancy in support of the amendment and the goals it lays out. He pointed out that regarding public benefit and public interest part of the amendment, other states have done similar things with their SEC. Last spring Commissioner Burak told the House committee that the SEC was close to breaking due to work load and strain, not a clear consensus but laid out a direction and the amendment is a good start. Siting energy facilities in NH has a large impact on the environment here in NH. Q: Sen. Prescott, do you have more siting information? A: Yes I can bring more, Q: Is the report a roadmap for this process? A: the report offers some guidance but more can be done.

Sheryl Lewis testified in support of the amendment. Currently in the 4<sup>th</sup> year of hearings of the Groton project, there are several problems and many of them could have been prevented. There was very little regulation and oversight of the project. SB 245 could make a difference and give stricter oversight of this process along with greater funding. In 2011 the original hearings took place and thought the SEC would evaluate this process thoroughly based on their stated mission. We found that not to be true and instead the SEC referenced the RPS standards, and the SEC decided that RSA 362F removes any responsibility for judging the impact of wind energy. A net benefit must take place for a project should be approved. Q: Sen. Odell, you are suggesting that throughout the process, there was no consideration of benefit for the state of NH? A: I am suggesting that there was no balance between different aspects we presented but the applicant exaggerated the benefits and then the RPS was cited as the reason to ignore the brief. Q: did you look at the Leomster project? A: There was not as much information available at the time, but she did spend time looking at that project for information. Q: Did you find a net negative benefit for the state of NH? A: Your town representative said the net financial benefit was zero, the carbon side of it is not accurate. If a decision is being made on inaccurate information then there needs to be greater scrutiny. Q: Sen. Bradley, familiar with access roads and wrong location, what happened with that? A: there was a conference in January and there will be 3 hearings and a year's time before the hearing begins. This is year 4 and this is frustrating, Q: No doubt in your mind that the building was in the wrong location, A: Absolutely wrong location.

Katherine Corkery testified from the NH Sierra Club. 10,000 members and supporters in NH, and they support the amendment. She explained that the Sierra Club is concerned that the SEC reviews everything now and should not be changed and concerned that unintended consequences of changing this process. She explains that qualified people on the committee are most helpful and people on the committee need to have an understanding of these complicated processes. She suggested to address funding by creating a flat fee of a reasonable amount and based on rigorous evaluation, and there should be some general funds allotted for the project review.

Dorothy McFall from Sugar Hill testified for the people who will live with the decisions made by the commission. She explained that paid people should not be dominating this process.

**Summary of testimony presented in opposition:**

Kevin O’Nella, born in NH from Leominster, opposed to this bill. Went into the family business in NH, built a sawmill, bought land to preserve the wilderness around us. He bought land around us, but in 1993 NAFTA put us at a disadvantage. In 2003 we were put in touch with a wind developer, went to the site evaluation committee and received a favorable review. We now have a wind farm on our property, and could not be happier. This is an issue of property rights regarding having equipment on your property. Today NH has the 4<sup>th</sup> highest electric rates in the country; if the proposed energy corridors do not work as planned then we will have serious problems. These energy projects represent progress.

Susan Geiger, EBP Renewables, testified opposed to the amendment. As originally proposed this legislation made some good changes but the amendment makes many changes and we did not have time to thoroughly review the amendment. Her first concern is in regards to the first section and facilities that provide a net public benefit, cost effective energy resources is not defined nor is who determines this definition. Regarding the composition of the SEC there is no language including two public members or if they have specialized knowledge. On page 4 lines 33-34 there is a mention of application fees and we believe this to be vague. On page 5 there is mention of public counsel guarding the state interest and is vague, there is a mention of alternatives but not who brings that forward, section 13 adds some criterion for those applying for a permit, concerned about the language here and what is defined and not defined. Currently, a developer’s commitment with the community or individual is considered by the SEC in the process. Q: Sen. Odell, this amendment would have a chilling effect on development? A: my interpretation is that it would have that impact, these are estimates based on my preliminary review of this amendment, there are restrictions in place that would strip an applicant of their ability to continue their project unless certain criterion are reached. Q: Sen. Bradley, net public benefit standard is less defined than no adverse impact, would you want a different level of scrutiny? A: whether a project is in the public interest is certainly something the PUC can view. Q: Sen. Prescott, why did you have less trepidation about the bill than the amendment, A: in the original bill there are minor changes to time frames of public hearings such as 60 days, in addition to that the original bill has a one-time fee with greater certainty.

Tom Goetz, attorney representing Northeast Utilities, opposed to the bill as written. He mentioned that he would like to participate in the amendment process to improve the bill. There are two other issues to look at, member of public appointed and what expertise they have, 5<sup>th</sup> member as proposed is problematic because they are from the locality is the lack of assurance of expertise. Will the person be subject have a conflict and subject to ex parte rules? There should be some re-focusing on the process and structure, in the area of strengthening public participation there was some good ideas put forward. creation of staff director responsibilities can vary, there are a host of expectations of this new role and this should be considered and reviewed. Tom shared the concerns of previous speakers regarding the wording and drafting of the bill. Q: Sen. Woodburn, there seems to be a reoccurring theme about when the public stands in this, where does the public fit into this process? A: There should be expertise required to be a member of the committee for one thing. The committee has a strong record of upholding the public process; I have an issue when vague language is used to describe sentiment.

Huck Montgomery testified representing the International Brotherhood of Electrical Workers. The data of the SB 99 does not show a consensus for all the changes just that there should be some improvements. This is an effective process but it could be better, the data gathered does not support the amendment because there was no clear preference on the changes. An incredible amount of work went into the study, use the data from this process to make thoughtful changes and making the SEC smaller would not be a thoughtful change.

Mark Brown did not testify but did hand out testimony in opposition.

Doug Patch of Wagner Forest Management testified as concerned about the amendment. He was concerned that changes would undermine the process here in NH and should make any changes that dissuade those changes. Generally Wagner believes caution is appropriate in these changes.

**Neutral testimony:**

Michael Licata testified from the BIA, appreciates the work of the bill sponsors, but the BIA takes no position either way. He commented on the amendment: we believe the SEC overall does a good job. the committee is looking to make changes to improve the SEC, for energy projects to move forward in this state there needs to be public approval. The BIA does support reducing the size of the SEC. The size is problematic and redundancy is found. Increasing the funding is a good idea but the BIA is opposed to changing the composition.

Beth Muzzie testified as Director of Historical Resources. The department of cultural resources joined SEC in 2009. This has created a more integrated review and certainly helped the process. There may be some unintended consequences with taking state agencies off the committee and would like to work with the committee on this issue.

Glen Normandeau testified as the executive directory of NH Fish and Game with no position. He was concerned about the cost of the reviews of these projects. Companies contact us in advance sometimes years to look at locations of these projects. Fish and Game is responsible for looking preliminarily and then in perpetuity, and would like to have a mechanism to bill these applicants for time spent on projects. There is some Federal funding available for environment review, he feels that at the start of these projects there should be authorization to contract with applicants and recoup cost for the surveys. The applicant should be funding Fish and Game's efforts reviewing these sites. Q: Sen. Odell, two or three years ago we met about the SEC, you said that when you go to national meetings and colleagues around the country like the NH process? A: Public opinion changes and views processes differently, in most states nothing happens without substantial court time, thankfully the process here does not have that yet, but I would suggest that the process be improved, people take these processes very seriously and the committee comes under criticism because the hearing is decided against their case. Q: Does Fish and Game have responsibility in perpetuity, for Leomster as well? A: yes, a few years ago this happened there with some nighthawks who were killed and this fell to Fish and Game, generally this is self-reported. Q: Sen. Woodburn, do other states charge for studies? A: He does not know.

**Fiscal Note:**

See attached

**Future Action:** Pending

# Speakers

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

ate: 2.19.14

Time: 9AM

Public Hearing on SB 245

SB 245 - relative to procedures and authority of the site evaluation committee.

Please check box(es) that apply:

SPEAKING FAVOR OPPOSED

NAME (Please print)

REPRESENTING

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Rep Suzanne Smith	Grafton 8
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Doug Patch <sup>amendment</sup>	Ugner Forest Management
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Amy Finkley's CHAIR PUC	PUC / DES BIAH
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Kris Pastore	self
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Nancy Martland	self
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Kevin C. O'Connell	self
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Susan Grigo <sup>amendment</sup> (GEIGER)	ED PIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Pamela Martin	SELF
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tom Getz	PSNH
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<del>Donna Paul</del>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Glenn Normandeau	NH F & G
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Gene Chandler	Carroll-1
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Will Abbott	SPNH F
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MICHAEL LICHTA	BIA
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Ms. McFall	
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# Testimony



February 19, 2014

Huck Montgomery

International Brotherhood of Electrical Workers

**Remarks on SB 245 – Senate Energy and Natural Resources Committee**

Good morning. My name is Huck Montgomery, and I represent the International Brotherhood of Electrical Workers. I was privileged to serve as a member of the SB99 "coordinating committee," where I worked with OEP Director Hatfield, representatives of the Consensus Building Institute and Raab Associates, and other coordinating committee members to help craft a review of New Hampshire's site evaluation procedures, including a meaningful and comprehensive public engagement process.

Director Hatfield and the consulting team did a great job engaging stakeholder groups and the citizens of New Hampshire in this process, and their report makes for some very informative reading about how the public feels about the way we site energy facilities in New Hampshire. Through a series of focus groups and citizen engagement workshops, the team gathered an impressive array of data that reflects the diverse opinions the people of New Hampshire hold on this subject.

I can say from my experience on the coordinating committee that there was some consensus, both during the stakeholder focus groups and the citizen workshops, for some changes to the site evaluation process. For instance, the data shows that many stakeholders and citizens favor a "meaningful pre-application process," as well as greater public engagement. What the data does not show is anything close to consensus for specific changes to the makeup of the Site Evaluation Committee.

Proposals to eliminate most state agency membership and shrink the SEC from 15 members to five, such as the proposed amendment to SB 245, are not supported by the data gathered during the SB99 public engagement process. In fact, neither the stakeholder focus groups nor the citizen workshops showed any clear preference for this course of action. I would encourage you to examine Chapter 2 Section 2, and Chapter 3 Section 2 of the Raab Associates report to OEP, where you will find no evidence for consensus around the issue of SEC membership.

An incredible amount of work went into the SB99 study and the public engagement process, and that effort produced some meaningful insight to the improvements to the site evaluation process the people of New Hampshire want to see. I'm sure the citizens and stakeholders who participated in the workshops and focus groups would encourage the legislature to listen to their concerns, and to use the data from this process as guidance for any new legislation regarding the SEC.

The IBEW believes that shrinking the SEC and moving away from broad state agency membership would make it more difficult for to fairly and effectively site new renewable energy projects in our state. Furthermore, we believe the data from the SB99 public engagement process does not support major changes to the makeup of the SEC such as those found in the amendment to SB 245.

We do look forward to continuing to work with OEP and with the legislature to improve the site evaluation process, and to make sure that New Hampshire families and businesses have access to reliable and affordable electricity.



February 18, 2014

The Honorable Russell Prescott, Chairman  
Senate Energy and Natural Resources Committee  
Legislative Office Building, Room 101  
Concord, NH 03301

RE: SB 245, relative to the siting of energy facilities (per amdt 2014-0568s)

Dear Chairman Prescott:

We write in our respective capacities as Chairman and Vice Chairman of the Site Evaluation Committee (SEC) established pursuant to RSA 162-H, to provide comments that may be helpful to your Committee in its consideration of SB 245 (as amended by 2014-0568s) relative to the siting of energy facilities. Please understand that we are not writing on behalf of the full SEC membership, as the SEC has not had an opportunity to call a public meeting for purposes of holding discussions or deliberations regarding this legislation. We have, however, received comments and questions from various SEC members in response to a summary document that was previously provided by the bill sponsor to all of the SEC members, and we have attempted to include this input along with our own thoughts based on our respective experiences with the SEC in our roles as the Commissioner of the Department of Environmental Services and the Chairman (and a Commissioner) of the Public Utilities Commission.

First and foremost, we wish to applaud Senator Forrester and all of the co-sponsors of this legislation for recognizing the need to review, improve and update our state's processes for considering energy facility proposals. The issues and implications are numerous, complex, and have engendered a broad range of views and opinions. We are encouraged by the general results of the SB99 stakeholder process, which suggest that people of various backgrounds and interests should be able to find common ground on constructive approaches to these difficult issues.

It is in this spirit that we offer more detailed comments below, and extend an offer to work collaboratively with both the Senate and the House to try to help reach that common ground. We recognize that time is now limited in the Senate to engage in detailed analyses of, and revisions to, the bill. We provide these comments in order to initiate a conversation during the Senate's work on the bill and in the hope that if the issues cannot be fully resolved in the Senate phase, the work can be completed during the House phase.

The Honorable Russell Prescott, Chairman  
Senate Energy and Natural Resources Committee  
February 18, 2014  
Re: SB 245

The questions and comments below relate to specific sections (by page and line number) of SB 245, as amended by 2014-0568s, and include both policy and administrative considerations.

**Policy: Determination of "need"; "net public benefits"**

Page 1, lines 14-15: Whether the SEC must find a projected is "needed" has been a contested matter in SEC proceedings and should be clarified. This amendment provides clarity by deleting the reference to need. The amendment then creates a new test, of "net public benefits". Guidance as to what such a test should weigh would be beneficial to applicants, intervenors and the SEC. We recognize that the language on Page 8, lines 24-27 provides some further definition of "net public benefits," but should be further expanded in order to help avoid the possibility of multiple conflicting interpretations arising.

**Policy: Cost-Effectiveness**

Page 1, lines 21-22: The replacement of the term "supply of energy" with "energy resources" is an appropriate recognition of the importance of thinking about energy in a holistic manner. However, the insertion of the term "cost effective" as a modifier of "energy resources" creates a substantial likelihood of disputes arising over the cost effectiveness of each project considered by the SEC. In the largely free-market regulatory setting in the energy field today, project developers make their own decisions as to whether a project will be cost effective; the SEC does not evaluate cost effectiveness except as it relates to the financial capability of the applicant. Guidance as to what a cost effectiveness test should consider would be beneficial to applicants, intervenors and the SEC.

**Administration: Structure of the SEC**

Page 2, lines 1-15: We support reducing the number of members of the SEC but are concerned about the amendment's provision that the Commissioner of DES, Chairman of the PUC and Commissioner of DRED hear all SEC matters. We project that over the next 12 to 24 months the SEC will be involved in at least 9 significant matters, likely to require 100 business days for each panelist, leaving little time for these three state officials to tend to their primary duties within their agencies. Accordingly, we respectfully suggest two alternatives: establish the SEC as an independent, quasi-judicial authority, consisting of 6 members, all of whom are appointed for terms by the Governor and Executive Council; or establish the SEC as a "hybrid" body whose members include some members who are appointed to terms by the Governor and Executive Council and others who serve as permanent designees of specified agency heads. Under the "independent authority" model, three of the members (who might be called "expert members") would be appointed by the Governor and Executive Council based upon their respective experience and expertise in such fields as: environmental protection; energy resource or facility management; and community or economic development. They would not, however, be state officials. Under either approach, the SEC could be administratively attached to the PUC, for efficiency of operations.

**Administration: Role of state agencies that are not members of SEC**

Some SEC members have expressed concern about how best to meet their statutory responsibilities before the SEC if they are no longer members. This is of particular concern for those agencies that do not have separate permitting authority. Two examples are the Fish and

The Honorable Russell Prescott, Chairman  
Senate Energy and Natural Resources Committee  
February 18, 2014  
Re: SB 245

Game Department and the Division of Historic Resources. Both agencies provide critical information to assist the SEC in its decisionmaking process, but they do not have separate permitting processes. Therefore, defining the way in which their input is considered by the SEC will be important. Providing resources to them to allow for appropriate review of energy facilities is a separate issue raised below.

**Administration: Designation of Public Members**

Page 2, lines 5-23: The amendment calls for a public member-at-large, appointed by the Governor and Executive Council, and a local public member, appointed by the Chairman of the PUC, to serve on the SEC for a term of 3 years. We recommend that all public members be appointed to terms by the Governor and Executive Council. It is rare that members of a quasi-judicial board, commission or committee are appointed by any authority other than the Governor and Executive Council, and we suggest that it would be most appropriate for that authority to be retained by the Governor and Executive Council.

One way to structure public member participation on the SEC would be to require Governor and Council appointment of 3 public members representing specifically defined geographic regions (e.g., one to represent the 4 most northern counties, one to represent the 3 southeastern counties, and one to represent the 3 southwestern counties). Under this model, a "local" public member would already be available to serve on a panel for a matter within their "territory", and their appointment would have been based upon broad criteria of suitability and availability to serve. Our understanding is that this approach has been used successfully for a number of years by the Health Services Planning and Review Board, RSA 151-C:3, I.(a)(2)(B), in selecting four consumers to serve on that board, each from a different region of the state.

**Administration: Per diem for service on the SEC**

Page 2, lines 16-23: We strongly recommend that "public members" and "expert members," however appointed, be paid a substantial "per diem" for their time given the very significant demands of this work. It is likely that the SEC will sit at least 60 days or more per year for the foreseeable future. The documents are voluminous, the issues complex and hearing days are long and at times contentious. When the PUC requires a "temporary" Commissioner in the event that one or more sitting PUC Commissioners must recuse themselves from, or are otherwise unavailable for a matter, the "temporary" Commissioner has historically been paid a per diem based on the salary of a PUC Commissioner. Given the demanding nature of this work, we do not believe that it would be reasonable to expect to find an adequate number of suitable and qualified "volunteers" to serve as members of the SEC.

Page 2, Line 16, prohibits any public member from deriving "any significant portion of their income" from parties in any way involved with the applicant. We support the provision but would recommend deleting the word "significant". It will be important to maintain the very bright line that currently exists among members of the SEC, which is that they do not derive any of their income from parties seeking or holding certificates issued by the SEC.

With respect to the "hybrid" alternative in which representatives of specific state agencies would sit as panelists on docketed SEC matters, we recommend that funding and authority be provided

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to each specified department to enable them to hire a full-time, high-level staff member whose principal role would be to serve as that department's designee to the SEC. This would enable these employees to be available immediately to address SEC matters as soon as they arise, and would ensure expertise, professionalism and consistency in the consideration of these matters. If there are "lulls" in SEC docketed matters, they would be available to work on SEC rulemaking or other matters that would not conflict with their roles as SEC members.

**Administration: SEC Staff Support and Transitional Issues**

Page 2, Lines 24-33: We strongly support a permanent, paid staff director and other full-time staffing to enable the SEC to fulfill its statutory responsibilities. We would be pleased to provide assistance in developing and evaluating potential funding mechanisms, as requested.

Because appointment of new SEC members under either the independent authority or hybrid approach (described above) will likely take a period of time, we recommend including authority in a set of transition provisions to enable the PUC Chairman, in consultation with the DES Commissioner, to appoint a temporary staff director who shall serve until such time as all of the new SEC members have assumed their respective posts and they are able to meet as a body and appoint a staff director. Moreover, the timeframes for submittal of plans for staffing and funding may need adjustments to align with the practicalities of the appointment process for the members.

Page 2, lines 35-37, and Page 3, Lines 1-7: Including the SEC staff director (which should be amended to include any staff designated by the staff director) on the list of parties to whom the SEC can delegate inspection and compliance assurance responsibilities is an important and valuable addition.

Page 3, Lines 8-14: Again, including the SEC staff director on the list of parties to whom the SEC can delegate authority to specify techniques and the like or to specify minor changes in route alignment is an important and valuable addition. We further recommend that in requesting such minor changes, the applicant be required to notify both the state agency having jurisdiction over or an interest in the matter, as well as the SEC. To ensure appropriate coordination between and among all participating state agencies and the SEC with respect to any certificates issued by the SEC, we recommend including language that would clarify that in incorporating permit conditions proposed by participating state agencies into SEC certificates, the SEC may not modify those proposed conditions without prior notice to and consultation with the participating state agency, and in no case may any conditions of SEC certificates be less stringent than would have been required by law if included in a permit issued directly by the participating state agency.

**Administration: Designation of hearing officer**

Page 3, Lines 15-20: Provided that subcommittees will no longer be necessary, we would support replacing the current language of RSA 162-H:4, V with the proposed language that would provide for designation by the SEC staff director of a hearing officer. In order to ensure consistency and predictability of process, we believe the best approach is to have an SEC staff member designated to handle procedural matters in most cases, though the director should have

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the flexibility to designate someone else if for reasons of workload or conflict, such alternate designation is appropriate.

**Administration: Pre-application process**

Page 3, Lines 21-30: We support a pre-application information and listening session in a host community for a facility as it is likely to make the overall SEC process more understandable and accessible to the public, and may help to reduce conflicts that could otherwise arise. It may be helpful to include language to clarify whether such pre-application sessions are only necessary in the case of a proposed new facility, or whether they would also be required for amendments to existing facilities, petitions for exemptions, or other procedural motions. Our suggestion would be that such pre-application processes only apply to proposed new facilities, but that the Chairman be authorized to require such proceedings under such other circumstances as appropriate.

**Administration: Role of state agencies not represented on SEC**

Page 3, Lines 31-37, and Page 4, Lines 1-10: This set of amendments to RSA 162-H:7, IV through VI-e, refers to a newly defined term, "participating state agency" (see Page 1, Lines 28-29), which means "each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the energy facility." We suggest that participation based solely upon "jurisdiction" is too narrow for the intended purposes of the proposed amendments to RSA 162-H:7, which would appear to include ensuring timely and substantial involvement in the SEC process by all state agencies having an interest in the matter.

For example, the Fish & Game Department may not necessarily have a direct regulatory role through a statute that would confer legal "jurisdiction" over some aspect of a proposed project, but the Fish & Game Department is, nevertheless, frequently consulted by project developers regarding potential impacts to wildlife or wildlife habitat, often in order to help provide reasonable assurances that the proposed activities will not cause subsequent violations of state or federal species protection laws. Accordingly, we would recommend revising the definition of "participating state agency" on Page 1, lines 28-29 to read, "'Participating state agency' means each state agency having regulatory or other jurisdiction over, an interest in, or which is otherwise consulted by an applicant for, an energy facility, including any aspect of the construction, operation or impacts of such facility." Alternatively, the provisions regarding other state agencies that wish to provide input (Page 5, lines 21-23) may be a useful vehicle for establishing a role for the agencies noted above, if the provisions were adequately amended.

**Administration: Application fee**

Page 4, lines 32-37: We support the creation of an application fee or other funding mechanisms. We would be pleased to provide assistance in developing and evaluating options for an appropriate tiered application fee and possible other funding mechanisms, as requested.

Page 5, lines 21-23 and 24-28 may not provide sufficient time for agencies without regulatory jurisdiction to provide initial comments, and it appears that they do not have an ongoing role after providing initial comments within 90 days. In addition, while it would be helpful for those agencies to designate a staff liaison, those agencies often lack permit fees or other funds to

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support SEC-related work other than general funds or other funds designated for specific programs or uses. Therefore, it would be appropriate if the legislation could include a mechanism for those agencies to be able to recover the costs for time related to an energy facility application from an applicant. For some agencies this work can be intensive, and may begin months or even years before an application is filed with the SEC.

**Administration: Role of public counsel**

Page 5, lines 29 through 36: We support clarification of the role of public counsel. Further guidance regarding the meaning of “the interests of the state as a whole” would be useful.

**Policy: Reasonable alternatives need definition**

Page 8, line 10: The term “reasonable alternatives” should be further defined in order to avoid the potential for multiple conflicting interpretations of this term arising.

**Administration: Timetables and transition issues**

Page 6, lines 10-26: The amendment calls for a public hearing within 30 days of the last public information session; it is not entirely clear what these terms envision and the sequence of the proceedings and whether there is adequate time for the applicant and community to be prepared. Moreover, in the case of a project that is physically located in more than one county, it may not be possible to schedule public hearings in all affected counties within that 30 day time period. Accordingly, we recommend changing this to 45 days (or more), or providing discretion to the SEC staff director in consultation with the SEC Chairman to extend the timeframe as necessary and appropriate.

**Administration: Ability of SEC or SEC staff to retain consultants.**

Page 7, lines 12-13 and 17-20: Because each docketed matter is different in scope, complexity and issues raised, it is possible that any particular matter may present issues on which specialized experts are required to fully inform the SEC. Accordingly, although most costs of proceedings would be covered by application or other fees, we recommend that the SEC retain the authority to hire consultants, experts or special legal counsel and to recover those costs from the applicant. In addition, we recommend that the reference in line 17 to “application fees” be broadened to include all sources of revenue received by the SEC.

**Policy: “Orderly development of the region”**

Page 8, line 17, changes “municipal governing bodies” to “municipal legislative bodies.” It is unclear whether the change to “municipal legislative bodies” would require towns to bring a matter to a regular or special town meeting in order to be able to provide their views to the SEC. If this were the case it could limit or significantly delay a town’s ability to participate in a docketed matter. Further, during the SB99 process, there were concerns that the “orderly development of the region” was a term that needed further specificity.

**Policy: Interplay between municipal standards and SEC review**

Page 8, lines 17-19 address the SEC’s consideration of the views of regional planning commissions and municipal bodies in the context of considering the orderly development of a region. The reference to “municipal ... planning commissions” is deleted, and it would be

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helpful to understand what is intended by this deletion. For example, in prior docketed matters, the SEC has considered any views expressed by municipal planning or zoning boards. It is unclear whether the deletion of "municipal" in this context is to be understood as an instruction to the SEC not to consider the views of municipal planning or zoning boards, or simply to consider them as the SEC would consider any other "public comments."

**Policy: Unreasonable adverse cumulative effects**

Page 8, line 20 creates a new standard of "unreasonable adverse cumulative effects" without further definition. Guidance on this term would be useful. Similarly, page 8, lines 24-27 require a finding of "net public benefits" for a proposed facility. Guidance on this term would also be useful.

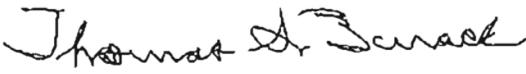
**Administration: Effective date and transitional concerns**

Finally, the effective date of the legislation is 60 days after passage. Restructuring of this magnitude will require more time in order to develop the new infrastructure, and for an appropriate transition of pending matters from the currently constituted SEC to a newly constituted SEC.

We would be pleased to assist in the development and evaluation of revisions to this legislation as requested.

Thank you for your consideration in this matter. If you have questions or need additional information, please contact Thomas Burack at 271-2958 or [thomas.burack@des.nh.gov](mailto:thomas.burack@des.nh.gov) or Amy Ignatius at 271-2442 or [amy.ignatius@puc.nh.gov](mailto:amy.ignatius@puc.nh.gov).

Sincerely,



Thomas Burack, Chairman  
Site Evaluation Committee



Amy Ignatius, Vice Chairman  
Site Evaluation Committee

Cc: Sponsors of SB 245



February 19, 2014

The Honorable Russell Prescott, Chairman  
Committee on Energy & Natural Resources  
New Hampshire State Senate  
The State House  
Concord, NH 03301

Dear Chairman Prescott:

Our organizations support the amendment to SB 245 offered this morning by Senator Forrester. We believe New Hampshire citizens deserve an energy facility siting process that serves them more effectively than the process currently in place under RSA 162-H.

Many of us were present last year when the Chairman of the State's Site Evaluation Committee (SEC) stated to the House Science, Technology, and Energy Committee that New Hampshire's current siting process is at a breaking point. That this is the situation is of great concern, as our state has now, and will see in the future, many more complex energy facilities being proposed across the state. Each will have its own specific issues that will impact our state's environment and quality of life. Ensuring that our state's energy facility siting board is structured to make the best possible decisions should be a top priority. We believe that Senator Forrester's amendment is a giant step forward towards accomplishing this goal.

Last session the General Court enacted SB 99, mandating a stakeholder process to examine the Site Evaluation Committee (SEC) and the tools it has to serve the public and project developers as it goes about its work. The Office of Energy and Planning delivered their comprehensive report at the end of December, and it identified a number of concerns about the structure of the SEC and how it functions. As a result of the participation by the public, energy industry, state agencies, and the NGO community in the stakeholder process, the report also identifies a number of solutions to address these concerns that have significant support from a wide range of these participants. The report also contains a comprehensive review of how neighboring states manage the task of siting energy facilities. While there is clearly no right or wrong way for states to make these decisions, there is certainly room for improvement in the way New Hampshire presently does the job.

Many of the issues raised and solutions identified in the SB 99 report are addressed by Senator Forrester's amendment. Specifically, the amendment provides meaningful reforms to the SEC in four key areas:

First, the purpose of the state's current siting statute --- to balance environmental protection with the need for new energy --- would be better served if the SEC were required to make a determination that a proposed project serves the public interest. The SEC makes no such determination under current law; rather, the siting board is

only required to determine that there are no "unreasonable adverse effects" on such things as aesthetics and the environment.

Senator Forrester's amendment requires that the SEC make a finding that a proposed project results in net public benefits, after considering all environmental, social, and economic cost and benefits. This is a workable, common-sense requirement that recognizes that, even in a restructured energy market, all major energy projects should provide a strong package of public benefits – whether for our natural resources, for ratepayers and businesses, for public health, or for the state's economy, or for all of the above – and that these benefits outweigh a project's potential adverse impacts. Other states, including Maine and Vermont, have such a requirement, ensuring that the greater good of the state and its communities is weighed as part of every siting decision.

Second, the current structure and membership of the SEC is cumbersome and a burden to the 15 key state officials who presently serve on the SEC, as well as to applicants and other participants trying to navigate through the process. One SEC application can consume 10% of each current SEC member's total work per year. The trend and expectation is that there will be more applications moving forward in the future, exacerbating a situation that takes these important agency personnel away from their core responsibilities. Even when the SEC appoints a subcommittee of seven to manage a siting application, the opportunity cost to the state and affected agencies is simply too high.

Senator Forrester's amendment proposes to reduce the size of the SEC to a manageable five, and the number of state officials serving on the committee to just three of the five. At the same time, all of our state agencies will continue to play important roles as they will still be charged with providing input and expertise to SEC decision-makers, but without the awkward constraints and extraordinary time commitments that now apply.

Third, the current law fails to fully engage the public in the SEC process, a concern that was front and center throughout the SB 99 stakeholder process. This is true in two key respects. One is that the public – those who are most directly affected by any outcome - do not have a seat at the decision-making table. RSA 162-H is designed to provide the state primacy in making decisions about the siting of energy facilities under SEC jurisdiction; this is appropriate to the extent that one municipality should not have veto power over a proposed project that may serve the greater good. But while we agree that state agencies have a critical role to play in the siting process, the public also has a responsibility to ensure that projects are properly sited in our communities. Senator Forrester's amendment addresses this by requiring that two of the five members of the SEC be appointed public members, one of whom comes from the region where the proposed project is located.

We believe that New Hampshire citizens deserve to know as much as possible about a project before they are expected to weigh in with comments. Under current law, the SEC must hold one public hearing in each county where the proposed project will be located. We do not feel that this requirement is adequate to ensure that the public is well-informed, and able to provide effective feedback to best inform the process. Under current statute, the public hearing may be the public's first opportunity to learn the details of the proposed project. In many cases, this public hearing is the primary opportunity for those directly impacted by the project to offer comments.

We all know that well-informed public comments require a well-informed public, and a well-informed public simply requires more information in a more timely manner than current law provides. The amendment addresses this issue by providing a logical schedule that ensures project developers inform the public of the details of a project both before and after a proposed project's voluminous application is filed at the SEC, providing a more meaningful opportunity for well-informed public comment on the specifics of an application.

Finally, it is unrealistic for the State of New Hampshire to expect these important and long lasting energy siting decisions to be made when the SEC itself has no permanent staff or financial resources to do its work. Senator Forrester's amendment provides resources that the SEC desperately needs to make prompt, well-informed decisions, and to make sure that the conditions placed on permits are met and adequately enforced.

The Forrester amendment is designed to improve the SEC process for both project applicants and New Hampshire citizens. It makes fulfilling the public interest the paramount priority of the energy facility siting process. It makes the project review process more user friendly for the public. It reduces the burden on state agency heads. It provides financial resources for the siting committee to conduct its work. And it retains the process's essential features: efficient one-stop shopping and a fair and rigorous adjudicative process.

In short, this amendment will help the SEC move away from the "breaking point" that it is heading towards if the Legislature fails to address these issues.

As energy markets change and mature, and as the market-based development of energy generation and transmission facilities provide the opportunity to meet our energy needs with innovative and cleaner resources, the process by which New Hampshire makes the critical decisions about the siting of such facilities must also change with the times. Public trust and confidence in the SEC and its decisions will be well served by adopting the changes proposed in Senator Forrester's amendment to SB 245.

Sincerely,

Will Abbott, Society for the Protection of NH Forests  
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Susan Arnold, Appalachian Mountain Club  
[sarnold@outdoors.org](mailto:sarnold@outdoors.org), 664-2050

Christophe Courchesne, Conservation Law Foundation  
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Jim O'Brien, The Nature Conservancy  
[jim\\_obrien@tnc.org](mailto:jim_obrien@tnc.org), 224-5853, Ext 28

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

From: JD Lavalley, Energy Policy Intern, The Nature Conservancy New Hampshire

Date: February 18, 2014

Re: NH SEC Reform – A Net Community Benefit Standard for Energy Facility Siting

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## I. An Introduction to Public Interest Utility Regulation

Historically, businesses “affected with the public interest” were subject to state regulation to ensure the common good.<sup>1</sup> As the country developed, companies providing the generation, transmission, and distribution of electricity (typically as one vertically integrated monopoly) were seen as providing an important public service. States began passing statutes to regulate this type of public service (along with other common public services such as railroads, gas, and telephone) and set up commissions to regulate companies “clothed with a public interest”, now known as public utilities.<sup>2</sup> The commissions regulating energy matters, called a Public Utility Commission (PUC) or a Public Service Commission (PSC), were given the power to administer the various statutes governing these new public utilities.

Traditionally the PUC had five basic powers: assigning territory, setting service standards, regulating rates, approving spending, and controlling abandonment. Under this traditional model of regulation, the state required electric utilities to obtain certificates-of-need (CONs) or a certificate of convenience and necessity (CCN) before building power plants, transmission lines, or other infrastructure. Such a certificate was issued only after a siting proceeding – a hearing before the state PUC during which the applicant utility made its proposal and affected groups were allowed to participate as intervenors. These hearings were meant to ensure that the proposed project (for which the utility would later seek cost recovery through its electricity rates) was truly needed; in essence, that the project was in the public interest.

Today, many states continue to actively regulate the siting and construction of energy facilities in the same manner. State PUCs or other designated state bodies have siting proceedings to weigh the costs and benefits of proposed energy projects. And through statutes and integrated resource planning, states have added the environmental impacts of utilities to the cost benefit analysis. The regulatory proceedings may also still include an assessment of the “need” for the proposed power plant or transmission, although in de-regulated markets such as New Hampshire, the market should prevent unnecessary economic duplication of costly infrastructure.<sup>3</sup> Across the country, various states explicitly mandate that energy facilities must

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<sup>1</sup> See, e.g., *Munn v. Illinois*, 94 U.S. 113 (1877) (In upholding Illinois statutes that regulated and set maximum rates for warehouses, grain elevators, and railroads, the Court noted that property becomes “clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large” and is therefore subject to reasonable state regulation).

<sup>2</sup> See, e.g., *Nebbia v. New York*, 291 U.S. 502 (1934) (Stating that “affected with the public interest” means “no more than an industry, for adequate reason, is subject to control for the public good”)

<sup>3</sup> But see New Hampshire Public Radio, *Reforms To Energy Siting Rules Begin To Take Shape* (February 11, 2014) (Noting the unpopularity of recently proposed projects in New Hampshire despite its deregulated electricity market) available at <http://nhpr.org/post/reforms-energy-siting-rules-begin-take-shape>.

demonstrate an overall net benefit to the state – after a rigorous analysis of the proposal’s costs and benefits – before allowing the project to be built.

## II. Public Interest Standards for Energy Facility Siting in the Northeast

This report briefly summarizes the energy facility siting process of five northeastern states: Connecticut, Maine, New York, Rhode Island, and Vermont.

### a. Connecticut

In Connecticut, energy facility siting is controlled by the Connecticut Siting Council.<sup>4</sup> In order to begin construction of a proposed facility, an applicant must first apply for and receive a “certificate of environmental compatibility and public need” from the siting council.<sup>5</sup> Through this certification process the council is responsible for balancing the need for adequate and reliable public utility services at the lowest reasonable cost with the need to protect the environment and ecology of the state and minimize damage to scenic, historic, and recreational values.<sup>6</sup> In order to approve any energy infrastructure project the Council must determine that there is a “public need” for the project.<sup>7</sup> And for electricity generating facilities specifically, the council must determine that there is both a “public need” and a “public benefit” for the proposed facility.<sup>8</sup>

As defined in statute, a public need exists if a proposed project is necessary for the reliability of the electric power supply of the state.<sup>9</sup> And a public benefit determination may be made when a generating facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity.<sup>10</sup>

The council must file, with its order granting or denying a certificate, an opinion stating in full its reasons for the decision. The council cannot grant a certificate unless it finds and determines:

- (A) A public need for the facility and the basis of the need;
- (B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife;

<sup>4</sup> Conn. Gen. Stat. §§ 16-50j., et seq.

<sup>5</sup> Conn. Gen. Stat. § 16-50k.

<sup>6</sup> Connecticut Siting Council, *About Us*, (last accessed February 18, 2014) available at <http://www.ct.gov/csc/cwp/view.asp?a=895&q=248310>.

<sup>7</sup> Conn. Gen. Stat. § 16-50p.(a)(3)(A).

<sup>8</sup> Conn. Gen. Stat. § 16-50p.(c)(1).

<sup>9</sup> *Id.*

<sup>10</sup> Conn. Gen. Stat. § 16-50p.(c)(3). See also CBI, Raab Associates, and Rubin & Rudman, *Multi-State Energy Facility Siting Review*, 35 (November 18, 2013) available at <https://www.nh.gov/oepl/energy/programs/sb99.htm>.

(C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application. . .<sup>11</sup>

Although at least one report has characterized the procedure by which the council makes siting determinations as highly litigious, the same report urged New Hampshire to look towards the "previous rulings that the Connecticut Siting Council has made to establish a more concrete set of guidelines" for New Hampshire projects.<sup>12</sup>

**b. Maine<sup>13</sup>**

The Maine Department of Environmental Protection (MDEP) manages all applications for energy facilities as the state does not have a committee specifically designated to process energy facility siting. Maine's Site Location Development Law<sup>14</sup> requires review of all developments that may have a substantial effect upon the environment.<sup>15</sup>

Of particular relevancy to New Hampshire SEC reform process are the standards for approving energy infrastructure projects within state-designated energy infrastructure corridors. These standards require the deciding authority (an interagency review committee) to determine that the proposed project:

- (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;
- (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money, determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and
- (3) Is in the long-term public interest of the State<sup>16</sup>

In determining whether the project is in "the long-term public interest" the deciding authority must consider, at a minimum, the extent to which the project:

- (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;

<sup>11</sup> Conn. Gen. Stat. § 16-50p (a)(3)(A)-(C).

<sup>12</sup> Richard D'Amato, Michael Sanchez, and Aislinn McLaughlin, *Policy Options for Siting Energy Facilities: A Cross-State Analysis of Energy Facility Siting Board Strategies*, Dartmouth Policy Research Shop, 7-8 (June 26, 2013) available at <https://www.nh.gov/oep/energy/programs/sb99.htm>.

<sup>13</sup> The state of Maine has enacted specific legislation regarding the siting and construction of utility-scale wind generation facilities, which is not examined in this report. See 35-A. M.R.S. § 3402.

<sup>14</sup> 38 M.R.S. § 481

<sup>15</sup> See Maine Department of Environmental Protection, *Site Location of Development (Site Law)* available at <http://www.maine.gov/depland/sitelaw/> (noting that the Maine legislature has identified developments such as projects occupying more than 20 acres, metallic mineral and advanced exploration projects, large structures and subdivisions, and oil terminal facilities as projects that may have a substantial effect on the environment).

<sup>16</sup> 35-A M.R.S. §122 1-D(A)

- (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;
- (3) Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;
- (4) Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;
- (5) Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts;
- (6) Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;
- (7) Increases the energy reliability, security and independence of the State; and
- (8) Reduces the release of greenhouse gases<sup>17</sup>

### c. New York

The New York State Power Act of 2011 re-authorized the Board on Electric Generation Siting and the Environment whose prior jurisdiction had lapsed in 2002.<sup>18</sup> Under the law the Board has the final decision on whether to grant a certificate or amendment to permit the construction or operation of an energy facility.

In order to grant such a certificate, the board must make explicit findings regarding the nature of the probable environmental impacts as a result of the construction and operation of the facility, including the cumulative impacts of related facilities such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines on:

- (a) ecology, air, ground and surface water, wildlife, and habitat;
- (b) public health and safety;
- (c) cultural, historic, and recreational resources, including aesthetics and scenic values;
- and
- (d) transportation, communication, utilities and other infrastructure.

<sup>17</sup> 35-A M.R.S. §122 1-D(B)

<sup>18</sup> See generally New York State Department of Public Service, *An Introduction to New York State Electric Generation Siting*, presented to Vermont Energy Generation Siting Policy Commission (December 19, 2012) available at [http://sitingcommission.vermont.gov/sites/cep/files/Siting\\_Commission/Publications/Meeting121912/NY\\_Austin\\_121912.pdf](http://sitingcommission.vermont.gov/sites/cep/files/Siting_Commission/Publications/Meeting121912/NY_Austin_121912.pdf). See also, Amato, Sanchez, and McLaughlin, *Policy Options for Siting Energy Facilities: A Cross-State Analysis of Energy Facility Siting Board Strategies*, supra n. 12 at 8.

The findings must include the cumulative impact of emissions on the local community, including whether the construction and operation of the facility would result in a significant and adverse disproportionate impact under New York's environmental justice regulations.<sup>19</sup>

The Board may not grant a certificate unless the board determines that:

- (a) The facility is a beneficial addition to or substitution for the electric generation capacity of the state; and
- (b) The construction and operation of the facility will serve the public interest; and
- (c) The adverse environmental effect of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable; and
- ...
- (d) The facility is designed to operate in compliance with applicable state and local laws and regulations ... except that the board may elect not to apply ... any local ordinance ... which would be otherwise applicable if it finds that, as applied to the proposed facility, such [ordinance] is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of the municipality.<sup>20</sup>

In making this determination the board shall consider:

- (a) The state of available technology
- (b) The nature and economics of reasonable alternatives;
- (c) Environmental impacts;
- (d) Impacts of construction and operation of related facilities
- (e) The consistency of the construction and operation of the facility with the energy policies and long range energy planning objectives and strategies contained in the most recent state energy plan;
- (f) The impact on the community character and whether the facility would affect communities that are disproportionately impacted by cumulative levels of pollutants; and
- (g) Such additional social, economic, visual or other aesthetic, environmental and other considerations deemed pertinent by the board.<sup>21</sup>

#### d. Rhode Island

In Rhode Island energy facility siting is controlled by a three-member centralized siting board.<sup>22</sup> The Rhode Island Energy Facility Siting Board has the authority to issue a "Board License" that constitutes a granting of all licenses, permits, assents, or variances required for the siting, construction, or alteration or any major energy facility within the state.<sup>23</sup>

<sup>19</sup> New York State Public Service Law Art. 10 §168 (2)

<sup>20</sup> New York State Public Service Law Art. 10 §168 (3)

<sup>21</sup> New York State Public Service Law Art. 10 §168 (4)

<sup>22</sup> R.I. Gen. Laws § 42-98-5

<sup>23</sup> R.I. Gen. Laws § 42-98-7(a); see also State of Rhode Island and Providence Plantations Energy Facility Siting Board Rules of Practice and Procedure, Section 1.13(e)

Applicants seeking Board approval for a proposed project must address a number of concerns in their application, including: the total land area involved, site plans, project cost, number of facility employees, financing, required support facilities, environmental impact, life-cycle management, and possible alternatives, including the estimated costs of those alternatives.<sup>24</sup> Once a complete application is submitted and docketed, the Board then designates relevant state agencies to file an advisory opinion concerning the project.<sup>25</sup>

After hearings are conducted and all evidence and testimony is collected, the Board makes a final decision. The Board must make specific findings and only grant a Board license to proceed upon finding that the applicant has demonstrated that:

- a) The construction of the proposed facility is necessary to meet the needs of the state and/or region for energy of the type to be produced by the proposed facility
- b) The proposed facility is cost justified
- c) The proposed facility can be expected to produce energy at the lowest reasonable cost to the consumer consistent with ... ensuring ... compliance with all [other state laws and regulations] under which, absent [this] Act, a license would be required, or that consideration of the public health, safety, welfare, security, and need for the proposed facility justifies a waiver...
- d) The proposed facility will not cause unacceptable harm to the environment, and
- e) The proposed facility will enhance the socioeconomic fabric of the state.<sup>26</sup>

In addition to the above findings, the Board's final decision must also specifically address each of the advisory opinions rendered by the designated agencies.<sup>27</sup> The Board must state its reasons for accepting, rejecting, or modifying those advisory opinions.<sup>28</sup>

#### e. Vermont

The state of Vermont is currently undergoing its own state energy planning and revision process. This revision and planning process includes developing specific criteria for energy facility siting.<sup>29</sup>

Under Vermont statute, the state Public Service Board has authority to grant Certificates of Public Good (CPG) – the necessary certificate for facility construction.<sup>30</sup> Before the Board issues a CPG, it must find that the construction of the proposed facility meets ten criteria and will promote the general good of the state.

<sup>24</sup> R.I. Gen. Laws § 42-98-8(a)

<sup>25</sup> R.I. Gen. Laws § 42-98-10

<sup>26</sup> R.I. Gen. Laws § 42-98-11; see also State of Rhode Island and Providence Plantations Energy Facility Siting Board Rules of Practice and Procedure, Section 1.13(c)1.

<sup>27</sup> R.I. Gen. Laws § 42-98-11(c); see also State of Rhode Island and Providence Plantations Energy Facility Siting Board Rules of Practice and Procedure, Section 1.13(c)2.

<sup>28</sup> *Id.*

<sup>29</sup> See generally Vermont Energy Generation Siting Commission <http://sitingcommission.vermont.gov/>; see also Vermont Public Service Board, *Guide to Filing Section 248 Petitions (Draft)* available at <http://psb.vermont.gov/statutesrulesandguidelines/guidelines/GuidetoFiling248Petition>.

<sup>30</sup> 30 V.S.A. § 248(a)

The project must:

- (1) Not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.
- (2) Be required to meet the present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy efficiency and load management measure.
- (3) Not adversely affect system stability and reliability
- (4) Provide an economic benefit to the States and its residents
- (5) Not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety
- (6) Be consistent with the Vermont's integrated resource plan<sup>31</sup>
- (7) Be in compliance with the electric energy plan approved by the Department of Public Service under section 202 of Title 30, or that there exists good cause to approve the proposed project
- (8) Not involve a facility affecting or located on any segment of the waters of the state that has been designated as outstanding resource waters by the water resources board, except that with respect to a natural gas or electric transmission facility, the facility does not have an undue adverse effect on those outstanding resource waters
- (9) (if the project is a waste-to-energy facility) the project must be consistent with the state solid waste management plan
- (10) Be able to be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers<sup>32</sup>

### III. A New Hampshire Public Interest Standard

As noted above, a public interest standard derived from weighing a proposed project's benefits and costs is not new to energy facility siting. And in New Hampshire, the state continues to play an important role in energy regulation.

As determined by the New Hampshire legislature, encouraging the investment in distributed energy resources is in the public interest because such resources can increase overall energy efficiency and provide energy security.<sup>33</sup> To encourage investment, a New Hampshire electric public utility may seek rate recovery for its portion of investments in distributed energy resources by making an appropriate rate filing to the NH PUC.<sup>34</sup>

However, before the PUC authorizes the utility's recovery of its investments in distributed energy resources, the PUC must determine that the utility's investment and recovery of that

<sup>31</sup> The Public Service Board has previously ruled that this provision does not apply to projects sponsored by private developers rather than regulated distribution utilities.

<sup>32</sup> 30 V.S.A. § 248(b)

<sup>33</sup> N.H. Rev. Stat. Ann. § 374-G:1

<sup>34</sup> N.H. Rev. Stat. Ann. § 374-G:5

Investment (through increased electricity rates) are in the public interest.<sup>35</sup> A determination of the public interest must include giving balanced consideration and equal weight to the following nine factors:

- (a) The effect on the reliability, safety, and efficiency of electric service;
- (b) The efficient and cost-effective realization of the purposes of the state's renewable portfolio standards and the state's restructuring policy principles;
- (c) The energy security benefits of the investment to the state of New Hampshire;
- (d) The environmental benefits of the investment to the state of New Hampshire;
- (e) The economic development benefits and liabilities of the investment to the state of New Hampshire;
- (f) The effect on competition within the region's electricity markets and the state's energy services market;
- (g) The costs and benefits to the utility's customers, including but not limited to a demonstration that the company has exercised competitive processes to reasonably minimize costs of the project to ratepayers and to maximize private investment in the project;
- (h) Whether the expected value of the economic benefits of the investment to the utility's ratepayers over the life of the investment outweigh the economic costs to the utility's ratepayers;
- (i) The costs and benefits to any participating customer or customers.<sup>36</sup>

#### IV. Conclusion

Public utilities have historically been regulated entities due to the important public services they provide. As part of that long history of regulation, projects proposed by utilities have often been subjected to a cost benefit analysis to ensure a specific project's merit. Today, many of the states close to New Hampshire engage in some sort of balancing test to weigh the various benefits and harms of a proposed energy facility before allowing it to be built. And in New Hampshire specifically, utilities are already familiar with seeking a public interest determination in the distributed energy context.

<sup>35</sup> *Id.*

<sup>36</sup> N.H. Rev. Stat. Ann. § 374-G:5



**NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES**  
 State of New Hampshire, Department of Cultural Resources 603-271-3483  
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**Senate Bill 245-FN,  
 an act relative to procedures and authority of the site evaluation committee  
 Public Hearing Testimony, February 19, 2014**

Thank you for opportunity to testify in regard to Senate Bill 245-FN and its goal of improving the NH Site Evaluation Committee process, with appreciation to Senator Forrester and her co-sponsors for putting forward this piece of legislation.

The Department of Cultural Resources, with its Division of Historical Resources as designee, has sat on the Site Evaluation Committee since 2009, adding, in particular, expertise as the committee evaluates whether a project presents significant adverse effects to historical and archaeological resources. This is consistent with New Hampshire RSA 227-C:1-a, which finds that historical and archaeological resources are among the state's most important environmental assets.

Many, but not all, energy projects are also reviewed by the Division under Section 106 of the National Historic Preservation Act. Section 106 is a consultation regulation, where a lead federal agency, my office and project proponents work together to avoid harm to historical properties during federally-assisted projects. The due diligence gathered for Section 106, if applicable, is also used during reviews by the Site Evaluation Committee.

Service of the Site Evaluation Committee creates a drain on a small office such as the Division of Historical Resources. However, I firmly believe that Division's presence on the committee has created a more integrated review of historical resource impacts. This efficiency benefits the resources, the applicant proposing a new energy facility, the state, and our constituents.

The proposed amendment to Senate Bill 245-FN removes the Division of Historical Resources from service on the Site Evaluation Committee and place it in the role of *participating state agency*. Although the Division appreciates the goal of lessening the work of state agencies serving on the committee, we have concerns as to how the current proposal may unintentionally alter the consideration of resources and the extent of integrated review that currently exists between the Site Evaluation Committee, project applicants, and state agencies with jurisdiction. We would be glad to work with the Energy and Natural Resources Committee to more fully detail these concerns.

Thank you again for the opportunity to comment; please feel free to call upon the Department when we can be of further assistance or answer any questions.

Respectfully submitted,

Elizabeth H. Muzzey  
 Director and State Historic Preservation Officer  
 NH Division of Historical Resources  
 NH Department of Cultural Resources



February 18, 2014

Chair Russell Prescott  
Senate Committee on Energy and Natural Resources  
State House  
Concord, NH 03301

RE: SB245

Dear Honorable Members of the Committee:

My name is Catherine Corkery. I am the Chapter Director of New Hampshire Sierra Club (NHSC). Sierra Club is the nation's oldest and largest grassroots organization started in 1892 with over one million members and supporters across the country. The statement of purpose of Sierra Club starts: "To explore, enjoy, and protect the wild places of the Earth." NH Sierra Club has over 10,000 members and supporters in New Hampshire.

Today NHSC is here to oppose SB245, as introduced, a bill relative to procedures and authority of the site evaluation committee. NHSC is interested to make the statute work better and has many ideas to share with the committee.

The bill focuses on the RSA 162:H, the statute concerning the Site Evaluation Committee. The SEC addresses all projects of every size, source and configuration making changes for any one project unadvisable because it may lead to unintended consequences. Changes to the statute must be deliberate and focused.

The Site Evaluation Committee (SEC) has become a focal point because the application for the Northern Pass project is expected to arrive there for state review. The Northern Pass project is the massive \$2 billion dollar DC and AC transmission line cutting crossing 31 communities and 187 miles in the state in heights between 85 and 155 feet - effectively dividing the state north to south from Canada to Deerfield. It will affect more landowners and residents than any single energy project in recent history. This is the biggest energy construction proposal forecasted in our state currently and demands the state's full attention.

NHSC would like to highlight guiding principles for a proposed amendment to support an independent panel, funding, criteria and public participation; continued adherence to SB99 and SB191; and NHSC commitment to improve the process at the SEC and reduce pollution from energy sources.

**Principles for Amendment**

Independent panel: The size and effectiveness of the Site Evaluation Committee could be easily addressed by creating an independent panel. This panel of 3 individuals should be appointed by the Governor based on

*The Sierra Club's members are 700,000 of your friends and neighbors. Inspired by nature, we work together to protect our communities and the planet. The Club is America's oldest, largest and most influential grassroots environmental organization.*

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relevant skills and knowledge with a rolling term limit – something akin to one 1-year position, one 2-year position, and one 3-year position. These individuals should be free of perceived bias and politics.

This panel should not be loaned from other departments that could have conflicts of interests in permitting process or decisions – RSA 162:H addresses all energy projects that require any number of permits from numerous state agencies. The panel should not include “volunteer” members because of the inherent perceived bias and lack of compensation. Another problem with “volunteer” members is the mundane delays in the process of finding candidates and getting them on the Executive Council agenda for a vote. This panel should have professional staff as well to carry out effective hearings, compile documentation and further the mission of the Site Evaluation Committee.

Independent funding: SB245 as introduced proposes a flat fee. NHSC does not disagree entirely with the suggestion but it must be reasonable and based on rigorous evaluation. The fee should not be excessive or restrained but it must be tied specifically with the work of the staff, panelists and process of the Site Evaluation Committee. Further, the independent panel should be funded by General Funds.

Objective Criteria: NHSC urges the members of this committee to be specific in the application section of the statute. If more information is needed in the application, then specifically add that information to RSA 162:H-7 –r or word in such a way that it will direct future rulemaking. Studies, lists of pre-application meetings, emissions savings, costs associated with leases, decommissioning commitments and many other ideas could be required in the application. Secondly, it is important that the application requirements in RSA 162:H-7 correlate with findings in RSA 162:H-16 because the application supplies the information to make the findings and ultimately the final decision. The amendment proposal expands the findings with a new requirement, a so-called “net benefit” requirement, but does not add corresponding documentation in the application. NHSC suggests that the committee **define** the new finding requirement and include those elements in the application.

Standing for impacted people: Increasing public participation is critical for the SEC process to better serve the people of our state. It is incumbent upon the SEC process to create the venues for the public to engage with the official information and clear opportunities. The public notice period for public hearings and meetings should be change from 14 days to 30 days – which is the normal timeframe for other state permits. Certified notices to abutters should be specifically required; as well as, a broad standard for intervention specifically, again on the principle that everyone should be heard and given a chance to engage in the proposal process.

**SB99 and SB191**

NHSC encourages this body remain committed to the promises in SB99 and SB191. SB99 required the Office of Energy and Planning to hire a consultant to examine the criteria of RSA 162:H with a public stakeholder process and then the Legislature instructed Site Evaluation Committee to draft rules using that report. A cautionary reminder: it is very difficult to draft rules while changes are taking place in the statute that the rules are based upon. As a few members on this committee share the responsibility of being on the Energy Advisory Council, SB191, created a committee to develop an energy strategy for the state – legislators and state agencies working together to establish a clear energy plan with a report due in September of 2014.

\$400,000 from the very worthy programs were allocated for SB191 and SB99. NHSC encourages this committee to recognize these mandates to establish an energy plan for the state and set rules for wind.

**NHSC Participation**

For the SB99 process, over 300 individuals from across the state signed a NHSC letter calling for solutions. The letter is included in the appendices and represents more than half of those who attended the workshops.

The letter stressed five requirements for the Site Evaluation process:

1. A fair process for all energy proposals;
2. Providing a professional staff for the work of the SEC;
3. People adversely impacted by a project must have the right to intervene;

4. Including clear filing requirements in the application, such as alternative options and analysis of environmental impacts; and
5. Consistency of project approval with state climate and renewable energy policies.

NHSC is committed to the SEC process and knows it can be improved. Addressing the challenges will not only bring the problems to light, it will make the solutions clearer as well. NHSC applauds the efforts to find solutions and is available to provide further suggestions throughout the legislative process.

Please strengthen SB245 to better serve the people of New Hampshire.

Thank you for your time. Please contact me if you have any questions.

Respectfully,

Catherine M. Corkery  
NH Sierra Club, Chapter Director  
603-224-8222  
[Catherine.corkery@sierraclub.org](mailto:Catherine.corkery@sierraclub.org)

**Testimony given by Marc Brown of the New England Ratepayers Association to the NH Senate Energy and Natural Resources Committee on February 19, 2014 on Senate Bill 245**

Thank you members of the committee. My name is Marc Brown and I am the Executive Director of the New England Ratepayers Association, a non-profit that represents hundreds of residential and small business ratepayers in New Hampshire. On behalf of the NH ratepayers that we represent, we oppose this bill as currently written.

In our opinion, the language in SB245 is extremely vague and will likely excessively restrict the development of new energy projects, not to mention the potential legal morass that the current language will provoke:

- ✓ • Page 1, lines 15-16 "...facilities that provide net public benefits..." Is benefit based on reduced costs to ratepayers? Jobs for the communities in which they are sited? Tax benefits? Environmental? A combination of those and/or others?
- Page 1, lines 22-23 "...and cost-effective energy resources". What is the definition of cost-effective? For ratepayers? To satisfy regulations like RPS or RGGI?

The reduction of agencies represented from eight to three will eliminate an abundance of expertise from the SEC and while we certainly understand the need to have public input when considering the siting of energy infrastructure, the inclusion of two "public" members, one at-large and one from the municipality where the project is or will be located opens up a Pandora's box. Energy infrastructure projects are highly technical and require a degree of expertise that is not held by the general public. The inclusion of public members will belabor the process and place an unnecessary burden on the experts on the committee. Furthermore, the likelihood of bias for or against a project by a member of the public will result in a less objective process. Any member of the public who is willing to donate their valuable time to sit on the SEC—even temporarily--will likely have a reason for doing so. Adding public members will open the process up to those who subscribe to the NIMBY factor when it comes to energy infrastructure.

Additionally, the requirement of developers to present alternatives, including the burial of transmission lines, will add tens of millions of dollars in engineering, geological and environmental impact studies to the cost of the application reducing incentive for developers to propose projects in New Hampshire. At a time when New Hampshire businesses and residents are facing ever-rising electricity rates, why would we enact policies that will only make it more difficult to bring cheaper energy to New Hampshire ratepayers?

There are some very good objectives in this bill—especially adding full-time staff to the SEC, which could help reduce the time it takes for the SEC to reach a decision on an application. Also, reducing the size of the SEC is probably a good idea, but we feel the ideal scenario is to reduce the redundancy in agency representation so that the agency itself isn't overly burdened, but the expertise provided by that agency isn't eliminated from the SEC.

Unfortunately, too much of the current language would restrict the develop of energy infrastructure and will only prohibit opportunities for new energy projects that would reduce the high costs of electricity paid by the businesses and residents of New Hampshire.

Thank you for your time.

## ENERGY AND NATURAL RESOURCES

### SB 245-FN

RE: 99 Post Road

Sugar Hill, NH 03586

Owners: Jonathan Halpern and Kirk D. Wilson

This house was built in 1994 to provide an idyllic environment for the parents of one of the owners, Jonathan Halpern, to live out their final years. The land was selected for its sweeping views of the majestic Franconia and Kinsman Ranges. Mr Halpern's parents, who lived most of their lives in New York City, loved the beauty of the mountains and forests of the North Country of New Hampshire. The siting of the house was perfect: an uninterrupted 180+ degree view including Canon Mt., Mt Lafayette, but centered directly on Mt Kinsman, as well as the Town of Sugar Hill Meeting Hall steeple, rising picturesquely above the trees. The house was designed to take advantage of this panoramic view of the town, mountains and forests with a patio from which to take-in the full view and strategically placed picture windows. The view in the Fall as the leaves turn colors is truly magnificent. In fact, the scene from the patio was chosen for an official New Hampshire calendar!

After Mr. Halpern's parents passed away and the other owner, Mr. Wilson, retired, the decision was made to downsize and sell the house. The first major issue a leading real estate broker from the area brought up in setting an offering price for the house was: "You know you have problem with Northern Pass coming right through the area" viewed from the patio. To be sure, the current Right-of-Way cuts through the center of the view. However, now only the extreme tops of two or three poles barely can be made out amongst the trees because the trees quite effectively obscure the current (wooden) poles. The proposed Northern Pass poles would tower above the trees for 50% of the 180 deg view and be situated in the direct line with Mt Kinsman. The listing broker explained how the possibility of Northern Pass coming through the North Country was depressing real estate values all along the projected path that use the current utility ROWs.

The agent's implicit dire predictions of the problems in selling the house have proven to be accurate. The house has been on the market for two years. In the meantime time, a comparable home in Sugar Hill, of even lower appraised value but not exposed to the Northern Pass proposed lines, has sold at a much price higher than that which the owners were asking. In particular, the real estate agent for the Post Road house reported that a perspective buyer appeared very enthusiastic about the house: the agent believed the couple was prepared to make an offer until they asked the inevitable question, "Where is Northern Pass going to be?" No interest after that point!

Given the uncertain situation over Northern Pass, it is unlikely that the owners will get a fair value for a home that cost nearly \$1M to construct, and would cost much more today. Since it is common knowledge in the real estate industry that a long period of being listed creates a negative impression on perspective buyers, the owners have reluctantly decided to take the house off the market until 2015 or until there is a clear resolution of the Northern Pass issue.

The owners strongly suspect that this kind of situation is not uncommon for choice properties along the Northern Pass proposed above-ground route using current Rights-of-Way. In short, the properties have become compromised, losing a significant portion of their resale value. (And, ironically, there will be no reduction in their assessed view tax due to this compromised view.) A commitment to bury the Northern Pass lines undoubtedly would alleviate much of the uncertainty in buyers' minds and significantly reopen the real estate market in affected areas. The owners urge the Senate Committee to pass the proposed legislation. It is a necessary step providing a possible answer to a home buyer's question, "Where is Northern Pass going to be?" and not have that answer kill real estate deals.



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Senator Russell Prescott  
Statehouse Room 302  
107 North Main St.  
Concord, NH 03301

March 4, 2014

Subject: Testimony Regarding SB245

Dear Chairman Prescott:

This letter is based on a document we provided to Meredith Hatfield, Director of the State Office of Energy and Planning, in December 2013 following the conclusion of the SB99 Study Commission. We would like to express our continued support for revisions to the current NH Site Evaluation Committee regulations and rules that align with our recommendations, as outlined below.

On behalf of the Newfound Lake Region Association (NLRA), I am submitting comments and recommendations for inclusion with the findings of the SB99 study commission. The NLRA is a member supported non-profit whose mission is to protect the ecological and economic vitality of the 65,000-acre Newfound Lake watershed. In November 2012 our Board took a position regarding the Wild Meadows wind project of "opposed as proposed". Since that time we have spent many hours researching and exploring the costs and benefits of commercial wind, as well as the current process for permitting such facilities through the NH Site Evaluation Committee (NHSEC) in the context of a State Energy Plan.

To become better informed about how energy siting decisions are made, we have attended various meetings, reviewed current policy and guidelines, and spoken with our members and conservation partners. In support of our position we have submitted testimony regarding House Bill 580 and Senate Bills SB99 and SB191, and participated in a Raab Associates focus group and the December 10<sup>th</sup> Citizen's Workshop.

We have several significant concerns about the process for siting energy facilities in the State, and especially with regard to the commercial windfarms proposed for the Newfound watershed and surrounding ridges. I have summarized our key concerns and recommendations as follows:

- The second sentence of NHSEC's governing statute (162-H:1) states "...it is in the public interest to maintain a balance between the environment and the *need* for new energy facilities..." (emphasis added). The lack of a current State energy plan exacerbates the problem caused by such undefined foundational standards. As the governing body, the NHSEC must have a clear means to determine project need.

Determination of need is central to an effective State energy plan and energy project evaluation. We recommend that critical criteria such as carbon emissions reduction;

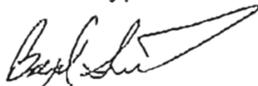
increased energy independence; reduced and stable electrical costs; and local, regional and State-wide impacts and benefits be included, defined and assessed as part of the needs determination.

- While the existing NHSEC criteria are broadly inclusive their lack of clarity and definition is problematic for applicants and intervenors. For example, criteria related to visual impacts and noise are undefined, and analyses of potential impacts, alternatives or mitigation options are not required of the applicant. NHSEC evaluating criteria must be clarified and defined.
- We applaud the NHSEC Commissioners for their commitment to what are essentially extra-curricular additions to their workloads, but believe the current system does not meet the State's needs. We recommend the following restructuring of the NHSEC:
  - Create an independent commission that can be supported by various State agencies and Departments, but is not staffed by Department directors. The Directors lack sufficient time and resources to perform the required duties, and the existing ex-parte communications requirement prevents them from working with their staff.
  - Include one or more local representatives of the impacted communities. In the case of Northern Pass or commercial wind facilities located on ridges, the visual impacts extend substantial distances. For example, on a recent clear day the full array of the Groton Wind project (24 turbines) is visible from the south side on Mt. Trip pyramid (north), roughly 30 miles away.
  - Provide sufficient funding to retain experts in the areas defined by the permit review criteria. The criteria are diverse, ranging from environmental impacts to financial life-cycle analysis, and a high level of specialized skill is required to effectively evaluate the complex and extensive filing requirements. Funding support should come in large part from the applicant, with a baseline of State funding to maintain independence and capacity between NHSEC assignments.

We just learned that Iberdrola Renewables submitted an application for the Wild Meadows project to the NHSEC on or around December 5, 2013 (*note*: application since withdrawn). In addition, we are aware of two other very large parcels of high-elevation, unfragmented forest in the Newfound watershed that have been leased for potential future wind development. With large uncertainties regarding the need for additional energy in New Hampshire and the process for determining whether a new facility will address this need, the NLRA is deeply concerned about how the NHSEC will proceed while their operating rules are being revised.

Thank you very much for your consideration of our concerns and recommendations, and for your leadership of this fast-paced, critical and challenging project, as well as for your Department's role in revising the State Energy Plan. Please do not hesitate to contact me if you should have any questions or if we can be of any assistance.

Sincerely,



Boyd Smith, Director

Email: [info@newfoundlake.org](mailto:info@newfoundlake.org) ~ Phone/fax 603-744-8689

# Committee Report

## New Hampshire General Court - Bill Status System

**Docket of SB245**

Docket Abbreviations

**Bill Title:** (New Title) relative to the siting of energy facilities.*Official Docket of SB245:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
12/20/2013	S	<b>Introduced</b> 1/8/2014 and Referred to Energy and Natural Resources
2/13/2014	S	Hearing: 2/19/14, Room 101, LOB, 9:00 a.m.; <b>SC7</b>
3/6/2014	S	Committee Report: Ought to Pass with Amendment <b>#2014-0921s</b> , 3/13/14; <b>SC9</b>
3/13/2014	S	Committee Amendment 0921s, NT, AA, VV
3/13/2014	S	<b>Ought to Pass with Amendment</b> 0921s, NT, MA, VV; Refer to Finance Rule 4-5; <b>SJ 7</b>
3/20/2014	S	Committee Report: Ought to Pass with Amendment <b>#2014-1125s</b> , 3/27/14; S11
3/27/2014	S	Committee Amendment 1125s, AA, VV
3/27/2014	S	<b>Ought to Pass with Amendment</b> 1125s, MA, VV; OT3rdg; <b>SJ 8</b>
4/1/2014	H	Introduced (In Recess, 3/26/14) and Referred to Science, Technology and Energy
4/2/2014	H	Public Hearing: 4/8/2014 2:15 PM LOB 301-303
4/2/2014	H	Subcommittee Work Session: 4/9/2014 1:00 PM LOB 304
4/2/2014	H	Subcommittee Work Session: 4/15/2014 10:00 AM LOB 304
4/2/2014	H	Subcommittee Work Session: 4/16/2014 10:00 AM LOB 304
4/2/2014	H	===CANCELLED=== Subcommittee Work Session: 4/16/2014 10:00 AM LOB 304
4/8/2014	H	Subcommittee Work Session: 4/10/2014 10:00 AM LOB 304
4/8/2014	H	Executive Session: 4/16/14 2:00 PM LOB 304
4/17/2014	H	Committee Report: Ought to Pass with Amendment <b>#2014-1442h</b> (Vote 16-1; RC); <b>HC 31</b>
4/23/2014	H	Amendment <b>#2014-1442h</b> AA VV
4/23/2014	H	<b>Ought to Pass with Amendment #2014-1442h</b> MA Div 227-69
4/23/2014	H	Refer to Finance
4/24/2014	H	Division I Work Session: 4/29/2014 1:30 PM LOB 212
4/29/2014	H	Division I Work Session: 5/1/2014 2:45 PM LOB 212
4/29/2014	H	Division I Work Session: 5/6/2014 10:00 AM LOB 212
5/1/2014	H	==RESCHEDULED== Work Session: 5/6/2014 9:00 AM LOB 212
5/2/2014	H	Executive Session: 5/8/2014 10:00 AM LOB 210-211
5/6/2014	H	Division I Work Session: 5/8/2014 9:00 AM LOB 212
5/8/2014	H	Committee Report: Ought to Pass with Amendment <b>#2014-1795h</b> (Vote 20-3; RC); <b>HC 35</b>
5/14/2014	H	Amendment <b>#2014-1795h</b> AA VV

80

5/14/2014	H	Ought to Pass with Amendment #1795h MA VV
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NH House	NH Senate
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# Other Referrals

SB 245

# COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL       RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- HANDOUTS FROM THE PUBLIC HEARING
- PREPARED TESTIMONY AND OTHER SUBMISSIONS
- SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 0568s       - AMENDMENT # 1125s
- AMENDMENT # 0921s       - AMENDMENT # 1795h

ALL AVAILABLE VERSIONS OF THE BILL: # 1442b

- AS INTRODUCED       AS AMENDED BY THE HOUSE
- FINAL VERSION       AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): \_\_\_\_\_

DATE DELIVERED TO SENATE CLERK: 7.3.14      Ch. Bob  
 BY COMMITTEE AIDE

# Bill as Introduced

84

SB 245-FN - AS INTRODUCED

2014 SESSION

14-2666

06/03

SENATE BILL **245-FN**

AN ACT relative to procedures and authority of the site evaluation committee.

SPONSORS: Sen. Forrester, Dist 2; Sen. Bradley, Dist 3; Sen. Woodburn, Dist 1; Sen. Fuller Clark, Dist 21; Rep. Vadney, Belk 2; Rep. Ladd, Graf 4; Rep. Suzanne Smith, Graf 8; Rep. Ford, Graf 3; Rep. G. Chandler, Carr 1

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill:

- I. Adds to the duties of the site evaluation committee.
- II. Modifies requirements for energy facility certificates.

Explanation: Matter added to current law appears in *bold italics*.  
 Matter removed from current law appears [~~in brackets and struck through~~].  
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.