STATE OF NEW HAMPSHIRE
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES
ROOM 219
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6312

October 16, 2015

Site Evaluation Committee
21 South Fruit Street
Concord, NH 03301

Re: Preliminary Objection to Final Proposals 2015-11 and 12

Dear Committee Members:

At its meeting on October 15, 2015, the Joint Legislative Committee on Administrative Rules (Committee) voted, pursuant to RSA 541-A:13, IV, to enter a preliminary objection to Final Proposal 2015-11, containing Site 100 and 200, relative to organizational and practice and procedure rules, and to Final Proposal 2015-12, containing rules on explanations of the proposed rule and certificates of site and facility. The Committee's preliminary objection was based on the grounds as outlined in the Committee staff annotations to the final proposals, on the written testimony provided to the Committee prior to its meeting, by the oral and written public testimony provided by the public at the Committee's meeting, and the Committee's concerns as reflected by its comments at the meeting. Copies of Final Proposals 2015-11 and 2015-12, as annotated by Committee staff, and the public's written testimony are enclosed for your use. A copy of the transcript of the Committee's discussion will be forwarded to you as soon as it is available.

You may respond to the Committee's preliminary objection by amending the rules to resolve the bases for objection, by withdrawing the rules, or by making no changes. You are required to respond in writing to the Committee's preliminary objection within 45 days of the date on which it was made, which is October 15, 2015. In this instance, the 45th day is November 29, 2015. Because November 29, 2015 is a Sunday, the date will be extended to November 30, 2015.

After the Committee has received your response, the Committee may take further action ranging from approval of the objection response to voting to support the sponsorship of a joint resolution to address the issues remaining with the proposal. Pursuant to RSA 541-A:13, VII(b), the Committee will have up to 50 days after the end of your response period to take action concerning a joint resolution, although the Committee can take action prior to that date. In this instance the 50th day is January 19, 2016. Please note that there is no deadline by which the Committee must act to approve the rules or to enter final objections, and the Committee may do so even after the adoption of the rules by the Board.

Please be advised that, pursuant to RSA 541-A:14, I, you may not adopt the rules until one of the following has occurred: 1) the expiration of the objection response review period without the Committee having taken action with respect to voting to support the sponsorship of a joint resolution; or 2) the Committee has taken action that is specifically in lieu of voting to support the sponsorship of a joint resolution.

If you have any question concerning the provisions in RSA 541-A relative to objections, responses, or adoptions, please call me at 271-3680.

Sincerely,

for Aaron J. Mitchell
Committee Attorney

Enc.

cc: Martin Honigberg, Esq., PUC/SEC Chairman
David Wiesner, Esq., Staff Attorney, PUC

OCT 15 2015

New England Ratepayers Association

Testimony given by Marc Brown, President of the New England Ratepayers Association to the NH Joint Legislative Committee on Administrative Rules on October 15, 2015

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, social welfare organization which advocates for ratepayers in New Hampshire and New England.

The high cost of electricity to New Hampshire's businesses and families has been well-documented. We have the fifth-highest electricity costs in the United States. One quarter of the region's capacity has recently retired or is expected to retire by the end of the decade—with the Pilgrim nuclear plant in Plymouth, Massachusetts the latest example. 50% of our generation is supplied by natural gas generators, yet we have natural gas pipeline capacity constraints and an electricity market that hasn't induced any natural gas generators to subscribe to firm capacity from any of the proposed pipeline projects. Since natural gas generation sets the wholesale market price for electricity 80% of the time extreme price volatility follows.

This leaves New Hampshire's electricity ratepayers held hostage to the volatility of natural gas markets, which are largely responsible for the 55 percent and 13 percent increase in wholesale electricity prices the past two years. Our state has lost 20% of its manufacturing jobs in the past decade. Is anyone surprised that companies like Sturm, Ruger & Company choose to expand to places like North Carolina citing energy costs as a reason—and creating 1,100 jobs a thousand miles away? Last year at an energy forum in Dover, Senator Watters specifically mentioned a manufacturer that passed on setting up shop in Dover—again, specifically because of high electricity costs. We have a problem and making it more difficult and expensive for developers to site energy projects certainly isn't putting us on a path to resolution.

Enacting the SEC rules as currently constituted, specifically the following, will do just that:

> 301.14 (h) *In determining whether to grant a certificate of site and facility for a proposed energy facility, the committee shall consider cumulative impacts to natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including aesthetic impacts and sound impacts, and, with respect to aesthetics, the potential impacts of combined observation, successive observation and sequential observation of energy facilities by viewer* and 301.16 (c) *Whether construction and operation of the facility will be consistent with federal, regional,*

state and local policies, including those specified in RSA 378:37 and RSA 362-F:1; and (d) *Whether the facility as proposed is consistent with municipal master plans and land use regulations pertaining to (i) natural, scenic, historic, and cultural resources, and (ii) public health and safety air quality, economic development, and energy resources...*

Requiring developers to comply with local policies in addition to federal, regional and state policies will effectively cede control of siting to municipalities nullifying benefits to the rest of the state—in particular lower electricity costs to families and businesses. The cumulative impact section defined in section 301.14 (h) is redundant to other sections of the rules, is far too subjective and impossible to quantify in any reasonable way.

I want to emphasize that if the current draft rules are adopted—essentially granting municipalities final say over energy infrastructure projects that have state-wide benefits—projects won't be developed and New Hampshire's ratepayers will continue to struggle with high electricity rates.

If this committee is concerned about the high electricity rates paid by the families and businesses in New Hampshire then you should strike or amend these sections and make it easier—not easy—to site energy projects that could bring relief to ratepayers.

Thank you for your time.

OCT 15 2015

Site Evaluation Committee (SEC) Rules Violate JLCAR law and rules
Executive Summary

The bottom line……An Agency should not be allowed by rule to enact new standards which were considered and rejected by the Legislature. An Agency should not be allowed by rule to adopt a new standard which conflicts with the existing statutory standards.

Site 301.16
Public Interest Standard – The Legislature substantially revised the NH energy siting law by passage of SB 245 during the 2014 session. During that process, it provided for a "public interest standard" **and specifically considered and rejected a "net benefits" standard (removed the "net benefits" language from an earlier version of SB 245**). The Chair and Vice Chair of the SEC testified in writing that the "net public benefit" standard was a "new test". The SEC now seeks to incorporate that new test, (the "net benefit" standard) as a means of defining the "public interest" by using language substantially similar to that specifically removed by the Legislature. **This violates JLCAR law and rules and forms the basis for an objection as "Contrary to the intent of the legislature." RSA 541-A: 13, IV (b); See also 402.01 (a) and 402.02 (a) the latter of which because the proposed new standard also conflicts with the existing statutory standard contained in RSA 162-H: 16, IV (c) with respect to the finding of "…unreasonable adverse effects…"**

Site 301.14 (g)
Cumulative Impacts/ Effects — The final rules include the concept of "cumulative impacts" as a "new standard" (see Written Testimony of SEC Chair and Vice Chair dated February 18, 2014, page 7) that accumulates impacts to various resources when considering whether to approve energy facilities. **This new standard was specifically considered and rejected by the Legislature during the SB 245 process as applied to all energy facilities** and was ultimately passed (HB 1602, 2014 Session) only with regard to wind energy facilities. The new standard also produces unworkable and irreconcilable conflicts with the existing statutory standards for approval of energy facilities contained in RSA 162-H: 16, IV (c) with respect to the finding of "…unreasonable adverse effects…" **This violates JLCAR law and rules and forms the basis for an objection as "Contrary to the intent of the legislature." RSA 541-A: 13, IV (b); See also 402.01 (a) and 402.02 (a) the latter of which because the new standard also conflicts with the existing statutory standard contained in RSA 162-H: 16, IV (c) with respect to the finding of "…unreasonable adverse effects…" and RSA 162-H: 10-a concerning wind energy.**

Senate Energy and Natural Resources Committee

Public Hearing on SB 245 re Siting of Energy Facilities

February 19, 2014

Q&A between Senator Bradley and Susan Geiger

Senator Bradley (30:25): Ms. Geiger, you talked about the uncertainty of a net public benefit standard, the standard today is no adverse impact. Would you be more comfortable with a public interest standard because that's a much more defined term in terms of case law and legal implications and obviously as a former PUC Commissioner there was a lot of familiarity with that; is that something you'd be more amenable with?

Susan Geiger (31:09): I'd have to think about that but I think that makes sense as you point out, whether a project is in the public interest I think is something that the PUC has reviewed in the past and so the standard is something I think decision makers might be more familiar with.

*The audio of the public hearing is available here.

1) Site 301.16 "net benefit" – Contrary to Legislative Intent, RSA 541-A:13, IV (b) as it "... attempts to implement a bill (portions thereof) which the Legislature defeated ... on its merits (not because the issue was better suited to rulemaking)" within the meaning of Committee Rule 402.01 (a) with specific regard to Site 301.16 (a) – (d) and with respect to 301.16 (e) as the latter is substantially the same as "net public benefit" that was defeated by the Legislature.

2) Site 301.16 "net benefit" (a) – (e) – Contrary to Legislative Intent – RSA 541-A:13, IV (b) as the net benefits test conflicts with RSA 162-H:16, IV (e) within the meaning of Committee Rule 402.02 (a).

3) Site 301.14 (g) "Cumulative Impacts" – Contrary to Legislative Intent – RSA 541-A:13, IV (b) as it "... attempts to implement a bill (portion thereof) which the Legislature defeated ... on its merits (not because the issue was better suited to rulemaking)" within the meaning of Committee Rule 402.01 (a).

4) Site 301.14 (g) "Cumulative Impacts" – Contrary to Legislative Intent – RSA 541-A:13, IV (b) as the "cumulative impacts" test conflicts with RSA 162-H:16, IV (e) and RSA 162-H:10-a within the meaning of Committee Rule 402.02 (a).

FURTHER OBJECTIONS:

5) Site 302.01 (b) – Site Inspection – Beyond Agency Authority – RSA 541-A:13, IV (a) as noted by the staff analysis there is no authority for constitutional violations. Committee Rule 401.04.

6) Site 100 and Site 201 – 204 – Contrary to Public Interest, RSA 541-A:13, IV (c) as where noted by public testimony and staff annotations the rules are not "clear and understandable" within the meaning of Committee Rule 403.01 (d).

7) Site 300 – Contrary to Public Interest, RSA 541-A:13, IV (c) as explained in public testimony and staff annotations the rules are not "clear and understandable" within the meaning of Committee Rule 403.01 (d).

OCT 15 2015 JLCAR Committee

I spoke at the two SEC rulemaking public hearings regarding setbacks for high voltage power lines which had not been referenced in the previous rules. In the recently released final SEC rules, high voltage power line collapse and setbacks were referenced in two places.

1. **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:

(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.

2. **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.

(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.

What we have been asking of the SEC is that the new rules provide real clarity and guidance for what setbacks should be. I am not going to read my testimony to the SEC to you, but I will include it for you here today. This testimony gave concrete examples of the setback rules from several states, communities and other countries; HUD requirements for transmission line setback; and FERC recommendations.

As you read the FERC information, I would like to point out that utility companies including Hydro Quebec, which has thousands of miles of overhead power lines in Canada, cite concerns that include the risk of electrical arcing, which could cause fire, power outages, bodily harm and compromise the reliability of the power grid.

All we are asking is that you take the time to read our testimony, HUD requirements and FERC guidelines and decide whether the new SEC rules adequately provide for the concerns of NH residents and their property.

I have also included, as an example, Connecticut's siting rules for high-voltage power lines.

Pamela Martin
Plymouth, NH

I would like to refer back to the subject of setbacks for high voltage power lines. This is in reference to 301.14 (f) (2) c.

A while back, attorney Weisner was asked if he knew of any other states that had setback regulations for high voltage power lines, and he said he didn't know of any. I'm afraid this Commission might have taken his "I don't know" as a negative as in "no, there are none" Well, the answer actually is Yes, there are states with power line setbacks. A number of states, local jurisdictions and countries have statutory limitations on the distance transmission lines can be built from various structures or the distance buildings can be sited near transmission lines. Some other states have implemented maximum levels of electric fields or magnetic fields, or both, either on or at the edges of the transmission line right of way.

For instance, California has specific guidelines of how close residences and schools can be built near power lines:

- 100 feet from the edge of an easement for a 50-133 kV line
- 150 feet from the edge of an easement for a 220-230 kV line
- 350 feet from the edge of an easement for a 500-550 kV line

California's guidance was developed in consultation with international experts on the health effects of electro-magnetic fields, the state Department of Public Health, the Division of the State Architect, the California Public Utilities Commission, electric utilities, school districts, consultants, and private citizens.

In 2004 the Connecticut General Assembly enacted Public Act 04-246 which restricted the siting of overhead transmission lines 345 kV or greater adjacent to "residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds," unless the applicant can demonstrate that "burying the facility will be technologically infeasible" or may result in an unreasonable economic burden on the ratepayers of the state. Iowa's Code Chapter 478 places restriction on the distance of new transmission lines from any home or business. In Washington State, there are prudent avoidance municipal regulations for electrical transmission and distribution facilities which include a preference for undergrounding transmission and distribution facilities. In Colorado, no public utility may construct facilities within the territorial boundaries of a city or county unless the utility complies with the applicable zoning requirements.

Other countries, as well, have setback requirements for high voltage power lines, including Great Britain, Finland, Switzerland, Bulgaria, and Israel. Austria requires underground burial of all new transmission lines.

There are setbacks for houses from each other, houses from the street, building near or in flood plains, lakes, streams, creeks and rivers, setbacks for septic systems and fences, setbacks for cell towers and wind turbines. There is absolutely no excuse not to have setbacks for high voltage power lines. In Northern Pass's original alternate route, their plan was to go directly through two children's camps. Right through them. They took that proposal off the table because they were denied the right of eminent domain, but not because they worried about the children's health or safety.

The reason utility companies balk at setbacks is not because they are unnecessary, as National Grid argued in their testimony, but because they don't want to be forced to bury their power lines; they want maximum

profit from their investment. But testimony at NH legislative hearings by companies that bury power lines has proven that burial of power lines is not only technologically feasible, it is affordable and much safer for humans and the environment. Burial of power lines along pre-softened transportation rights of way is 21st century, state-of-the-art technology, avoiding property damage, environmental impacts and EMF fears. Stringing overhead power lines from giant steel towers is a relic of the past.

One committee member mentioned unintended consequences of requiring setbacks, but what about the unintended consequences of not requiring setbacks. A 125 ft. tower could someday be replaced by a much taller tower. Hydro Quebec's own website states that they have towers up to 175m. That's 574 ft. What happens to the residence, school, children's camp or playgrounds which are now within the fall zone. Without a reasonable setback requirements, the welfare and safety of the residents of NH and our property are put at risk.

So, Commission members, for the sake of the health, welfare and safety of the public, please rethink your position on setbacks for transmission lines following HUD requirements. Study what the other states I have mentioned have done. We have an opportunity to be part of the future like the other New England states, not the past.

Pamela Martin, Plymouth
House Representative Susan Ford, Easton
Rick Samson, Coos County Commissioner, Stewartstown
Robert Tuveson, Holderness
Elizabeth Terp, Thornton
Pat Kellogg, Littleton
Mary Northrop, Littleton
Irene Mosedale, Littleton
Tom Mullen, Campton
Brad & Daryl Thompson, Gilford
Susan Schibanoff, Easton
Roxanne Busch, Sugar Hill
Chris Thayer, Appalachian Mountain Club, Sugar Hill
Dorothy McPhaul, Sugar Hill
James & Judy Ramsdell, Dalton

http://www.maine.gov/mpuc/legislative/Reports/ATTACHMENT%201%20-%2011-30-13.pdf

http://www.cde.ca.gov/ls/fa/sf/powerlinesetback.asp

HUD REQUIREMENTS

Fall Zone Setbacks – Overhead High-Voltage Transmission Lines

Setback from Occupied Buildings: The setback distance between a wind turbine tower, a radio/TV transmission tower, microwave relay dish or satellite dish (radio, TV cable), or high-voltage electrical transmission tower* and a non-participating landowner's existing occupied building shall be not less than three times the height of the tower. The setback distance shall be measured from the center of the tower base to the nearest point on the foundation of the occupied building.

Setback From Property Lines: The setback distance between a wind turbine tower, a radio/TV transmission tower, microwave relay dish or satellite dish (radio, TV cable), or high-voltage electrical transmission tower* and non-participating landowner's property line shall be not less than the 2.5 times the tower height. The setback distance shall be measured to the center of the tower base.

Setback From Public Roads: All wind turbine towers, radio/TV transmission towers, microwave relay dish or satellite dish (radio, TV cable), or high-voltage electrical transmission tower* shall be set back from the nearest public road a distance of not less than 1.5 times the tower height as measured from the right-of-way line of the nearest public road to the center of the tower base.

* A High-Voltage Electric Transmission Line is a power line that carries high voltage between a generating plant and a substation. These lines are usually 60 Kilovolts (kV) and greater, and are considered hazardous. Lines with capacity of 12-60 kV and above are considered high voltage. High voltage lines do not include local distribution and service lines. Low voltage power lines are distribution lines that commonly supply power to housing developments and similar facilities. These lines are usually 12 kV or less and are considered to be a minimum hazard. These lines may not pass directly over any structure, including pools or other outbuildings.

HUD guidelines preclude a building from being constructed within the "Engineered" Fall Distance of a high voltage tower. HUD is tightening their lending and want verification that the building is not within this fall distance.

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4150.2/41502c2HSGH.pdfJ.

No dwelling or related property improvement may be located within the engineering (designed) fall distance of any pole, tower or support structure of a high-voltage transmission line, radio/TV transmission tower, microwave relay dish or tower or satellite dish (radio, TV cable, etc.). For field analysis, the appraiser may use tower height as the fall distance. For the purpose of this Handbook, a High-Voltage Electric Transmission Line is a power line that carries high voltage between a generating plant and a substation. These lines are usually 60 Kilovolts (kV) and greater, and are considered hazardous. Lines with capacity of 12-60 kV and above are considered high voltage for the purpose of this Handbook. High voltage lines do not include local distribution and service lines. Low voltage power lines are distribution lines that commonly supply power to housing developments and similar facilities. These lines are usually 12 kV or less and are considered to be a minimum hazard. These lines may not pass directly over any structure, including pools, on the property being insured by HUD.

FERC GUIDELINES

Easement setbacks are the distances from the edge of a right of way (ROW) that utility poles and towers are located. FERC has issued guidelines concerning setbacks for NEW overhead power lines.

FERC issued its setback guidelines as a result of its staff study of the massive power outages caused by the October 2011 Nor'easter snow storm which caused estimated damages of $1-3 billion in New England and adjacent states.* The immediate question for FERC was what to do about the overlap of trees and power lines, the ongoing conflict between nature and technology, in this case, overhead high voltage transmission lines. The distribution lines that run along roads and bring power in our homes may be able to tolerate contact with trees. High voltage transmission lines cannot.

In the case of existing power lines, FERC sided with the lines. It recommends more prudent and consistent vegetation management (tree cutting) by utility companies so that even limbs and branches outside the easement do not endanger existing power lines.

For NEW power lines, however, FERC comes down on the side of the existing trees. That is, FERC recommends that new power lines have sufficient setbacks to prevent "fall-ins" – trees outside the easement falling in on the lines. The burden is on the developer to acquire wide enough ROWs to accommodate existing and future vegetation conditions outside its easement. In short, new power lines should not hug the edges of the ROW.

FERC Guideline: ***Preventing fall-ins from both inside and outside the right of way is easier if utilities consider vegetation management needs when siting new transmission lines and acquiring new easements. Therefore, staff recommends that utilities carefully assess vegetation and growth rates in the area of planned lines in order to establish the appropriate right of way width. For example, if native trees have a mature height of 100 feet, the easement should cover an area wide enough to ensure that existing and future trees outside of the right of way will not fall into the facilities.***

If native trees (like the white pine which grows 100 feet tall) abut the ROW, then new transmission structures should be setback 100 feet from the edge of the ROW.

*http://www.ferc.gov/legal/staff-reports/05-31-2012-ne-outage-report.pdf

From Connecticut's Siting Rules:

(D) In the case of an electric transmission line, (i) what part, if any, of the facility shall be located overhead, (ii) that the facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving the state and interconnected utility systems and will serve the interests of electric system economy and reliability, and (iii) that the overhead portions, if any, of the facility are cost effective and the most appropriate alternative based on a life-cycle cost analysis of the facility and underground alternatives to such facility, are consistent with the purposes of this chapter, with such regulations or standards as the council may adopt pursuant to section 16-50t, including, but limited to, the council's best management practices for electric and magnetic fields for electric transmission lines and with the Federal Power Commission "Guidelines for the Protection of Natural Historic Scenic and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities" or any successor guidelines and any other applicable federal guidelines and are to be contained within an area that provides a buffer zone that protects the public health and safety, as determined by the council. **In establishing such buffer zone, the council shall take into consideration, among other things, residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route. At a minimum, the existing right-of-way shall serve as the buffer zone;**

(E) In the case of an electric or fuel transmission line, that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line;

https://www.cga.ct.gov/2011/pub/Chap277a.htm#Sec16-50i.htm

STATE OF NEW HAMPSHIRE
Executive Council

JOSEPH D. KENNEY
EXECUTIVE COUNCILOR
DISTRICT ONE

STATE HOUSE ROOM 207
107 NORTH MAIN STREET
CONCORD, NH 03301
(603) 271-3632

OCT 15 2015

Representative Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
107 North Main Street
Concord, NH 03301

October 15, 2015

Dear Representative McGuire,

As the Executive Councilor of the North Country that represents over a quarter of a million New Hampshire citizens I want to express my concern with some of the administrative powers of the Site Evaluation Committee who evaluate many of the major utility projects in the State.

I have received many letters from constituents and municipal leaders who feel that Site Evaluation Committee rules preempt the town zoning laws and master plans. As someone who has grown up in the State and served as a local selectman I can appreciate the spirit of local control and the need to preserve our quality of living and respecting the need to strike a balance.

In addition, I believe that the public interests should always come first and that the private development of energy projects needs to work in concert with the local citizens and leaders of New Hampshire. To marginalize the input of our citizens and to increase the power of the Site Evaluation Committee would set a wrong precedent.

I encourage the Joint Legislative Committee on Administrate Rules members to advance the importance of public comment and to preserve the local control aspect of our State within the administrative rules of the Site Evaluation Committee.

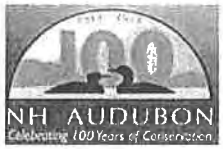
Thank you for all your public service as citizen legislators. I admire the many hours of commitment that you perform on our behalf.

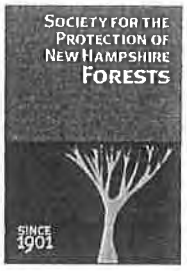
Sincerely,

Joseph D. Kenney

Joseph D. Kenney
Executive Councilor District 1
Wakefield, NH
(603) 581-8780

OCT 15 2015





To: **Representative Carol M McGuire, Chair**

Joint Legislative Committee on Rules

From: **Appalachian Mountain Club, Audubon Society of New Hampshire, Society for the Protection of New Hampshire Forests, The Nature Conservancy**

Date: **October 15, 2015**

Re: ***Organizational Rules and Rules of Practice and Procedure of the Site Evaluation Committee***

SEC Docket No. 2014-4

Madame Chair and Members of the Committee:

Thank you for this opportunity to express our support for the proposed rules submitted to you by the Site Evaluation Committee. Our organizations have been active participants in this rule-making process, and were advocates for the legislation that initiated this rule-making. For most of us, these rules are the fruition of a decade of effort to update and improve the energy siting criteria used by the SEC.

The proposed rules accomplish several important goals:

- They provide needed specificity and clarity to the standards used by the SEC to make their findings.
- They include a new finding of "public interest" that ensures the opportunity for the SEC to assess the overall impacts of an energy facility on the interests of the citizens and communities of the state.
- They incorporate current approaches to gauging the impacts of today's energy facilities and technologies.

We believe the proposed rules provide critical transparency to both applicants and the public as to how and what the SEC will consider during its deliberations. While some may claim that these rules will constrain energy development in New Hampshire, we would argue that in fact they will ensure appropriate and timely siting of energy facilities. For the first time, both applicants and the public will have a clear and ready understanding of the standards required when siting an energy development projects. The work of the SEC is a balancing act, and while these rules do not eliminate the judgments that must be made by the SEC as they try to find that balance, they do provide the public and the applicant with clearer sidebars and context for the SEC's assessments.

The siting of energy facilities in New Hampshire has both immediate and long-term implications for the health of our economy as well as our natural environment and historic character. We believe these proposed rules will help ensure that decisions made by the SEC will continue to appropriately balance these vital concerns. We urge the Committee to approve these proposed rules.

Thank you for your consideration.

15-6

Eaton, Scott

From: Ellen at Duck Soup [ducksoupnh@myfairpoint.net]

Sent: Wednesday, October 14, 2015 9:15 PM

To: Eaton, Scott

Subject: JLCAR

OCT 15 2015

Dear Mr Eaton,
This is a letter to say that I am opposed to the SEC having authority to give energy projects that receive a permit the right to preempt Town and City Zoning laws/ordinances and masterplans. This would be an injustice to all the residents of these towns and flies in the face of all of the their rights as property owners and the rules governing their towns/cities which they live by.
Sincerely,
Ellen Pritham
Easton, NH

OCT 15 2015

15-6

Eaton, Scott

From: Dorothy McPhaul [dmmcphaul101@gmail.com]
Sent: Thursday, October 15, 2015 2:37 AM
To: Eaton, Scott
Subject: Attn. Carol McGuire JLCAR Chair

October 15, 2015

Representative Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301

Dear Chairman McGuire,

I have three places in the rules to which I object and I would like changes made. I would like them all made, if possible, in the two decommissioning plans (two are the same change in different locations) one for wind projects and the other for all other energy projects.

I would like 301.08 (a) (7) to read:
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 provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond.

I would like to strike the wording "or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times as investment grade credit rating." which followed "surety bond" at the end of the above paragraph. I would like this because no company is to big to fail; what happens if the credit rating drops and the project is not meeting expectations and many parent companies are located in foreign countries, such as Spain and Portugal. Collecting monies from a failing company abroad would most likely be impossible. I would personally like it to be "cash up front," but I am sure that is unrealistic.

I would like to request the same removal of language be made from the paragraph below regarding all energy facilities, but most importantly, I would like the inclusion of "which plan shall provide for removal of all structures and restoration of the facility site" as was included in the wind decommissioning plan. I would like to include that line because all energy facilities must remove all structures and restore the site, not just wind projects. Whether that was intentionally left out or accidental, it must be included.

I would like 301.08 (c) (2) to read:
A decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility 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 provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond.

Thank you,
Dorothy McPhaul

OCT 14 2015

Walsh, Cheryl

From: Stefanie Lamb [slamb@biaofnh.com]
Sent: Wednesday, October 14, 2015 4:22 PM
To: Walsh, Cheryl
Cc: Jim Roche
Subject: Letter to JLCAR members re: SEC final rules discussion on 10-15-15
Importance: High
Attachments: BIA ltr to JLCAR Final SEC Rules 101415.pdf

Cheryl,

Good afternoon. Attached please find the letter that the Business and Industry Association (BIA) prepared for JLCAR members regarding the Final Proposals 2015-11 and 2015-12 (SEC Rules Sites 100 - 204, and 300 – 500). It's my understanding that JLCARs SEC discussion is tentatively scheduled to commence at 10:45 tomorrow morning at the Legislative Office Building (Rm 305-307). In addition to our letter, which we are planning on providing hard copies for committee members, we are planning on providing verbal testimony tomorrow which will include the major points of our letter

Could you please see that this letter is received by committee members prior to the start of tomorrow's meeting.

Thank you.

Stefanie

Stefanie Lamb
Director of Public Policy
Business & Industry Association | 122 North Main Street | Concord, NH 03301
603-224-5388 x112 | fax: 603-224-2872 | slamb@BIAofNH.com | www.BIAofNH.com

BIA
Business and Industry Association
New Hampshire's Statewide Chamber of Commerce

122 North Main Street, Concord, NH 03301
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OCT 15 2015

October 14, 2015

Members of the Joint Legislative Committee on Administrative Rules
Office of Legislative Services– Room 219
25 South Capitol Street
Concord, NH 03301

Re: Final Proposals 2015-11 and 2015-12 (SEC Rules Sites 100 - 204, and 300 – 500)

Dear JLCAR Committee Members:

The Business and Industry Association (BIA) is New Hampshire's statewide chamber of commerce. We are the only statewide, broad-based business advocacy group in the Granite State. Our mission is to promote a healthy climate for job creation and a strong economy.

BIA believes New Hampshire and New England are in an electrical energy crisis. The latest data from the U.S. Energy Information Administration shows New England has the highest commercial, industrial and residential electricity prices in the contiguous U.S. New Hampshire prices are nearly 60 percent higher than the national average. The New Hampshire Public Utilities Commission itself recently reported that the region paid nearly $5 billion more for wholesale electrical energy during the winter of 2013-14, and $2 billion more last winter, than during the benchmark winter of 2011-12. Even with news that this winter's rate increases may not be as big as in recent years, prices are still very high by historical standards and in relation to the rest of the country. Our regional electric rate disparity remains a long-term, persistent challenge.

The root cause for high electricity costs is that the region lacks enough natural gas pipeline and electric transmission capacity to balance electricity demand with supply. This is compounded by retirement of non-gas-generating facilities, including the unexpected announcement of Pilgrim Nuclear Power's retirement in 2019.

If electricity and natural gas infrastructure is not built soon, New Hampshire and New England will face significant, adverse economic consequences. A recent analysis by La Capra Associates estimates that failure to expand the region's energy infrastructure will lead to $5.4 billion in higher energy costs for households and businesses, a reduction in disposable income that could top $12 billion, and 167,600 jobs lost or not created.

The BIA does not support or oppose any specific development project. BIA's primary concern is the cost of electricity and New Hampshire's economic future. We are very concerned that new energy project siting rules recommended by the Site Evaluation Committee for confirmation by JLCAR are overly burdensome, lengthen the process for filing, invite challenges and litigation, and may go beyond statutory authority. This is incredibly disconcerting to businesses, New Hampshire's job creators. Rules for siting energy infrastructure projects in New Hampshire must

be fair, balanced, clear and expeditious, not the reverse. BIA strongly encourages JLCAR to carefully and thoroughly consider specific rule provisions that create difficulties/burdens for project developers who wish to do business in New Hampshire.

Up to now, BIA worried about slowing job growth and economic activity as employers, particularly advanced manufacturers—New Hampshire's most important economic sector—expanded operations elsewhere. If the energy project rules as recommended by the SEC are approved by JLCAR we face a bleaker scenario: employers moving existing jobs in New Hampshire and throughout New England to other locations around the country or world with lower-cost energy. The long-term, adverse economic consequences of this will be felt for decades.

Thank you for the opportunity to provide these comments. Please do not hesitate to contact me with any questions.

Respectfully submitted,

Jim Roche
President

OCT 14 2015

Orr&Reno

William L. Chapman
George W. Roussos
James E. Morris
John A. Malmberg
Douglas L. Patch
Steven L. Winer
Peter F. Burger
Lisa Snow Wade
Susan S. Geiger
Jennifer A. Eber
Jeffrey C. Spear
Connie Boyles Lane
Judith A. Fairclough
Maureen D. Smith
James F. Laboe
Robert S. Carey
Jeremy D. Eggleton
Nicole M. T. Paul
John M. Zaremba
Caroline K. Brown
Heidi S. Cole
Justin M. Boothby
Andrew D. Grosvenor
Zachary D. Bland

Neil F. Castaldo
(Of Counsel)

October 14, 2015

Via Hand Delivery

The Honorable Carol McGuire, Chair
Joint Legislative Committee on Administrative Rules
c/o Office of Legislative Services
Administrative Rules
25 Capitol Street
Concord, NH 03301

Re: Comments on Notice No. 2015-12 – Site Evaluation Committee Rules – SEC Docket No. 2014-04

Dear Representative McGuire:

These comments are submitted on behalf of EDP Renewables ("EDPR") regarding the above-referenced proposed rules filed by the New Hampshire Site Evaluation Committee ("SEC" or "Committee"). EDPR is an experienced developer of clean, renewable, wind energy, and the third largest wind energy developer, owner, and operator in the United States. It has 31 operating wind projects in the United States and is currently constructing three (3) projects and developing new projects around the country, including here in New Hampshire. EDPR was an active member of the stakeholder groups that worked on Senate Bill 245 (2014) which resulted in changes to RSA 162-H that prompted this rulemaking.

Listed below are issues of concern that EDPR respectfully submits warrant objections from JLCAR.

1. **Site 301.14(f)(2) b.** This rule would restrict **shadow flicker** created by a proposed wind facility to **not 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. This standard is unreasonable and could potentially prevent future wind projects from being built in New Hampshire. According to a study issued by the National Association of Regulatory Utility Commissioners – "Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States" (Jan. 2012), a shadow flicker standard of 30 hours per year is a "commonly used" and "reasonable standard."

This standard was used by two New Hampshire wind project applicants (Groton and Antrim) and was acceptable to the SEC. In addition, throughout this rulemaking and until the final day of the SEC's deliberations on the rules, the SEC's draft rule contained the 30 hour standard. The SEC's abrupt departure of the 30 hours/year standard is unreasonable and therefore objectionable because it is not in the public interest. *See* RSA 541-A:13, IV(c).

2. The definition of "**Cumulative Impacts**" in **Site 102.18** is overly broad, unworkable and therefore not in the public interest. The term is defined as "the totality of effects resulting from the proposed facility, all existing energy facilities, all energy facilities for which a certificate of site and facility has been granted, **and all proposed energy facilities for which an application has been accepted."** The term is used in **Site 301.14(g)** which states that in determining whether to grant a certificate of site and facility, the SEC must 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."

The definition of cumulative impacts (above) would require that the SEC and applicant consider effects of another proposed facility – i.e. one that has not been built – in combination with those of the applicant's proposed facility. This would require speculation and could result in a futile effort to anticipate consequences of another facility that might never be built or whose layout may change at a later date. Accordingly, this rule is not in the public interest and, therefore, JLCAR should object. *See* RSA 541-A:13, IV(c).

3. **Site 301.05 (b)(7) Photosimulations** submitted with the application must be from "key observation points" (as defined in Site 102.25), from other scenic resources characterized as "high" in the visual impact analysis, **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…

This requirement is excessive and has the potential to cause significant expense and delay in the siting process. The rule could potentially result in an applicant conducting photosimulations from every potential private vantage point. The rule does not indicate to what extent an applicant is required to contact private property owners to conduct these visual simulations. It is unclear which sample of private property observation points will be acceptable to the SEC. In the past, visual experts have limited their analyses of wind projects to photosimulations taken from public vantage points. Now, it appears that a project's effect on private properties would have to be studied. Failure to study sufficient private vantage points may cause the SEC to find that an application is incomplete and/or order an applicant to conduct more visual simulations, which would delay the review process. For the foregoing reasons, JLCAR should object to this rule because it is not in the public interest. *See* RSA 541-A:13, IV(c).

4. **Site 301.08(a)(7).** This rule requires a wind project applicant to submit a decommissioning plan prepared by an independent expert with demonstrated knowledge and experience in wind generation and cost estimates. Among other things, the plan must provide for removal of all structures and site restoration "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 maintain at all times an investment grade credit rating.**

The legislature previously considered but rejected accounting for salvage value in a decommissioning funding plan. *See* SB 281, as amended by the Senate (2014). Including this provision is contrary to legislative intent and therefore is inappropriate and objectionable. *See* RSA 541-A:13, IV (b). In addition, the listed forms of financial assurances are financially onerous and are not required by statute. Accordingly, JLCAR should object to this rule as it is not in the public interest and would have a substantial economic impact. *See* RSA 541-A:13, IV (c) and (d).

5. **Site 301.09**. Among other things, this rule requires an applicant to submit the "**master plans of affected communities and zoning ordinances of the proposed facility host municipalities and unincorporated places**…".

The New Hampshire Supreme Court has held that the SEC process preempts local zoning and planning processes. *Town of Hampton, 120 N.H. 68 (1980).* Thus, master plans and zoning ordinances are arguably irrelevant to the SEC process. Accordingly, applicants should not be required to submit this information. JLCAR should object to this rule as it is beyond the authority of the SEC. *See* RSA 541-A:13, IV (a).

6. **Site 301.16** **<u>Criteria Relative to Finding of Public Interest</u>**. Among other things, this rule requires that in determining whether a proposed energy facility will serve the **public interest**, the SEC shall consider:

(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 identified in **RSA 378:37**… and **(d) – municipal master plans and land use regulations.**

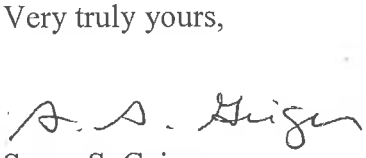
In 2009, the legislature repealed the requirement that the SEC find an application to be consistent with the state energy policy established in RSA 378:37. *See* N.H. Laws of 2009, Ch. 65:24, IX. (repealing RSA 162-H:16, IV (d)). Thus, a rule requiring the SEC to consider the state's energy policy is contrary to the legislature's intent and therefore JLCAR should object. *See* RSA 541-A:13, IV(b).

In addition, as noted above, local planning and zoning requirements are preempted by the SEC process. The New Hampshire Supreme Court has held that attempts by municipalities to regulate facilities under the jurisdiction of the SEC is impermissible. *Town of Hampton, 120 N.H. 68, 71 (1980).* Thus, it is beyond the authority of the SEC to adopt a rule that would enable a municipality, through its land use policies, plans and regulations, to improperly exert authority over energy facility siting. For the foregoing reasons, this rule is beyond the authority of the SEC, is contrary to the legislature's intent, and not in the public interest. Therefore, JLCAR should object to this rule. *See* RSA 541-A:13, IV(a), (b) and (c).

7. **Site 201.01 (b)** requires an applicant to mail a copy of the notice of the preapplication public information session to each abutting property owner by certified mail. This requirement is excessive and goes well beyond the statutory requirement of RSA 162-H:10, I which simply calls for newspaper publication. Accordingly, JLCAR should object. *See* RSA 541-A:13, IV(a) and (b).

Please do not hesitate to contact me if you or the other JLCAR members have questions about these comments. Thank you.

Very truly yours,



Susan S. Geiger

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Town of Easton
1060 Easton Valley Road
Easton, NH 03580

http://townofeastonnh.org/

OCT 14 2015

October 12, 2015

Representative Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, New Hampshire 03301

Dear Chairman McGuire,

The Easton Select board is writing to express concern over recent comments made by Commissioner Scott, a member of both the Public Utilities Commission and the Site Evaluation Committee (SEC). In his comments, he indicated that the SEC could possibly act as a statewide planning and zoning board and would have authority to effectively preempt local planning and zoning ordinances, master plans, etc.

This is a troubling statement to us, and our town.

If this were to pass, where would that leave the legality of NH RSA 673.1 and 674.2, that states that the duty of the local planning board is to prepare and amend as necessary a master plan to guide the development of a municipality?

It is our feeling that in granting permits for all large energy projects in the State of New Hampshire, careful attention should be paid not only to NH State RSAs, but also to the interests and desires of the residents within the towns that are affected.

Respectfully submitted,

Easton Select Board

Cc: Governor Maggie Hassan
Attorney David Wiesner
Chairman Martin Honigberg
Jane Murray
Executive Councilor Joseph Kenney

2015-12

Eaton, Scott

OCT 14 2015

From: Robert H Copenhaver [muffyc@roadrunner.com]
Sent: Wednesday, October 14, 2015 11:20 AM
To: Eaton, Scott
Subject: JLCAR

To whom it may concern: I object to a rule that would give the SEC the power to distribute to energy projects the authority to preempt municipal zoning laws and master plans. Thank you. Irene Copenhaver, Littleton

TOWN OF LITTLETON

125 Main Street, Suite 200
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603.444.3996 www.townoflittleton.org

A Great American Main Street Community

OCT 13 2015

Rep. Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301

October 8, 2015

Dear Chairman McGuire,

After reading the Site Evaluation Committee's (SEC) comments on the review of their administrative rules, the **Town of Littleton** is submitting this letter to **officially protest** the interpretation that the law's intent is for the SEC to become the State's Planning and Zoning Authority.

We strongly object to any attempt to make the unelected SEC the preemptive Planning and Zoning authority for the State of New Hampshire.

Under RSA 673.1 the legislature of New Hampshire gave the right to every Town to elect a Planning Board to oversee the planning and zoning for the Town's legislative body. Within that intent was RSA 674.2 which describes the duty of the Planning Board to prepare and amend as necessary a master plan to guide the development of a municipality. This allows for local control to meet the needs of individual communities that direct current and future development related issues. The government must allow the people to prepare and determine as much of their municipal future as society allows. The State Site Evaluation Committee should not have the power to disregard local control over projects that will have enormous impacts within the Towns and Cities of New Hampshire.

We ask that you oversee the Site Committee's recommendation of Administrative Rules to ensure that all planning and zoning for New Hampshire does not become centralized, particularly in regards to elective energy projects.

Thank you for your consideration regarding our concerns.

Respectfully submitted,

Andrew Dorsett, Town Manager
On behalf of the Littleton Board of Selectmen

Cc: Governor Maggie Hassen
Attorney Scott Eaton (scott.eaton@leg.state.nh.us)
David Wiesner, Attorney, Site Evaluation Committee, c/o Public Utilities Commission (David.Wiesner@puc.nh. gov) Martin Honigberg, Chairman, Site Evaluation Committee, c/o Public Utilities Commission (Martin.Honigberg@puc.nh. gov) Jane Murray, Department of Environmental Services (jane.murray@des.nh.gov) Executive Councilor Joseph Kenney (Joseph.Kenney@nh.gov)

Monadnock

OCT 13 2015

Richard G. Verney
Chairman and Chief Executive Officer

Monadnock Paper Mills, Inc.
117 Antrim Road
Bennington, New Hampshire
03442-1205
www.mpm.com

Phone 603 588 3311
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Phone 800 231 8323 x216

rverney@mpm.com

October 13, 2015

Honorable Carol M. McGuire, Chair
Joint Legislative Committee on Administrative Rules (JLCAR)
Legislative Office Building, Rms 305-307
Concord, NH 03301

Re: Final Proposal; Site Evaluation Committee Rules

Dear Madam Chair and Honorable Members of the Committee:

On behalf of Monadnock Paper Mills, Inc. (MPM), thank you for the opportunity to testify on the Site Evaluation Committee's (SEC's) proposed administrative rules called for by RSA 162-H:10, VII. MPM has been following this rulemaking process and filed comments on November 7, 2014 in response to the SEC's request for public input on the draft rules. I have reviewed and discussed the final proposal for new SEC rules with my advisors, and I am very troubled by the final product as it incorporates many provisions designed to prohibit proposed energy infrastructure projects rather than objectively evaluate them. MPM urges you to reject the final proposal as it is currently drafted.

By way of background, Monadnock Paper Mills is a family owned business in Bennington, New Hampshire. We are proud to be the oldest continuously operating paper mill in the United States, dating back to 1819, especially in light of the high cost of doing business in New Hampshire and the significant challenges facing the paper industry. The Mill provides over 170 good-paying jobs in the Monadnock Region and supports the local and state economies in various ways, not only by paying the salaries of many local citizens and supporting local charities, but by paying a significant amount in property and business taxes.

Energy costs are a significant portion of our overall costs and have a major impact on our ability to compete in the worldwide market. MPM has taken important steps to reduce its energy costs by investing significant sums in energy efficiency and on-site small-scale hydro generation. Nonetheless, the Mill still purchases substantial amounts of electricity and oil in the competitive market to run its operations. Thus, it is critical for us that there be a fair and balanced method to evaluate new energy alternatives proposed in New Hampshire that allows for the development of much-needed infrastructure while providing for public participation.

SGS SGS

The final SEC rules must be consistent with legislative intent. The rulemaking proceeding is not an opportunity to go beyond existing statutes or legislative policies. MPM opposes provisions in the proposed rules that erect substantial hurdles to the development of new energy infrastructure and that exceed the SEC's statutory authority. Examples in the proposed rules include, but are not limited to, use of a "net benefit" standard (rejected by the Legislature) as a means of defining "public interest" and use of a "cumulative impacts" test applied to *all* energy facilities (also rejected by the Legislature). These and other provisions proposed in the SEC rules will make it much more difficult, expensive, and perhaps even impossible to build new energy infrastructure in New Hampshire that is clearly needed as part of an "all of the above" energy strategy.

If New Hampshire is to remain "open for business," MPM urges you to reject the final SEC proposed rules. Thank you for the opportunity to be heard on these important issues.

Sincerely,

Richard G. Verney
Chairman and Chief Executive Officer

OCT 1 2 2015

Dorothy M. McPhaul
PO Box 601
Sugar Hill, NH 03586

October 12, 2015

Attorney Scott Eaton
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301-6312

Dear Attorney Eaton,

JLCAR rules state:
"(c) Pursuant to RSA 541-A:13, IV, the Committee may make a preliminary objection to a final proposal or amended final proposal if the rule is:
- Beyond the authority of the agency;
- Contrary to the intent of the legislature;
- Not in the public interest; or
- Deemed by the Committee to have substantial economic impact not recognized in the fiscal impact statement."

I am writing to object to the alleged rule that the SEC has the authority to grant to energy projects, receiving a certificate, the power to preempt municipal zoning laws and master plans.

To be clear, I do contest the claim the SEC has the power of preemption and would be willing to prove my case, but that issue, I do not believe, is one JLCAR would address. I am objecting to the proposal by which the SEC transfers their purported power of preemption to energy companies.

It is a difficult objection to argue as nothing is written in black and white. Nothing... not RSAs that should explicitly give the power to the SEC and not the rule of the SEC that supposedly allows the passing of that power to the energy companies. According to SB 245, there was to be specificity in the criteria of the rules. This is clearly a breach of that criteria.

I have done extensive research and requested preemption information from two attorneys for the SEC. Neither answered the question regarding the authority of the SEC to give the preemption power to energy companies. However, the SEC claims it has that authority. A quote from Commissioner Burack during a SEC rulemaking session leads one to question the preemption authority: "I will also offer the observation, and I know this may not be accepted by some, but I think we need to acknowledge that the Legislature, in creating this statute, really expected that this body would act as a statewide planning and zoning

board and would have the authority to effectively preempt local planning and zoning ordinances, master plans, etcetera, to the extent that they may exist and might otherwise lead to a different outcome with respect to a particular project."

Ironically, Commissioner Burack's quote was stated during the SEC discussion on "Public Interest." It may be found in the SEC NH website, under Rulemaking, in the Transcript Minutes dated April 2nd, Page 62, lines 13-21). The statute to which Commissioner Burack was referring was 162-H: 16 IV (b) which reads: "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: (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." One has to question how Commissioner Burack derives the SEC has the power of preemption, to pass along to energy companies, from this quote. In addition to being a form of Eminent Domain, forbidden by new legislation since the 1980 Court case of "The Town of Hampton vs PSNH", it is Not in the Public Interest and Beyond the Authority of the Agency.

Assuming there must be a rule, the proper placement for the SEC to authorize the giving of preemption powers to an applicant for an energy project should be in either of the two following sites:
162-H:4, Powers and Duties of the Committee
I. The committee shall:
(b) Determine the terms and conditions of any certificate issued under this chapter.

There is no statement regarding preemption. Any rule that could change millions of lives negatively, should be explicitly stated, as per SB 245.

Site 301.17: Conditions of Certificate
The power of preemption is not reflected in any form in this section. All sites read as though they relate to other conditions required "from" an applicant, not any powers the SEC can provide "to" the applicant.

In addition, the Legislature, in RSA 673.1, "gives the right to every town in this State to elect a planning board to oversee the planning and zoning for the Town's legislative body." Included is 674.2 which states "The purpose of the master plan is to set down as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning board, to aid the board in designing ordinances that result in preserving and enhancing the unique quality of life and culture of NH." Those are specific words granted to towns by the Legislature. Supposed language, nebulous to some, non-existent to others, within the rules of the SEC, should not be allowed to preempt specifically worded RSAs written by the Legislature.

In 162-H:4 Powers and Duties of the Committee

• regarding granting exemptions
(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:"
(d) "All environmental impacts or effects are adequately regulated by other federal, state, or *local statutes, rules or ordinances."*

The wording of this RSA states the importance and power of municipal ordinances and local statutes, rules or ordinances. If the SEC could grant projects, legally, the power of preemption, there would be no need for the above, italicized language in this RSA. Again, preemption is Beyond the Authority of the Agency.

Finally, the preemption of towns zoning ordinances and master plans and the introduction of an energy facility, could have a severe, negative effect on property values, property values that in many cases equate to a landholders life savings. This would be a violation of JLCAR's rule regarding a "substantial economic impact not recognized in the fiscal impact statement."

In closing, the SEC claims they have the authority to transfer to energy companies the right to preempt municipal zoning regulations and master plans. There are no clear rules that support that claim. I object to whatever rule the SEC identifies as the support for that power transfer because it contradicts RSA 673.1 and RSA 674.2, it is Beyond the Authority of the Agency, it is Contrary to the Intent of the Legislature, Not in the Public Interest and it would have substantial economic impact not recognized in the fiscal impact statement. I urge you to ascertain what rule is used to delegate the preemption power to energy companies and require changes be made to negate that power. If there is no rule, they should not be allowed that power.

Thank you for your consideration.

Respectfully,

Dorothy M. McPhaul

Testimonies and letters written concerned with or objecting to the preemption of municipal zoning regulations and master plans:

02/24/2015	Conservation Groups
03/04/2015	Mark Watson
03/23/2015	Albert Franz
03/23/2015	Town of Hebron
03/23/2015	Dorothy McPhaul

03/23/2015	Larry Goodman (1st letter)
03/23/2015	National Historic Preservation
03/23/2015	National Audubon Society
03/23/2015	National Preservation Alliance
03/23/2015	Town of Bridgewater
04/06/2015	Dorothy McPhaul
04/24/2015	Kris Pastoriza
08/21/2015	Julie Moran
09/08/2015	Pat Kellogg
09/15/2015	Town of Monroe
09/17/2015	Nancy Martland
09/18/2015	Larry Goodman
09/29/2015	Bethlehem Conservation Commission
10/02/2015	Town of Bethlehem
10/06/2015	Karen Placey
10/06/2015	Karen Placey
10/07/2015	Town of Sugar Hill

OCT 1 2 2015

Kris Pastoriza
Easton, NH

October 7, 2014

Rep. Carol M. McGuire, Chair
Sen. John Reagan, Vice Chair
New Hampshire Joint Legislative Committee on Administrative Rules
25 Capitol Street, Rm 219
Concord, NH 03301-6312

RE: Site Evaluation Committee Docket #2014-04

Dear Chairman McGuire and Vice-Chairman Reagan:

I write to respectfully request that the Joint Legislative Committee on Administrative Rules register a preliminary objection to the the following specific proposal within the above mentioned rulemaking docket from the Site Evaluation Committee:

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:

(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;" (emphasis added)

JLCAR's rules state:

"(c) Pursuant to RSA 541-A:13, IV, the Committee may make a preliminary objection to a final proposal or amended final proposal if the rule is:

(1) Beyond the authority of the agency;
(2) Contrary to the intent of the legislature;
(3) Not in the public interest;
(4) Deemed by the Committee to have substantial economic impact not recognized in the fiscal impact statement."

Site 301.17 (g) is contrary to the intent of the legislature:

SB-99 VII. states: "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." (emphasis added)

RSA 162 H:16, IV(c) requires that "The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety."

Site 301.17 (g) fails to set specific criteria to protect public health and safety.

Site 301.17 (g) is not in the public interest because:

1. Lack of specific, mandatory setbacks leaves the public vulnerable to interrupted electric service, the hazard of fallen poles, and the potential health effects of electromagnetic radiation.

2. Lack of specific, mandatory setbacks leaves industry without the necessary information to determine the feasibility of potential projects.

3. Lack of specific, mandatory setbacks will lead to regulation by litigation, but limit public participation in the adjudicative SEC siting process to those few that can afford it.

Site 301.17 (g) will have a substantial economic impact not recognized in the fiscal impact statement because it will place upon members of the public the expensive burden of participation in the adjudicative proceedings of the SEC siting process.

Sincerely,

Kris Pastoriza

Susan Schibanoff, Easton

Lee Ann Moulder, Holderness

Mike Marino, Holderness

Pat Kellogg, Littleton

Julie Moran, Colebrook

Campbell McLaren, Easton

Dolly McPhaul, Sugar Hill

Gail Beaulieu, Plymouth

Brian Tilton, Hookset

Taras Kucman, Concord

Lee Sullivan, Easton

Steven Buzzell, Easton

Susan Ford, NH House Representative, Grafton #3

Richard J. Samson, Coos County Commissioner District Three

Attached for your information are 28 separate submissions to the SEC during its consideration of these proposed rules dealing with the need for specific setback criteria. The SEC failed to incorporate specific setback criteria in the rules, and, therefore, JLCAR should send this part of the proposal back for further consideration.

1. http://www.nhsec.nh.gov/projects/2014-04/documents/10-02-15-sec-2014-04-late-filed-comment-kris-pastoriza.pdf (pgs. 16-17, 24-25 October 2, 2015)

2.http://www.nhsec.nh.gov/projects/2014-04/documents/09-28-15-sec-2014-04-late-filed-letter-leann-moulder.pdf (September 28, 2015)

3. http://www.nhsec.nh.gov/projects/2014-04/documents/09-23-15-sec-2014-04-late-filed-letter-campbell-mclaren.pdf (September 23, 2015)

4. http://www.nhsec.nh.gov/projects/2014-04/documents/09-20-15-sec-2014-04-late-filed-letter-peter-pamela.pdf (September 20, 2015)

5. http://www.nhsec.nh.gov/projects/2014-04/documents/09-17-15-sec-2014-04-letter-senator-jeanie-forrester.pdf (September 17, 2015)

6. http://www.nhsec.nh.gov/projects/2014-04/documents/09-17-15-sec-2014-04-letter-nancy-martland.pdf (September 17, 2015)

7. http://www.nhsec.nh.gov/projects/2014-04/documents/09-16-15-sec-2014-04-letter-campbell-mclaren.pdf (September 16, 2015)

8. http://www.nhsec.nh.gov/projects/2014-04/documents/09-15-15-sec-2014-04-letter-kris-pastoriza.pdf (September 15, 2015)

9. http://www.nhsec.nh.gov/projects/2014-04/documents/09-15-15-sec-2014-04-letter-pamela-martin.pdf (September 15, 2015

10. http://www.nhsec.nh.gov/projects/2014-04/documents/09-08-15-sec-2015-04-letter-pat-kellogg.pdf (September 8, 2015)

11. http://www.nhsec.nh.gov/projects/2014-04/documents/08-21-15-late-filed-comments-of-julie-moran.pdf (August 21, 2015)

12. http://www.nhsec.nh.gov/projects/2014-04/documents/08-16-15-late-filed-comments-from-rep.-rappaport.pdf (August 16, 2015)

13. http://www.nhsec.nh.gov/projects/2014-04/documents/late-filed-comments-of-presby-environmental-inc.pdf (July 31, 2015)

14. http://www.nhsec.nh.gov/projects/2014-04/documents/sec-rulemaking-public-comment-issues-list-7-9-15.pdf (p. 16. July 9, 2015)

15. http://www.nhsec.nh.gov/projects/2014-04/documents/150421schibanoff.pdf (April 21, 2015)

16. http://www.nhsec.nh.gov/projects/2014-04/documents/150420noyes.pdf (April 20, 2015)

17. http://www.nhsec.nh.gov/projects/2014-04/documents/150409pastoriza.pdf (pgs. 5-6. April 9, 2015)

18. http://www.nhsec.nh.gov/projects/2014-04/documents/150415minutes.pdf (pgs. 105-8, 110-115. April 4, 2015)

19. http://www.nhsec.nh.gov/projects/2014-04/documents/150323block.pdf (March 23, 2015)

20. http://www.nhsec.nh.gov/projects/2014-04/documents/150323mcphaul.pdf (p. 2. March 23, 2015)

21. http://www.nhsec.nh.gov/projects/2014-04/documents/150310holderness.pdf (March 10, 2015)

22. http://www.nhsec.nh.gov/projects/2014-04/documents/150305mclaren.pdf (March 5, 2015)

23. http://www.nhsec.nh.gov/projects/2014-04/documents/150304martin.pdf (March 4, 2015 Public Hearing)

24. http://www.nhsec.nh.gov/projects/2014-04/documents/150220mclaren.pdf (February 20, 2016)

25. http://www.nhsec.nh.gov/projects/2014-04/documents/150216mclaren2.pdf (February 16, 2015)

26. http://www.nhsec.nh.gov/projects/2014-04/documents/150216mclaren.pdf (February 16, 2015)

27. http://www.nhsec.nh.gov/projects/2014-04/documents/150130pastoriza.pdf (pgs. 4-6. January 30, 2015

28. http://www.nhsec.nh.gov/projects/2014-04/documents/140812oep.pdf (pgs. 60-62, SB-99 Health & safety workgroup report, August 23, 2014)

OCT 1 2 2015

Walsh, Cheryl

From: Huck Montgomery [hmontgomery33@gmail.com]
Sent: Monday, October 12, 2015 10:30 AM
To: Reagan, John; Avard, Kevin; Cataldo,Sam; Watters, David; Feltes, Dan; Birdsell, Regina; Clark, Martha Fuller; D'Allesandro, Lou; Daniels, Gary; Stiles, Nancy; McGuire, Carol; Kidder, David; Ladd,Rick; Sad, Tara; Schmidt, Peter; Gottling, Suzanne; Hatch, William; Sytek, John
Cc: Eaton, Scott; Morrell, Michael; Mitchell, Aaron; Houde, Patty; Walsh, Cheryl
Subject: Letter from IBEW regarding Site Evaluation Committee Rules

Attachments: IBEW JLCAR Letter on SEC rules.pdf

IBEW JLCAR Letter on SEC rules...

Dear JLCAR members,

Please find attached a letter from the International Brotherhood of Electrical Workers' New Hampshire leadership concerning the draft Site Evaluation Committee rules that are expected soon before your committee.

The IBEW is concerned that some aspects of these draft rules are not true to the intent of the legislature, and that these draft rules would make it harder to build critical energy infrastructure that New Hampshire needs to keep the lights on and bring down the cost of energy.

Thanks very much for you consideration.

Best,

--
Huck Montgomery
Principal
GraniteRoots Public Solutions
(603) 391-5898

OCT 1 2 2015

October 12, 2015

Joint Legislative Committee on Administrative Rules
25 Capitol Street
Room 219
Concord, NH 03301

Dear JLCAR Members,

We write on behalf of more than 2,000 New Hampshire workers in the electrical industry.

At a time when New Hampshire faces high energy costs and a stagnating economy, workers, families, and businesses are seeking any viable solution to move our state forward. All of the possible solutions will require the siting and construction of new energy infrastructure in New Hampshire. The IBEW supports a responsible pathway for siting new energy infrastructure.

The IBEW has joined local businesses and other interested parties to encourage the New Hampshire Site Evaluation Committee to adopt rules that would be fair, objective, true to legislative intent, and designed to enable the construction of new energy infrastructure. To our grave disappointment, the Site Evaluation Committee's proposed rules would erect significant barriers to the development of new energy infrastructure projects.

First, the Committee disregarded the intent of the legislature in regards to the "public interest standard" for siting energy facilities. During the 2014 legislative session, the legislature revised New Hampshire's state energy siting law by passing SB 245, which provided for a "public interest standard" for siting potential energy facilities. During the drafting of SB 245, the legislature specifically considered, and rejected a "net benefits standard" for evaluating the potential impact of a proposed energy facility. Despite the legislature's choice to reject the "net benefits standard," the Site Evaluation Committee's proposed rules would incorporate this standard into the site evaluation process.

Second, we believe using "cumulative impacts" to judge impacts of proposed energy projects will have a chilling effect on development. The "cumulative impacts" test was also rejected during the SB 245 drafting process as applied to all energy facilities. During rulemaking, the Site Evaluation Committee decided that although the legislature had specifically intended for the "cumulative impacts" test to apply to wind energy facility applications, the legislature did not intend for it to ONLY apply to wind energy facility proposals. We reject this interpretation of the statute.

The final draft of the proposed rules, as it currently stands will make it more difficult, more expensive, and unnecessarily onerous to construct the energy infrastructure we must have to meet the needs of New Hampshire families and businesses. We believe the proposed rules contradict legislative intent, and that implementing these rules will stifle the growth of New Hampshire's energy portfolio and hurt job growth. We urge the Joint Legislative Committee on Administrative Rules to address these issues in the Committee's final proposed rules.

Sincerely,

Denis Beaudoin
Business Manager
IBEW Local 490

Joe Casey
International Representative
IBEW

Tiler Eaton
International Representative
IBEW

Brian Murphy
Business Manager
IBEW Local 104

Eaton, Scott

From: Donald Pfundstein [pfundstein@gcglaw.com]
Sent: Monday, October 12, 2015 3:01 PM
To: Mitchell, Aaron
Cc: Eaton, Scott
Subject: FE6615-Legislative History SB 245 sit.DOCX
Attachments: FE6615-Legislative History SB 245 sit.DOCX

Hey Aaron (and Scott),

This is our base legislative history I have been working with. I will bring a hard copy with the embedded documents. The pile is about 2 inches thick in all. I can quickly walk you through it.....really. Not really sure what final testimony will look like yet but will file it when ready. I can't get to Cheryl's email from here, so please send it to her if that is your procedure. Best, Donald

Donald J. Pfundstein, Esq

Gallagher, Callahan & Gartrell, P.C.
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Concord, NH 03301
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OCT 1 2 2015

Legislative History on SB 245 re the Siting of Energy Facilities

1/15/14 – SB 245 As Introduced. The entire Senate docket on the bill is here, including Senate notes on hearings and written testimony filed by stakeholders.

PDFPlus.Document

2/19/14 - SB 245 had a public hearing before the Senate Energy and Natural Resources Committee. The audio of the public hearing is available here. Those who testified were:

Senator Forrester – she referenced SB 99; amendment 0568s brought to hearing (included in embedded Senate docket above); seeks to do a number of things including ensuring that projects provide a "net community benefit"; the amendment needs more work.

Rep. Suzanne Smith – she supports amendment 0568s; time for reform is now.

Rep. Gene Chandler – signed-up in support of the bill but did not speak.

Amy Ignasius – supports bill; speaking on behalf of Burack too; letter from some SEC members; efficiency, funding, etc.; request from Sen. Prescott for fiscal note; no mention of public interest standard in her oral testimony but in written testimony, the PUC and DES wrote: "Whether the SEC must find a projected [sic] 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."

Kevin O'Nella (Lempster, refers to himself as Senator Odell's neighbor) – owner of land on which Lempster Wind sits; right of local land owners to host facilities .

Susan Geiger – EDP Renewables; questions / concerns with amendment 0568s including "enough public benefit" is not defined; bill includes arbitrary and poorly defined provisions; "demonstrable net benefits" is not defined; imposing "benefits" as part of the certificate is a problem.

Q&A between Geiger and Odell about "benefits" as part of the certificate is at minute marker 28:40 – 30:25.
Q&A between Geiger and Bradley about "uncertainty of a net public benefit standard" and current "no adverse impact" standard is at minute marker 30:25-

31:32. Would you be more comfortable with a public interest standard b/c that's a much more defined term in case law and legal implications? Answer – that could make sense, decision makers are more familiar with that.

Tom Getz – NU; share concerns regarding net public benefit test; new standard is a fundamental change, not a modest change; what is intended?, how will it be interpreted?, this would be something new and subject to appeal.

Michael Licata – BIA; opposed to proposed composition of SEC and grave concerns over requiring a net public benefit (minute marker 56:25).

Huck Montgomery – electrical workers; no mention of public interest / benefit standard.

Jim O'Brien – Nature Conservancy, CLF, AMC, and SFPNHF joint letter; letter / handout includes their research on public interest / benefit research from other New England states (minute marker 1:04:00), plus Oregon and state of Washington; provides guide posts; SB 99 report provides a direction to head. Their written letter states "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 [sic] and benefits. This is a workable, common- sense requirement ... all major energy projects should provide a strong package of public benefits... these benefits [should] 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." Their letter includes an attached 8 page memo on their research regarding "A net community benefit standard for energy facility siting."

Beth Muzzey – Historical Resources; written testimony was mostly about SEC membership.

Cheryl Lewis – citizen & intervenor in Groton Wind project; SB 245 would have avoided problems with the project; plea for net benefits as a standard in siting; SEC is relying on NH RPS law that renewable energy is already in the public interest; RPS law trumps the SEC law; SEC needs to protect NH residents and not wind developers.

Director Glenn Normandeau – NH Fish & Game; F&G should be able to bill applicants for time spent on environmental review regardless of whether F&G sits on the SEC.

Catherine Corkery – NH Sierra Club; written testimony; concerns with the net benefit requirement because it's not defined; amend the application section of the statute so the application will correlate with findings. The written testimony states "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."

Doug Patch – Wagner Forest Management; concerns about amendment; don't undermine RPS law or investment in renewables; better define terms in the bill.

Dorothy Crossley – Sugar Hill; local people deserve a say.

Mark Brown – New England Ratepayers Association; written letter expresses concern that the net public benefits language in SB 245 is extremely vague and will likely excessively restrict new development.

3/5/14 – DES and the PUC filed the attached letter with Senator Forrester commenting on the latest draft of the bill. On page 1, they ask if the Senate intends to leave in the remaining reference to "need" and whether it would be in addition to or replaced with the public interest finding described in pages 9 and 10 of the bill at that time.

PDFPlus Document

3/6/14 – Senator Forrester sponsored Amendment #2014-0905s, which either did not pass or was never considered – I can't find a record of any action.

PDFPlus.Document

3/6/14 – The Senate Energy and Natural Resources Committee voted on a voice vote of 4-1 to pass the bill w/Amendment #2014-0921s.

3/12/14 – DES and the PUC filed the attached letter with the Senate. It does not appear to address "public interest."

PDFPlus Document

3/13/14 – The Senate passed the bill as amended on a voice vote and referred it to Senate Finance. The Senate floor debate can be listened to here, 3/13/14 "morning session" at minute markers 1:19:00 through 1:21:50. Senator Bradley introduced the bill as amended. He did not mention the public interest standard in his remarks. The Senate adopted the amendment on a voice vote. Several members including Senator Sanborn can be heard voting no. Then, the Senate adopted the bill as amended on a voice vote – again, several members can be heard voting no.

3/20/14 – Senators Bradley and Forrester sponsored Amendment #2014-1107s, which either did not pass or was never considered – I can't find a record of any action.

PDFPlus.Document

3/20/14 – The Senate Finance Committee voted on a voice vote of 4-1 to pass the bill w/ Amendment #2014-1125s.

3/27/14 – The Senate passed the bill as amended on a voice vote. The Senate floor debate can be listened to here, 3/27/14 "morning session" at minute markers 53:50 through 1:03:14. Senator Forrester introduced the bill as amended. At minute marker 55:00, Forrester mentions the standard of public interest: "requires the [SEC] to make a finding that each new energy facility proposed is in the public interest as a condition of approval." Senator Fuller Clark also spoke to the Committee amendment, namely the need to reduce the burden on state agencies and allow for greater public input, and the ability to fund the SEC's work. Senator Soucy asked a question about agency intervention (Bradley responded). Senator Woodburn made a speech saying the process will be much better. The Committee amendment and the bill as amended were both adopted on voice votes with no one audibly saying no. The Bill As Amended by the Senate and accompanying Fiscal Note pegging the cost at nearly $750 K per year is here:

SB0245.pdf

4/8/14 – 4/9/14 – SB 245 had a public hearing before the House ST&E Committee. The Committee's notes on the hearing as well as written testimony filed by stakeholders are attached.

PDFPlus.Document

- The Committee's notes do not reflect any comments on "public interest."
- Senator Jeb Bradley testified but not in writing.
- Senator Jeanie Forrester testified in writing. Page 1 of her testimony says that the public interest standard is a "workable, common-sense requirement" and that all major energy projects should provide a strong package of public benefits and "that these benefits must be weighed against the 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."
- Forrester's sentiments mirror written comments submitted by Cheryl Lewis, a citizen.
- The Sierra Club's written testimony, page 3, reads: "the proposal expands the findings with a new requirement, a so-called "public interest" requirement, but does not add a definition or corresponding documentation in the application section, thus this addition tries to thread the needle between making policy and following policy. NHSC is very cautious about this approach and would ask the committee to recognize the responsibilities of the SEC as following policy set by this body."

- Lisa Linowes' written comments, page 5, suggest defining "public interest: "For example, the project will serve the public interest if it satisfied a need for capacity to generate electricity, a need for a greater supply of electricity, and/or the need for more economic, reliable, or otherwise improved sources of either capacity or energy." Also add back in the finding of need.
- AMC, CLF, SFPNH, and TNC filed written comments where they state "Under the bill, all projects must be found to "serve the public interest." This is a crucial reform to ensure that the SEC looks rigorously at any public benefits of a project in the context of any adverse impacts on the state's resources... [The bill] makes fulfilling the public interest the paramount priority of the energy facility siting process."

4/8/14 – Donald Pfundstein filed this letter with Rep. Amanda Merrill on behalf of Northern Pass. (Note: This was in GCG's files but not in the House Clerk's files.)

PDFPlus.Document

4/9/14 – SB 245 had a work session in House ST&E. Materials from the House Clerk's file on the bill are attached. The Committee's vague notes about its meeting indicate that someone said "public interest" needs to be defined and the response was that a definition will be in the purpose section.

PDFPlus.Document

4/10/14 – SB 245 had a work session in House ST&E.

4/15/14 – SB 245 had a work session in House ST&E.

4/16/14 – House ST&E voted 16-1 to pass SB 245 with Amendment #2014-1442h. Rep. Cali-Pitts voted no. The blurb in the calendar reads as follows: SB 245-FN, (New Title) relative to the siting of energy facilities. OUGHT TO PASS WITH AMENDMENT. Rep. Amanda A Merrill for Science, Technology and Energy. The site evaluation committee (SEC) reviews proposals for energy facilities in New Hampshire and issues certificates for construction and operation of those proposals that meet the statutory requirements of RSA 162-H. Senate Bill 245 makes changes to the membership of the SEC and to the SEC process that will increase the efficiency of the committee and provide greater opportunity for public involvement. The current SEC is unusually large compared to equivalent review panels in other states in the region, with 15 members drawn from the ranks of senior state agency officials. As the number and variety of applications to the SEC has grown in recent years, so has the strain on resources for participating agencies. And at the same time, members of the public are calling for more involvement in siting decisions that can have significant impacts on their communities. SB 245 addresses both of these issues with a change in committee makeup, decreasing the number of state agency members to seven while adding two public members. The bill also gives the SEC chairperson the option of empanelling smaller subcommittees in matters other than issuance of certificates and petitions of jurisdiction. In order to ensure that the SEC continues to benefit

from the input of all relevant state agencies, the bill clarifies the procedures for participation of agencies not represented on the SEC. To further the goal of increasing public knowledge about proposed facilities, SB 245 adds specific requirements for information sessions in counties proposed as locations for such facilities. The bill authorizes a much-needed administrator for the SEC. This individual will perform tasks as authorized in statute, working under the supervision of the chairperson and with committee approval as appropriate. The administrator shall be paid through a new non-lapsing site evaluation committee fund be used to support the functioning of the SEC, established with a loan from the renewable energy fund. It is important to note that ongoing use of the renewable energy fund is prohibited in SB 245. The bill requires the SEC to develop a permanent funding plan for submission to the governor and the chairpersons of the house and senate finance committees; such plan would then be subject to legislative approval. This bill is the result of a study of the SEC conducted by the office of energy and planning under SB 99 (2013). Vote 16-1.

4/23/24 – The House passed the bill as amended on a division vote of 227-69. The bill was referred to the House Finance Committee.

4/29/14 – SB 245 had a work session in House Finance, Division I.

5/1/14 – SB 245 had a work session in House Finance, Division I. A 5/2/14 Draft Amendment #2014-1673h resulted.

Microsoft Word
97-2003 Document

5/6/14 – SB 245 had a work session in House Finance, Division I.

5/8/14 – SB 245 had a work session in House Finance, Division I.

5/8/14 – House Finance voted 20-3 to pass SB 245 with Amendment #2014-1795h. The blurb in the calendar reads as follows: SB 245-FN, (New Title) relative to the siting of energy facilities. OUGHT TO PASS WITH AMENDMENT. Rep. Bernard L Benn for Finance. This bill restructures the site evaluation committee, which reviews applications for new energy facilities (generation units, transmission lines, etc.) and acts on amendments or enforcement of projects already certificated. The SEC's work load has increased tremendously in recent years and shows no sign of abating, resulting in an unreasonable burden on the state agency members. The restructured SEC will be more efficient by having fewer state agency members and will include public members appointed by the Governor and confirmed by the Executive Council. The SEC will be administratively attached to the public utilities commission and for the first time will have a budget established for its operations. The chair of the PUC will serve as Chair of the SEC; the current chair of the SEC, the commissioner of the department of environmental services, will serve as Vice-Chair. Administrative duties are now shared between DES and the PUC but under SB 245 will be managed by an unclassified Administrator and other such support as

needed, under the supervision of the SEC Chair. Funding for the SEC will initially be through a one-time grant of up to $500,000, transferred in smaller increments, as needed, from the renewable energy fund into a non-lapsing fund. The SEC chair shall submit a proposed budget to the Fiscal Committee before July 01, 2014 for FY 15; upon approval of the interim budget the first transfer from the REF will be made. By December 01, 2014, the SEC shall submit a long-term funding plan for consideration by the Governor and Legislature. The long-term funding plan will propose application fees and other possible funding sources. There will be a transitional period as the "old SEC" winds down matters that have commenced adjudicative hearings before the "new SEC" ramps up. Vote 20-3.

5/14/14 – The House passed SB 245 as amended on a voice vote.

5/22/14 – The Senate concurred with House Amendment #2014-1795h to SB 245.

7/11/14 – SB 245 was signed into law by the Governor, Chapter 0217. Section 24, Section 25, and RSA 162-H:21, III as inserted by Section 23 took effect on 7/11/14. The remainder took effect on 7/1/14.

OCT 0 6 2015

2015-12

Karen G. Placey
32 Wire Road
Merrimack, NH 03054
429-1051 cell 440-3632

October 6, 2015

Representative Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301-6312

Ms. Chairman,

As a landowner in Pittsburg, West Stewartstown and Merrimack, I am writing to you to voice my concerns over the SEC and it's views over power projects. It seems that the SEC feels that it can act as a statewide planning and zoning board and that they have the authority to preempt local planning and zoning ordinances to the extent that it can grant power to energy companies to receive a permit that will ignore the rules and master plans of the towns affected by these projects.

This is NOT acceptable. The towns must have the power to protect themselves from energy companies (many of the companies are from foreign countries). Our towns must have the power to preserve their lands, property rights and the future of their children from these projects that are for profit and not needed. We should have local control and not be overruled by projects seeking private profits.

Karen Placey

Town of Sugar Hill

1411 ROUTE 117 • P.O. BOX 574 • SUGAR HILL, NEW HAMPSHIRE 03586
603-823-8468

Representative Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301

OCT 0 8 2015

October 6, 2015

Dear Chairman McGuire:

After reading the Site Evaluation Committee's (SEC) comments on the review of their administrative rules, the town of Sugar Hill is submitting this letter to **officially protest** the interpretation that the law's intent is for the SEC to become the state's planning and zoning authority.

We strongly object to any attempt to make the unelected SEC the preemptive planning and zoning authority for the state ofNew Hampshire.

Under RSA 673.1 the legislature ofNew Hampshire gave the right to every town to elect a planning board to oversee the planning and zoning for the town's legislative body. Within that intent was RSA 674.2 which describes the duty of the planning board is to prepare and amend as necessary a master plan to guide the development of a municipality. This allows for local control to meet the needs of individual communities that direct current and future development related issues. The government must allow the people to prepare and determine as much of their municipal future as society allows. The State Site Evaluation Committee should not have the power to disregard local control over projects that will have enormous impacts within the towns and cities ofNew Hampshire.

We ask that you oversee the Site Committee's recommendation ofAdministrative Rules to ensure that all planning and zoning for New Hampshire does not become centralized, particularly in regards to elective energy projects.

Thank you for your consideration of our concerns.

Respectfully submitted,

Sugar Hill Select Board

cc: Governor Maggie Hassan
Attorney Scott Eaton
Attorney David Wiesner, Site Evaluation Committee, c/o Public Utilities Commission,
Martin Honigberg, Chairman, Site Evaluation Committee
Public Utilities Commission Jane Murray, Department of Environmental Services
Executive Councilor Joseph Kenney

TOWN OF BETHLEHEM

2155 Main Street • Post Office Box 189 • Bethlehem, New Hampshire 03574
(603) 869-3351 / 869-2042 • *fax* (603) 869-2280 • www.bethlehemnh.org

Representative Carol McGuire, Chair
Joint Legislative Committee on Administrative Rules
25 Capital Street, Room 219
Concord, NH 03301

OCT 0 2 2015

September 30, 2015

Dear Representative McGuire,

After reviewing the Site Evaluation Committee's comments on the review of their administrative rules we would like to submit this letter as our official protest to the interpretation that the law's intent is for this committee to become the State's Planning and Zoning authority.

We as the Planning Board for the Town of Bethlehem, NH strongly object to any attempt to make the unelected Site Evaluation Committee the preemptive planning and zoning board for the State of New Hampshire.

Under RSA 673.1 the Legislative of NH gave the right to every town in this State to elect a planning board to oversee the planning and zoning for the Town's legislative body. Within that intent was 674.2 whereby one duty is to prepare and amend as necessary a master plan to guide the development of a municipality. This allows for local control to meet the needs of individual areas that help to preserve our heritage as an independent people.

The government must allow the people to prepare and determine as much of their municipal future as society allows. The State Site Evaluation Committee should not have the power to disregard local control over projects that will have enormous impacts within the Towns and Cities of New Hampshire.

We ask that you oversee the Site Committee's recommendation of Administrative Rules to ensure that all planning and zoning for our Towns does not become centralized

Thank you for your consideration of our concerns.

Sincerely,

Michael A. Bruno
Town of Bethlehem Planning Board Chair

cc Governor Maggie Hassen
Executive Councilor Joseph Kenny
Attorney David Wiesner
Martin Honigberg
Jane Murray, DES

Town of Sugar Hill

1411 ROUTE 117 • P.O. BOX 574 • SUGAR HILL, NEW HAMPSHIRE 03586
603-823-8468

September 2 1, 2015

SEP 2 2 2015

To: Governor Maggie Hassan
Attorney David Wiesner, SEC
Chairman, Martin Honigberg, SEC
Jane Murray, DES
Executive Councilor Joseph Kenney
Representative Carol McGuire, Chairman – JLCAR

The town of Sugar Hill supports the recommendations from the Appalachian Mountain Club, the Society for the Protection of New Hampshire Forests and New Hampshire Audubon regarding their recommendations for reforming the SEC rules.

The SEC seems to be ignoring the reforms that were made by many residents throughout the state during the SEC rule making hearings. These sessions were specifically designed to improve the SEC rules in ways that would enable citizens and municipalities to be heard and to make industry more answerable to the communities and individuals their projects would impact.

We would like to add the town of Sugar Hill as a supporter of the recommendations submitted on 7/23/15 and request that the SEC consider these suggestions seriously.

NH RSA 162-H;16.IV(e) requires the SEC to make a finding relative to the "public interest", and section 301.01(h)(6) of the proposed rules includes a requirement that the application include "information describing how the proposed facility will be consistent with the public interest".

However, there are no draft criteria for addressing this finding. The suggestions by the three environmental organizations suggest language to remedy that omission.

In determining whether a proposed energy facility will be in the public interest, the committee shall consider:

a) **Whether the net environmental effect of the facility, considering both beneficial and adverse effects, serve the public interest.**
b) **Whether 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, serve the public interest.**
c) **Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.**

d) **Whether the facility as proposed is consistent with master plans and land use regulations of affected municipalities pertaining to (i) natural, historic, scenic, cultural, resources and (ii) public health and safety, air quality, economic development, and energy resources.**
e) **Such additional public interest criteria as may be deemed pertinent by the committee.**

Thank you for your attention to this important issue.

Sincerely,

Richard Bielefield
Select Board Chair

Margaret J. Connors
Select Board Member

John J. Strasser III
Select Board Member

SEP 21 2015

Town of Monroe
Po Box 63
Monroe, N.H. 03771
Phone 603-638-2644
Fax 603-638-2021
Email: monroeselectmen@roadrunner.com

September 15,2015

To Whom It May Concern,

The town of Monroe vehemently protests the concept that the Site Evaluation Committee should be considered the master planner and zoning board for the towns in New Hampshire. We also object to the Site Evaluation Committee thinking they have the authority to give large energy projects receiving a permit the power to preempt our town's rules and regulations.
It is totally unacceptable, especially for an elective project.

Thank you for addressing this critical matter.

Sincerely,
The Town of Monroe Selectboard

Dorothy M. McPhaul ~ PO Box 601 ~ Sugar Hill, NH 03586

September 15, 2015

SEP 17 2015

Chairman Martin Honigberg
New Hampshire Site Evaluation Committee
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Rulemaking, Docket No. 2014-04

After reviewing the final draft rules, I still have some issues I feel need your review and either addition to or clarification of the rules.

Site 301.03 (c) (6) With regards to the proposed SEC rules thus far, I am still not satisfied with the wording regarding control of a project's route for an application. It appears to be opening the door for the Northern Pass which wants to file its application, yet does not have complete control of its route, either in northern Coos county or along the roadways where the NP intends to bury its lines. All permitting, etc. should be totally completed prior to the application to save the SEC's, as well as the public's, time due to route revisions.

The power of your committee to supposedly preempt municipal town zoning laws and master plans needs to be addressed. Commissioner Burack's statement, "I will offer the observation, and I know this may not be accepted by some, but I think we need to acknowledge that the Legislature, in creating this statute, really expected that this body would act as a statewide planning and zoning board and would have the authority to effectively preempt local planning and zoning ordinances, master plans, etcetera, *to the extent that they may exist and might otherwise lead to a*

different outcome with respect to a particular project." is unrealistic. I highly doubt that the intent of the legislature is that any nine people should be able to destroy towns all over NH by giving the power to an energy company to preempt towns' rules.That type of authority would not be merely inferred by a statute. It should have to be granted only by a specifically worded, legislative action and even then, it is an unacceptable abuse of our constitutional rights.

"New " Large energy projects applying for a permit shall be labeled as "essential" (necessary to keep the lights on) or "elective." Basic words, clear and understandable by all, so as not to distort the general purpose of the point, as happened in the committee's earlier discussion, which was...Elective projects should not be granted powers available to "essential" projects.

"Considered" used throughout your rules should be replaced. Considering a historic site, a town's economy, a negative visual impact, a master plan or zoning rules, does not offer any protection to those entities. It is a way to proceed as the energy companies want to proceed.

"New" "All elective transmission lines shall be buried unless proven it is not possible." The technology is available and burial of lines would remove many of the negatives.

"New " "If a town or municipality votes to place certain restrictions on an energy project, the project shall abide by the will of the town."

"Every project shall submit with the application a map of the entire project showing buildings in the affected areas with their distance from the project. *They shall also include the buildings' purpose (high school, hospital, daycare center, etc..)*"

"New ""If additional lines or voltage is to be added to the lines and towers, there shall be a further application made to the Site Evaluation Committee to consider the new parameters and notice of such addition(s) shall be required to be submitted to the affected town officials."

"New " "Transmission lines or towers shall have setback requirements ." Despite your acceptance of the National Grid's recommendation that there is no need for setbacks for transmission lines and towers, and despite Attorney Wiesner's comment: "Theoretically, there is a risk of fall. But the risk is so minimum, versus the other benefits of the development, that it should be permitted.", there is a need setback rules. Commission Burack's reasoning that just because pictures of fallen towers and poles did not list where, when and why the poles had fallen, they could be ignored and since the risk is low there is no need for setbacks, is unacceptable. In the ice storm of 1998, as one example, one thousand steel poles and thirty five thousand wooden poles fell. Is that a minor risk? Aren't setbacks necessary?

"Transmission lines in areas with residences or public buildings shall have a routine *five year* inspection by an electrical engineer, unrelated to the project, to ascertain the EMFs or mGs are within the updated (at that time) guidelines for safety."

"New " "The decline in property values due to any energy project shall be included in the application form, verified by a certified appraiser of the affected area, unrelated to the project."

"New " "Loss of property value shall be compensated to the owner by the offending project . " When a woman testifies at

a hearing that her husband had died, all her money was tied up in her home and when asked how much her property value would decrease, she was told only 10%, she was horrified. Why should people lose "their" money to subsidize a for profit company?

"New " "The application shall include the realistic estimated numbers of jobs lost, due to a project . " (Currently it only includes the number of jobs created due to a project.) It is a case of giving you, the SEC, the negative and positive numbers, as you discussed.

"New " "The potential effect on the economy of the town, area, etc., of an energy project, shall be considered. There shall be no negative effects allowed for "elective projects" and considerable proof of necessity and a town vote of support for "essential" ones. "

"New " "Private views, as well as public views, shall not be damaged for an "elective" project."

"Day and night visits to the area for a project *shall be required* by the SEC voting members prior to the voting. A balloon shall demonstrate the highest point of the project if over a certain height."

"New " "There shall be *required unannounced* visits to the area of a project under construction by an inspector unrelated to the project." (The purpose being to ascertain building practices are according to the rules. IT must be specified NO notice is to be given.)

"New " "Any departure from the specific rules for a project *shall be fined on a daily basis, and collected, until the matter is corrected.* (The fines would act as a deterrent and a source of revenue for the SEC.)

"The funds for decommissioning shall be proved available at the beginning of the project and remain available." A parent company, with a good credit rating, is not sufficient. No company is too big to fail, as we have witnessed. You are taking the advice you requested from the National Grid and not considering the potential consequences for the people of this state.

I know your job is extremely difficult and I urge you to not just accept the recommendations of the industry representatives. You have the ability, as I previously said, to change thousands and thousands of lives for the worse. You must give the people more consideration.

Thank you,

Dorothy McPhaul

SEP 0 8 2015

Elisha Gray
809 Blake Hill Road
New Hampton, NH 03256
yarge@comcast.net
603-744-2921

September 2, 2015

Mr. Martin Honigberg, Chairman
Site Evaluation Committee
c/o Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

Re: Northern Pass

Dear Mr. Honigberg and Committee Members:

First of all, I thank you for your service. I know this issue has many interested parties, comments from whom are numerous. Your task of reading and digesting their significance is daunting, I am sure.

I want to make four points that relate both specifically to my family as well as to the analysis of the project that has gone before:

A. The newly proposed routing for Northern Pass that maintains 132 miles of overhead High Voltage lines and towers would mar the New Hampshire landscape for a large section of the state. ANY proposal using existing PSHN transmission routes south of Ashland would significantly impact my property adversely. Within one mile of our residence at 809 Blake Hill Road, New Hampton, 10 new towers* in Hill, from 70 to 95 feet high, all above the tree-tops, will mar the view from our house, devaluing our property by aesthetic desecration of our views. Also, travelling to and from our house in New Hampton, we would have to drive under the lines that cross Coolidge Woods Road in New Hampton. Viewing these lines would negatively affect our quality of life daily, as we purchased out farm primarily for its vista.

B. Others within the view shed would similarly be impacted. You should clearly identify the number of residents who would view these lines and record via scientific polling their stance on overhead lines. It should take into account the opinions of people who are directly affected by this project. I suspect that the overwhelming conclusion would be thousands of people in opposition to overhead lines, while many fewer in opposition to burial of lines.

C. As there has been an overwhelming response from New Hampshire residents and property owners, I would expect that each member of the Site Evaluation Committee and authors of the EIS would take into account every one of the comments made from all sources: Hearings, DOE EIS postings, etc. in order to evaluate the people*s reaction to the proposal by Northern Pass.

D. The effect on appraised value of real estate in the EIS seems extremely low. Already the prospect of overhead lines has caused home sales to be scuttled and at least one golf course housing development (Owl*s Nest) to file for bankruptcy for lack of sales. I suggest the Site evaluation Committee take another look at the methodology used.

Trusting you will respond to these concerns, I am

Yours truly,

Elisha Gray

Cc:

Governor Maggie Hassan
State House
107 North Main Street
Concord, NH 03301

Attorney David Wiesner
Site Evaluation Committee
c/o Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

Jane Murray
Department of Environmental Services
P O Box 95
Concord, NH 03302-0095

Executive Councilor Joseph Kenney
P.O. Box 201
Union, NH 03887

Representative Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301-6312

Eaton, Scott

From: Joe Lukeman [joe_lukeman@hotmail.com]
Sent: Thursday, September 03, 2015 10:06 AM
To: Eaton, Scott
Subject: SEC Process & Rules Review (SB99 + SB245)

SEP 0 3 2015

Dear Mr Eaton,
If you would please do your best to see that MS McGuire fully considers the points outlined in my email.

I congratulate the various staff members for their effort required to participate in the long and tedious meetings required to complete the SEC Rules Review. I believe that they are working very hard to do the best job possible.

Having said that I believe that the rules favor big business and do not fully consider the NH public interest... I think anyone would have to agree that almost any energy project has the potential to negatively impact the NH environment and the NH tourism related economy thus significantly impacting some NH individuals. As a result I feel that a missing rule is to consider the long term benefit to NH residents versus the long term impact of the project to the environment, economy and residents. In my view the reason for the SEC is to balance the needs of the many versus the impact on the few. But that reason is limited to the people of NH and does not include the needs of corporations, and residents of other states or countries.

Thus any project that generates power that is primarily sold out of state should be turned down because the negative impact to the NH environment and tourist related economy would outweigh the benefit to NH. The draft rules defined thus far do not completely consider the public interest in that they:

1. do not differentiate between essential to NH residents and elective projects that primarily benefit other countries, or other states.
2. do not fully consider the economy of a town or the impact on a town's master plan. Towns that have felt it important enough to spend their meager resources developing a master plan should not have that plan ignored by the State of NH.

The reason for the State Government is to benefit the people of NH. The needs of our people must preempt the needs of out of state residents. For example CT wants the power from the northern pass project yet they legislate that all new power transmission lines in their state must be buried. Presumably they did this to protect their residents yet we in NH do not have that rule. Another example is that existing wind projects have sold their power for the 15 year life of the project to MA and CT (not NH) companies. MA rules specify that the town must agree to any wind project in or abutting it's border. That rule is missing from our SEC draft rules.

Thank you for taking the time to read this long email.

Joe Lukeman

CHRISTOPHER W MARSHALL
215 Pemigewasset Shores Road
Bristol, NH 03222
603-744-3434
christophermarshall3@gmail.com

AUG 3 1 2015

30 August 2015

Martin Honigberg, Chairman
Site Evaluation Committee
c/o Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

RE: Northern Pass proposed towers & lines

Dear Mr. Honigberg,

It is unacceptable for a non-public 'utility' to be allowed to damage the value and enjoyment of our homes and environments. Our area is a tourist area which annually brings tens or possibly hundreds of thousands to enjoy the scenery and natural surroundings. These would be severely be damaged by the proposed above ground towers. Our home values would be diminished and many jobs in the tourist industry would be lost.

Above ground towers are unreasonable especially when a valid below ground even shorter alternative exists.

Sincerely,

Christopher Marshall

Presby Environmental, Inc.

The Next Generation of Wastewater Treatment Technology

143 Airport Rd., Whitefield, NH 03598
Tel: 800-473-5298 Fax: 603-837-9864
info@presbyeco.com
www.PresbyEnvironmental.com

AUG 0 5 2015

July 31, 2015

Representative Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301-6312

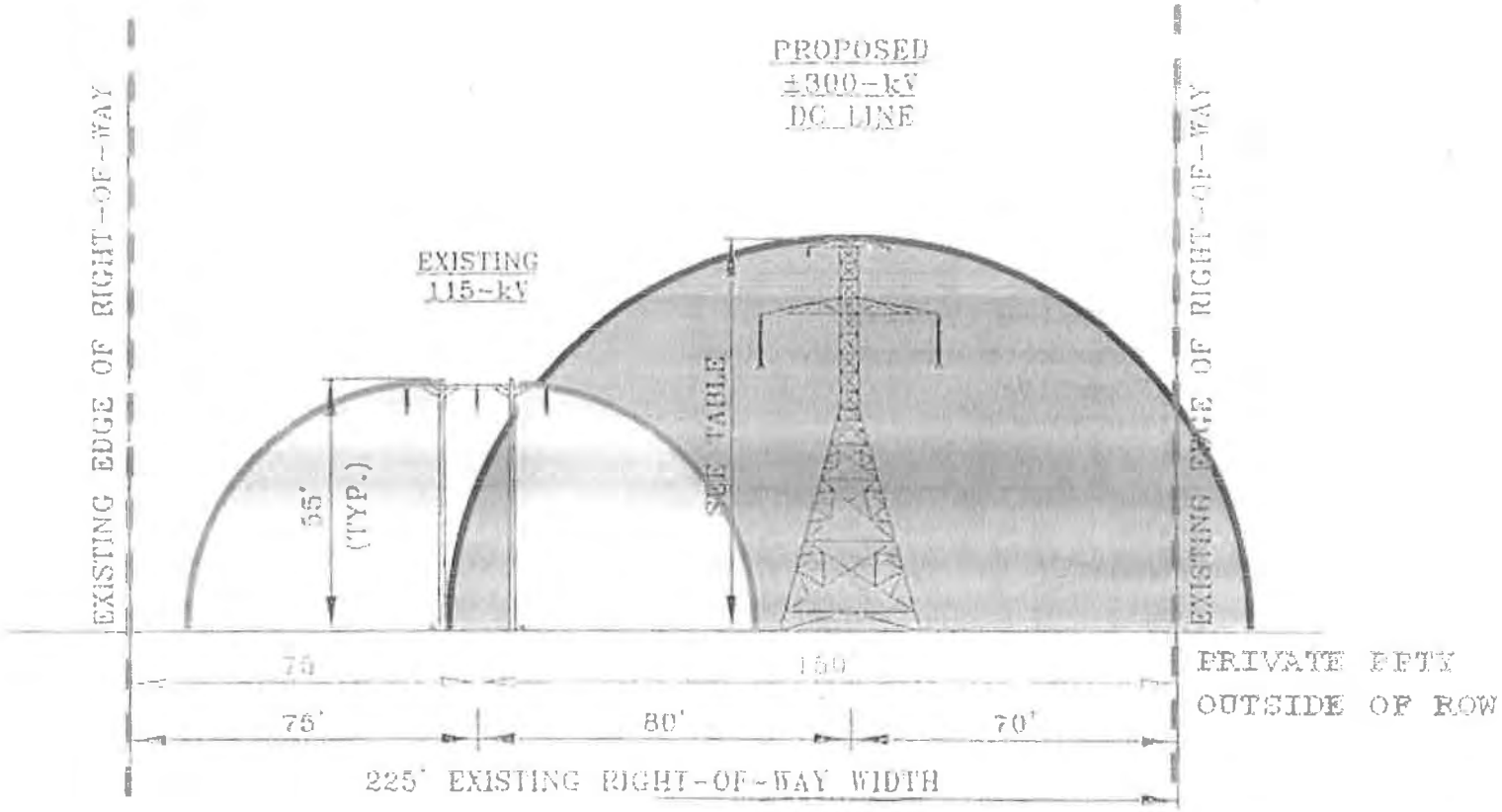
RE: Bury the Transmission Lines for Northern Pass

Dear Governor Hassan:

I am writing today in support of the effort to force Eversource to bury the transmission lines proposed for Northern Pass. As a lifelong resident, entrepreneur and employer of the North Country, I am adamantly against Eversource's proposal to build the high-voltage electric transmission lines through the heart of New Hampshire's tourist economy.

If Eversource is allowed to put in high tension power lines, it will destroy the properties of thousands of residents and businesses that call the North Country their home because of the quality of life and priceless views available to those who choose to live, work and play in the beautiful, rural areas of our state. The harm to these properties will unfairly shift the burden on the taxpayers by devaluating some and causing other property owners to pay more to balance the coffers. Finally, not only will it hurt property values and the towns' tax base, but it will also remove the ability of the land to provide a livelihood through timber taxes and logging revenue.

It is also worthwhile to note that it has always been my belief, based upon personal experience, that a tower in a right of way (ROW) should be designed in such a way so that if it ever falls, it will only fall within the right of way so that it will not land on, or damage, any property that it does not have rights to. The current plan for the transmission lines does not guard against such an event. As you can see in the diagram below, even when the towers are in the lower end of their proposed range of heights (80 to 138 ft), the area on either side of the tower is not large enough to prevent the towers and lines from falling either in the woods on property outside of the ROW that they do not have rights to (causing unsafe situations on property that Eversource does not own) or on the existing power lines (causing extensive outages and costly repairs). Simply put, Eversource cannot guarantee that overhead lines will not collapse during inclement weather or that their towers will not harm other property or existing lines.



I witnessed firsthand what happens to these large transmission lines when they fall, and the damage and havoc that ensues. I drove trucks through Quebec in the aftermath of the infamous ice storm of 1998, when the ice caused downed transmission lines and extensive power outages. Burying the transmission lines will ensure that such an event will not occur in New Hampshire, and prevent unnecessary harm to people and property.

It is hard to believe that when landowners originally signed the electricity conveyance easements over 60 years ago, that they ever envisioned or would have agreed to a project like Northern Pass. Certainly Eversource's predecessors never foresaw this project or they would have bought bigger ROWs at the time in order to support the bigger, taller structures required for Northern Pass. **When the original ROWs were bought by the power company, they intended to eventually erect identical power lines like the one that already exists in the ROW; thus, at the time they bought the exact width needed for an identical line to ensure the safe**

operation of the power lines within the existing ROW. Had they intended to install bigger high voltage lines, they would have, and should have, bought a wider ROW.

The Northern Pass project is extending, without permission, the original agreement between landowners and the electricity utilities by installing "large industrial-appearing lattice structures" that would obscure the scenic view by towering over the natural treeline (in some cases, more than doubling the height of existing poles), widening the original rights of way, and causing disruption to our way of living. Please do not let the economic interests of a large conglomerate get in the way of doing what's right for New Hampshire and its citizens.

Not only will Northern Pass harm me personally, passing right through the land on which I built my home, but it will also impact several other parcels of land that I own, as well as those of my neighbors. Please don't let Eversource destroy the value of my home, my neighbors' homes, and the businesses I have worked hard to grow and keep in the North Country.

The only way that Eversource should be able to upgrade its transmission lines is through committing to bury all new lines associated with the project. Eversource certainly has the money and resources to do so, and the recent Economic Impact Statement has shown that burial of the lines will not only preserve the recreation and tourism industries that make New Hampshire the wonderful state that it is, but will also bring far more short-term and permanent jobs to a state that truly needs them. The contractors of New Hampshire are not qualified to install high tension power lines, but can very easily be employed to bury underground transmission lines, thus ensuring the available jobs go to in-state workers.

Sincerely,

David W. Presby
President, Presby Environmental, Inc.
Resident of Sugar Hill, Grafton County, NH
Employer of North Country Residents

JUL 27 2015

Yvonne Eames
639 Partridge Lake Road
Littleton, NH 03561

Littleton, July 24, 2015.

Representative Carol McGuire, Chairman
Joint Legislative Committee on Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301-6321

Re: Northern Pass

Dear Representative Carol McGuire,

Enclosed is a letter mailed to Governor Hassan, it is our hope that after reading the letter you will agree with the Citizen of New Hampshire how important it is for the SEC to change the current version of the SEC rules in order to protect the beauty and values the North Country.

Sincerely,

Yvonne Eames

Yvonne Eames

JUL 27 2015

Yvonne Eames
639 Partridge Lake Road
Littleton, NH 03561

Littleton, July 24, 2015.

Dear Governor Maggie Hassan,

Is it just me or have we grown weary of our representatives, who, while campaigning, will promise to work for the Citizens, but once in office soon forget their promise? Will the headlines in the paper read "Governor Hassan Stands With The Citizens of New Hampshire? " or, will you be **forever remembered** for selling us out to Hydro Quebec, because you did not pressure the SEC to stand with us and protect our natural landscape from the Northern Pass?

Northern New Hampshire is renown for its beauty it brings millions of people and, thereby tax revenue to the State. If the Northern Pass as presently proposed is permitted it will put a permanent scar to a flawless face. We will never again be an attraction to both tourists and potential residents who come here to experience the peace, beauty and natural habitat of the North Country.

Sincerely,

Yvonne Eames

27th July 2015

VISIT SCENIC
FRANCONIA NOTCH
NEW HAMPSHIRE

JUL 29 2015

PLACE
STAMP
HERE

Representative Carol McGuire, Chairman
Joint Legislative Committee on
Administrative Rules
Concord, N.H. 03301

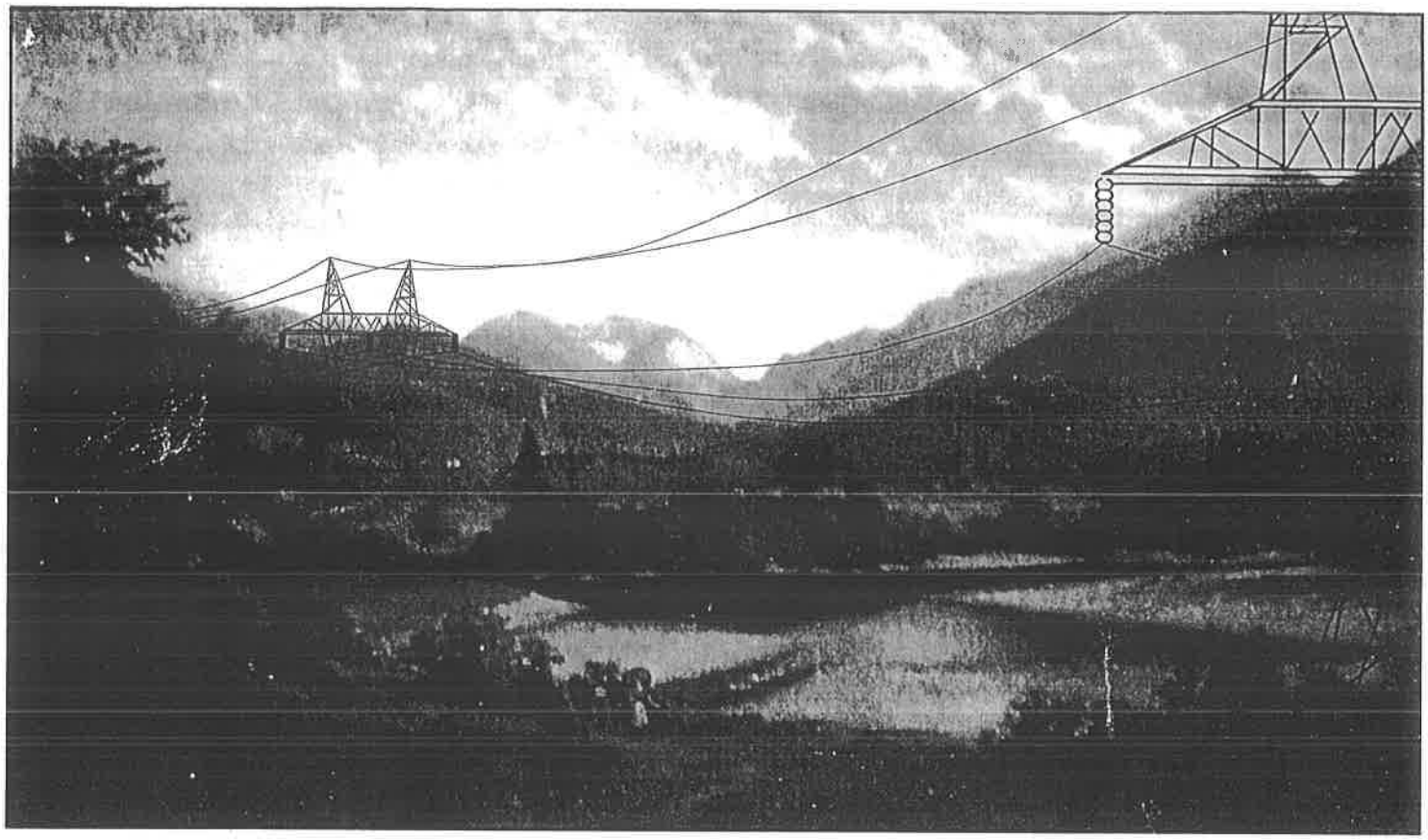
Dear Representative McGuire,

As Chairman of the Joint Legislative Committee on Administrative Rules, I am asking that the Site Evaluation Committee (SEC) change the current version of the SEC rules under consideration to honor the citizens properties and values. These rules apply to all large energy projects seeking a permit in New Hampshire, whether transmission lines, pipelines, wind turbines, nuclear plants, or other generating facilities, etc.

Energy companies have considerable financial, political and legal advantages. The Site Evaluation Committee's duty should first be to protect the citizens and their property, NOT large energy projects.

Sincerely,
Patricia Kellogg

Pat Kellogg
320 Manns Hill Road
Littleton, New Hampshire 03561



NEW HAMPSHIRE'S HERITAGE

adm

Final Proposal No. 2015-11
Date Filed 10-2-15

OCT 0 2 2015

APPENDIX II-G

10/12

COVER SHEET FOR FINAL PROPOSAL

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

1. Agency Name & Address:

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

Substantive comments p. 3, 5, 8, 11, 12, 20, and 23.

2. RSA Authority: **RSA 162-H:10, VI and VII**
RSA 541-A:16, I(a), (b)-(d)

3. Federal Authority:

4. Type of Action:
- ☐ Adopt
- ☐ Amendment
- ☐ Repeal
- ☐ Readoption
- ☒ Readoption w/amendment

5. Short Title: **Organizational and Practice and Procedure Rules**

6. Contact person for copies and questions:

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

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

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

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

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

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

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

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

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

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

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

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

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

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

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

- Item 10. The "Final Proposal—Fixed Text," required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.

- Item 11. An "Incorporation by Reference Statement" (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.

- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.

- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

LBAO
FIS 15:006
01/20/15

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

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

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

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

No federal mandate, no impact on state funds.

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

A. To State general or State special funds:

None

B. To State citizens and political subdivisions:

None

C. To independently owned business:

None

OCT 0 7 2015

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

**PLEASE LIST THE FOLLOWING:

1. Name of Agency. **New Hampshire Site Evaluation Committee**

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

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

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

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

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

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

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

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

**PLEASE SIGN THE FOLLOWING:

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

Date: **October 7, 2015**

Signature: _____

Name: **Martin P. Honigberg**

Title: **Chairman**

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

ATTACHMENT TO APPENDIX II-H
INCORPORATION BY REFERENCE STATEMENT

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

Site 102.23

4) 36 C.F.R. §800.16(l)(1) (2014).

5) The agency did not modify the text.

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

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

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

CHAPTER Site 100 ORGANIZATIONAL RULES

PART Site 101 PURPOSE AND APPLICABILITY

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

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

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

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

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

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

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

PART Site 102 DEFINITIONS

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

Site 102.02 "Acceptance" means "acceptance" as defined in RSA 162-H:2, I, namely, "a determination by the committee that it finds that an application is complete and ready for consideration."

Site 102.03 "Adaptive management" means a system of management practices based on specified desired outcomes, monitoring to determine if management actions are meeting the desired outcomes, and, if not, provisions for management changes designed to ensure that the desired outcomes are met or are re-evaluated.

Site 102.04 "Adjudicative hearing" means a public hearing held by the committee in an adjudicative proceeding.

Site 102.05 "Adjudicative proceeding" means "adjudicative proceeding" as defined in RSA 541-A:1, I, namely, "the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36."

Site 102.06 "Administrator" means "administrator" as defined in RSA 162-H:2, I-a, namely, "the administrator of the committee," as established by RSA 162-H.

Site 102.07 "Affected Communities" means the proposed energy facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and

unincorporated places, and other municipalities and unincorporated places that are expected to be affected by the proposed facility, as indicated in studies included with the application submitted with respect to the proposed facility.

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

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

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

Site 102.11 "Astronomical maximum" means the theoretical maximum number of hours that shadow flicker will be produced at a location assuming the sun is shining all day from sunrise to sunset, the rotor-plane of the turbine is always perpendicular to the sun, and the turbine is always operating.

Site 102.12 "Best practical measures" means available, effective, and economically feasible on-site or off-site methods or technologies used during siting, design, construction, and operation of an energy facility that effectively avoid, minimize, or mitigate relevant impacts.

Site 102.13 "Certificate" or "certificate of site and facility" means "certificate" or "certificate of site and facility" as defined in RSA 162-H:2, II-a, namely "the document issued by the committee, containing such terms and conditions as the committee deems appropriate, that authorizes the applicant to proceed with the proposed site and facility." "Certificate" includes the document issued by a subcommittee, containing such conditions as the subcommittee deems appropriate, that authorizes the applicant to proceed with the proposed renewable energy facility.

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

Site 102.15 "Commission" means the New Hampshire public utilities commission.

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

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

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

(1) Essential to the conservation of the species; and

(2) Which can require special management considerations or protection; and

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

Site 102.18 "Cumulative impacts" means the totality of effects resulting from the proposed facility, all existing energy facilities, all energy facilities for which a certificate of site and facility has been granted, and all proposed energy facilities for which an application has been accepted.

Site 102.19 "Energy facility" means "energy facility" as defined in RSA 162-H:2,VII, namely

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

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

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

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

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

(f) a renewable energy facility.

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

Site 102.20 "Energy transmission pipeline" means a pipeline used to transport natural gas, oil, or other source of energy.

Site 102.21 "Exemplary natural community" means "exemplary natural community" as defined in RSA 217-A:3, VII, namely, "a viable occurrence of a rare natural community type or a high quality example of a more common natural community type as designated by the natural heritage bureau based on community size, ecological condition, and landscape context."

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

Site 102.23 "Historic sites" means "historic property," as defined in 36 C.F.R. §800.16(l)(1) and RSA 227-C:1, VI, and may include rural, designed, traditional and natural landscapes.

Site 102.24 "Investment grade credit rating" means a current rating for senior unsubordinated debt of AAA, AA, A, or BBB, as issued by Standard and Poor's Corporation, or Aaa, Aa, A, or Baa, as issued by Moody's Investors Service, Inc.

Edit: "includes".

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

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

Site 102.26 "Landscape" means the characteristic, visible features of an area including landforms, water forms, vegetation, historic and cultural features and all other objects and aspects of natural and human origin.

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

Site 102.28 "Motion" means a request made to the committee or the presiding officer after the commencement of a contested proceeding for an order or ruling directing some act to be done in favor of the party making the motion, including a statement of justification or reasons for the request.

Site 102.29 "Natural community" means "natural community" as defined in RSA 217-A:3, XI, namely, "a recurring assemblage of plants and animals found in a particular physical environment."

Site 102.30 "Natural heritage bureau" means the natural heritage bureau administered within the division of forests and lands of the department of resources and economic development.

Site 102.31 "Party" means "party" as defined by RSA 541-A:1, XII, namely, "each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party." The term "party" includes all intervenors in a proceeding, subject to any limitations established pursuant to RSA 541-A:32, III.

Site 102.32 "Person" means "person" as defined by RSA 162-H:2, IX, namely, "any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization."

Site 102.33 "Petition" means:

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

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

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

Site 102.34 "Petitioner" means

(a) For a petition as defined in Site 102.33(a), "petitioner" as defined in RSA 162-H:2, XI, namely, "a person filing a petition meeting any of the following conditions:

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

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

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

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

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

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

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

Site 102.36 "Presiding officer" means "presiding officer" as defined in RSA 541-A:1, XIV, namely, "that individual to whom the agency has delegated the authority to preside over a proceeding, if any; otherwise, it shall mean the head of the agency."

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

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

Site 102.39 "Public information session" means a public meeting held before or after the filing of an application at which the applicant presents information to the public regarding the proposed facility, as provided for in RSA 162-H:10, I and I-a.

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

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

Edit: "also includes".

Site 102.42 "Renewable energy facility" means "renewable energy facility" as defined in RSA 162-H:2, XII, namely, "electric generating station equipment and associated facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 megawatts and powered by wind energy, geothermal energy, hydrogen derived from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas, biomass technologies, solar technologies, or hydroelectric energy. "Renewable energy facility" shall also include electric generating station equipment and associated facilities of 30 megawatts or less nameplate capacity but at least 5 megawatts which the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI."

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

Site 102.44 "Scenic quality" means a reasonable person's perception of the intrinsic beauty of landforms, water features, or vegetation in the landscape, as well as any visible human additions or alterations to the landscape.

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

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

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

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

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

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

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

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

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

Site 102.47 "Service list" means a list maintained by the committee containing the names and addresses of all parties and intervenors in a proceeding and all other interested persons or groups who request to be included on the service list.

Site 102.48 "Shadow flicker" means the alternating changes in light intensity that can occur when the rotating blades of a wind turbine are back-lit by the sun and cast moving shadows on the ground or on structures.

Site 102.49 "Significant habitat resource" means habitat used by a wildlife species for critical life cycle functions.

Site 102.50 "Significant wildlife species" means:

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

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

Site 102.51 "Subcommittee" means any subcommittee established under RSA 162-H:4-a for the purpose of reviewing an application for an energy facility or to exercise any other authority or perform any other duty of the committee, subject to the limitations set forth in RSA 162-H:4-a, I.

Site 102.52 "Successive observation" means a viewer sees multiple energy facilities from a particular viewpoint, but not within the same viewing arc, by changing the viewer's cone of vision.

Site 102.53 "Urban cluster" means an "urban cluster" as designated by the U.S. Census Bureau.

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

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

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

Site 102.57 "Wildlife" means "wildlife" as defined in RSA 207:1, XXXV, namely, "all species of mammals, birds, fish, mollusks, crustaceans, amphibians, invertebrates, reptiles or their progeny or eggs which, whether raised in captivity or not, are normally found in a wild state."

PART Site 103 COMMITTEE DESCRIPTION

Site 103.01 Committee Membership and Responsibilities.

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

(1) The commissioners of the commission;

(2) The commissioner of the department of environmental services;

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

(4) The commissioner of the department of transportation;

(5) The commissioner of the department of cultural resources or the director of the division of historical resources as designee; and

(6) Two members of the public appointed pursuant to RSA 162-H:3, I (f), except in any matter for which an alternate public member is appointed pursuant to RSA 162-H:3, XI.

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

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

(1) Evaluation and issuance of any certificate for an energy facility under RSA 162-H and these rules;

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

(3) Adjudication and determination of any petition filed under RSA 162-H and these rules;

(4) Monitoring of the construction and operation of any energy facility issued a certificate under RSA 162-H and these rules to ensure compliance with such certificate;

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

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

Site 103.02 Committee Chairperson and Vice-Chairperson and Authority.

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

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

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

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

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

(2) Perform administrative actions for the committee;

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

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

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

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

Site 103.03 Subcommittee Formation and Authority.

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

(1) Approve the budgetary requirements of the committee;

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

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

(4) Adopt initial or final rulemaking proposals.

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

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

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

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

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

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

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

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

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

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

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

Edit: "may".

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

Site 103.04 Committee Administrator and Staff.

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

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

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

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

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

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

Site 103.05 Counsel for the Public. Pursuant to RSA 162-H:9, the attorney general shall appoint an assistant attorney general as counsel for the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.

PART Site 104 PUBLIC REQUESTS FOR INFORMATION

Site 104.01 Requests for Committee Public Records.

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

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

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

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

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

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

(f) The committee shall post public information on its website at www.nhsec.nh.gov.

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

CHAPTER Site 200 PRACTICE AND PROCEDURE RULES

PART Site 201 PUBLIC INFORMATION SESSIONS AND HEARINGS

Site 201.01 Public Information Sessions Prior to Application.

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

(b) The applicant shall publish a public notice not less than 14 days before each such session in one or more newspapers having a regular circulation in the county in which the session is to be held. This notice shall describe the nature and location of the proposed facility. The applicant shall mail a copy of this notice to each of the affected communities by first class mail and to each owner of abutting property by certified mail.

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

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

Site 201.02 Public Information Sessions After Application.

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

(b) The applicant shall publish a public notice not less than 14 days before each such session in one or more newspapers having a regular circulation in the county in which the session is to be held, describing the nature and location of the proposed facility. The applicant shall mail a copy of this notice to each of the affected communities by first class mail.

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

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

Site 201.03 Public Hearings in Host Counties.

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

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

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

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

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

(d) The committee shall publish a public notice not less than 14 days before each such public hearing in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facility. The committee shall mail a copy of this notice to each of the affected communities by first class mail.

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

PART Site 202 ADJUDICATIVE PROCEEDINGS

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

Site 202.02 Presiding Officer and Hearing Officer.

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

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

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

(1) Facilitate informal resolution of contested issues;

(2) Conduct any hearing in a fair, impartial and efficient manner;

(3) Decide any disputed petitions for intervention;

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

(4) Admit relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;

(5) Provide opportunities for the parties and committee members to question any witness;

(6) Receive public statements; and

(7) Cause a complete record of any hearing to be made.

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

(1) Procedural schedules for proceedings;

(2) Discovery schedules for proceedings;

(3) Discovery motions in proceedings;

(4) Consolidation of parties having substantially similar interests;

(5) Decisions on undisputed petitions for intervention; and

(6) Identification of significant disputed issues for hearing and decision by the committee.

Site 202.03 Withdrawal of Committee or Subcommittee Member.

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

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

(1) A direct interest in the outcome of the proceeding, including, but not limited to, a financial or family relationship within the third degree of relationships, with any party or representative;

(2) Made statements or engaged in behavior which a reasonable person would believe indicates that he or she has prejudged the facts of the case; or

(3) Personally believes he or she cannot fairly judge the facts of the case.

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

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

(a) A brief identification of the matter;

(b) A statement as to whether or not the representative is an attorney and, if so, whether the attorney is licensed to practice in New Hampshire; and

(c) The party or representative's daytime address, telephone number, e-mail address, and other basic contact information.

Site 202.05 Participation of Committee and Agency Staff.

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

(b) The presiding officer shall request the attendance of a participating state agency's designated liaison at a session of the committee or any subcommittee, if that person could materially assist the committee or subcommittee in its examination or consideration of a matter.

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

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

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

Site 202.06 Format of Documents.

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

(1) Include the title and docket number of the proceeding, if known;

(2) Be typewritten or clearly printed on paper 8 ½ by 11 inches in size;

(3) Be signed by the party or proponent of the document, or if the party appears by representative, by the representative; and

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

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

(1) The signer has read the document;

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

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

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

Site 202.07 Service of Documents.

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

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

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

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

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

Site 202.08 Computation of Time.

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

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

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

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

Site 202.10 Prehearing Conference.

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

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

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

Site 202.11 Intervention.

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

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

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

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

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

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

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

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

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

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

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

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

Site 202.12 Discovery.

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

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

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

(d) A person or group of persons who or which are voluntarily or by order participating in the proceeding together may serve more than one set of data requests on a party, but the total number of data requests served by each person or group, as the case may be, shall not exceed 50, unless otherwise

response if the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time the party served the response.

Site 202.13 Site Inspections.

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

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

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

Site 202.14 Motions and Objections.

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

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

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

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

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

(1) Concur in the motion;

(2) Take no position on the motion;

(3) Object to the motion; and

(4) Could not be reached despite a good faith effort to do so, if the motion requests a postponement or extension of time.

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

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

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

Site 202.15 Waiver of Rules.

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

(1) The waiver serves the public interest; and

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

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

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

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

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

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

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

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

Site 202.16 Postponements.

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

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

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

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

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

Site 202.17. Continuances.

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

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

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

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

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

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

Site 202.19 Burden and Standard of Proof.

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

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

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

Site 202.20 Order of Proceeding. Unless otherwise determined by the presiding officer upon a finding that a different order would facilitate the conduct of the proceeding fairly and expeditiously, evidence shall be offered in the following order at any proceeding before the committee or subcommittee, as applicable:

(a) The applicant or other party bearing the overall burden of proof;

(b) Intervenors; and

(c) Counsel for the public.

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

Site 202.22 Prefiled Testimony.

(a) An applicant's prefiled testimony and exhibits shall be filed with its application.

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

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

Site 202.23 Filings and Applications.

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

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

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

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

Site 202.24 Evidence.

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

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

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

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

Site 202.25 Public Statements.

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

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

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

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

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

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

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

Site 202.26 Closing the Record.

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

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

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

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

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

Site 202.27 Reopening the Record.

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

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

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

Site 202.28 Issuance or Denial of Certificate.

(a) The committee or subcommittee, as applicable, shall make a finding regarding the criteria stated in RSA 162-H:16, IV, and Site 301.13 through 301.17, and issue an order pursuant to RSA 541-A:35 issuing or denying a certificate.

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

Site 202.29 Rehearing.

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

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

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

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

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

(d) A motion for rehearing shall:

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

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

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

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

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

Site 202.30 Ex Parte Communications Prohibited.

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

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

PART Site 203 DECLARATORY RULINGS

Site 203.01 Declaratory Rulings.

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

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

(1) The exact ruling being requested; and

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

Site 203.02 Action on Requests.

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

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

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

(1) Fails to set forth factual allegations that are definite and concrete;

(2) Involves a hypothetical situation or otherwise seeks advice as to how the committee would decide a future case;

(3) Does not implicate the legal rights or responsibilities of the petitioner; or

(4) Is not within the committee's jurisdiction.

PART Site 204 RULEMAKING

Site 204.01 How Adopted.

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

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

Site 204.02 Manner for Adoption.

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

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

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

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

(b) Requests shall contain the following:

(1) The date of the request;

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

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

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

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

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

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

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

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

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

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

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

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

Site 204.05 Public Hearing.

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

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

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

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

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

APPENDIX A

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

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

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

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

(a) Intervenors shall participate as specified in the presiding officer's order issued pursuant to RSA 541-A:32, V;

(b) The individual designated to represent the department shall present testimony, evidence, and argument and otherwise serve as the department's point of contact for the proceeding;

(c) Other department staff shall present testimony and evidence only if called as a witness by a participant; and

(d) Complainants shall present testimony and evidence only if called as a witness by a participant.

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

PART Env-C 205 NON-ADJUDICATIVE PROCEEDINGS

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

(a) Adopt, readopt, amend, or repeal rules;

(b) Review applications for licenses and issue decisions thereon;

(c) Review requests filed under RSA 72:12-a and issue decisions thereon; or

(d) Provide information and receive public comment in any other matter that is not an adjudicative proceeding covered by Env-C 204.

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

Env-C 205.02 Presiding Officer.

(a) The presiding officer for a non-adjudicative proceeding shall be the commissioner or designee.

(b) The presiding officer in a non-adjudicative proceeding shall:

(1) Receive relevant information and public comments;

(2) Cause a complete record of the proceeding to be made; and

(3) Take any other action consistent with applicable statutes and rules necessary to conduct the proceeding and complete the record in a fair and timely manner.

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

Env-C 205.03 Non-Adjudicative Oral Public Hearings.

(a) The department shall conduct an oral public hearing in a non-adjudicative proceeding:

(1) When proposing to adopt, readopt, amend, or repeal rules;

(2) To receive oral public comment on a license application if required by the statute or rules specific to such applications;

(3) For any matter for which the department is required by law or by these rules to hold an oral hearing in a proceeding that is not an adjudicative proceeding pursuant to Env-C 204.01; and

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

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

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

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

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

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

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

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

Env-C 205.05 Record of Non-Adjudicative Proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Env-C 205.06 Opening an Oral Public Hearing.

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

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

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

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

Env-C 205.07 Testimony at an Oral Public Hearing.

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

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

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

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

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

Env-C 205.08 Closing the Hearing and the Record.

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

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

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

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

Env-C 205.09 Continuances.

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

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

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

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

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

PART Env-C 206 MOTIONS FOR RECONSIDERATION

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

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

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

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

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

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

Env-C 206.04 Filing.

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

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

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

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

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

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

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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.

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TITLE XII
PUBLIC SAFETY AND WELFARE

CHAPTER 162-H
ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

Section 162-H:10

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

I. At least 30 days prior to filing an application for a certificate, an applicant shall hold at least one public information session in each county where the proposed facility is to be located and shall, at a minimum, publish a public notice not less than 14 days before such session in one or more newspapers having a regular circulation in the county in which the session is to be held, describing the nature and location of the proposed facility. At such session, the applicant shall present information regarding the project and provide an opportunity for comments and questions from the public to be addressed by the applicant. Not less than 10 days before such session, the applicant shall provide a copy of the public notice to the chairperson of the committee. The applicant shall arrange for a transcript of such session to be prepared and shall include the transcript in its application for a certificate.

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

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

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

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

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

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

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

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

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

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

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

TITLE XIX
PUBLIC RECREATION

CHAPTER 227-C
HISTORIC PRESERVATION

General Provisions

Section 227-C:1

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

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

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

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

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

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

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

VII. "Historic resource" means:

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

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

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

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

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

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

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

resources, department of cultural resources.

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

(a) A postgraduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology, or other relevant aspects of physical anthropology or medicine;

(b) A minimum of one year's experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity; and

(c) Designed and executed a skeletal analysis, and presented the written results and interpretations of such analysis.

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

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

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

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

TITLE I
THE STATE AND ITS GOVERNMENT

CHAPTER 5
DEPARTMENT OF STATE

Archives and Records Management

Section 5:40

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

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

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ELECTRONIC CODE OF FEDERAL REGULATIONS

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

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

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

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§800.16 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need assistance?

ATM

OCT 07 2015

10/13

Final Proposal No. 2015-12
Date Filed 10-7-15

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

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

1. Agency Name & Address:

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

2. RSA Authority: **RSA 162-H:10, VI and VII**

3. Federal Authority:

4. Type of Action:
- ☐ Adopt
- ☐ Amendment
- ☐ Repeal
- ☒ Readoption
- ☒ Readoption w/amendment

5. Short Title: **Explanation of Proposed Rule and Certificates of Site and Facility Rules**

6. Contact person for copies and questions:

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

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

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

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

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

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

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

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

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

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

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

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

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

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

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

- Item 10. The "Final Proposal—Fixed Text," required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.

- Item 11. An "Incorporation by Reference Statement" (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.

- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.

- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

LBAO
FIS 15:007
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.

Note to JLCAR: These will be non-expiring rules, unlike Site 300.

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;

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

(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.

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 by10.2 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:

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

(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;

Edit: ", available as noted in Appendix B"

(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.

(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 4th 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 4th 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*.

(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

RULE	TITLE/CITATION (DATE)	SOURCE
Site 301.06(b)	36 C.F.R. §800.16(d) (2014)	Available from U.S. Government Publishing Office, http://www.gpo.gov
Site 301.06(f)	36 C.F.R. §800.2(c) (2014)	Available from U.S. Government Publishing Office, http://www.gpo.gov
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 43rd Street, 4th Floor, New York, NY 10036 Hard copy or electronic copy can be purchased for $115.00 at: http://webstore.ansi.org
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 43rd Street, 4th Floor, New York, NY 10036 Hard copy or electronic copy can be purchased for $100.00 at: http://webstore.ansi.org
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: http://webstore.ansi.org
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 Varembé, CH-1211, Geneva 20, Switzerland Hard copy or electronic copy can be purchased for $303.00 at: http://webstore.ansi.org
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 Varembé, CH-1211, Geneva 20, Switzerland Hard copy or electronic copy can be purchased for $55.00 at: http://webstore.ansi.org

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* ***defin****e 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:	**Kathryn M. Bailey**	Title:	**Committee Member**
Address:	**c/o NHPUC, 21 South Fruit Street, Suite 10 Concord, NH 03301**	Phone #:	**603-271-2431**

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

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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 43rd Street, 4th 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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3. Specific rule number where the material is incorporated: **Site 301.18(a)(2)**

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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.

6) A copy of ANSI/ASA S12.9-1992 2013 Part 2 can be obtained in hard copy or in electronic copy from the American National Standards Institute for $100.00. 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 43rd Street, 4th Floor, New York, NY 10036, Telephone No. 1-212-642-4900.

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3. Specific rule number where the material is incorporated: **Site 301.18(c)(1)**

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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 43rd Street, 4th Floor, New York, NY 10036, Telephone No. 1-212-642-4900.

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3. Specific rule number where the material is incorporated: **Site 301.18(c)(2)**

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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 43rd Street, 4th Floor, New York, NY 10036, Telephone No. 1-212-642-4900.

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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 43rd Street, 4th Floor, New York, NY 10036, Telephone No. 1-212-642-4900.

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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.

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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.

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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**:

Date	Body	Description
12/20/2013	S	**Introduced** 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.; **SC7**
3/6/2014	S	Committee Report: Ought to Pass with Amendment **#2014-0921s**, 3/13/14; **SC9**
3/13/2014	S	Committee Amendment 0921s, NT, AA, VV
3/13/2014	S	**Ought to Pass with Amendment** 0921s, NT, MA, VV; Refer to Finance Rule 4-5; **SJ 7**
3/20/2014	S	Committee Report: Ought to Pass with Amendment **#2014-1125s**, 3/27/14; **SC11**
3/27/2014	S	Committee Amendment 1125s, AA, VV
3/27/2014	S	**Ought to Pass with Amendment** 1125s, MA, VV; OT3rdg; **SJ 8**
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 **#2014-1442h** (Vote 16-1; RC); **HC 31**
4/23/2014	H	Amendment **#2014-1442h** AA VV
4/23/2014	H	**Ought to Pass with Amendment #2014-1442h** 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 **#2014-1795h** (Vote 20-3; RC); **HC 35**
5/14/2014	H	Amendment **#2014-1795h** AA VV
5/14/2014	H	**Ought to Pass with Amendment** #1795h MA VV

5/22/2014	S	Sen. Prescott Concurs with House Amendments #1795h, MA, VV; **SJ 14**
6/3/2014	H	Enrolled Bill Amendment #14-2006eba Adopted, VV (In recess of 5/15/2014)
6/4/2014	S	Enrolled Bill Amendment **#2014-2006e** 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

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, [~~will~~] ***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 of 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
☐ Bill Status
☐ Docket
☐ Calendar
Proof: ☐ Calendar ☐ 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	Sen. Jeb Bradley	Sen. Jeff Woodburn	Sen. Martha Fuller Clark
Rep. Herbert Vadney	Rep. Rick Ladd	Rep. Suzanne Smith	Rep. Susan Ford
Rep. Gene Chandler			

SB200-FN-A

Sen. Jeb Bradley	Sen. Jeanie Forrester	Sen. Jeff Woodburn	Sen. Jim Rausch
Sen. Martha Fuller Clark	Rep. Suzanne Smith	Rep. Rick Ladd	Rep. Herbert Vadney
Rep. Susan Ford	Rep. Gene Chandler		

Chris Cote 271-3067

Sen. Russell Prescott
Chairman

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 4th 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 4th 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, 5th 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

Date: 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
☑	☒	☐	Rep Suzanne Smith	Grafton 8
☑	☐	☒	Doug Pasek (amendment) Wagner	Forest Management
☑	☐	☐	Amy Ignatius CHAIR PUC	PUC / DES BURIAL
☑	☒	☐	Kris Pastorek	self
SB 218	☒	☐	Nancy Martland	self
	☒	☐	Andy Smith	self
	☒	☐	Roy Stever	self
☑	☐	☐	Kevin C. Onnela	self
☑	☐	☒	(no amendment) Susan Geiger (GEIGER)	ED PR
☑	☒	☐	Pamela Martin	SELF
☑	☐	☒	Tom Getz	PSNH
☑	☒	☐	D. McPhail	
☑	☐	☐	Glenn Normandeau	NH F & G
☑	☑	☐	Rep Gene Chandler	Carroll-1
☑	☑	☐	Will Abbott	SPNHF
☑	☐	☒	MICHAEL LIGHT	BIA
	☐	☐	Ms. McFall	
	☐	☐		
	☐	☐		

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date: 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
☐	☒	☐	Kris Pastorek	SCEP
☐	☒	☐	Susan Arnold	AMC
☒	☒	☒	Hack Montgomery	IBEW
☒	☒	☐	Jim O'Brien	The Nature Conservancy
☒	☐	☐	Beth Murphy 2min	NH Div of Hist Res
☒	☒	☐	Cheryl Lewis	Intervenor
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SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

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Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☐	☐	☐	~~Amy Ignatious~~	~~PUC/DES~~
☐	☐	☐		
☒	☐	☒	Marc Brown	New England Ratepayers Association
☒	☐	☐	Catherine Corkery	NH Sierra Club
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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 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 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

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 <u>any</u> 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

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

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

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

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 understand 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. Restructuing 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 or Amy Ignatius at 271-2442 or 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 conducts 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,

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Susan Arnold, Appalachian Mountain Club
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Jim O'Brien, The Nature Conservancy
jim_obrien@tnc.org, 224-5853, Ext 28

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

From: JD Lavallee, 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.[1] 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.[2] 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 utilizes 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.[3] Across the country, various states explicitly mandate that energy facilities must

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[1] *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).

[2] *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")

[3] *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.[4] 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.[5] 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.[6] In order to approve any energy infrastructure project the Council must determine that there is a "public need" for the project.[7] 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.[8]

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.[9] 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.[10]

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;

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[4] Conn. Gen. Stat. §§ 16-50j., *et seq.*

[5] Conn. Gen. Stat. § 16-50k.

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

[7] Conn. Gen. Stat. § 16-50p.(a)(3)(A).

[8] Conn. Gen. Stat. § 16-50p.(c)(1).

[9] *Id.*

[10] 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/oep/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...[11]

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.[12]

b. **Maine**[13]

The Maine Department of Environmental Protect (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[14] requires review of all developments that may have a substantial effect upon the environment.[15]

Of particularly 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[16]

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;

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[11] Conn. Gen. Stat. § 16-50p (a)(3)(A)-(C).
[12] 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.
[13] 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.
[14] 38 M.R.S. § 481
[15] See Maine Department of Environmental Protection, *Site Location of Development (Site Law)* available at http://www.maine.gov/dep/land/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).
[16] 35-A M.R.S. §1221-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[17]

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.[18] 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.

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[17] 35-A M.R.S. §1221-D(B)

[18] 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. 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.[19]

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..[20]

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.[21]

d. Rhode Island

In Rhode Island energy facility siting is controlled by a three-member centralized siting board.[22] 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.[23]

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[19] New York State Public Service Law Art. 10 §168 (2)
[20] New York State Public Service Law Art. 10 §168 (3)
[21] New York State Public Service Law Art. 10 §168 (4)
[22] R.I. Gen. Laws § 42-98-5
[23] 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.[24] Once a complete application is submitted and docketed, the Board then designates relevant state agencies to file an advisory opinion concerning the project.[25]

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.[26]

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.[27] The Board must state its reasons for accepting, rejecting, or modifying those advisory opinions.[28]

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.[29]

Under Vermont statute, the state Public Service Board has authority to grant Certificates of Public Good (CPG) – the necessary certificate for facility construction.[30] 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.

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[24] R.I. Gen. Laws § 42-98-8(a)
[25] R.I. Gen. Laws § 42-98-10
[26] 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.
[27] 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.
[28] *Id.*
[29] *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.
[30] 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[31]
(7) Be in compliance with the electric energy plan approved by the Department of Public Service under section 202 of Tile 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[32]

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.[33] 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.[34]

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

[31] The Public Service Board has previously ruled that this provision does not apply to projects sponsored by private developers rather than regulated distribution utilities.
[32] 30 V.S.A. § 248(b)
[33] N.H. Rev. Stat. Ann. § 374-G:1
[34] N.H. Rev. Stat. Ann. § 374-G:5

Investment (through increased electricity rates) are in the public interest.[35] 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.[36]

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.

[35] *Id.*
[36] 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
19 Pillsbury Street, Concord, NH 03301-3570 FAX 603-271-3433
www.nh.gov/nhdhr preservation@dcr.nh.gov

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

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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 –I 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

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 Layafette, 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.

NEWFOUND LAKE REGION ASSOCIATION
10 N. Main St. Unit 1 ~ Bristol, NH 03222
www.newfoundlake.org

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 10th 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 slide on Mt. Tripyramid (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 ~ 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**:

Date	Body	Description
12/20/2013	S	**Introduced** 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.; **SC7**
3/6/2014	S	Committee Report: Ought to Pass with Amendment **#2014-0921s**, 3/13/14; **SC9**
3/13/2014	S	Committee Amendment 0921s, NT, AA, VV
3/13/2014	S	**Ought to Pass with Amendment** 0921s, NT, MA, VV; Refer to Finance Rule 4-5; **SJ 7**
3/20/2014	S	Committee Report: Ought to Pass with Amendment **#2014-1125s**, 3/27/14; S11
3/27/2014	S	Committee Amendment 1125s, AA, VV
3/27/2014	S	**Ought to Pass with Amendment** 1125s, MA, VV; OT3rdg; **SJ 8**
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 **#2014-1442h** (Vote 16-1; RC); **HC 31**
4/23/2014	H	Amendment **#2014-1442h** AA VV
4/23/2014	H	**Ought to Pass with Amendment #2014-1442h** 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 **#2014-1795h** (Vote 20-3; RC); **HC 35**
5/14/2014	H	Amendment **#2014-1795h** AA VV

80

5/14/2014	H	**Ought to Pass with Amendment** #1795h MA VV

NH House	NH Senate

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
" # 1442h

ALL AVAILABLE VERSIONS OF THE BILL:

✓ 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 [signature]
BY COMMITTEE AIDE

Revised 2011

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 struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.