

**SUMMARY OF COMMENTS RECEIVED AND RESPONSES BY THE STAFF OF
THE SITE EVALUATION COMMITTEE ON RULEMAKING NOTICE #2016-77
AND NOTICE #2016-78, REGARDING THE SITING OF HIGH PRESSURE
NATURAL GAS PIPELINES AND ENFORCEMENT PROCEDURES**

JUNE 30, 2016

Prepared by: Pamela G. Monroe, Administrator

- 1. Comment by Arthur B. Cunningham on behalf of the Town of Fitzwilliam: Add to Site 301.03(e)(8), the requirement that the applicant submit a sworn certificate that the applicant has complied with the National Environmental Policy Act (NEPA) by submitting a copy of the environmental impact statement, environmental assessment of other document, a detailed description of how the applicant plans to comply with the federal Clean Water Act, the state environmental permitting process, and local environmental ordinances and permitting requirements.**

Staff Response: The proposed rule at Site 301.03(e)(8), requires the applicant to submit to the SEC a copy of its application to the Federal Energy Regulatory Commission (FERC), as well as any environmental report, assessment, or impact statement, prepared by or on the behalf of FERC. FERC has jurisdiction in determining whether the applicant has complied with NEPA and memorializes that determination in either an environmental assessment or an environmental impact statement. The applications for federal, state, and local permits will contain the information needed in order to determine whether those permits should be issued. Existing Site 301.03(c)-(e), requires an applicant to include information demonstrating compliance with federal and state agencies having permitting or other authority. The Staff recommendation is that no change is required.

- 2. Comment by Arthur B. Cunningham on behalf of the Town of Fitzwilliam: Add a subparagraph (9) to Site 301.03(e), to require a detailed emergency response plan for the construction and operation of the project. The plan should address fire suppression, locations of gas leak detectors, training for first responders, training and experience of the applicant's responding personnel, turnout gear needed by first responders, security monitoring during construction, who may access the site and how, vehicles, equipment and materials that will be provided to first responders by the applicant, evacuation routes, protection against "soft terrorism," plans to maintain road access to the project and to homes that may have limited access during construction, a list of applicant's emergency contacts, financial commitment to reimburse first responders, and applicant's plan to compensate municipalities and individuals for personal injury and property damage resulting from the construction of the project. Ms. Fletcher, member of the Mason Pipeline Committee, also requested that standards for construction be included in the proposed rules.**

Staff Response: Site 301.08(d)(3)-(5), requires an applicant to submit a "plan for fire safety prepared by or in consultation with a fire safety expert;" a "plan for emergency response to the proposed facility site;" and 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.” In addition, the Federal Department of Transportation (DOT) safety requirements have been incorporated by reference at Puc 506 and Puc 508, with respect to gas pipeline design, construction, operation and maintenance, and the DOT pipeline requirements for Class 4 (high density) locations will apply if the Site 301.14(f)(5)e., as proposed, is adopted. DOT and the NH Public Utilities Commission (PUC) rules require each operator to have an emergency plan, which includes establishing and maintaining communications with local fire, police, and other officials. Each plan must address how the operator will respond to: (i) gas detected inside or near a building; (ii) fire located near or directly involving a pipeline facility; (iii) explosion occurring near or directly involving a pipeline facility; and (iv) natural disaster. In addition, 40 CFR §192.616, requires each operator to have a public awareness program. The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

- (1) Use of a one-call notification system prior to excavation and other damage prevention activities;
- (2) Possible hazards associated with unintended releases from a gas pipeline facility;
- (3) Physical indications that such a release may have occurred;
- (4) Steps that should be taken for public safety in the event of a gas pipeline release; and
- (5) Procedures for reporting such an event.

It is opinion of the Staff that the SEC does not have the authority under RSA 162-H, to require applicants to agree to plans for compensating municipalities and residents for damages resulting from construction or operation incidents, and that the existing rules cited above, together with DOT’s safety requirements, address Attorney Cunningham’s comments.

3. **Comment by Richard M. Husband, Liz Fletcher of the Mason Pipeline Committee, Julia Steed Mawson of the Pelham Pipeline Awareness Committee, and Attorney Richard Kanoff, representing the N.H. Municipal Pipeline Coalition (Coalition): Add to Site 301.08(c)(1), add language to the comprehensive health impact assessment (CHIA) requirement, that would include all facilities associated with high pressure gas pipelines (to include: compressor stations, valve stations, metering stations, and pigging stations). In addition, Mr. Husband requested that the CHIA should be paid for by the applicant, but selected by a panel comprised of an SEC member and representatives of all municipalities reasonable likely to be impacted by the pipeline or its infrastructure. Mr. Husband also suggested that the CHIA specifically include short-term and long-term analyses of the health effects resulting from all expected releases during the construction, operation, and decommissioning of the pipeline, together with a description of the modeling or other methodology used to derive the expected releases.**

Staff Response: Staff agrees that the CHIA should address all facilities associated with a high-pressure gas pipeline, as well as the pipeline itself, and that the person preparing the CHIA should be an independent health professional. Such a person need not be selected by the SEC and local government members in order to retain his or her independence from the applicant, and

that requiring other governmental officials to participate in the selection process could potentially violate Part I, Article 28-a, of the N.H. Constitution (unfunded State mandate). Staff agrees that both short-term and long-term effects should be addressed in a CHIA. An independent health professional preparing a scientific study such as a CHIA, would state the methodology used in the report. It is recommended that Site 301.08(c)(1), be amended as follows:

“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:

(c) For high pressure gas pipelines:

(1) A comprehensive health impact assessment *prepared by an independent health and safety expert in accordance with nationally recognized standards, and* specifically designed to identify and evaluate potential *short-term and long-term* human health impacts by identifying potential pathways for ~~facility-related~~ contaminants from high pressure gas pipelines *and associated compressor, valve, metering, and pigging stations* to harm human health, quantifying the cumulative risks posed by any contaminants, and recommending necessary avoidance, minimization, or mitigation;”

4. Comment by Richard M. Husband, Ms. Fletcher, member of the Mason Pipeline Committee: The person preparing the facility decommissioning plan should be an independent expert selected by a panel consisting of an SEC member and representatives of all municipalities reasonable likely to be impacted by the pipeline or its infrastructure. In addition, Mr. Husband requested that the decommissioning plan include a detailed description of all items to be decommissioned, how they will be removed and disposed of, an EIA on the effects of the decommissioning, proposed post-decommissioning monitoring and compliance activities. Further, Mr. Husband requested adding a provision for complete financial assurance and documentation as to how all decommissioning costs will be met, and the form of the financial commitments.

Staff Response: Regarding selection of the decommissioning expert by a panel as described above, please see response in 3. above. Neither the PUC nor the federal rules require the removal of the pipeline at the end of a project, but the existing Site 301.08(c)(2)d., requires the removal of underground infrastructure that is buried less than 4 feet in depth. Puc 506.02(j), and 49 CFR §192.727, direct the operator how to abandon a pipeline in place. In addition, when a certificate holder decides to abandon a facility or convert it to another use, 18 CFR 380.5(b), requires FERC to prepare an environmental assessment (EA), and 18 CFR 380.12, requires the certificate holder to prepare an environmental report (ER). Resource Report 1 in the ER must describe how the facility will be abandoned and how the site will be restored. Site 301.08(c)(2), also requires that an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates, prepare the decommissioning plan, which must include a 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 Staff recommendation is that no change is required.

5. Comment by Richard M. Husband: Add a new subsection (j) to Site 301.10 to prohibit “pre-filing” submissions of applications.

Staff Response: RSA 162-H:10, I, requires an applicant to hold at least one public information session in each county where the proposed facility is to be located, at least 30 days prior to filing an application for a certificate, and to provide a copy of the notice to the chairperson of the committee at least 10 days before such session. The SEC opens a docket when the notice is submitted in order to inform the public. Prohibiting “pre-filing” submissions would be contrary to the statute. In addition, no changes were proposed to Site 301.10, so that section of the rules is not open for comments at this time. The commenter may petition the SEC to change the rules pursuant to Site 204.03.

6. Comment by Richard M. Husband: Add a new subsection (j) to Site 301.17, requiring annual statements of the amount of gas that is lost or unaccounted for.

Staff Response: The existing Site 301.17(i), provides the committee with the authority to include conditions in a certificate that are necessary to serve the objectives of RSA 162-H, or support findings made pursuant to RSA 162-H:16. In addition, no changes were proposed to Site 301.17, so that section of the rules is not open for comments at this time. The commenter may petition the SEC to change the rules pursuant to Site 204.03.

7. Comment by Marilyn Lerner: Specific recommendations in previously submitted comments regarding setbacks, waste disposal, water use and disposal, road use, safety, comprehensive health impact assessment implementation and funding, herbicide use and notification, emissions, air quality monitoring, grounding, corrosion and other aspects of gas pipeline construction, operation and decommissioning were not included in the proposed rule and should be included in the final rule.

Staff Response: The proposed rules were drafted based on the comments submitted by the public in response to the Request for Advance Public Comment, which was published in the Rulemaking Register on February 4, 2016. Comments very similar to Ms. Lerner’s were received during that comment period. Detailed requirements for the construction, environmental impact of energy projects are regulated by state agencies such as the PUC, Department of Environmental Services (DES), and NHDOT, which are represented on the SEC. The application for a certificate of site and facility that is submitted to the SEC must include the applications for all of the various agencies with permitting authority. RSA 162-H:7, VI-c, requires all state agencies that have permitting or other regulatory authority to make and submit to the SEC, a final decision on the parts of the application that relate to its permitting or other regulatory authority. DES has been delegated the authority to permit sources of air emissions under the Clean Air Act. Under this comprehensive regulatory scheme, DES can require monitoring requirements as a condition of an air permit. In addition, many detailed requirements are contained in state federal rules, as discussed above. The proposed rules attempt to maintain a balance between not being duplicative or creating conflicts between state and federal rules, but are consistent with RSA 162-H:10-b. The Staff recommendation is that no change is required.

- 8. Comment by Terry Silverman, Chair of Planning Board, Town of Fitzwilliam: The threat of federal preemption should not prevent state and local governments from adopting rules to protect their natural resources and there should be more community control over such projects. Susan Silverman, Fitzwilliam Board of Selectmen, testified that state and local controls should be more integrated because local communities know better where their precious places are located.**

Staff Response: The proposed rules establish new requirements for the siting of high pressure gas pipelines and are consistent with the authority set forth in RSA 162-H:10-b. See the discussion in 9. below, regarding the consideration given to the views of municipalities. The Staff recommendation is that no change is required.

- 9. Richard Kanoff, attorney for the Coalition: Site 301.03(e)(8), should be amended to require the applicant to submit a copy of any proposed plan application or other documentation required to be submitted to any local authority pursuant to any local rules, statutes, or ordinances, or alternatively, a detailed description of the measures planned to comply with such local rules, statutes, and ordinances.**

Staff Response: An applicant is required to document that it has given written notification of the proposed project to the communities where the project will be located (See RSA 162-H:7,V,(f)), but the statute does not require the applicant to describe how it intends to comply with local requirements. RSA 162-H:16, IV,(b), requires the SEC to make a finding, prior to issuing a certificate, that 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.” The Staff recommendation is that no change is required.

- 10. Richard Kanoff, attorney for the Coalition: Site 301.03(h)(6) and Site 301.14(g) should be amended to require the applicant and the SEC to consider cumulative impacts of the project, as is required of wind energy projects.**

Staff Response: RSA 162-H:10-a, II(2), required the SEC to adopt rules specifically addressing the cumulative impacts of wind energy projects to natural, scenic, recreational, and cultural resources from multiple towers or projects. In contrast, RSA 162-H:10-b, II, does not provide the SEC with similar specific authority to adopt rules related to the cumulative impacts of siting high pressure gas pipelines. However, FERC regulation 18 CFR 380.12, does require the applicant to identify the cumulative effects resulting from existing or reasonably foreseeable pipeline projects. In addition, no changes were proposed to the rules cited above, so that section of the rules is not open for comments at this time. The commenter may petition the SEC to change the rules pursuant to Site 204.03. The Staff recommendation is that no change is required.

- 11. Richard Kanoff, attorney for the Coalition: Site 301.14(c) and (d), which provide criteria for determining if a project will have unreasonable adverse effects on air and water quality, should be amended to include the SEC to consider: (1) all local statutes, rules, or ordinances of the proposed energy facility host municipalities and unincorporated places; and (2) the effectiveness of the measures proposed by the**

applicant to avoid, minimize, or mitigate unreasonable adverse effects on air quality, and the extent to which such measures represent best practical measures.

Staff Response: As discussed in 10. above, RSA 162-H:16, IV,(b), requires the SEC to make a finding, prior to issuing a certificate, that 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.” Regarding air and water quality, the SEC bases its decision, in part, on whether DES and other agencies with regulatory authority, would authorize the construction and operation of the project under the applicable rules that take into account item (2), above. In addition, FERC regulation 18 CFR 380.12(j), requires each application to describe the proposed mitigation measures and alternatives to the project and to compare the environmental impacts of such alternatives to those of the proposal. The Staff recommendation is that no change is required.

12. Richard Kanoff, attorney for the Coalition: Site 301.08(c)(1), should be amended to require an applicant to undertake a Comprehensive Health Impact Assessment for high pressure gas pipelines and all associated facilities, prepared by an independent licensed expert.

Staff Response: Staff agrees and proposes amending Site 301.08(c)(1), as discussed in response to Comment 4.

13. Richard Kanoff, attorney for the Coalition: Site 301.08(c)(2), should be amended to require that the decommissioning plan for high pressure gas pipelines, and associated facilities, provide for the removal of all structures and restoration of the facility site.

Staff Response: Existing rule Site 301.08(c)(2)d., requires the removal of underground infrastructure that is buried less than 4 feet in depth. Current PUC rules do not require the removal of all structures associated with natural gas pipeline, nor do FERC or DOT rules. When a certificate holder decides to abandon a facility or convert it to another use, 18 CFR 380.5(b), requires FERC to prepare an EA, and 18 CFR 380.12 requires the certificate holder to prepare an ER. Resource Report 1 in the ER, must describe how the facility will be abandoned and how the site will be restored. The Staff recommendation is that no change is required.

14. Richard Kanoff, attorney for the Coalition: For high pressure gas pipeline sound standards in proposed new Site 301.14(f)(5)a., the proposed 55 dBA threshold for interstate pipelines should be lowered to 40 dBA, consistent with the standards set forth in the existing rules for wind energy systems.

Staff Response: As Attorney Kanoff notes in his comments, proposed new rule Site 301.14(f)(5)b., will require *intrastate* pipeline projects to meet the sound standards for wind energy systems. This standard is more stringent than the federal standard of 55 dBA, which has been proposed for *interstate* pipelines. When state law conflicts with federal law, the federal law prevails. (See JLCAR Staff Memo Relative to Authority, attached to comments on the proposed amendments to Site 301 and 302). Therefore, the standard in the proposed rule that is consistent

with federal law for *interstate* pipelines, can be enforced by the state. The Staff recommendation is that no change is required.

- 15. Richard Kanoff, attorney for the Coalition: A pipeline application should address blasting activities. Mr. Silverman testified that the Town of Fitzwilliam has a local land use code that governs blasting. Many similar comments regarding blasting were also previously submitted in response to the Request for Advance Public Comments.**

Staff Response: Blasting is regulated by OSHA at 29 CFR §1910.109 and §1926.900-914 for worker safety, and by the NH Department of Safety (DOS) at Saf-C 1600. Blasting that might affect underground facilities is regulated by the PUC through RSA 374:48-56 and Puc 800. The SEC could impose conditions in any certificate related to blasting, consistent with Site 301.17(i). The Staff recommendation is that no change is required.

- 16. Richard Kanoff, attorney for the Coalition: An application for a certificate for a gas pipeline should address traffic and roadway considerations. Attorney Kanoff suggested adding the following subparagraph (7) to the 301.14(f):**

“(7) Application shall identify, on topographic maps at a scale of 1:24,000 and a description of existing and planned roads, rail lines, bike trails, airports, bus routes serving the project vicinity, pipelines, and canals in the project area affected by or serving the proposed facility. For each road identified, include the following information, where applicable:

- (i) Road classification and design capacity;**
 - (ii) Current daily average and peak traffic counts;**
 - (iii) Current and projected levels of service before project development, during construction, and during project operation;**
 - (iv) Weight and load limitations;**
 - (v) Estimated percentage of current traffic flows for passenger vehicles and trucks;**
- and**
- (vi) An identification of any road features affecting public safety.”**

Staff Response: Attorney Kanoff does not provide the Coalition’s reasoning as to why such detailed information is necessary or what the SEC should do with that information. RSA 162-H:10-b, does not direct the SEC to adopt rules to address traffic and roadways. Existing Site 301.03(e), does require an applicant to provide information on the raw materials to be used or transported, and a description of the means of transportation. The Staff recommendation is that no change is required.

- 17. Richard Kanoff, attorney for the Coalition, and a similar comment was filed by Ms. Steed Mawson: Site 301.07 should be amended by adding a subparagraph (d), to require an application to contain the following information:**

“[A]ll potential effects of facility demand on water supply and other users of this source, including, but not limited to, water availability for other uses during construction or after the facility begins operation, consistency of the water use with applicable resource management plans, and any changes in the physical or chemical conditions of existing water supplies as a result of water use by the facility.

Application shall contain a hydrostatic testing plan to include detailed information on the potential sources, volumes, water discharge rate, velocity reducing devices, and site specific plans for the discharge locations.”

Staff Response: Attorney Kanoff does not provide the Coalition’s reasoning on why such detailed information is necessary or what then the SEC should do with it. Site 301.07(b), requires an applicant to provide information regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of the proposed energy facility on water quality. The Staff recommendation is that no change is required.

- 18. Richard Kanoff, attorney for the Coalition: Site 301.16, should be amended to include public interest criteria such as evidence that the project is needed, project alternatives, and costs associated with the project.**

Staff Response: Site 301.16, establishes the criteria relative to a finding of public interest. No changes were proposed to Site 301.16, so that section of the rules is not open for comments at this time. The commenter may petition the SEC to change this rule pursuant to Site 204.03.

- 19. Many commenters submitted concerns regarding pipeline components, thickness and corrosion.**

Staff Response: Proposed Site 301.14(f)(5)e., would require the applicant to meet the most stringent requirements (class 4 location in a high consequence area) for pipeline construction and safety.

- 20. Many commenters submitted concerns related to the Potential Impact Radius, including the proximity of gas pipelines to churches, residents, schools, and electric power lines. Ms. Fletcher, member of the Mason Pipeline Committee, commented that high pressure gas pipelines and associated infrastructure should be set back from high voltage electrical transmission lines at least 1,000 feet. Mr. Lewicke testified that when a pipeline and a high voltage transmission line are within 1,000 to 5,000 feet, that the rules should require that “best industry practices will be followed in terms of siting.”**

Staff Response: The proposed new Site 301.08(c)(3) and (4), would require the applicant to include a description of the planned setbacks to all of the facility types listed above, and would

require the applicant to explain why the planned setbacks are adequate to protect the public from the risks associated with the operation of the pipeline and any associated compressor station. In addition to the requirements in the proposed new Site 301.08(c)(3) and (4), the SEC conducts adjudicative proceedings in accordance with its procedural rules (Site 200), where testimony and evidence is submitted regarding a pending application for a certificate. Site 301.14(f)(6), would require the committee to consider the results of the CHIA, the proximity of the electric transmission lines to the pipeline, the proximity of any compressor station to schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms, as well as the effectiveness of the measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures. The Staff recommendation is that no change is required.

21. Ms. Fletcher, member of the Mason Pipeline Committee, testified that Site 301.08 should include specific set back requirements in order to protect the public and that if the people feel that they would not be safe, that they should have their property bought.

Staff Response: Please see discussion in number 20, above. In addition, RSA 162-H, does not provide the committee with the authority to require applicants to purchase resident's property. The Staff recommendation is that no change is required.

22. Office of Legislative Services (OLS): A "JLCAR Staff Memo Relative to Authority" was attached to OLS comments on the proposed amendments to Site 301 and 302. The Memo notes that a constitutional issue exists with these rules because the underlying statute, RSA 162-H:10-b, may conflict with federal law. No other substantive comments were made.

Staff Response: Staff agrees with the points made in the Staff Memo Relative to Authority, noting that it has made every effort to comply with RSA 162-H:10-b, and be responsive to public comments, keeping in mind that rules directly conflicting with federal regulations on the same subject matter could be preempted. Therefore, the proposed rules attempt to identify and address areas that the federal government has not regulated, and crafts other rules in a manner that does not conflict with federal rules, but can be enforced by the state.

All editorial comments made by OLS are accepted and will be incorporated into the Final Proposal.