



# New England Ratepayers Association

September 30, 2014

David K. Wiesner, Staff Attorney  
N.H. Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

Re: Proposed Rule Language for New Hampshire Site Evaluation Committee

Attorney Wiesner:

On behalf of the New England Ratepayers Association (NERA) we respectfully submit the enclosed comments on proposed rule language for the New Hampshire Site Evaluation Committee (SEC). NERA is a non-profit, public advocacy organization which represents hundreds of New Hampshire ratepayers in supporting policies that reduce the cost of regulated utilities to ratepayers.

It is the responsibility of the SEC to review applications and issue certificates for the siting of energy facilities in New Hampshire. It is also the responsibility of the SEC to ensure that the siting of energy facilities is not unduly delayed while also considering potential environmental and community impacts. As an active participant in the SB 245 process, NERA recognized the need to balance many of the competing interests of the participants. The rule changes enclosed here have incorporated many of the concerns expressed in several of the working group meetings, as well as considering similar rules from other states in the region.

In submitting these rules, NERA recommends that the SEC strongly weighs the impact on New Hampshire's electricity rates, which are currently some of the highest in the nation, when considering whether or not to issue a certificate to an energy facility. Policies that increase costs to developers will ultimately be borne by ratepayers and will have a deleterious impact on the economy and specifically, jobs.

We thank you for the opportunity to submit these comments.

Sincerely,

Marc Brown  
Executive Director  
New England Ratepayers Association

## EXISTING SECTIONS

### Site 202.11(f)

- (f) With committee approval, the presiding officer may allocate some portion of the costs and expenses of a party to an intervener to the extent incurred to respond to a course of conduct by such intervener which is primarily designed to delay or unnecessarily obfuscate the proceeding and impair the orderly and prompt conduct of the hearings.

### Contents of Application

#### Section 301.03

- (i) Each application shall include information regarding the effects of the facility on, and plan for avoidance, minimization or mitigation to the extent practical and economically feasible of any effects for, the following:

#### (1) Aesthetics

- a) All applicants for a certificate shall prepare a Visual Impact Analysis (VIA) using generally accepted professional standards.
- b) The VIA shall include a map and general description of the visual analysis zone, including topography, prominent landforms and natural features, vegetation, major conservation lands and recreational areas, and patterns of human land use, development and settlement.
- c) The VIA shall include a detailed project map showing the location of all facility structures, roads, electrical connections, and areas to be cleared or graded.
- d) The VIA shall analyze aesthetic impacts within a “visual analysis zone” defined as follows:
  - For wind energy projects
    - less than 200 feet – 5 mile radius
    - between 200 and 400 feet – 10 mile radius
    - over 400 feet – 15 mile radius

For electrical transmission lines less than 200 feet: no specified distance, but shall be sufficient to allow identification and analysis of potentially sensitive viewpoints from which it will be clearly visible.

- e) The VIA shall identify through GIS analysis all parts of the landscape within the visual analysis zone from which the facility will be potentially visible, based on both bare ground conditions (i.e. topographic screening only) and with

consideration of screening by vegetation or other factors. Topographic screening analysis shall utilize the highest resolution topographic data available, with a maximum allowable horizontal resolution of 30 meters. Analysis of vegetative screening shall assume a height of 40 feet for forest vegetation. The analysis shall quantify as appropriate the extent of project visibility (e.g., number of towers).

- f) The VIA shall list and describe all existing or proposed energy facilities within 10 miles of any portion of the visual analysis zone.
- g) The VIA shall specifically identify all Scenic Viewpoints, public roads, cultural features or facilities and town or village centers within the visual analysis zone, as well as any concentrations of residences within 5 miles of the facility and any individual residences within 2 miles of the facility, from which any part of the facility will be visible.
- h) For all features the VIA shall categorize the potential visual impact as Minimal, Moderate or Significant based on consideration of:

The significance of the viewpoint, based on factors such as:

- i. The level of public use;
  - ii. The uniqueness of the viewpoint relative to other viewpoints in the region;
  - iii. Identification of the viewpoint in public plans, analyses, reports or other documents or materials;
  - iv. Identification of the viewpoint in guidebooks or other published materials.
- i) The quality of the view shed seen from the viewpoint, based on factors such as:
    - i. The horizontal breadth of the view shed (i.e. panoramic or narrow);
    - ii. The visual diversity of the view shed, including topographic and vegetative diversity and the presence of distinctive features such as prominent summits, lakes or rivers;
    - iii. The nature and extent of existing human land use and development.
    - iv. The intactness of the view shed (i.e., the presence or absence of discordant or distracting elements);
    - v. The uniqueness of the view shed relative to other scenic resources in the region.
  - j) The impact of the proposed facility, based on factors such as:
    - i. The expectations of the typical viewer;
    - ii. The extent of facility (including all structures and disturbed areas) visible from the viewpoint;

- iii. The distance of the facility from the viewpoint;
- iv. The horizontal breadth (visual arc) of visible facility elements;
- v. The scale of the facility relative to surrounding topography and existing structures;
- vi. The duration and direction of the typical view;
- vii. The presence of intervening topography;
- viii. The effect of facility lighting on nighttime use and enjoyment of the viewpoint;
- ix. The cumulative impact of the facility in combination with other existing or proposed energy facilities.

k) The VIA shall include visual simulations of the facility as follows:

- i. Simulations will be prepared from all Scenic Viewpoints deemed to have a significant level of potential impact, as well as a representative sample of views from public roads, town and village centers, and residential areas;
- ii. Simulations shall include comparative photographs of both the current condition and the simulated appearance of the facility;
- iii. Simulations should include all visible facility structures.

l) Photographs used in the simulation shall be taken at an equivalent focal length of 50 mm (i.e., "normal view") and represent conditions of maximum visibility to the greatest extent possible.

m) If the facility is required by Federal Aviation Administration regulations to install aircraft warning lighting, then simulations of the nighttime impact of such lighting shall be included.

n) If the party preparing the simulations has developed simulations of existing facilities of the same type as the proposed facility, the VIA shall include a representative sample of these simulations as well as equivalent photographs of the actual facility as constructed.

o) For concentrated industrial energy generation facilities (including but not limited to those utilizing natural gas, oil, coal or biomass) that are located on previously developed sites in proximity to existing commercial or industrial development, and for which the aesthetic impacts are limited to the visual foreground zone (i.e., within one-half mile of the facility), the SEC may at its discretion waive the requirements of this section and substitute other evaluation requirements appropriate for the proposed facility, site and vicinity.

p) No finding of unreasonable adverse effect shall be made with respect to those items contained in Section 301.03 (i) if the applicant has proposed, or used in its

design, reasonable steps for the avoidance, minimization or mitigation, to the extent practicable and economically feasible.

## (2) Historic Sites

- a) All applications shall identify any areas of historic or archaeological sensitivity on the project site.
- b) All applications shall identify any historic resources within 2 miles of the project site.
- c) All applications shall provide measures to minimize impacts to any identified historic or archaeological sites.
- d) All applications shall provide information regarding discussions and consultations with any state or federal historic preservation agencies.

## (3) Air Quality

No suggested changes.

## (4) Water Quality

No suggested changes.

## (5) Natural Environment

- a) All applications shall identify any areas of environmental sensitivity on the project site.
- b) All applications shall identify any rare species or plants that will be impacted by the proposed project.
- c) All applications shall provide measures to minimize impacts to any environmentally sensitive areas or any rare species or plants.
- d) All applications shall provide information regarding discussions and consultations with any state or federal environmental agencies.

(6) Public health and Safety

a) For wind energy applications

i. Noise

- a. Include a project sound impact assessment prepared in accordance to general professional standards. This assessment shall include:
- b. A predevelopment baseline sound study which provides ambient background sound at the project site and at ½ mile increments out to 5 miles from the project site;
- c. A detailed description of the potential noise levels that will be generated by the proposed wind turbines at the project site boundary and at ½ mile increments out to 5 miles from the project site;
- d. A description of the measures to minimize the impacts of any areas which will result in noise levels from the project exceeding 35db above the baseline sound within 5 miles of the project site.

ii. Ice Drop and Throw

- a. All applications shall include an ice throw evaluation report for each turbine location.
- b. The ice throw evaluation report shall include the methodology to evaluate and assess the risk of ice throw and the manufacturer's technical documentation relating to ice throw for the specific equipment to be installed at the project site.
- c. The report shall also include calculations of the maximum distance that ice can be thrown from each of the proposed turbines at the project site, as well as a map indicating the ice throw radius in relation to the local geography.
- d. The application shall include any potential mitigation to minimize the risk, occurrence and impact of ice throw from the wind turbines at the project site. Mitigation will also require:
  - Turbines shall be curtailed during periods of ice accretion;
  - Turbine technology shall be implemented which will prevent ice accretion or operation during periods of ice accretion;

- The use of warning signs is required to alert anyone in the area of risk;
- Operational staff should be aware of the conditions likely to lead to ice accretion on the turbine and conduct visual inspections to ensure the turbines are not operating with ice on the rotor unit;
- A safety zone or setback distance shall be defined for each turbine;
- The SEC may reconsider the size of the safety zone if the applicant submits a risk assessment that includes project-specific information and mitigations that will adequately protect the public;
- In no case shall safety zones encompass portions of non-participating properties, public roads or public gathering areas.

iii. Blade Shear

- a. All applications shall include a blade shear evaluation report for each turbine location.
- b. The blade shear evaluation report shall include the methodology to evaluate and assess the risk of blade shear and the manufacturers' technical documentation relating to blade shear for the specific equipment to be installed at the project site.
- c. The report shall also include calculations of the maximum distance that a blade could be sheared from each of the proposed turbines at the project site, as well as a map indicating the blade shear radius in relation to the local geography.
- d. The application shall include any potential mitigation to minimize the risk, occurrence and impact of blade shear from the wind turbines at the project site.

iv. Shadow Flicker

- a. All applications shall include a shadow flicker evaluation report for each of the proposed turbines in the project.

- b. The shadow flicker report shall include a detailed description of the conditions that may cause shadow flicker, the methodology to evaluate the impact of shadow flicker and any manufacturer documentation that relates to shadow flicker.
- c. The shadow flicker report shall provide a study area map which identifies areas which will be impacted by shadow flicker.
- d. The application shall include any potential mitigation to minimize the impact of shadow flicker from the wind turbines at the project site.

## NEW SECTION

### **Decommissioning**

- 1) Any application for a certificate for any facility with a useful life less than 30 years shall contain a decommissioning plan that includes:
- 2) The projected useful life of the facilities;
- 3) Identification of any circumstances that would trigger the decommissioning of the facility in advance of its projected useful life;
- 4) A description of the method by which any foundations, towers, turbines or associated equipment and components will be dismantled and removed;
- 5) A description of the method by which the site will be restored as near as possible to its original condition, including stabilization, regarding and re-vegetation;
- 6) An estimate of the total cost of implementing the decommissioning plan calculated by a certified professional engineer based on the projected useful life of the facility;
- 7) Financial assurance that sufficient funds are available for the complete decommissioning of the facility and restoration of the project site.



## NEW SECTION

### **Unreasonable Adverse Effects**

- (1) In determining whether a proposed site will have an unreasonable effect on aesthetics the committee should consider:
  - a. The current character of the surrounding community and the area of potential impact by the physical presence of the facility;
  - b. The overall visual impact of the facility;
  - c. The mitigation measures proposed by the applicant.
  
- (2) In determining whether a proposed site will have an unreasonable effect on historic sites the committee should consider:
  - a. The significance of any archeological and historic sites identified;
  - b. The mitigation measures proposed by the applicant.
  
- (3) In determining whether a proposed site will have an unreasonable effect on air quality the committee should consider:
  
- (4) In determining whether a proposed site will have an unreasonable effect on water quality the committee should consider:
  
- (5) In determining whether a proposed site will have an unreasonable effect on natural environment the committee should consider:
  - a. The significance of any environmentally sensitive areas, or rare plants and species identified by the applicant;
  - b. The mitigation measures proposed by the applicant.
  
- (6) In determining whether a proposed site will have an unreasonable effect on public health and safety the committee should consider:
  - a. Sound standards that shall not exceed 40db above the ambient sound levels during daylight hours and 30db above ambient sound levels during nighttime hours on any private property within 5 miles of the project site;

- b. If the facility is required by Federal Aviation Administration regulations to install aircraft warning lighting, then any facility with tower heights above 200 feet shall utilize radar-activated lighting unless technically infeasible;
- c. Shadow flicker standards that prohibit shadow flicker within any permanent residence within 2 miles of the project site;
- d. Setback standards which should reflect the blade shear and ice throw risks as identified in the blade shear and ice throw reports;
- e. The mitigation measures proposed by the applicant.

## NEW SECTION

### **Undue Interference in Orderly Development**

In determining whether a proposed site will have an undue interference with the orderly development of the local area the committee should consider:

- a. The project impact on state electricity rates;
- b. The project impact on state employment;
- c. The projects negative and positive impact on private property owners through any lease payments or property sales;
- d. Any additional economic benefits and impacts the project will effect on the local communities, the county in which the project is located and the state;
- e. Any additional financial benefits or impacts the project will provide to local communities, the county in which the project is located and the state;
- f. The concerns of the local municipal and county officials where the project is located;
- g. All economic and financial benefits must be considered on a net present value basis based on a period of not less than 10 years.