



October 15, 2014

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

Dear Mr. Wiesner:

This letter is to convey the enclosed material in reply to your call for public comments on the Site Evaluation Committee (SEC) rulemaking presently underway in response to the legislative mandates of SB 99, SB 245, and HB 1602.

Enclosed is draft rule language for use as a starting point for several elements of the rulemaking task in which the SEC is engaged. The specific language principally derives from a submission by our organizations as part of the pre-rulemaking process, dated March 25, 2014, and various aspects of the reports of rulemaking working groups convened by the Office of Energy and Planning (OEP) earlier this year. This submission addresses several specific issues, which our organizations believe are important to our members and constituents, and with which several of our organizations have significant expertise and experience.

This language is intended to provide potential directions and concepts and is not intended as final language for proposed rules. For example, there may be language in this submission that is more suitable for inclusion in application guidance rather than rules, such as the submission's detailed description of a Visual Impact Analysis. In addition, we are *not* offering a comprehensive set of draft rules to meet the entire set of mandates established in the above referenced legislation, such as the implementation of procedural changes made by SB 245 or all elements of the required rules for wind energy facilities under HB 1602.

Setting aside the draft rulemaking language, our organizations believe that in general the SEC should aim to achieve four overarching objectives during this rulemaking process. The first is to clearly define terms used in the rules so the language means the same thing to all readers. Second is to clarify for applicants the expectations for a complete application submission. Third is to establish concise, comprehensive siting criteria for new energy facilities. Fourth is to ensure that the SEC has clearer guidance on how to make decisions on each of the four findings now required by the statute when reviewing applications for certificates to site new energy facilities.

As part of the rulemaking process, we strongly encourage the SEC to seek procedural efficiencies where practical and appropriate. Our organizations, however, will not support regulatory changes that diminish public participation, intervenor rights, due process, and or rigor of the SEC's review.

In addition, there are numerous vital elements of this legislatively-mandated rulemaking that have not been addressed to date either by our organizations or by the public stakeholder process conducted by OEP. For example, further elaboration on an application requirement for developers to include a robust alternatives analysis would be highly appropriate. Such language would build on the requirement in existing SEC rules to describe the alternatives to the submitted project that were considered and the SEC's obligation to consider "all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits." RSA 162-H:16, IV.

We hope to provide further input on some of those areas in the near future as the rulemaking process continues.

We as a group are willing to meet with you to further explain our objectives with the specific language proposed in the enclosed material if such discussions are helpful to your process. Thank you for your consideration of these suggestions.

Sincerely,

Will Abbott, Society for the Protection of New Hampshire Forests
Susan Arnold, Appalachian Mountain Club
Christophe Courchesne, Conservation Law Foundation
Carol Foss, Audubon Society of New Hampshire
Jim O'Brien, The Nature Conservancy

CHAPTER 100

Adopt Site 102.01 through 102.37 to be cited and to read as follows:

PART Site 102 DEFINITIONS

Site 102.01 “Acceptance” means:

(a) A determination by the committee that it finds that an application is complete and ready for consideration; and

(b) For an application for a renewable energy facility, a determination by the chairperson or designee that the application is complete and ready for consideration.

Site 102.02 “*Adaptive management*” means *a system of management practices based on clearly identified desired outcomes, monitoring to determine if management actions are meeting desired outcomes, and, if not, provisions for management changes that will best ensure that desired outcomes are met or that outcomes are re-evaluated.*

Site 102.03 “Adjudicatory hearing” means “adjudicative proceeding” as defined in RSA 541-A:1, 1, namely, “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.”

Site 102.04 “Applicant” means any person seeking to construct and operate an energy, renewable energy or bulk power supply facility within this state.

Site 102.05 “Application” means the written document filed with the committee seeking the issuance of a Certificate of Site and Facility.

Site 102.06 “Bulk power supply facility” means “bulk power supply facilities” as defined in RSA 162-H:2, II, but, pursuant to RSA 162-H:5, IV, “bulk power supply facilities” does not include:

(a) Electric generation station requirement and associated facilities designed for, or capable of operation at a capacity of greater than 30 megawatts proposed and to be owned by entities not subject to rate regulation by the commission; or

(b) Transmission lines which are necessary to interconnect one electric generating facility or group of energy facilities to the transmission grid.

Site 102.07 “*Best practical mitigation*” means *methods or technologies used during siting, design, construction or operation of an energy facility that control or reduce to the lowest feasible level impacts to aesthetics, historic sites, air and water quality, the natural environment, and public health and safety. Mitigation may also include strategies (such as land conservation) to compensate for unavoidable impacts.*

Site 102.08 “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 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 committee deems appropriate, that authorizes the applicant to proceed with the proposed renewable energy facility.

Site 102.09 “*Combined observation*” means that a viewer sees multiple energy facilities from a stationary point within a typical cone of vision.

Site 102.10 “Commission” means the New Hampshire public utilities commission.

Site 102.11 “Committee” means the site evaluation committee established under RSA 162-H and these rules.

Site 102.12 “*Cumulative impact*” means the incremental adverse effect of an energy facility on the resource values set forth in RSA 162-H:16, IV(c) when added to other existing and reasonably likely development. Cumulative impacts can result from individually minor but collectively significant developments taking place over a period of time. The committee may analyze cumulative impacts with reference to legal standards established under the National Environmental Policy Act, as amended, to the extent consistent with this definition.

Site 102.13 “Energy facility” means “energy facility” as defined in RSA 162-H:2, VII, namely “any industrial structure other than bulk power supply facilities 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 limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generation station and its associated facilities, plants for coal conversion and onshore and offshore loading and unloading facilities for energy sources. Energy facility shall also include energy transmission pipelines, storage units, or any other facility which the applicant or 2 or more petition categories as defined in RSA 162-H:2, XI request and the committee agrees, or which the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1.”

Site 102.14 “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 102.15 “*Natural community*” means a recurring assemblage of plants and animals found in particular physical environments as classified in the New Hampshire Natural Heritage Bureau publication *Natural Communities of New Hampshire*. Rare natural communities are those ranked S1 (critically imperiled), S2 (imperiled) or S3 (very rare and local). Exemplary natural communities are rare natural community types and high quality examples of more common community types, as determined by the NH Natural Heritage Bureau.

Site 102.16 “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:33, II.

Site 102.17 “Petition” means (a) “Petition” as defined in RSA 162-H:2, X-a, namely, “a request to the committee to rule on the applicability of this chapter to a particular proposed bulk power supply facility or energy facility;” or

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

Site 102.18 “Petitioner” means:

(a) For a petition as defined in Site 102.13(a), “petitioner” as defined in RSA 162-H:2, XI, namely, “a person filing a petition meeting any of the following conditions:

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

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

(3) A petition endorsed by the board of selectmen of the host community or 2 or more boards of selectmen of abutting communities; or

(4) A petition filed by the potential applicant;” or

(b) For a petition as defined in Site 102.16(b), a person who files a petition for intervention pursuant to RSA 541-A:32.

Site 102.19 “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 102.20 “Proof by a preponderance of the evidence” means that what is sought to be proved is determined to be more probable than not.

Site 102.21 “Public information hearing” means a hearing scheduled pursuant to RSA 162-H:10, I where the applicant presents information to the site evaluation committee and other agencies that have jurisdiction over the subject matter and to the public about the proposed facilities.

Site 102.22 “Public utility” means any electric utility engaged in the production, distribution, sale, delivery or furnishing of electricity, including municipalities, cooperatives, regulated electric companies, agencies or any combination thereof.

Site 102.23 ***“Rare plant” means any species included on the most recent version of the “Rare Plant List for New Hampshire” maintained by the New Hampshire Natural Heritage Bureau.***

Site 102.24 “Reasonably likely development” means, with respect to energy facilities, any energy facilities for which an application for a certificate has been filed with and determined complete by the site evaluation committee, for which an application for federal permitting or approval has been filed, or for which an application for local land use approvals has been filed. “Reasonably likely development” means, with respect to development that is not energy facilities, proposed development activities of a significant scale for which an application for federal, state, or local approvals has been filed.

Site 102.25 “Renewable energy facility” means “renewable energy facility” as defined in RSA 162-H:2, XII.

Site 102.26 “Scenic Viewpoint” means any point to which the public has a legal right of access and which provides a focal point for aesthetic enjoyment of the surrounding landscape. Scenic Viewpoints are not intended to encompass all points affording views of a facility, but rather those points or routes from which aesthetic enjoyment is a significant component of the user experience. Scenic Viewpoints may include viewpoints from: (a) a National Natural Landmark, federally designated wilderness area or other comparable outstanding natural or cultural feature such as the Appalachian National Scenic Trail, (b) trails of public recreational use areas on federal, state or municipal conservation and/or recreation lands, (c) trails or public recreational use areas on privately-owned conservation lands, (d) trails or public recreational use areas on lands encumbered by a conservation easement in which aesthetic or recreational values are expressly recognized, (e) recreational trails or trail networks established, protected or maintained in whole or in part with public funds, (f) Great Ponds, (g) segments of a National Wild and Scenic River or river designated in the New Hampshire Rivers Management and Protection Program, (h) other navigable rivers used by the public for motorized or non-motorized recreational boating, (i) designated scenic byways, (j) designated scenic turnouts on public roads, (k) a property that is listed on the state or national register of historic places, (l) municipal public recreation areas, (m) viewpoints or viewsheds recognized in municipal master plans, and (n) any other viewpoint which by the weight of evidence meets the spirit and intent of this definition.

Site 102.27 “Sequential observation” means a viewer sees multiple energy facilities from different viewpoints as the viewer travels along a route, e.g. a hiking trail, river, scenic byway or on a lake.

Site 102.28 “Service list” means a list maintained by the committee containing the names and addresses of all parties and intervenors to a proceeding and all other interested persons or groups who request to be included on the service list.

Site 102.29 “Significant visual impact” means a change in aesthetics and visual resources that occurs when, relative to a public view:

(a) features are altered, introduced, made less visible, or are removed, such that the resultant effect on public views is strongly incongruous with the inherent, established harmony and character of the landscape, and which demonstrably appear prominent, inharmonious, out of place, discordant, and distracting; and/or

(b) access to public views is substantially diminished or eliminated by screening or blocking of the affected view; and/or physical access to public viewing positions is substantially restricted or eliminated.

Site 102.30 “Significant wildlife species” means 1) any species listed as Threatened or Endangered, or which is a candidate for such listing, by the U.S. Fish and Wildlife Service; or 2) any species listed as Threatened, Endangered or Special Concern by the New Hampshire Department of Fish and Game.

Site 102.31 “Subcommittee” means any subcommittee established under RSA 162-H:4, V (b) for the purpose of reviewing an application for a renewable energy facility.

Site 102.32 “Successive observation” means that a viewer sees multiple energy facilities from a particular viewpoint, but not within the same viewing arc, e.g., the viewer would have to turn their head and/or body.

Site 102.33 “Transmission line” means an electric transmission line as that term is used and described in RSA 162-H:2, II (b), (c), and (d).

Site 102.34 “Wetlands and water resources” means the full range of issues related to the flow of water across and through the landscape, including impacts to groundwater, streams, lakes, ponds, wetlands, seeps and springs and their associated shoreline or buffer (“riparian”) areas.

Site 102.35 “Wildlife” means, as defined under NH RSA 207.1, XXXV, “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.”

CHAPTER 300

Adopt Site 301.03 through 301.12 to be cited and read as follows:

Site 301.03 Contents of Application.

(a) Each application for a certificate of site and facility for an energy facility, a renewable energy facility, or a bulk power supply facility shall be signed and sworn to by the person, or the executive officer of the association or corporation, making such application.

(b) Each application shall include the information contained in this subparagraph, and subparagraphs (c) through (k) 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 its directors, officers and stockholders;
- (5) If the applicant is an association, the names and addresses of the residences of the members of the association;
- (6) Whether the applicant is the owner or lessee of the site or facility or has some legal or business relationship to it; and
- (7) A statement of assets and liabilities of the applicant.

(c) each application shall contain the following information:

- (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 of residences, industrial buildings, and other structures and improvements within or adjacent to the site;

(4) Identification of wetlands and surface waters of the state within or adjacent to the site; and

(5) Identification of natural and other resources at or within or adjacent to the site.

(6) Information related to whether the proposed site and facility will unduly interfere with the orderly development of the region having given due consideration to the view of municipal and regional planning commissions and municipal governing boards.

(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 jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility;

(2) Documentation that demonstrates compliance with the application requirements of 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 whether represented on the committee or not.

(e) If the application is for an energy facility, 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, 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 transporting; and

(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.

(f) If the application is for an electric generating unit which is either a bulk power facility or a renewable energy facility, the application shall include the following information:

- (1) Make, model and manufacturer of the unit;
- (2) Capacity in megawatts, as designed and as intended for operation;
- (3) Type of unit, including:
 - a. Fuel utilized;
 - b. Method of cooling discharge;
 - c. Whether the unit will serve base, immediate or peaking loads;
 - d. Unit efficiency; and
 - e. Impact on system stability and reliability;
- (4) Any associated new substations and transmission lines; and
- (5) Construction schedule, including start date and scheduled completion date.

(g) If the application is for a transmission line or a bulk power facility, or renewable energy facility with an associated transmission line, the application shall include the following information:

- (1) Location shown on U.S. Geological Survey Map;
- (2) Corridor width for:

- a. New route; or
- b. Widening along existing route.

- (3) Length of line;
- (4) Distance along new route;
- (5) Distance along existing route;
- (6) Voltage (design rating);
- (7) Any associated new generating unit or units;
- (8) Type of construction (described in detail);
- (9) Construction schedule, including start date and schedule completion date; and
- (10) Impact on system stability and reliability.

(h) Each application shall include the following:

- (1) A description in detail of the type and size of each major part of the proposed facility;
- (2) Identification of the applicant's preferred location and any other options for the site of each major part of the proposed facility;
- (3) A description in detail of the impact of each major part of the proposed facility on the environment for each site proposed;
- (4) A description in detail of the applicant's proposals for studying and solving environmental problems;
- (5) A description in detail of the applicant's financial, technical and managerial capability to construct and operate the proposed facility;
- (6) A statement of assets and liabilities of the applicant; and
- (7) Documentation that written notification of the proposed project, including appropriate copies of the application, has been given to the governing body of each community in which the facility is proposed to be located.

(i) Each application shall include information regarding the effects of the facility on, and plan for *best practical* mitigation of any effects for, the following:

- (1) Aesthetics;
- (2) Historic sites;
- (3) Air quality;
- (4) Water quality;
- (5) Natural environment; and
- (6) Public health and safety.

(j) In support of the information required in Site 301.03(i), the application must be supported by studies to determine the impact of the facility on historic sites, air quality, water quality, the natural environment and public health and safety shall be designed in consultation with the appropriate state agencies, including but not limited to the Department of Environmental Services, the Department of Fish and Game, the Department of Resources and Economic Development, the Natural Heritage Bureau, and the Division of Historical Resources.

(k) Applicants are encouraged to consult with other parties with relevant knowledge and expertise, including but not limited to municipal officials, non-governmental organizations, academic institutions and resource professionals, for input both on issues that need to be addressed by impact studies and on the appropriate methodologies for conducting such studies.

(l) In support of the information required in Site 301.03(i)(1), the applicant shall prepare a Visual Impact Analysis (VIA) using generally accepted professional standards as follows. The VIA shall be of sufficient detail and geographic scope to allow the Committee and the public to understand and evaluate the potential impact of the proposed facility on the aesthetic character of viewpoints from which it will be clearly visible.

(1) The VIA shall include a detailed project description and map, including the size, location and appearance of all facility structures, infrastructure and areas to be cleared or graded.

(2) The VIA shall include a description of the physiographic and cultural landscape that forms the visual setting for the facility.

(3) The VIA shall characterize the extent of visibility and aesthetic impacts of the facility.

(4) The VIA shall include a description and discussion of alternatives that were considered during project development.

(5) The VIA shall include a description and discussion of best practical mitigation to avoid, minimize or mitigate adverse aesthetic impacts of the facility.

(6) Sections 301.03(l)(7) through 301.03(l)(14) shall be required elements of the VIA for 1) wind energy facilities, 2) an electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length. Other facilities shall incorporate these provisions to the extent appropriate and necessary to allow a full evaluation of the potential adverse aesthetic impacts of the proposed facility.

(7) The VIA shall analyze aesthetic impacts within a “visual analysis zone” defined as follows:

- a. For wind energy projects: at least 10 miles from any turbine.*
- b. For electrical transmission lines: no specified distance, but shall be sufficient to allow identification and analysis of potentially sensitive viewpoints from which it will be clearly visible. Suggested distances are ½ mile in urban areas, 2 miles in suburban and rural residential and village areas, 5 miles in lightly developed or undeveloped landscapes where the line follows an existing corridor, and 10 miles where the line would be located in a new corridor.*

(8) The VIA shall include a general description and map of the visual analysis zone, including topography, major landforms and natural features, major conservation lands and recreational areas, public roads, town and village centers, and land cover (e.g. forest, open, agriculture, residential, developed, etc.).

(9) The VIA shall identify all parts of the landscape within the visual analysis zone from which any part of any turbine or transmission tower 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. The analysis shall utilize the highest resolution topographic data available, with a horizontal resolution (raster pixel size) of no more than 30 meters. Analysis of vegetative screening shall assume a height of 40 feet for forest vegetation unless a different height is supported by LIDAR or other site-specific data. The analysis shall quantify the extent of project visibility (e.g., number of turbines or towers).

(10) The VIA shall identify visually sensitive viewpoints within the visual analysis zone from which the facility will be visible, which may include (but are not limited to) Scenic Viewpoints, town or village centers, major public roads, cultural areas or facilities, major water bodies or rivers, and residential areas. Identification of visually sensitive viewpoints shall consider:

- a. The significance of the viewpoint, based on factors such as:***
 - The level of use.***
 - The uniqueness of the viewpoint relative to other viewpoints in the region.***
 - Characterization of the viewpoint in public land management plans, town master plans or other public documents.***
 - Identification of the viewpoint in guidebooks or other published materials.***

- b. The existing aesthetic quality of the viewshed seen from the viewpoint, based on factors such as:***
 - The horizontal breadth of the viewshed (i.e. panoramic or narrow).***
 - The visual diversity of the viewshed, including topographic and vegetative diversity and the presence of distinctive features such as prominent summits, lakes or rivers.***
 - The nature and extent of existing human land use and development.***
 - The intactness of the viewshed (i.e., the presence or absence of discordant or distracting elements).***
 - The uniqueness of the viewshed relative to other scenic resources in the region.***

(11) Scenic Viewpoints of particularly high public value beyond the extent of the visual analysis zone, and from which the facility would be clearly visible, shall be considered for inclusion as visually sensitive viewpoints.

(12) For all visually sensitive viewpoints identified in Sections 10 and 11, the VIA shall categorize the potential aesthetic impact as Low, Medium or High based on consideration of factors such as:

- a. The expectations of the typical viewer.***
- b. The effect on future use and enjoyment of the viewpoint.***
- c. The extent of the facility (including all structures and disturbed areas) visible from the viewpoint.***

- d. The distance of the facility from the viewpoint.*
- e. The horizontal breadth (visual arc) of visible facility elements.*
- f. The scale of the facility relative to surrounding topography and existing structures.*
- g. The duration and direction of the typical view.*
- h. The presence of intervening topography.*
- i. The effect of facility lighting on nighttime use and enjoyment of the viewpoint.*
- j. The cumulative impact of the facility in combination with other existing and reasonably likely energy facilities.*

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

- a. Simulations will be prepared from all visually sensitive viewpoints deemed by the analysis of Section 12 to have a High level of potential impact, as well as a representative sample of views of characteristic landscapes from other visually sensitive viewpoints, public roads, town and village centers, or residential areas.*
- b. Simulations shall include comparative photographs of both the current condition and the simulated appearance of the facility.*
- c. Simulations should include all visible facility structures as well as associated infrastructure (including but not limited to roads) and cleared or graded areas.*
- d. Simulations shall adhere to the following standards [to be developed]:*
- e. Simulations shall to the greatest practical extent represent conditions of maximum visibility of the facility based on atmospheric conditions, sun angle and other relevant factors.*

(14) If the facility is required by Federal Aviation Administration regulations to install aircraft warning lighting, then the VIA shall characterize to the greatest practical extent the impact of this lighting (including but not limited to the number of lights visible from different viewpoints).

(m) In support of the information required in Site 301.03(i)(5), the applicant shall:

- (1) include documentation summarizing communications with natural resource agency personnel and other natural resource professionals.*
- (2) include a copy of an information request to the N.H. Natural Heritage Bureau regarding known or potential occurrences of rare, threatened, and endangered plants and exemplary natural communities in the project area; a list of rare, threatened, and endangered plants and exemplary natural communities potentially affected by the project; an assessment of potential effects on such plants and natural communities; and proposed best practical mitigation for any adverse effects.*
- (3) include copies of information requests to the New Hampshire Fish and Game Department, U.S. Fish and Wildlife Service, and N.H. Natural Heritage Bureau regarding known or potential occurrences of significant wildlife species in the project area; a list of significant wildlife species potentially affected by the project; an assessment of potential effects on such wildlife species; and proposed best practical mitigation for any adverse effects.*
- (4) include a report, prepared by a qualified professional, identifying and describing any critical wildlife habitat (as designated by the U.S. Fish and Wildlife Service) and any significant habitat resources within the project area; a list of critical wildlife habitat and significant habitat resources potentially affected by the project; an assessment of potential effects on such habitats and habitat resources; and proposed best practical mitigation for any adverse effects.*
- (5) conduct pre-application surveys for evidence of significant wildlife species following pertinent, available protocols recommended by state and federal wildlife agencies, unless waived in writing by state and federal wildlife agencies.*
- (6) prepare a cumulative impacts assessment, in consultation with state and federal wildlife agencies, addressing the scope and scale of potential effects of the facility, in combination with other existing or proposed energy development, on populations of significant wildlife species.*

(n) Each application shall include information regarding the effects of the facility on the orderly development of the region, including the applicant's estimate of the impacts of the construction and operation of the facility on:

- (1) Local land use;
- (2) Local economy; and
- (3) Local employment.

(o) Each application shall include pre-filed testimony and exhibits supporting the application.

(p) Each application shall include an attorney letter verifying that the applicant has secured legal access to all land necessary to build the proposed project, accompanied by any and all necessary documentation to prove such legal access.

Site 301.04 General Standards.

(a) The site evaluation committee shall consider the impacts to the resources set forth in NH RSA 162-H:16, IV(c) both individually and in combination. Impacts to multiple resources, none of which in itself is sufficient to create a finding of unreasonable adverse effect, may be sufficient to create such a finding when considered in combination.

(b) In addition to considering the impacts of the proposed facility in isolation, the SEC shall also consider the cumulative impacts of the proposed facility.

(c) The “Grounds for a finding of unreasonable adverse effect” and “Grounds for a finding of no unreasonable adverse effect” set forth in Sections 301.07 through 301.12 are neither exclusive nor dispositive; the SEC retains the ultimate judgment based on the balance of the evidence of whether or not a particular facility causes an unreasonable adverse effect on a resource.

(d) The site evaluation committee shall assess the following factors in resolving adverse impacts when considering an application:

(1) The facility should be proposed and designed to avoid adverse effects on the resources identified in NH RSA 162-H:16, IV(c);

(2) In cases where adverse impacts cannot be avoided, measures to minimize adverse effects identified in the SEC’s review of the facility may support a finding that such adverse effects are not unreasonable; and

(3) Where adverse impacts have been minimized as much as possible, in certain circumstances on-site mitigation measures or (where on-site mitigation measures are impractical or insufficient) off-site mitigation measures may support a finding that such adverse effects are not unreasonable. Mitigation measures must address the resource category adversely affected, reflect the best practical mitigation under the circumstances, and ensure resource benefits that exceed the adverse effects on the impacted resource.

(e) The site evaluation committee shall assess the following monitoring and adaptive measures when considering an application:

(1) The site evaluation committee shall require, where necessary, as conditions of the certificate appropriate post-construction studies to 1)

ensure compliance with required standards or 2) to evaluate and mitigate adverse impacts of a facility that cannot be reliably predicted prior to permitting (“adaptive management”). Such studies, if any, shall be conducted for a minimum of two years within the first five years of facility operation. The cost of such studies shall be borne by the applicant.

(2) Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain; it is the preferred method of management in these cases. Where sufficient knowledge exists, actual implementation of a solution should not be replaced by adaptive management. Adaptive management studies shall be designed in consultation with and approval of an adaptive management team established by the certificate, including representatives of appropriate state and federal agencies and at least one non-governmental professional with pertinent expertise. Results and recommendations to mitigate impacts identified from such studies shall be provided to the SEC and members of the adaptive management team within three months of the end of each field season or year of operation as appropriate. Subsequent to completion of such studies, or sooner if serious impacts are identified, the adaptive management team shall meet with representatives of the facility owner/operator and at least one member of the SEC to review results and identify satisfactory best practical mitigation strategies. Mitigation strategies so developed shall become amendments to the facility permit; and

(3) The site evaluation committee shall require, where necessary, as a condition of the certificate an appropriate protocol for ongoing monitoring, documentation and reporting of wildlife mortality or injury by facility staff. Any observed mortality or injury event involving an individual of a significant wildlife species shall be reported to NH Fish and Game Department (NHFG) and the US Fish and Wildlife Service within 24 hours of discovery. Other wildlife mortalities shall be reported monthly to NHFG by date, species, location, and circumstances. NHFG may recommend further study and/or adaptive management provisions based on observed mortality.

(f) The site evaluation committee shall require, where necessary, as a condition of certificate a decommissioning plan be submitted to and be approved. The plan must include, at a minimum, full funding for the removal of all components of the development, vegetative restoration of the developed area if it was built on previously undeveloped land, and maintenance of public safety and environmental protection during decommissioning. The SEC shall require the use of letters of credit, performance bonds, segregated funds, corporate parent guarantees and other forms of financial assurance to ensure that sufficient funds for decommissioning are available regardless of what point in the history of the development decommissioning becomes

necessary and are sufficiently escrowed in case of bankruptcy. The anticipated salvage value of facility components or materials shall not be included in the determination of the decommissioning fund.

(g) Each application for an energy facility shall contain, and the SEC shall require, best practical mitigation for all aspects of construction and operation of generating and transmission facilities. In determining best practical mitigation options, the site evaluation committee shall consider the following:

- (1) The existing state of technology;*
- (2) The effectiveness of available technologies or methods for reducing impacts; and*
- (3) The economic feasibility of the type of mitigation under consideration.*

Site 301.05 General Standards: Natural Environment. In determining whether an energy or transmission facility creates an unreasonable adverse effect on the natural environment, the SEC shall at a minimum consider the following resource areas: rare plants, rare and exemplary natural communities, wetlands and water resources, and wildlife and wildlife habitat.

Site 301.06 General Standards: Aesthetics.

(a) In determining whether an energy facility creates an unreasonable adverse effect on aesthetics, the site evaluation committee shall at a minimum consider the visual impact to historic properties, settled areas such as town centers and residential areas, and relatively natural landscapes valued for their contribution to recreational activities as viewed from Scenic Viewpoints.

- (1) The site evaluation committee shall consider not only the effect of the facility in isolation but also its potential cumulative effect when combined with other existing or proposed energy facilities within at least 10 miles of the proposed facility. Assessment of cumulative effect may be based upon the combined, successive, or sequential observation of energy facilities by the viewer.*
- (2) The site evaluation committee shall consider not only direct daytime visibility of the facility but also the nighttime impact of facility lighting, including both direct visibility of facility lights and indirect visibility of atmospherically-reflected lighting.*
- (3) In making a determination as to whether a facility creates an unreasonable adverse effect on aesthetics, the site evaluation committee shall consider the Visual Impact Analysis, information submitted by*

intervenors and independent consultants, and public comment. The site evaluation committee shall base its decision on the potential impact to individual viewpoints or the combined impacts to multiple viewpoints.

(4) A finding that an energy facility is a visible feature in the landscape is not by itself a sufficient basis for a finding that the facility has an unreasonable adverse effect on aesthetics.

Site 301.07 Grounds for Findings: Rare Plants.

(a) For the Site Evaluation Committee to determine that the site and facility will have an unreasonable adverse effect on rare plants, the committee shall give strong consideration to findings that a population of a rare plant species is present in the project area, would be directly disturbed by project activity, and:

*(1) The population that would be disturbed by project activity is notably larger or of higher quality than other known populations of the species;
or*

(2) The species is known from few if any other locations within the ecological subsection or other ecologically relevant area.

(b) For the Site Evaluation Committee to determine that the site and facility will not have an unreasonable adverse impact on rare plants, the committee shall give strong consideration to findings that:

(1) No rare plants will be disturbed by project activity, or

(2) A population of a rare plant species is present in the project area and will be directly disturbed by project activity, but:

- i. The population is small or of low quality relative to other known populations of the species,*
- ii. There are multiple other populations of the species within the ecological subsection or other ecologically relevant area, or*
- iii. The population has a low probability of long-term viability if left undisturbed.*

Site 301.08 Grounds for Findings: Natural Communities.

(a) For the Site Evaluation Committee to determine that the site and facility will have an unreasonable adverse effect on natural communities, the committee shall give strong consideration to findings that an occurrence of such a community is present within the project area, would be directly impacted by project activity and:

(1) The community that would be disturbed by project activity is notably larger or of higher quality than other known occurrences of the community; or

(2) The community is known from few if any other locations within the ecological subsection or other ecologically relevant area.

(b) For the Site Evaluation Committee to determine that the site and facility will not have an unreasonable adverse impact on natural communities, the committee shall give strong consideration to findings that:

(1) No rare or exemplary natural communities will be disturbed by project activity; or

(2) An occurrence of a rare or exemplary natural community is documented within the project area and will be directly impacted by project activity, but:

- i. The community occurrence is small or of low quality relative to other known occurrences of the community,*
- ii. There are multiple other occurrences of the community within the ecological subsection or other ecologically relevant area, or*
- iii. The occurrence has a low probability of long-term viability if left undisturbed.*

Site 301.09 Grounds for Findings: Wetlands and Water Resources.

(a) For the Site Evaluation Committee to determine that the site and facility will have an unreasonable adverse effect on wetlands and water resources, the committee shall give strong consideration to findings that the facility involves impacts to wetlands, streams or other water resources that cannot be avoided, minimized, or mitigated through the conditions of permits issued by the New Hampshire Department of Environmental Services, U.S. Army Corps of Engineers and other state or federal agencies with jurisdiction over the facility because:

(1) Project activity would create a significant risk of degradation of water quality (including but not limited to turbidity, temperature, chemical parameters and biotic and aquatic community integrity) outside of the project area.

(2) Project activity would significantly alter natural hydrologic regimes (i.e., quantity and timing of surface and subsurface flows) outside of the project area.

(b) For the Site Evaluation Committee to determine that the site and facility will not have an unreasonable adverse effect on wetlands and water resources, the

committee shall give strong consideration to findings that the New Hampshire Department of Environmental Services, the U.S. Army Corps of Engineers and other state or federal agencies with jurisdiction over the facility have issued required permits with conditions sufficient to minimize significant impacts to wetlands, water quality and hydrologic regimes and appropriate best practical mitigation for wetland impacts.

Site 301.10 Grounds for Findings: Wildlife and Wildlife Habitat.

(a) For the Site Evaluation Committee to determine that the site and facility will have an unreasonable adverse effect on wildlife and wildlife habitat, the committee shall give strong consideration to findings that:

- (1) The presence of one or more significant wildlife species has been documented in the project area, and the facility would eliminate or significantly degrade primary habitat utilized by that species.*
- (2) The project area lies in whole or in part above 2700 feet in elevation, and the facility would eliminate or significantly degrade habitat utilized by species dependent on high-elevation habitat.*
- (3) Available information suggests a high risk of mortality for migrating or resident aquatic species, animals, birds or bats as indicated by passage rates, flight elevations or species composition of migrants and residents during various weather or flow conditions, and the facility would create an unacceptable risk of mortality to migrating or resident aquatic organisms, animals, birds or bats that cannot be successfully mitigated through operational measures.*
- (4) The facility would create significant fragmentation of aquatic ecosystems or a block of mature interior forest habitat that is notable in the ecological subsection or other ecologically relevant area for its size and/or quality.*
- (5) The facility is a wind energy facility and is located within one-half mile of a peregrine falcon or golden eagle aerie or active bald eagle nest, within 1.5 miles of a known bat maternity/nursery colony or hibernaculum, or within 0.25 miles of a known common nighthawk nest site.*
- (6) The facility would 1) significantly alter aquatic and riparian habitat (including but not limited to quantity and timing of hydrologic flows, temperature or chemical composition, and the character of aquatic, littoral and riparian vegetation) to the detriment of native or sport species, 2) significantly restrict the passage of aquatic organisms through the project area, 3) create a significant risk of mortality to aquatic organisms passing through the project area.*

(7) The facility's cumulative impact, in itself or in combination with other impacts, could represent an overall detrimental impact to a vulnerable wildlife resource.

(b) For the Site Evaluation Committee to determine that the site and facility will not have an unreasonable adverse impact on wildlife and wildlife habitat, the committee shall give strong consideration to findings that:

(1) The facility would only disturb habitat that is common in the ecological subsection or other ecologically relevant area or which has been significantly impacted by previous human activity.

(2) The facility would not directly impact the primary habitat(s) utilized by significant wildlife species observed in the project area.

(3) The facility would not fragment aquatic ecosystems or large blocks of mature interior forest habitat.

Site 301.11 Grounds for Findings: Aesthetics. [Note: This proposal focuses on evaluation of impacts to Scenic Viewpoints (more or less natural areas, including the backdrop to historic places) but do not fully address the issues associated with evaluating energy facilities' aesthetic impacts on settled areas (such as town centers and residential areas).]

(a) For the Site Evaluation Committee to determine that the site and facility will have an unreasonable adverse effect on aesthetics when viewed from one or more Scenic Viewpoints, the committee shall give strong consideration to findings that:

(1) The Viewpoint(s) are deemed to be of high concern by the Visual Impact Analysis or SEC deliberations;

(2) The facility will have a significant visual impact on a relatively naturally appearing landscape or setting for a historic property; and

(3) There is a high likelihood that the facility, considered in isolation or cumulatively in combination with the impacts of other existing or reasonably likely facilities, will significantly reduce the public's aesthetic enjoyment of one or more Viewpoints.

(b) For the Site Evaluation Committee to determine that the site and facility will not have an unreasonable adverse effect on aesthetics when viewed from one or more Scenic Viewpoints, the committee shall give strong consideration to findings that:

(1) The facility is not a dominant feature on the landscape as seen from Scenic Viewpoints due to factors such as distance or intervening topography or vegetation.

(2) Only limited parts of the facility are visible from Scenic Viewpoints such that the facility is not a dominant feature on the landscape.

(3) The facility is seen only from Scenic Viewpoints of relatively low significance or low levels of public use.

(4) The facility is seen in the context of a landscape in which existing human development is already a prominent feature of the viewscape.

Site 301.12 Grounds for Finding: Public Interest. In determining whether a facility will serve the public interest, the SEC shall take 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.