

State of New Hampshire
Site Evaluation Committee

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Martin P. Honigberg, Esquire
Chairman

Thomas S. Burack, Esquire
Vice-Chair

January 12, 2015

Mr. Jeffry A. Pattison
Legislative Budget Assistant
Office of Legislative Budget Assistant
Room 102 State House
Concord, NH 03301

Re: REQUEST FOR FISCAL IMPACT STATEMENT
Site 205 and Site 300 – Explanation of Proposed Rule and Certificates of
Site and Facility Rules of Site Evaluation Committee

Dear Mr. Pattison:

Attached please find a Request for Fiscal Impact Statement regarding Site 205 and Site 300, the rules of the Site Evaluation Committee regarding Explanation of Proposed Rule and Certificates of Site and Facility. A copy of the Initial Proposals for readoption without amendment of Site 205 and readoption with amendments of Site 300, as approved by the Site Evaluation Committee, is attached for your review. The Committee is readopting its existing Site 205 without amendment and its existing Site 300 rules with a significant number of amendments that reflect recent legislation that amended the Committee's governing statute, RSA 162-H. These rules have an expiration date of June 17, 2016, but are required to be amended "[a]s soon as practicable but no later than July 1, 2015," pursuant to RSA 162-H:10, VII.

When you have completed the Fiscal Impact Statement, please notify me as contact person for the Committee. If you should have any questions or concerns regarding this matter, please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "David K. Wiesner".

David K. Wiesner
Staff Attorney, NHPUC
David.Wiesner@puc.nh.gov
Tel: 271-2431

Enclosures

APPENDIX II-B

OFFICE OF LEGISLATIVE BUDGET ASSISTANT
REQUEST FOR FISCAL IMPACT STATEMENT (FIS)

FIS Number _____ Rule Number Site 205 and Site 300

<p>1. Agency Name & Address:</p> <p>Site Evaluation Committee c/o Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, New Hampshire 03301</p>	<p>2. RSA Authority: <u>RSA 162-H:10, VI and VII</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment X _____</p>
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5. Short Title: **Site 205 and Site 300 - Explanation of Proposed Rule and Certificates of Site and Facility**

6. Contact Person:

Name:	David K. Wiesner	Title:	Staff Attorney
Address:	N.H. Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, NH 03301	Phone #:	603-271-6030
		Fax #:	603-271-4033
			David.Wiesner@puc.nh.gov
			TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

Remember:

- (a) A copy of the proposed rule or an annotated copy of the amended rule must accompany this form. The annotated copy shall use [brackets] to indicate deleted material, and underlining for added material, or any other annotation style allowed in Section 5.4 in Chapter 4 of the Drafting and Procedure Manual for Administrative Rules.
- (b) If calculations are required in the preparation of this request, attach a worksheet showing the methodology.
- (c) This form may be replicated to expedite preparation.
- (d) A transmittal memo shall accompany a request for a fiscal impact statement, noting the number of requests being sent and short titles.
- (e) Please allow 10 working days from day of receipt for the Office of Legislative Budget Assistant to complete the fiscal impact statement. Additional information about this form is in Section 2.3 in Chapter 3 of the Drafting and Procedure Manual for Administrative Rules.

REQUEST FOR FISCAL IMPACT STATEMENT (FIS) - Page 2

(f) Please provide the following information and attach additional sheets if necessary:

(1) Summarize the rule.

The proposed rules make changes required by recent statutory amendments to RSA 162-H that affected the administration and procedures of the Site Evaluation Committee and required the Committee to adopt more detailed and specific rules covering applications for, and criteria for the issuance of, certificates of site and facility for wind energy systems and other energy facilities. The proposed rules also update the existing rules based on administrative experience and to reflect changed circumstances.

(2) Is the cost associated with this rule mandated by the rule or by state statute? If the cost is mandated by statute, then the rule itself may not have a cost or benefit associated with it. Please state either the statute or chapter law that is instigating this rule.

Any costs associated with the proposed rules are mandated by statute, RSA 162-H, as implemented through the rules. The proposed rules administer the statute and do not add any other specified costs or fees.

(3) Compare the cost of the proposed rule with the cost of the existing rule, if there is an existing rule.

No net change in costs to the State is anticipated as a result of the proposed rules as compared to the existing rules, other than cost changes due to the statutory amendments affecting the Committee's membership, structure, organization, governance, administration, processes, and procedures. Any such cost changes are believed to be indeterminable because of the many variables involved in the work of the Committee, including the number, nature, and complexity of applications, petitions, and other matters that are filed with and adjudicated by the Committee during any particular fiscal year.

(4) Describe the costs and benefits to the state general fund which would result from this rule.

Any civil penalties incurred as a result of violations of these rules would be applied to the State's general fund.

(5) Explain and cite the federal mandate for the proposed rule, if there is such a mandate. How would the mandate affect state funds?

There is no federal mandate for these proposed rules.

(6) Describe the cost and benefits to any state special fund which would result.

There is no impact on any State special fund as a result of the proposed rules or the existing rules.

(7) Describe the costs and benefits to the political subdivisions of the state.

The proposed rules are neutral as applied to political subdivisions of the State. Although the rules provide significant opportunities for the involvement of political subdivisions in the process of reviewing

applications for certificates of site and facility for energy facilities and in other matters before the Committee, this participation is voluntary except to the extent provided under the governing statute, RSA 162-H.

- (8) Describe the costs and benefits to the citizens of the state.

The proposed rules cause no direct costs to the citizens of the State, although the rules provide significant opportunities for citizen involvement in the process of reviewing applications for certificates of site and facility for energy facilities and in other matters before the Committee. The proposed rules benefit the citizens of the State in that the rules implement the amended statutory process for siting of proposed energy facilities located in the State, which the Legislature stated provides many benefits and serves the public interest. See RSA 162-H:1.

- (9) Describe the costs and benefits to any independently owned business, including a description of the specific reporting and recordkeeping requirements upon those employing fewer than 10 employees.

The proposed rules do not impose any direct costs on independently owned businesses, except to the extent provided under or contemplated by the governing statute, RSA 162-H.

Although the proposed amendments to the Site 300 provisions specifying application requirements for a certificate of site and facility are extensive and detailed, these amendments are believed to largely reflect current practice and precedent of applicants and the Committee. The proposed rules provide greater clarity and certainty to applicants and other interested stakeholders with respect to application requirements and the criteria for certificate issuance, and this clarity and certainty may serve to reduce the total costs of their participation in the process.

In certain cases, applicants may incur greater costs in preparation of application materials but decreased costs during the course of review and adjudication of the application, under the proposed rules as compared to the existing rules. More specific information may be required to be submitted at the application stage by certain applicants, but this may obviate the need to submit this information in response to discovery requests or during the adjudicatory hearing stage. In other cases, the opposite cost effects may pertain.

Any such cost effects of the proposed rules are believed to be indeterminable because of the many variables involved in any particular applicant's proposed project, including the type, size, location, environmental impacts, and economic effects of the project.

The proposed rules are not expected to change the level of reporting or other recordkeeping requirements already performed by independently owned businesses employing fewer than 10 employees.

Readopt Site 205, effective 6-17-08 (Document #9182-A), to read as follows:

Site 205 EXPLANATION OF PROPOSED RULE

Site 205.01 Explanation of Proposed Rule.

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

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

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

APPENDIX

Rule	Statute
Site 205.01	RSA 162-H: 4, V(a); <u>10, VI and VII</u> ; RSA 541-A:11, <u>VII</u>

Readopt with amendments Site 300, effective 6-17-08 (Document #9182-B), to read as follows:

CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY

PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES

Site 301.01 Filing.

(a) Each applicant for a certificate for an energy facility ~~or a renewable energy facility~~ shall file with the committee one original and ~~18~~15 paper copies of its application and an electronic version of its application in PDF format ~~with the committee, unless otherwise directed by the chairperson or the administrator.~~

~~— (b) Pursuant to RSA 162 H:7, I, each applicant for a certificate for a bulk power supply facility shall file on original and 18 copies of its application and an electronic version of its application in PDF format with the commission.~~

~~— (c) The chairperson shall:~~

(b) The committee or the administrator shall:

(1) Acknowledge receipt of ~~the an~~ application ~~in~~filed under Site 301.01(a) in writing directed to the applicant;

(2) Forward a copy of the application and acknowledgment to each member of the committee ~~and the department of cultural resources, division of historical resources;~~ and

(3) Post a copy of each application on the committee's website.

Site 301.02 Format of Application.

(a) Applications shall be prepared on standard 8 ½ x 11 inch sheets, and plans shall be folded to that size.

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

(c) All information furnished shall follow the numbering ~~systems~~systems set forth in Site 301.03 through 301.09.

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

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

Site 301.03 Contents of Application.

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

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

(1) The name of the applicant;

- (2) The applicant's mailing address, telephone and fax numbers, and e-mail address;
- (3) The name and address of the applicant's parent company, association or corporation if the applicant is a subsidiary;

(4) If the applicant is a corporation:

- a. The state of incorporation;
- b. The corporation's principal place of business; and
- c. The names and addresses of ~~it~~the corporation's directors, officers and stockholders;

~~(5)~~(5) If the applicant is a limited liability company:

- a. The state of the company's organization;
- b. The company's principal place of business; and
- c. The names and addresses of the company's members, managers and officers;

~~(6)~~ If the applicant is an association, the names and addresses of the residences of the members of the association; and

~~(7)~~ Whether the applicant is the owner or lessee of the ~~site or~~proposed facility or has some other legal or business relationship to ~~it~~; and

~~(7)~~ A statement~~the proposed facility, including a description~~ of ~~assets and liabilities of the applicant~~that relationship.

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

- (1) The location and address of the site of the proposed facility;
- (2) Site acreage, shown on an attached property map and located by scale on a U.S. -Geological Survey or GIS map;
- (3) The location 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;
- (5) Identification of natural and other resources at or within or adjacent to the site; and

~~(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 views of municipal and regional planning commissions and municipal governing boards.

(6) Evidence that the applicant has a current right of legal access to and control of or the ability to acquire control of the site, in the form of ownership, ground lease, easement, option, or other contractual rights or interests.

(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~~permitting or other regulatory authority, under ~~state or federal~~ or state law, to regulate any aspect of the construction or operation of the proposed energy facility;
 - (2) Documentation that demonstrates compliance with the application requirements of all such agencies;
 - (3) A copy of the completed application form for each such agency; and
 - (4) Identification of any requests for waivers from the information requirements of any state agency or department having permitting or other regulatory authority whether or not such agency or department is represented on the committee ~~or not~~.
- (e) If the application is for an energy facility that is not an electric generating facility, an electric transmission line, or an energy transmission pipeline, 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~~transportation;
 - (6) Production information, as follows:
 - a. An inventory of products and waste streams;
 - b. The quantities and specifications of hazardous materials; and
 - c. Waste management plans.
- (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~~each turbine and generator unit;
 - (2) Capacity in megawatts, as designed and as intended for operation;
 - (3) Type of turbine and generator unit, including:
 - a. Fuel utilized;
 - b. Method of cooling condenser discharge; and
 - c. ~~Whether the unit will serve base, intermediate or peaking loads;~~
 - d. ~~Unit efficiency; and~~

~~e. Impact on system stability and reliability.~~

(4) Any associated new substations, generator interconnection lines, and transmission lines, whether identified by the applicant or through a system impact study conducted by or on behalf of the interconnecting utility or ISO New England, Inc.; 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~~ an electric generating 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 electric generating unit or units;

(8) Type of construction (described in detail);

(9) Construction schedule, including start date and scheduled completion date; and

(10) Impact on system stability and reliability.

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

(1) A detailed 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~~ alternative locations it considers available for the site of each major part of the proposed facility;

(3) ~~A description~~ Documentation that the applicant has held at least one public information session in detail of the impact of each major part of county where the proposed facility on the environment for each site is to be located at least 30 days prior to filing its application, pursuant to RSA 162-H:10, I and Site 201.01;

(4) Documentation that written notification of the proposed facility, including copies of the application, has been given to the governing body of each municipality in which the facility is proposed to be located;

~~(4) A description in detail of the applicant's proposals for studying and solving environmental problems;~~

~~(5) A description in detail~~(5) Each application shall include the information described in Sections 301.04 through 301.09;

(6) Each application shall include information describing how the proposed facility will be consistent with the public interest; and

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

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

~~(6)-(a)~~ Financial information shall include:

(1) A statementdescription of the applicant's experience financing other energy facilities;

(2) A description of the corporate structure of the applicant, including a chart showing the direct and indirect ownership of the applicant;

(3) A description of the source of funds for the construction and operation of the proposed facility;

(4) An explanation of how the applicant's financing plan compares with financing plans employed for other energy facilities, including any increased risks or costs associated with the applicant's financing plan; and

(5) Current and pro forma statements of assets and liabilities of the applicant; and

~~(7) Documentation that written notification~~(b) Technical information shall include:

(1) A description of the proposed projectapplicant's qualifications and experience in constructing and operating energy facilities, including appropriate copiesprojects similar to the proposed facility; and

(2) A description of the application, has been given to the governing bodyexperience and qualifications of each community in whichany contractors or consultants engaged or to be engaged by the facility isapplicant to provide technical support for the construction and operation of the proposed to be located facility, if known at the time;

~~(i)~~(c) Managerial information shall include:

(1) A description of the applicant's management structure for the construction and operation of the proposed facility, including an organizational chart for the applicant;

(2) A description of the qualifications of the applicant and its executive personnel to manage the construction and operation of the proposed facility; and

(3) To the extent the applicant plans to rely on contractors or consultants for the construction and operation of the proposed facility, a description of the experience and qualifications of the contractors and consultants, if known at the time.

Site 301.05 Effects on Aesthetics. Each application shall include the following information regarding the effects of ~~the facility on~~, and planplans for ~~mitigation of~~avoiding, minimizing, or mitigating any unreasonable adverse effects on the following of, the proposed facility on aesthetics:

~~(1) Aesthetics;~~

(a) ~~(2)~~ A visual impact assessment of the proposed facility prepared in a manner consistent with generally accepted professional standards by a professional trained or having experience in visual impact assessment procedures;

(b) The visual impact assessment shall contain the following components:

(1) A description and map depicting the locations of the proposed facility and all associated buildings, structures, roads, and other ancillary components, and all areas to be cleared and graded, that would be visible from any scenic resources, based on both bare ground conditions using topographic screening only and with consideration of screening by vegetation or other factors;

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

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

(4) A computer-based visibility analysis to determine the area of potential visual effect, which, for proposed wind energy systems, shall extend to a 10-mile radius from each wind turbine in the proposed facility, and, for electric transmission lines longer than 1 mile, shall be ½ mile in urban areas, 2 miles in suburban, rural residential, and village areas, 3 miles in lightly developed or undeveloped landscapes where the line follows an existing transmission corridor, and 5 miles in lightly developed or undeveloped landscapes where the line would be located in a new transmission corridor;

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

(6) Characterization of the potential visual impacts of the proposed facility on identified scenic resources as high, medium, or low, based on consideration of the following factors:

a. The expectations of the typical viewer;

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

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

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

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

f. The scale of the proposed facility relative to surrounding topography and existing structures;

g. The duration and direction of the typical view of elements of the proposed facility; and

h. The presence of intervening topography between the scenic resource and elements of the proposed facility;

(7) Photosimulations from representative key observation points, and from other scenic resources for which the potential visual impacts are characterized as “high” pursuant to (6) above, to illustrate the potential change in the landscape that would result from construction of the proposed facility and associated infrastructure, including land clearing and grading and road construction;

(8) If the proposed facility is required by Federal Aviation Administration regulations to install aircraft warning lighting, a description and characterization of the potential visual impacts of this lighting, including the number of lights visible from key observation points; and

(9) A description of the best practical measures planned to avoid, minimize, or mitigate the potential visual impacts of the proposed facility, and any alternative measures considered but rejected by the applicant.

Site 301.06 Effects on Historic sites;

~~(3) Air quality;~~

~~(4) Water quality;~~

~~(5) Natural environment; and~~

~~(6) Public health and safety.~~

~~(j) Sites.~~ Each application shall include the following information regarding the effects of ~~the~~ and plans for avoiding, minimizing, or mitigating any unreasonable adverse effects of, the proposed facility on historic sites:

(a) Demonstrate that project review of the proposed facility has been initiated for purposes of compliance with Section 106 of the National Historic Preservation Act, 16 U.S.C. §470, or RSA 227-C:9, as applicable;

(b) Identify all areas of potential archaeological sensitivity located in the proposed facility area;

(c) Identify all historic resources located in the proposed facility area or within the area of potential effects as defined in 36 C.F.R. §800.16(d);

(d) Identify the best practical measures planned to avoid, minimize, or mitigate potential adverse effects on archaeological and historic resources;

(e) Describe the applicant’s plans to implement any measures identified pursuant to (d) above; and

(f) Describe the status of the applicant’s consultations with the New Hampshire Division of Historical Resources, and, if applicable, with the lead federal agency.

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

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

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

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

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

(1) Identify significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility;

(2) Identify critical wildlife habitat and significant habitat resources potentially affected by construction and operation of the proposed facility;

(3) Assess potential impacts of construction and operation of the proposed facility on significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and on critical wildlife habitat and significant habitat resources, including fragmentation or other alteration of terrestrial or aquatic significant habitat resources;

(4) Describe the best practical measures planned to avoid, minimize, or mitigate potential adverse impacts of construction and operation of the proposed facility on wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and on critical wildlife habitat and significant habitat resources; and

(5) Describe the status of the applicant's consultations with the New Hampshire Department of Fish and Game, the New Hampshire Natural Heritage Bureau, the United States Fish and Wildlife Service, and any other federal or state agencies having permitting or other regulatory authority over fish, wildlife, and other natural resources.

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

(a) For proposed wind energy systems:

(1) Include a sound impact assessment prepared in accordance with professional standards by an expert in the field, which assessment shall include the reports of a preconstruction sound background study and a sound modeling study, as follows:

a. The preconstruction sound background study shall:

1. Use measurement procedures that are consistent with the most recent versions of ANSI S12.18 and ANSI S12.9, Part 3 (with or without an observer present) guidelines;
2. Include measurements taken using a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter; and
3. Be conducted in locations that are representative of nearby sound receptors, including occupied permanent residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings;

b. The preconstruction sound background study report shall:

1. Include a map showing proposed wind turbine locations and all permanently occupied residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings located within the study area;
2. Indicate topography, temperature, weather conditions, sources of ambient sound, and prevailing wind direction for the monitoring period; and
3. Describe the test locations with GPS coordinates or a similar level of detail that permits others to identify the specific test locations;

c. The sound modeling study shall:

1. Be performed based on the most recent version of International Organization for Standards ISO 9613-2; and
2. Use wind turbine sound power levels determined according to the most recent version of International Electrotechnical Commission Standard IEC 61400, Part 11;

d. The sound modeling study report shall:

1. Include the results of the modeling described in (c) above as well as a map with sound contour lines showing dBA sound emitted from the proposed wind energy system at 5 dBA intervals;
2. Include locations out to the 35 dBA sound contour line or 2 miles from any wind turbine included in the proposed facility, whichever is closer to the nearest wind turbine; and
3. Show proposed wind turbine locations and all occupied permanent residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings located within the study area;

(2) Include a report evaluating the shadow flicker expected to be perceived at all buildings occupied or used for another purpose, which report shall be based upon computer modeling programs and input data defining the most conservative case scenario, including the astronomical maximum shading duration;

- (3) Describe planned setbacks that indicate the distance between each wind turbine and the nearest nonparticipating landowner's existing occupied building and property line, and between each wind turbine and the nearest public road and overhead utility line, and explain why the indicated distances are adequate to protect the public from risks associated with the operation of the proposed wind energy facility;
- (4) Include an assessment of the risks of ice throw, blade shear, and tower collapse on public safety, including a description of the best practical measures taken or planned to avoid or minimize the occurrence of such events, if necessary;
- (5) Describe the lightning protection system planned for the proposed facility;
- (6) Describe any determination made by the Federal Aviation Administration regarding whether any hazard to aviation is expected from any of the wind turbines included in the proposed facility, and describe the Federal Aviation Administration's lighting, turbine color, and other requirements for the wind turbines;
- (7) Include a decommissioning plan providing for removal of all structures and restoration of the facility site with a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond; and
- (8) Include a plan for fire protection for the proposed facility prepared by or in consultation with a fire safety expert;
- (b) For electric transmission facilities:

 - (1) Include an assessment of electric and magnetic fields and the potential impacts of such fields on public health and safety; and
 - (2) Include an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 dBA or more over ambient levels at the edge of the right-of-way, or at the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant;
- (c) For all energy facilities:

 - (1) Include an assessment of operational sound, except as provided elsewhere herein;
 - (2) Include a facility decommissioning plan with a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond;
 - (3) Include a plan for fire safety prepared by or in consultation with a fire safety expert;
 - (4) Include a plan for emergency response to the proposed facility site; and

(5) Include a description of any additional plans or measures to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility.

Site 301.09 Effects on Orderly Development of Region. Each application shall include information regarding the effects of the proposed facility on the orderly development of the region, including the views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility, if such views have been expressed in writing, and the applicant's estimate of the impactseffects of the construction and operation of the facility on:

~~(1) Local land use;~~

~~(2) Local economy; and~~

~~(3) Local employment.~~

(a) — (k) Each application shall include pre-filed testimony and exhibits supporting the application. Land use in the region, including the following:

(1) A description of the prevailing land uses in the host communities and communities abutting the proposed facility; and

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

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

(1) The economic effect of the facility on the host communities and communities abutting the proposed facility;

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

(3) The effect of the proposed facility on State and local tax revenues;

(4) The effect of the proposed facility on regional real estate values;

(5) The effect of the proposed facility on tourism and recreation in the host communities and communities abutting the facility; and

(6) The effect of the proposed facility on community services and regional infrastructure;

(c) Employment in the region, including an assessment of:

(1) The number and types of full-time equivalent local jobs expected to be created, preserved, or otherwise affected by the construction of the proposed facility, including direct construction employment and indirect employment induced by facility-related wages and expenditures; and

(2) The number and types of full-time equivalent jobs expected to be created, preserved, or otherwise affected by the operation of the proposed facility, including direct employment by the applicant and indirect employment induced by facility-related wages and expenditures.

Site 301.0410 Completeness Review and Acceptance of Applications for Bulk Power Supply Facilities and Energy Facilities.

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

(b) Upon receiving an application, the committee shall conduct a preliminary review to ascertain if the application contains sufficient information for the committee to review the application ~~to carry out the purposes of~~under RSA 162-H: ~~and these rules.~~

~~_____ (c) Each state agency shall have 45 days from the time the committee forwards the application to notify the committee in writing whether the application contains sufficient information for the agency to begin its review.~~

~~_____ (d) Within 60 days after the filing of the application, the committee shall ~~decide~~ determine whether to accept the application ~~as~~ administratively complete and has been accepted for review.~~

~~_____ (d) If the application is incomplete, the chairperson shall explain in writing the basis for the decision.~~

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

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

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

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

Site 301.05 Completeness Review11 Exemption Determination.

~~_____ (a) The committee shall have the authority to exempt an applicant from the approval and Acceptance certificate provisions of Applications for Renewable Energy Facilities RSA 162-H and the rules of the committee according to this section.~~

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

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

(2) Consideration of the proposed energy facility, the chairperson shall forward to each of the other state- by only selected agencies having jurisdiction represented on the committee is required and the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;

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

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

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

Site 301.12 Timeframe for Application Review.

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

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

(c) The committee shall issue or deny a certificate for an energy facility within 365 days after application acceptance.

(d) The committee shall temporarily suspend its deliberations and the time frames set forth in this section at any time while an application is pending before the committee, if it finds that such suspension is in the public interest.

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

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

(1) The applicant's experience in securing funding to construct and operate energy facilities similar to the proposed facility;

(2) The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;

(3) The applicant's statements of current and pro forma assets and liabilities; and

(4) Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.

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

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

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

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

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects.

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

- (1) The existing character of the area of potential visual effect in the host community and communities abutting or in the vicinity of the proposed facility;
- (2) The significance of affected scenic resources and their distance from the proposed facility;
- (3) The extent, nature, and duration of public uses of affected scenic resources;
- (4) The scope and scale of the change in the landscape visible from affected scenic resources;
- (5) The evaluation of the overall visual impacts of the facility as described in the visual impact assessment submitted by the applicant and other relevant evidence submitted pursuant to Site 202.24;
- (6) Whether the proposed facility would be a dominant feature of a landscape in which existing human development is not already a prominent feature as viewed from affected scenic resources;
- (7) Whether the visibility of the proposed facility would offend the sensibilities of a reasonable person during daytime or nighttime periods; and
- (8) The effectiveness of the best practical measures planned by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics.

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

- (1) Consider the nature and significance of the historic and archaeological resources identified by the applicant;

(2) Consider the effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on historic and archaeological resources; and

(3) Consider the status of the applicant's consultations with the New Hampshire Division of Historical Resources and, if applicable, the federal lead agency.

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

(d) In determining whether a proposed energy facility will have an unreasonable adverse effect on water quality, the committee shall consider the determinations of the New Hampshire Department of Environmental Services, the United States Army Corps of Engineers, and other state or federal agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, a copy of the application for the agency's review as described with respect to applications and permits identified in RSA 162-H:7, IV Site 301.03(d), and other relevant evidence submitted pursuant to Site 202.24.

~~— (b) Upon the filing of an application, the chairperson or designee shall conduct a preliminary review to ascertain whether the application contains sufficient information to carry out the purposes of RSA 162-H:~~

~~— (c) Within 30 days after the filing of the application, the chairperson or designee shall decide whether to accept the application:~~

~~— (d) If the application is determined to be incomplete, the chairperson or designee will notify the applicant in a writing stating the basis for the decision.~~
(e) In determining whether construction and operation of a proposed energy facility will have an unreasonable adverse effect on the natural environment, including wildlife species, rare plants, rare natural communities, and other exemplary natural communities, the committee shall consider:

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

(2) The nature, extent, and duration of the potential effects on the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(3) The nature, extent, and duration of the potential fragmentation or other alteration of terrestrial or aquatic significant habitat resources;

(4) The views of the New Hampshire Department of Fish and Game, the New Hampshire Natural Heritage Bureau, the United States Fish and Wildlife Service, and other agencies authorized to identify and manage significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(5) The best practical measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(6) The best practical measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on terrestrial or aquatic significant habitat resources; and

(7) Whether conditions should be included in the certificate for post-construction monitoring and reporting and for adaptive management to address potential adverse effects that cannot reliably be predicted at the time of application.

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

(1) For all energy facilities, consider the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24;

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

a. Sound Standards: A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA above ambient levels between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above ambient levels at all other times during each day, as measured at the exterior wall of any existing permanently occupied building on a non-participating landowner's property, or at the non-participating landowner's property line if it is less than 300 feet from an existing occupied building, and these sound levels shall not be exceeded for more than 3 minutes within any 60 minute period;

b. Shadow Flicker Standard: Shadow flicker created by the applicant's energy facility during operations shall not occur more than 30 hours per year or 30 minutes per day within any occupied permanent residence of a non-participating landowner;

c. Setback Standards: The setback distance between a wind turbine tower and a non-participating landowner's existing permanently occupied building shall be no less than 3 times the turbine tower height as measured from the center of the wind turbine base to the nearest point of the foundation of the permanently occupied building, the setback distance between a wind turbine tower and a non-participating landowner's property line shall be no less than 1.1 times the turbine tower height as measured from the center of the wind turbine base, and the setback distance between a wind turbine tower and the nearest public road shall be no less than 1.5 times the turbine tower height as measured from the center of the wind turbine base to the right-of-way line of the public road, in each case with the turbine tower height measured from the base of the turbine foundation to the tip of the blade in the vertical position; and

d. Participating Landowners: The applicant's energy facility may exceed the sound, shadow flicker, and setback requirements set forth in a., b., and c. above with respect to any residence, occupied building, or other property if the owner thereof has agreed in writing to waive those requirements.

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

(a) The extent to which the siting, construction, and operation of the proposed facility will affect land use, employment, and the economy of the county or counties in which the facility is proposed to be located;

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

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

Site 301.16 Additional Criteria Relative to Wind Energy Systems. In addition to the criteria set forth in Site 301.13 through 301.15, in determining whether to grant a certificate of site and facility for a proposed wind energy system, the committee shall consider:

(a) Cumulative impacts to natural, scenic, recreational, and cultural resources, including with respect to aesthetics the potential impacts of combined observation, successive observation, and sequential observation of energy facilities by the viewer; and

(b) Best practical measures to avoid, minimize, or mitigate adverse effects of the proposed wind energy system.

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~~(c) If the applicant is notified that its application is incomplete, the applicant may file a new application or complete the filed application within 10 days of receipt of notification of that the application is incomplete.~~

~~(f) If the applicant completes the application within the 10 day time frame, the chairperson or designee shall, no later than 14 days after receipt of the revised application, accept the application. If the application is not complete, the chairperson or designee shall notify the applicant in writing and instruct the applicant to file a new application.~~

SITE 302 ENFORCEMENT OF TERMS AND CONDITIONS

Site 302.01 Determination of Certificate Violation.

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

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

~~(c) Except in the case of an emergency or when the chairperson or the administrator has determined based on credible information that a violation has occurred and is or may be ongoing, the chairperson or the administrator shall provide 5 days prior written notice of any inspection to be conducted pursuant to (b) above to the holder of the certificate.~~

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

~~(e) certificate, conduct~~ Except in the case of an emergency, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide an opportunity for an adjudicative hearing pursuant to Site 201 ~~to determine whether a violation of a certificate term or condition has occurred~~ with respect to the proposed suspension.

~~— (b) When the committee commences an enforcement hearing upon complaint, the complainant shall be admitted as a party to the proceeding.~~

~~— (e) (f) Except for emergencies~~ in the case of an emergency, the committee shall provide 14 days prior written notification ~~notice~~ of the hearing referred to in ~~(ae)~~ (a) above, to the holder of the certificate and to the complainant, if any.

~~(dg)~~ If the committee determines that a violation has occurred following an ~~the~~ adjudicative hearing that a certificate violation has occurred and is continuing, the committee ~~shall~~ may issue an order that suspends the holder's certificate until such time as the violation has been corrected.

~~— Site 302.02~~ Site 302.02 Determination of Misrepresentation or Non-Compliance.

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

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

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

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

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

~~— Site 302.03~~ Revocation of Certificate.

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

(b) If the committee has suspended a certificate pursuant to Site 302.01 ~~above~~ or Site 302.02 and the holder has failed to correct and mitigate the consequences of the violation ~~which caused or misrepresentation that was the basis for~~ the suspension, the committee shall initiate ~~an adjudicative~~ proceeding to revoke the suspended certificate.

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

(d) Except for emergencies, the committee shall conduct an adjudicative hearing prior to revoking revocation of a certificate.

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

Site 302.~~0304~~ 0304 Emergencies.

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

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

Site 302.~~0405~~ 0405 Waiver of Rules.

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

(1) The waiver serves the public interest; and

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

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

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

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

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

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

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

APPENDIX

Rule	Statute
Site 301.01- 301.03 <u>02</u>	RSA 162-H:10,VI; RSA 162-H:7, I RSA 162-H:4,V(a)II, <u>10,VI and VII</u>
<u>Site 301.03</u>	<u>RSA 162-H:7,IV and V, 10,VI and VII</u>
Site 301.04	RSA 162-H: 4 <u>7</u> ,IV; RSA 162-H: and V, 10,VI; and VII
Site 301.05 and 06	RSA 162-H: 6; <u>162-H:7,IV and V,</u> 10,VI; and VII
Site 301.06	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.07	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.08	RSA 162-H:7,IV and V, 10,VI and VII
Site 301.09	RSA 162-H:7,IV and V, 10,VI and VII
Site 301. 07(c) <u>10</u>	RSA 162-H: 4,V(a); 162-H:7,IV and VI, 10,VI; and 162-H:6-a <u>VI</u>
<u>Site 301.11</u>	<u>RSA 162-H:4, IV, 10,VI and VII</u>
Site 302 <u>301.12</u>	RSA 162-H: 4 <u>7</u> , VI-b, VI-c and 162-H:VI-d, 10,VI and <u>VII, 14, I</u>
<u>Site 301.13</u>	<u>RSA 162-H:10,VI and VII, 16, IV(a)</u>
<u>Site 301.14</u>	<u>RSA 162-H:10,VI and VII, 10-a, 16, IV(c)</u>
<u>Site 301.15</u>	<u>RSA 162-H:10,VI and VII, 16, IV(b)</u>
<u>Site 301.16</u>	<u>RSA 162-H:10,VI and VII, 10-a</u>
<u>Site 302.01-04</u>	<u>RSA 162-H:10,VI and VII, 12</u>
<u>Site 302.05</u>	<u>RSA 162-H:10,VI and VII; RSA 541-A:22, IV</u>