

## Comments on the SEC Draft Rules, Kris Pastoriza, Easton, NH January 2015

With the editing programs available it would have been simple and honest to indicate on the SEC draft rules what wording came from the industry submission, what wording came from the environmental groups' submission and what wording came from the taxpayer-funded public input groups. I compared the industry submission with pages 28-40 of the 12/16/14 Draft Code of Administrative Rules and whoever wrote the draft code appears to have cut and pasted the industry submission into the Draft and made minor changes. Page 30 has eight whole sentences taken from the environmental groups' submission, but the rest of their lengthy submission is barely to be found. Most disturbingly, the industry submission appears to have provided the format for the Draft (I have not seen the old rules) thereby leaving no easy way of incorporating the environmental groups' suggestions.

Just as disturbing is the lack of incorporation of the suggestions made by the SB-99 mandated work groups. Many people put hours of their time into these discussion and documents yet the SEC appears to have barely attempted to include their work. Clear and technically sound suggestions such as:

"Photographs used in the simulation shall be taken at an equivalent focal length of 50 mm (i.e., "normal view").

- Simulations should represent the equivalent of what would be taken with a 75mm focal length lens on a full-frame 35mm camera and printed at 15.3"x10.2" (390x260mm) for hand-holding."

were ignored, and should be in the final rules. They were submitted partly in response to the grossly misleading photo-simulations produced by wind and transmission project developers.

Compare the Draft definition of Scenic Resource to the Industry submission and the Aesthetics Work Group definition of Scenic Viewpoint, which was left out:

Draft: "Site 102.35 "Scenic resource" means resources designated by national, state, or municipal authorities for their scenic quality and to which the public has a legal right of access; conservation lands or easement areas that possess a scenic quality and to which the public has a legal right of access; lakes, ponds, rivers, parks, and other tourism destinations recognized by the New Hampshire Division of Travel and Tourism as having scenic quality and to which the public has a legal right of access; recreational trails, parks, or areas established, protected or maintained in whole or in part with public funds; and town and village centers that possess a scenic quality."

Industry: "Scenic resource" means resources designated by state or national authorities for their scenic quality that are open to the public; state or nationally conserved properties that possess a scenic quality and are open to the public; tourism destinations recognized by the New Hampshire Division of Travel and Tourism as having a scenic quality and that are open to the public."

Aesthetics workgroup" "4. "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 or 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 established, protected or maintained in whole or in part with public funds; (f) segments of a National Wild and Scenic River or river designated in the New Hampshire Rivers Management and Protection Program; (g) designated scenic byways; (h) designated scenic turnouts on public roads; (i) a property that is listed on the state or national register of historic places; (j) municipal public recreation areas; (k) viewpoints or viewsheds recognized in municipal master plans; and (l) any other viewpoint which by the weight of evidence meets the spirit and intent of this definition."

In addition, the industry and draft use of the word "resource" to describe scenic views implies they are a commodity, in one location, able to be reduced to a cash value.

Several professional acousticians participated in the Health and Safety work group and agreed on the following standards for noise, which did not make it into the Draft Rules except for #1. Rather than put intervenors who may not have such resources through the expense of hiring expert witnesses to testify on acoustics, these standards should be incorporated into the rules.

"Pre-construction baseline survey

1. Adherence to the ANSI/ASA S12.9-2013 Part 3 standard, a standard that requires short-term attended measurements.
2. Long-term unattended monitoring may be conducted in accordance with ANSI S12.9-1992/Part 2, provided audio recordings are taken in order to clearly identify and remove transient noises from the data. Frequencies above 1250 Hz 1/3 octave band are to be filtered out of the data.
3. Measurement locations should be conducted at the nearest properties from proposed wind turbines representative of all non-participating residential properties within 2.0 miles.
4. Sound measurements shall be omitted when the wind velocity is greater than 4 m/s (~9 mph) at the microphone position, when there is rain, and/or with temperatures below instrumentation minima. Following ANSI 12.9 Part 3 protocol, microphones shall be placed 1 to 2 meters above the ground, and at least 15 feet from any reflective surface. A windscreen of the type recommended by the monitoring instrument's manufacturer must be used for all data collection. Microphones should be field calibrated before and after measurements. An anemometer shall be located within close proximity to each microphone.
5. Pre-construction sound reports shall include a map and/or diagram clearly showing the following:
  - layout of project area, including topography, project boundary lines, property lines;
  - locations of the Measurement Points (MPs);
  - distance between any MP and the nearest wind turbine(s);

- location of significant local non-turbine sound and vibration sources;
- distance between all MPs and significant local sound sources;
- The location of all sensitive receptors including, but not limited to: schools, day-care centers, hospitals, residences, residential neighborhoods, places of worship, and elderly care facilities.

6. Applicant will provide A weighted and C weighted sound levels for L10, Leq and L90. Preconstruction Predictive Modeling

7. Predictive modeling will be conducted in accordance with ISO 9613-2.

8. An adjustment to the Leq produced by the model shall be applied in order to adjust for turbine manufacturer uncertainty. This adjustment shall be determined in accordance with the most recent release of the IEC 61400 Part 11 standard (Edition 3.0 2012-11). This standard anticipates that the analysis of wind turbine acoustical emissions will also consider sound power level and tonality for a batch of wind turbines as opposed to just one machine (IEC 61400 Part 14).

9. Predictions shall be made at all properties within two (2) miles from the project turbines for the wind speed and operating mode that would result in the worst case wind turbine sound emissions at night.

10. Other corrections for model's algorithm error shall be disclosed and accounted for in the model(s).

Post-Construction Compliance Monitoring

11.

Adherence to the ANSI/ASA S12.9-2013 Part 3. This standard requires short-term attended measurements to ensure transient noises are removed from the data. Measurements will include at least one nighttime hour where turbines are operating at full sound power with winds less than 3 m/s (~6 mph) at the microphone.

12. Unattended long-term monitoring can also be conducted.

13. Sound measurements shall be omitted when there is rain, and/or with temperatures below instrumentation minima. Microphones shall be placed 1 to 2 meters above the ground and at least 15 feet from any reflective surface following ANSI 12.9 Part 3 protocol. Proper microphone screens are required. Microphones should be field calibrated before and after measurements. An anemometer shall be located within close proximity to each microphone.

14. Monitoring will involve measurements being made with the turbines in both operating and non-operating modes. SCADA data will be used to record hub height wind speed and turbine power output.

15. Locations to be pre-selected where noise measurements will be taken. Measurements will be performed at night with winds above 4.5 m/s (~10 mph) at hub height and less than 3 m/s (~6 mph) on the ground.

16. All sound measurements during post-construction monitoring will be taken at 0.125-second intervals measuring both "fast" response and Leq metrics..

17. Post-construction monitoring surveys will be conducted once within three months of commissioning, and once each season thereafter for the first year. Additional surveys may be conducted at the request of the SEC. Reasonable adjustments to this schedule will be permitted subject to SEC review.

18. Post-construction sound reports shall include a map and/or diagram clearly showing the following:

- layout of project area, including topography, project boundary lines, property lines;

- locations of the Measurement Points (MPs);
- distance between any MP and the nearest wind turbine(s);

For each measurement period during the post-construction monitoring, reports will include each of the following measurements:

- LAeq, LA10, and LA90;
- LCEq, LC10, and LC90

19. Noise emissions shall be free of audible tones. If the presence of a pure tone frequency is detected, a 5 dB penalty shall be added to the measured dBA sound level.

20. The SEC shall adopt a complaint resolution program. Validation of noise complaints shall require field sound surveys conducted under the same meteorological conditions as occurred at the time of the complaint. "

It appears the outdated, inadequate, industry-friendly standards set by previous projects were allowed to stand, and the public Health and Safety section in the Draft Rules is about 90% identical to the industry submission for this section. The SEC must require remedy its inadequate noise standards rather than continue to resort to the grossly inadequate and insulting mitigation it resorted to in Lempster Wind: "SEC standard triggered mitigation measures including installing Energy Star air- conditioners in bedrooms of non-participating homeowners if in-door noise levels exceeded the greater of 30 dBA or 5dBA above ambient."

Given the movement of people from energy corporations like PSNH, to the SEC and back to energy corporations like Northern Pass and EDP Renewables, it is hard to escape the conclusion that the actions and decisions of some SEC members are influenced in favor of the industries they hope will employ them when they leave the SEC, and who will pay them highly for their knowledge of regulatory practice. I suggest a voluntary five year gap between leaving the SEC and working for an industry regulated by the SEC.

**In the Health and Safety section in reference to transmission projects, your Draft states only: "Include an assessment of electric and magnetic fields and the potential impacts of such fields on public health and safety." This is a toothless requirement masquerading as regulation.**

**The Health & Safety work group submitted the following suggestions which should be in the Draft rules unless the SEC provides clear reasons for not requiring industry to take measures to protect the health and safety of New Hampshire children and adults.**

*"TRANSMISSION LINE SAFETY (EMF) - Application requirements*

*1. The number and type of each building within the following distance categories – as estimated from the*

*centerline: 0-25 feet, 26-50 feet, 51-100 feet, 101-150 feet, and 151-300 feet. Types of buildings include*

*homes, apartments, schools, daycare centers, hospitals, and commercial/ industrial buildings.*

*2. Detailed magnetic field profiles for each unique structure type or circuit configuration (new and existing)*

*with the exception of dead-end structures adjacent to substations.*

3. For routes that would affect existing electric lines, provide magnetic field profiles for the existing lines and a post-construction scenario that incorporates the new and the existing lines.

4. For routes that would have multiple adjacent underground circuits, provide magnetic field profiles for each set of circuit configurations.

5 California Department of Health Services and the Public Health Institute, *Electric and Magnetic Fields* retrieved at <http://www.ehib.org/emf/longfactsheet.PDF>

6 Application rules derived from the State of Wisconsin PSC requirements. The State of Wisconsin has not established any limits on EMF levels or setback distances.

5. Estimated magnetic field data which includes:

- estimate for proposed lines at 80 percent and at 100 percent of peak load for one year post-construction and 10 years post-construction. For existing lines, use present day loadings to estimate the magnetic fields levels.
- provide expected current levels for 80 and 100 percent of peak load at one and ten years post-construction.

6.

Provide all assumptions used to model magnetic field levels including:

- Pole design diagram that includes the dimensions of pole arms, dimensions of conductor locations, horizontal distance from the pole to the conductors, and the distance of conductors from the ground at the pole.
- Height of lowest conductor(s) at mid-span.
- Depth from ground surface to circuits, for underground construction.

7.

The Application shall propose and implement where practicable, low-cost efforts to reduce EMF without

compromising safety. Suggested mitigations may include but not be limited to:

- increase distance between the transmission line and the public's exposure to the magnetic fields;

- Increase height of transmission structures which would lower resulting exposure levels;

- bring lines closer together (magnetic fields interfere with one another, producing a lower overall

magnetic field level, too close could cause arcing between the lines);

- bury transmission lines to reduce magnetic fields. (Underground lines can be installed closer together and insulated with rubber, plastic, or oil.)

TRANSMISSION LINE SAFETY (EMF) - Application requirements<sup>6</sup>

1.

The number and type of each building within the following distance categories – as estimated from the

centerline: 0-25 feet, 26-50 feet, 51-100 feet, 101-150 feet, and 151-300 feet. Types of buildings include

homes, apartments, schools, daycare centers, hospitals, and commercial/ industrial buildings.

2.

*Detailed magnetic field profiles for each unique structure type or circuit configuration (new and existing)*

*with the exception of dead-end structures adjacent to substations.*

*3. For routes that would affect existing electric lines, provide magnetic field profiles for the existing lines and*

*a post-construction scenario that incorporates the new and the existing lines.*

*4. For routes that would have multiple adjacent underground circuits, provide magnetic field profiles for each set of circuit configurations."*

**In addition, your Draft rules failed to require any setbacks for transmission lines and ignored the recommendations provided by the Health and Safety work-group, which were based on setbacks required by other states:**

*".4 Background information on Transmission Siting and EMF*

*Different states have taken different approaches regarding EMF when siting large transmission projects. The following paragraphs briefly detail how some address EMF exposure when siting lines greater than 69kV16.*

*Massachusetts*

*The Commonwealth of Massachusetts has defined an edge-of-ROW level of 85 mG as a benchmark for comparing different design alternatives. Although a ROW-edge level in excess of this value is not prohibited, it may trigger a more extensive review of alternatives.*

*New York*

*New York has a policy that requires transmission lines to be designed, constructed and operated so that magnetic fields at the edges of the ROW will not exceed 200 mG.*

*Florida*

*Florida limits magnetic fields at the edge of the ROW to 150 mG for transmission lines with voltages of 69 kV through 230 kV. For lines greater than 250 kV, the limit is 200 mG.*

*Doublecircuited*

*500 kV lines and lines greater than 500 kV may not exceed 250 mG, also at the edge of the ROW.*

*Wisconsin1*

*Wisconsin has not set hard limits on EMF levels but the state has taken the position that the public has a right to know details about EMF levels. The application process requires project proponents to provide the following information:*

*a) number and type of each building within the following distance categories – as estimated from the centerline: 0-25 feet, 26-50 feet, 51-100 feet, 101-150 feet, and 151-300 feet. Types of buildings include homes, apartments, schools, daycare centers, hospitals, and commercial/ industrial buildings.*

*b) detailed magnetic field profiles for each unique structure type or circuit configuration (new*

*and existing) with the exception of dead-end structures adjacent to substations.*

*16 It's important to note that EMF is directly tied to the amount of current flowing through a line. Lower capacity lines (69 kV) can show high levels of EMF while some 115kV lines may have lower levels of EMF."*

**In addition, you have averted your gaze from the corruption inherent in the SEC process: Project developers (corporations) have the vast sums required to buy expert witness testimony to prove what they want to prove. They buy influence with you which the public cannot afford.**

The Draft rules, in adopting the Industry submission for finding of unreasonable adverse effects on the Natural Environment, Wildlife, Rare Species, Rare Natural Communities and Water Quality, adopted wording that is non-specific and vague. The SEC is ordered to consider "the significance, nature, extent and duration of potential effects", etc. This is a very low bar, and what constitutes proof of consideration if there is no specific wording of what is to be considered? The Environmental Group submission (below), informed by the Wildlife, Rare Plants and Natural Communities work group, should be incorporated into the Rules. These five organizations represent tens of thousands of people who are dedicated to the long-term future of New Hampshire. The Industry submission represents the wishes of entities incapable of looking ahead more than five years or considering environmental or ethical concerns that do not affect their profits or image.

***"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. "*

**In addition, the SEC Rules should include Fred Ward's suggestion that they assess wind projects as a whole, rather than on a case by case basis.**

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Industry suggestions underlined, Environmental Groups' suggestions in italics,

- (h) Each application for a certificate for an energy facility shall include the following:
- (1) *A detailed description of the type and size of each major part of the proposed facility;*
  - (2) *Identification of the applicant's preferred location and any alternative locations it considers available for the site of each major part of the proposed facility;*
  - (3) *A detailed description of the applicant's financial, technical and managerial capability to construct and operate the proposed facility, as follows:*
    - a. Financial information shall include:
      1. A description of the applicant's experience financing other energy facilities;
      2. A description of the corporate structure of the applicant, including a chart showing the direct and indirect ownership of the applicant;
      3. A description of the 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;
    - b. Technical information shall include:
      1. A description of the applicant's qualifications and experience in constructing and operating energy facilities, including projects similar to the proposed facility; and
      2. A description of the experience and qualifications of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time;
    - c. Managerial information shall include: Draft 12/16/14  
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      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;
  - (4) Documentation that the applicant has held at least one public information session in each county where the proposed facility is to be located at least 30 days prior to filing its application, pursuant to RSA 162-H:10, I and Site 201.01; and

(5) 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.

(i) Each application shall include information regarding the effects of, and plans for avoiding, minimizing, or mitigating any unreasonable adverse effects of, the proposed facility on the following:

(1) Aesthetics. Such information shall include 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, which visual impact assessment shall contain the following components:

a. 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;

b. A description of how the applicant identified and evaluated the scenic quality of the landscape and potential visual impacts;

c. 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;

d. A computer-based visibility analysis to determine the area of potential 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; Draft 12/16/14

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e. Identification of all scenic resources within the area of potential effect and a description of those scenic resources from which the proposed facility would be visible;

f. 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:

1. *The expectations of the typical viewer;*

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

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

4. *The distance of the proposed facility from the scenic resource;*

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

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

7. *The duration and direction of the typical view of elements of the*

proposed facility; and

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

g. Photosimulations from representative key observation points, and from other scenic resources for which the *potential visual impacts are characterized as “high” pursuant to f. 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;

h. *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

i. 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;

(2) Historic sites. Such information shall:

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;Draft 12/16/14

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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 2 miles of the proposed facility area;

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;

(3) Air quality. Such information shall include the applications and permits filed pursuant to Site 301.03 (d) regarding issues of air quality;

(4) Water quality. Such information shall include the applications and permits filed pursuant to Site 301.03 (d) regarding issues of water quality;

(5) Natural environment. Such information shall:

a. 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;

b. Identify significant wildlife species, rare plants, rare natural communities,

and other exemplary natural communities potentially affected by construction and operation of the proposed facility;

c. Identify critical wildlife habitat and significant habitat resources potentially affected by construction and operation of the proposed facility;

d. 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;

e. 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 Draft 12/16/14

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f. 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;

*(6) Public health and safety.* Such information shall:

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:

(i) The preconstruction sound background study shall:

i. 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;

ii. 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

iii. 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;

(ii) The preconstruction sound background study report shall:

i. 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;

ii. Indicate topography, temperature, weather

conditions, sources of ambient sound, and prevailing wind direction for the monitoring period; and

iii. Describe the test locations with GPS coordinates or a similar level of detail that permits others to identify the specific test locations;

(iii) The sound modeling study shall:

i. Be performed based on the most recent version of International Organization for Standards ISO 9613-2; and Draft 12/16/14  
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ii. Use wind turbine sound power levels determined according to the most recent version of International Electrotechnical Commission Standard IEC 61400, Part 11;

(iv) The sound modeling study report shall:

i. Include the results of the modeling described in (iii) above as well as a map with sound contour lines showing dBA sound emitted from the proposed wind energy system at 5 dBA intervals;

ii. 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

iii. 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 occupied permanent residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings, 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;Draft 12/16/14

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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.

(j) 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 effects of the construction and operation of the facility on:

(1) Land use. Such information shall include:Draft 12/16/14

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- a. A description of the prevailing land uses in the host communities and communities abutting the proposed facility; and
- b. 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;

(2) Economy. Such information shall include an assessment of:

- a. The economic effect of the facility on the host communities and communities abutting the proposed facility;
- b. The economic effect of the proposed facility on in-state economic activity during construction and operation periods;
- c. The effect of the proposed facility on State and local tax revenues;
- d. The effect of the proposed facility on regional real estate values;
- e. The effect of the proposed facility on tourism and recreation in the host communities and communities abutting the facility; and
- f. The effect of the proposed facility on community services and regional infrastructure;

(3) Employment. Such information shall include an assessment of:

- a. The number and types of full-time equivalent local jobs expected to be created or preserved by the construction of the proposed facility, including direct construction employment and indirect employment induced by facility related wages and expenditures; and
- b. The number and types of full-time equivalent jobs expected to be created or preserved by the operation of the proposed facility, including direct employment by the applicant and indirect employment induced by facility related wages and expenditures.

(k) Each application shall include information describing how the proposed facility will be consistent with the public interest.

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

Site 301.04 Completeness Review and Acceptance of Applications for Energy Facilities.

(a) Upon the filing of an application for an energy facility, the committee shall forward to each of the other state agencies having permitting or other regulatory authority 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, IV. Draft 12/16/14

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(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 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 determine whether the application is administratively complete and has been accepted for review.

(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 of incompleteness.

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

accept the new or completed application.

(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 Exemption Determination.

(a) The committee shall have the authority to exempt an applicant from the approval and certificate

provisions of RSA 162-H and the rules of the committee according to this section.

(b) Within 60 days of acceptance of an application or the filing of a petition for exemption, the committee shall exempt the applicant from the approval and certificate provisions of RSA 162-H and these

rules, if the committee finds that:

(1) Existing state or federal statutes, state or federal agency rules or municipal ordinances provide

adequate consideration and protection of the objectives set forth in RSA 162-H:1;

(2) Consideration of the proposed energy facility by only selected agencies represented on the committee is required and the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;

(3) Response to the application or request for exemption from the general public 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. Draft 12/16/14

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(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 301.06 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 301.07 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:Draft 12/16/14

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(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 301.08 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 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;

(3) Consider the iterative nature of the process under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470;

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

(5) Include in its decision and in the certificate conditions requiring:Draft 12/16/14  
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a. Continuing consultation with the New Hampshire Division of Historical Resources and, if applicable, with the lead federal agency; and

b. Compliance with any agreement or memorandum of understanding with the New Hampshire Division of Historical Resources and, if applicable, the lead federal 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, with respect to applications and permits identified in Site 301.03 (d), and other relevant evidence submitted pursuant to Site 202.24.

(e) In determining whether construction and operation of a proposed energy facility will have an unreasonable adverse effect on the natural environment, including wildlife species, rare plants, rare natural communities, and other exemplary natural communities, the committee shall consider:

(1) The significance of the affected 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:Draft 12/16/14

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(1) For all energy facilities, consider the information submitted pursuant to Site 301.03

(i) (6) 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 nonparticipating 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 301.09 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. Draft 12/16/14

Environmental Groups' suggestions (in italics) for SEC Rules draft. Highlighted suggestions were not adopted in the Draft. Bold Sections are Draft rules, for comparison.

“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.*  
(Adopted)

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.*  
(Not adopted. Draft version below)

**Site 102.08 “Best practical measures” means economically feasible actions that utilize available technology and have been demonstrated to effectively avoid, minimize, or mitigate relevant facility 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.*

(Adopted)

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.*

(Not adopted. Draft version below)

**Site 102.14 “Cumulative impacts” means the totality of effects resulting from the proposed facility, all existing energy facilities, all energy facilities for which a certificate of site and facility has been granted, and all proposed energy facilities for which an application has been accepted.**

Site 102.13 “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.  
(Not adopted. Draft version below)*

**Site 102.16 “Exemplary natural community” means a rare natural community type and high quality example of a more common community type as determined by the New Hampshire 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.*

(Adopted)

*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.*

(Not adopted or defined in Draft)

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.*

*(Not adopted. Draft term and definition below)*

**Site 102.35 “Scenic resource” means resources designated by national, state, or municipal authorities for their scenic quality and to which the public has a legal right of access; conservation lands or easement areas that possess a scenic quality and to which the public has a legal right of access; lakes, ponds, rivers, parks, and other tourism destinations recognized by the New Hampshire Division of Travel and Tourism as having scenic quality and to which the public has a legal right of access; recreational trails, parks, or areas established, protected or maintained in whole or in part with public funds; and town and village centers that possess a scenic quality.**

*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.*

*(Adopted)*

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.*

*(Not adopted)*

*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.*

(Adopted)

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.*

(Adopted with alteration, see below)

**Site 102.42 “Successive observation” means a viewer sees multiple energy facilities from a particular viewpoint, but not within the same viewing arc, by changing the viewer’s cone of vision.**

Site 102.33 “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.*

(Not adopted)

*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.”*

(Adopted)

## 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:  
(Adopted with altered wording)

**i) Each application shall include information regarding the effects of, and plans for avoiding, minimizing, or mitigating any unreasonable adverse effects of, the proposed facility on the following:**

(Industry format was adopted from here on which makes comparison difficult)

(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.*  
(Not adopted)

*(k) Applicants are encouraged to consult with other parties with relevant knowledge and expertise, including but not limited to municipal officials, nongovernmental 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.*  
(Not adopted)

*(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.*  
(Not adopted)

*(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.*  
(Draft version below)

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

**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;**

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

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

*(4) The VIA shall include a description and discussion of alternatives*

*that were considered during project development.*  
(Draft version below)

***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;***

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

***(6) Sections 301.03(1)(7) through 301.03(1)(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.***

***(Not adopted)***

*(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.*  
(Adopted, also industry wording)

*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.*

(Adopted with alterations, see below)

**A computer-based visibility analysis to determine the area of potential 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;**

*(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.). (Not adopted though partially addressed)*

*(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). (Not adopted)*

*(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: (Not adopted)*

*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.*

*(Not adopted)*

*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.*

*(Not adopted)*

*(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.*

*(Not adopted)*

*(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:*

*(Draft wording below)*

**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.*

*(Adopted)*

*b. The effect on future use and enjoyment of the viewpoint.*

*(Adopted with “viewpoint” changed to “scenic resource.”)*

*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.*

*(Adopted with “proposed” before “facility” and “viewpoint changed to “scenic resource.”)*

*e. The horizontal breadth (visual arc) of visible facility elements.*

*(Adopted with “visible facility elements” changed to “the visible elements of the proposed facility.”)*

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

*(Adopted)*

*g. The duration and direction of the typical view.*

*(Adopted with “of elements of the proposed facility” added after “view”)*

*h. The presence of intervening topography.*

(Adopted with “between the scenic resource and elements of the proposed facility” added after “topography.”)

*i. The effect of facility lighting on nighttime use and enjoyment of the viewpoint.*

(Not adopted)

*j. The cumulative impact of the facility in combination with other existing and reasonably likely energy facilities.*

(Not adopted)

*(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.*

(Not adopted)

*b. Simulations shall include comparative photographs of both the current condition and the simulated appearance of the facility.*

(Not adopted)

*c. Simulations should include all visible facility structures as well as associated infrastructure (including but not limited to roads) and cleared or graded areas.*

(Not adopted, Draft wording below)

**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;**

*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.*

(Not adopted)

*(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).(Adopted with altered wording, see below)*

**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;**

*(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.*

*(Adopted, p. 31 section 5(a))*

*(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.*

*(Not adopted)*

*(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.*

*(Not adopted)*

*(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.*

*(Not adopted)*

*(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.*

*(Not adopted)*

*(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.*  
*(Not adopted)*

(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.*  
*Not adopted, compare this to draft wording below:*

**“Evidence that the applicant has a current right of legal access to and control of or the ability to acquire control of the site... )**

*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.*  
*(Not adopted)*

*(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.*  
*(Not adopted)*

*(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.*  
*(Not adopted)*

*(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);  
(Not adopted)*

*(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  
(Not adopted)*

*(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.  
(Not adopted)*

*(e) The site evaluation committee shall assess the following monitoring and adaptive measures when considering an application:  
(Not adopted)*

*(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.  
(Not adopted)*

*(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  
(Not adopted)

(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.  
(Not adopted)

(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.  
(Adopted with changes, Draft versions below)

**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; (Wind)**

**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; (All energy facilities)**

*(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.*
- (Not adopted)*

90% of the Draft Rules for the following section, Unreasonable Adverse Effects, is identical to the Industry Group submission. In it, Natural Environment, Wildlife Species, Rare Plants, Rare Natural Communities and Exemplary Natural Communities are lumped together as one category, making it exceedingly difficult to tailor the rules to these specific groups.

*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.*

*(Not adopted)*

*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.*

*(Not adopted)*

*(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.*

*(Not adopted)*

*(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.*

*(Not adopted)*

*(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.**(Not adopted)*

*(First section adopted with changes, see draft version below)*

**(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;**

*(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.*

*(Not adopted)*

*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*

*(Not Adopted)*

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

*(Not adopted)*

*(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*

*(Not adopted)*

*(2) A population of a rare plant species is present in the project area and will be directly disturbed by project activity, but:  
(Not adopted)*

*i. The population is small or of low quality relative to other known populations of the species,  
(Not adopted)*

*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.  
(Not adopted)*

*Site 301.08 Grounds for Findings: Natural Communities.*

Draft/Industry language is “Exemplary Natural Communities” thereby considerably narrowing the communities given consideration.

*(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  
(Not adopted)*

*(2) The community is known from few if any other locations within the ecological subsection or other ecologically relevant area.  
(Not adopted)*

*(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:  
(Not adopted)*

*(1) No rare or exemplary natural communities will be disturbed by project activity; or  
(Not adopted)*

*(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:  
(Not adopted)*

*i. The community occurrence is small or of low quality relative to other known occurrences of the community,  
(Not adopted)*

*ii. There are multiple other occurrences of the community within the ecological subsection or other ecologically relevant area, or  
(Not adopted)*

*iii. The occurrence has a low probability of long-term viability if left undisturbed.  
(Not adopted)*

**Draft wording:**

**(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;**

***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:  
(Not adopted)*

*(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.

(Not adopted)

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

(Not adopted)

(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.

(Not adopted)

*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.

(Not adopted)

(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.

(Not adopted)

(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.

(Not Adopted)

(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.

*(Not adopted)*

*(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.*

*(Not adopted)*

*(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,*

*(Not Adopted)*

*3) create a significant risk of mortality to aquatic organisms passing through the project area.*

*(Not adopted)*

*(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. (Not adopted)*

*(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.*

*(Not adopted)*

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

*(Not adopted)*

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

*(Not adopted)*

*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: (Not adopted, “give strong consideration to” changed to “consider”)*

*(1) The Viewpoint(s) are deemed to be of high concern by the Visual Impact Analysis or SEC deliberations; (Not adopted)*

*(2) The facility will have a significant visual impact on a relatively naturally appearing landscape or setting for a historic property; and (Not adopted)*

*(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. (Not adopted)*

*(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. (Not adopted)*

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

*(3) The facility is seen only from Scenic Viewpoints of relatively low significance or low levels of public use. (Not adopted)*

*(4) The facility is seen in the context of a landscape in which existing human development is already a prominent feature of the viewscape. (Not adopted)*

Draft appears to have no section on Criteria Relative to Finding of Adverse Effects on Public Interest.

*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.*

*(Not adopted)*

*(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.*

*(Not adopted)*

*(3) Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.*

*(Not adopted)*

*(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.*

*(Not adopted)*

*(5) Such additional public interest considerations as may be deemed pertinent by the committee.*