State of New Hampshire
Site Evaluation Committee

Martin P. Honigberg, Esquire
Chairman

Thomas S. Burack, Esquire
Vice-Chair

http://www.nhsec.nh.gov
21 South Fruit St., Suite 10
Concord, New Hampshire
03301-2429
Telephone (603) 271-2437
Fax (603) 271-4033

January 30, 2015

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, NH 03301

Re: Site 100 and Site 201-204 – Organizational Rules and Rules of Practice and Procedure of the Site Evaluation Committee
SEC Docket No. 2014-04

Dear Mr. Eaton:

Based on comments received from your office regarding the filing made on behalf of the Site Evaluation Committee on January 26, 2015, we have revised the Rulemaking Notice Form and the pagination and format of the Initial Proposal and Appendix with respect to the above-referenced rulemaking initiative. There is no change to the text or substance of the proposed rules. Enclosed please find the following documents for filing with your office:

1. Appendix II-C, Rulemaking Notice Form;
2. Fiscal Impact Statement – FIS 15:006;
3. Site 100 and Site 201-204 Initial Proposal - Annotated Text (showing changes from current rules) (2 copies); and
4. Site 100 and Site 201-204 Cross-Reference Table of Applicable Statutes (last page of Initial Proposal).

The Site Evaluation Committee is readopting its existing Site 100 and Site 201-204 rules with a significant number of amendments reflecting recent legislation that amended the Committee's governing statute, RSA 162-H. These rules are required to be amended "[a]s soon as practicable but no later than July 1, 2015," pursuant to RSA 162-H:10, VII. Please include the Rulemaking Notice Form in the next available Rulemaking Register.

Thank you for your assistance with this matter. If you should have any questions regarding this filing, please contact David Wiesner, NHPUC Staff Attorney, as contact person for the Committee.

Sincerely,

Martin P. Honigberg
Chairman

Enclosures

cc: Chairman, House Science, Technology and Energy Committee (w/encs.)
Chairman, Senate Energy and Natural Resources Committee (w/encs.)

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____ Rule Number **Site 100 and Site 201-204**

1. Agency Name & Address:

Site Evaluation Committee
c/o Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

2. RSA Authority: **RSA 162-H:10, VI and VII**
RSA 541-A:16, I(a), (b)-(d)

3. Federal Authority: _____

4. Type of Action:

Adoption	_____
Amendment	_____
Repeal	_____
Readoption	_____
Readoption w/amendment	**X**

5. Short Title: **Organizational and Practice and Procedure Rules**

6. (a) Summary of what the rule says and of any proposed amendments:

Site 100 and Site 201-204 contain the organizational rules and most of the rules of practice and procedure of the Site Evaluation Committee. The Site 201-204 rules cover public hearings and information sessions, adjudicatory proceedings, discovery and site inspections, motions and pleadings, rules waivers, motions for rehearing, declaratory rulings, rulemakings, and other procedural matters.

The proposed rules effect substantial changes to the Committee's existing organizational rules and rules of practice and procedure, as required by recent statutory amendments to RSA 162-H, Energy Facility Evaluation, Siting, Construction and Operation. These amendments were enacted in Laws of 2014, Chapter 217 (Senate Bill 245), and Laws of 2014, Chapter 310 (House Bill 1602), and affected the membership, structure, organization, governance, administration, processes, and procedures of the Committee. The proposed rules also update the existing rules based on administrative experience and to reflect changed circumstances.

6. (b) Brief description of the groups affected: **The rules affect applicants for certificates of site and facility for energy facilities to be located in the State, as well as other petitioners, interveners, state agency representatives, and public commenters involved in applications and other proceedings before the Committee. The proposed rules also affect the state agency and public members of the Committee and its administrator and staff.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement

The cross-reference table below contains a listing of the specific sections of state statutes which the proposed rules are intended to implement:

Rule	Statute
Site 101.01-02	RSA 162-H:3, 4, and 10,VI and VII; RSA 541-A:16, I (a)
Site 102.01-45	RSA 162-H:2 and 10,VI and VII
Site 103.01	RSA 162-H:3, 4, and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.02	RSA 162-H:3 and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.03	RSA 162-H:4-a and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.04	RSA 162-H:3, 4-a, and 10,VI and VII; RSA 541-A:16,I(a)
Site 103.05	RSA 162-H:3-a, 4, and 10,VI and VII; RSA 541-A:16,I(a)
Site 103.06	RSA 162-H:9 and 10,VI and VII; RSA 541-A:16, I (a)
Site 104.01	RSA 162-H:10,VI and VII, 13; RSA 541-A:16, I (a)
Site 201.01	RSA 162-H:10,I, VI and VII
Site 201.02	RSA 162-H:10,I-a, VI and VII
Site 201.03	RSA 162-H:10,I-c, VI and VII
Site 201.04	RSA 162-H:10,I-b, VI and VII
Site 202.01	RSA 162-H:10,VI and VII; RSA 541-A:30-a
Site 202.02	RSA 162-H:4, 4-a, 10,VI and VII; RSA 541-A:30-a
Site 202.03	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (k)
Site 202.04	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.05	RSA 162-H:7-a, 10,VI and VII; and RSA 541-A:30-a,III
Site 202.06-07	RSA 162-H:10,VI and VII; and RSA 541-A:30-a,III
Site 202.08	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (f)
Site 202.09	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III and 31, III
Site 202.10	RSA 162-H:10,VI and VII; RSA 541-A:31,V(c)
Site 202.11	RSA 162-H:4,V, 10,VI and VII; RSA 541-A:32
Site 202.12-14	RSA 162-H:10,VI and VII; RSA 541-A:30-a
Site 202.15	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (j)
Site 202.16	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.17	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (h)
Site 202.18	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.19	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (d) and (e)
Site 202.20-23	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.24-25	RSA 162-H:10,VI and VII; RSA 162-H:10, III
Site 202.26	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.27	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (i)
Site 202.28	RSA 162-H:10,VI and VII, 16, IV; RSA 541-A:35
Site 202.29	RSA 162-H:10,VI and VII; RSA 541
Site 202.30	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 203.01-02	RSA 162-H:10,VI and VII; RSA 541-A:16,I(d)
Site 204.01-05	RSA 162-H:10,VI and VII; RSA 541-A:16,I(c)

APPENDIX II-C (Continued)

RULEMAKING NOTICE FORM - Page 2

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	**David K. Wiesner, Esq.**	Title:	**NHPUC Staff Attorney**
Address:	**Public Utilities Commission** **21 South Fruit Street, Suite 10** **Concord, NH 03301**	Phone #:	**603-271-6030**
		Fax#:	**603-271-4033**
		E-mail:	**David.Wiesner@puc.nh.gov**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **March 13, 2015**

X Fax **X** E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **March 4, 2015 at 9:00 a.m.**

Place: **Public Utilities Commission**
21 South Fruit Street, Suite 10
Concord, New Hampshire

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **FIS 15:006** , dated **January 20, 2015**

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution: **The proposed rules do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision of the State of New Hampshire. They therefore do not violate Part I, Article 28-a of the N.H. Constitution by necessitating additional local expenditures by a political subdivision.**

STATE OF NEW HAMPSHIRE
Inter-Department Communication

DATE: January 20, 2015

FROM: Pamela Ellis
Office of Legislative Budget Assistant
State House, Room 102
Concord, New Hampshire 03301

RE: FIS 15:006

TO: David Wiesner
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Attached is the fiscal impact statement listed above. It should be reviewed and then submitted to the Division of Administrative Rules, Office of Legislative Services, in accordance with the N.H. Rulemaking Manual dated September 2001.

Attachment

LBAO
FIS 15:006
01/20/15

Fiscal Impact Statement for Site Evaluation Committee rules governing Organizational and Procedural Rules. [Site 100 and Site 201.01-204.05]

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**
   There is no difference in cost when comparing the proposed rules to the existing rules.

1. **Cite the Federal mandate. Identify the impact on state funds:**
   No federal mandate, no impact on state funds.

2. **Cost and benefits of the proposed rule(s):**

   A. **To State general or State special funds:**
      None

   B. **To State citizens and political subdivisions:**
      None

   C. **To independently owned business:**
      None

Readopt with amendments Site 100, effective 6-17-08 (Document #9182), to read as follows:

CHAPTER Site 100 ORGANIZATIONAL RULES

PART Site 101 PURPOSE AND APPLICABILITY

Site 101.01 Purpose. The purpose of these rules is to:

(a) Describe the requirements and procedures of the site evaluation committee in reviewing and acting upon applications to construct energy facilities, ~~renewable energy facilities, and bulk power supply facilities~~requests for modification of facilities, determinations of jurisdiction and exemption, and similar or related business before the committee or any designated subcommittee; and

(b) Describe the organization of the site evaluation committee and any designated subcommittee.

Site 101.02 Applicability. These rules shall apply to:

(a) Any person who constructs or operates, or proposes to construct or operate~~,~~ an energy~~, renewable energy, or bulk power~~ facility in New Hampshire; ~~and~~

(b) Any person who participates in public information sessions scheduled by the applicant or adjudicative or informational public hearings conducted by the committee, or a designated subcommittee, ~~or commission~~ concerning an energy~~, renewable energy, or bulk power supply~~ facility; and

(c) Any person or organization appearing as a party, an intervenor, or a public commenter before the committee or any designated subcommittee.

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~~ Site 102.02 "Adaptive management" means a system of management practices based on specified desired outcomes, monitoring to determine if management actions are meeting the desired outcomes, and, if not, provisions for management changes designed to ensure that the desired outcomes are met or are re-evaluated.

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

Site 102.~~03~~04 "Administrator" means the administrator of the committee.

Site 102.05 "Applicant" means any person seeking to construct and operate any energy~~, renewable energy or bulk power supply~~ facility within this state.

Site 102.~~04~~06 "Application" means the written document filed with the committee seeking the issuance of a Certificate of Site and Facility.

Site 102.~~05 "Bulk power supply facilities~~07 "Area of potential visual effect" 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 equipment and associated facilities designed for, or capable of operation at~~ geographic area from which a ~~capacity of greater than 30 megawatts~~ proposed ~~and to be owned by entities not~~facility would be visible, and would result in potential visual impacts, subject to ~~rate regulation by~~ the ~~commission; or~~

limitations in Site 301.05(b~~) Transmission lines which are necessary to interconnect one electric generating facility or group of energy facilities to the transmission grid.~~)(4).

~~Site 102.06~~ 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 102.09 "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 subcommittee deems appropriate, that authorizes the applicant to proceed with the proposed renewable energy facility.

Site 102.10 "Combined observation" means a viewer sees multiple energy facilities from a stationary point within a typical cone of vision.

Site 102.11~~07~~ "Commission" means the New Hampshire public utilities commission.

Site 102.~~08~~12 "Committee" means the site evaluation committee established under RSA 162-H and these rules.

~~Site 102.09~~ Site 102.13 "Critical wildlife habitat" means, for a federally listed threatened or endangered species, (a) the designated and mapped specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, 16 U.S.C. § 1533, on which are found those physical or biological features (1) essential to the conservation of the species, and (2) which may require special management considerations or protection, and (b) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, 16 U.S.C. § 1533, upon a determination by the Secretary of the United States Department of the Interior that such areas are essential for the conservation of the species.

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 102.15 "Energy facility" means "energy facility" as defined in RSA 162-H:2,VII, namely ~~"~~

(a) 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 be 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 generating 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~~ and energy transmission pipelines~~, storage tanks, 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~~ that are not considered part of a ~~certificate, consistent with the findings and purposes set forth in RSA 162-H:1."~~local distribution network;

(b) electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts or more;

(c) an electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility under subparagraph (b), over a route not already occupied by a transmission line or lines;

(d) an electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length, over a route not already occupied by a transmission line;

(e) a new electric transmission line of design rating in excess of 200 kilovolts;

(f) a renewable energy facility; and

(g) any other facility and associated equipment that the committee determines requires a certificate, consistent with the findings and purposes of RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI."

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 102.17 "Historic sites" means "historic property," as such term is defined in 36 C.F.R. §800.16(l).

Site 102.18 "Key observation point" means a point from a scenic resource that has the greatest number of proposed facility structures or components potentially visible, where the greatest amount of public use is anticipated, and at which access to the scenic resource is most easily or likely achieved.

Site 102.19 "Landscape" means the characteristic, visible features of an area including landforms, water forms, vegetation, cultural features and all other objects and aspects of natural and human origin.

Site 102.20 ~~Site 102.10~~ "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 102.21 "Natural community" means a recurring assemblage of plants and animals found in particular physical environments as classified by the New Hampshire Natural Heritage Bureau.

Site 102.22

~~Site 102.11~~ "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~~32, III.

Site 102.~~12~~23 "Person" means "person" as defined by RSA 162-H:2, IX, namely, "any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization."

Site 102.~~13~~24 "Petition" means:

(a) ~~"Petition" as defined in RSA 162-H:2, X-a, namely, "a~~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~~.~~; or

(c) Any other initial filing that requests the committee to take action with respect to a matter within its jurisdiction or to determine whether it has jurisdiction over a matter.

Site 102.~~14~~25 "Petitioner" means~~:~~

(a) For a petition as defined in Site 102.~~13~~24(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~~governing body of ~~selectmen of the~~a host community or 2 or more ~~boards of selectmen~~governing bodies of abutting communities; or

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

(b) For a petition as defined in Site 102.~~13~~24(b), a person who files a petition for intervention pursuant to RSA 541-A:32~~.~~; or

~~Site 102.15~~ (c) For a petition as defined in Site 102.24(c), a person who files the petition with the committee.

Site 102.26 "Photosimulations" means computer-enhanced images generated using professionally accepted software that illustrate the visible effects anticipated from a proposed facility.

Site 102.27 "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.~~16~~28 "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.~~17~~29 "Public information hearing" means a hearing scheduled pursuant to RSA 162-H:10, I-c where the applicant presents information to the site evaluation committee and other agencies that have ~~jurisdiction~~permitting or other regulatory authority over the subject matter and to the public about the proposed ~~facilities~~facility.

Site 102.30 "Public information session" means a public meeting held before or after the filing of an application at which the applicant presents information to the public regarding the proposed facility, as provided for in RSA 162-H:10, I and I-a.

Site 102.31

~~Site 102.18~~ "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.~~19~~32 "Rare natural community" means a natural community ranked by the New Hampshire Natural Heritage Bureau as S1 (critically imperiled), S2 (imperiled), or S3 (very rare and local).

Site 102.33 "Rare plant" means any species included on the most recent version of the "Rare Plant List for New Hampshire" maintained by the New Hampshire Natural Heritage Bureau.

Site 102.34 "Renewable energy facility" means "renewable energy facility" as defined in RSA 162-H:2, XII.

Site 102.35 "Scenic quality" means a reasonable person's perception of the intrinsic beauty of landforms, water features, or vegetation in the landscape, as well as any visible human additions or alterations to the landscape.

Site 102.36 "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 102.37 "Sequential observation" means a viewer sees multiple energy facilities from different viewpoints as the viewer travels along a particular route such as a hiking trail, river, scenic byway, or on a lake.

Site 102.38

~~Site 102.20~~ "Service list" means a list maintained by the committee containing the names and addresses of all parties and intervenors ~~to~~in a proceeding and all other interested persons or groups who request to be included on the service list.

Site 102.~~21~~39 "Shadow flicker" means the alternating changes in light intensity that can occur when the rotating blades of a wind turbine are back-lit by the sun and cast moving shadows on the ground or on structures.

Site 102.40 "Significant habitat resource" means habitat used by a wildlife species for critical life cycle functions.

Site 102.41 "Significant wildlife species" means (a) any species listed as threatened or endangered, or which is a candidate for such listing, by the United States Fish and Wildlife Service, or (b) any species listed as threatened, endangered, or of special concern by the New Hampshire Department of Fish and Game.

Site 102.42 "Subcommittee" means any subcommittee established under RSA 162-H:4~~, V (b)~~ a for the purpose of reviewing an application for ~~a renewable~~an energy facility or to exercise any other authority or perform any other duty of the committee, subject to the limitations set forth in RSA 162-H:4-a, I.

Site 102.43 "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 102.44 "Visibility analysis" means a spatial analysis conducted using computer software to determine the potential visibility of a proposed facility.

Site 102.45 "Visual impact assessment" means the process for determining the degree of change in scenic quality resulting from construction of a proposed facility.

Site 102.46 "Wildlife" means "wildlife" as defined under RSA 207:1, XXXV, namely "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."

~~Site 102.22 "Transmission line" means an electric transmission line as that term is used and described in RSA 162-H:2, II (b), (c), and (d).~~

PART Site 103 COMMITTEE DESCRIPTION

Site 103.01 Committee Membership and Responsibilities.

(a) The site evaluation committee consists of the following 9 persons, except as otherwise provided in (b) below:

(1) The commissioners of the commission;

(2) The commissioner of the department of environmental services ~~or assistant commissioner as designee~~;

~~(2) The director of the division of water of the department of environmental services;~~

(3) The commissioner of the department of resources and economic development ~~or the director of the division of economic development as designee~~;

(4) The commissioner of the department of ~~health and human services or one of the 2 most senior administrators within the department responsible for management of public health services as designee~~transportation;

(5) The ~~executive director~~commissioner of the ~~fish and game~~ department~~;~~

~~(6) The director~~ of cultural resources or the ~~office of energy and planning or deputy director as designee;~~

~~(7) The~~ director of the division of ~~parks and recreation;~~historical resources as designee; and

~~(8) The director of the division of forests and lands;~~

~~(9) The director of the division of air resources;~~

~~(10) The commissioner of the department of transportation or assistant commissioner as designee;~~

~~(11) The commissioners of the public utilities commission; and~~

~~(12) A staff engineer designated by the commissioners of the public utilities commission.~~

~~(b)~~ (6) Two members of the public appointed pursuant to RSA 162-H:3, I (f), except in any matter for which an alternate public member is appointed pursuant to RSA 162-H:3, XI.

(b) If at any time a member who is a state employee must recuse himself or herself on a matter, or is not otherwise available for good reason, such member shall designate a senior administrative employee or a staff attorney from his or her agency to sit on the committee.

(c) The committee shall be responsible for ~~evaluating, siting,~~the following:

(1) Evaluation and issuance of any certificate for an energy facility under RSA 162-H and these rules;

(2) Determination of the terms and conditions of any certificate issued under RSA 162-H and these rules;

(3) Adjudication and determination of any petition filed under RSA 162-H and ~~monitoring~~these rules;

(4) Monitoring of the construction and operation of ~~energy-related facilities as specified in RSA 162-H.~~ any energy facility issued a certificate under RSA 162-H and these rules to ensure compliance with such certificate;

(5) Enforcement of the terms and conditions of any certificate issued under RSA 162-H and these rules; and

(6) Assistance to the public in understanding the requirements of RSA 162-H and these rules.

Site 103.02 Committee Chairperson and Vice-Chairperson and Authority.

~~(a) The~~ (a) The chairperson of the commission shall be chairperson of the committee.

(b) The commissioner of the department of environmental services shall be ~~chairperson of the committee.~~

~~(b) The chairperson of the public utilities commission shall be~~ the vice-chairperson of the committee.

(c) The chairperson shall serve as the chief executive of the committee and shall have the authority to do the following:

(1) Delegate to other members the duties of presiding officer;

(2) Perform administrative actions for the committee;

(3) Establish the budgetary requirements of the committee, with the consent of the committee;

(4) Hire or engage the administrator and other personnel to provide services to the committee;

(5) In the absence of an administrator, and with approval of the committee, engage independent contractors or additional personnel to provide technical, legal, or administrative support to fulfill the functions of the committee; and

(6) Form subcommittees pursuant to RSA 162-H:4-a and Site 103.03 ~~Renewable Energy~~.

Site 103.03 Subcommittee Formation and Authority.

(a) A subcommittee ~~of~~may be established to consider and make a decision on an application, including the issuance of a certificate, or to exercise any other authority or perform any other duty of the committee under this chapter, except that no subcommittee shall

(1) Approve the budgetary requirements of the committee;

(2) Approve any support staff positions paid for through the site evaluation committee fund;

(3) Propose the committee funding plan under RSA 162-H:21; or

(4) Adopt initial or final rulemaking proposals.

(b) For purposes of executing its regulatory functions under RSA 162-H and these rules, a subcommittee shall assume the role of and be considered the committee with all of its associated powers and duties in order to execute the charge given the subcommittee upon its formation.

(c) When considering the issuance of a certificate or a petition of jurisdiction, a subcommittee shall have no fewer than 7 members ~~shall be created for each application accepted for a renewable energy facility pursuant to RSA 162-H:6-a, III.~~, provided that

~~(b) The~~ (1) The 2 public members shall serve on each subcommittee ~~shall include~~with the ~~chairperson~~remaining 5 or ~~vice-chairperson of the committee, and at least 3~~more members selected by the chairperson from among the ~~following:~~state agency members of the committee;

~~(1) The department of environmental services;~~

~~(2) The department of resources and economic development; and~~

~~(3) The fish and game department.~~

(2) Each selected member may designate a senior administrative employee or staff attorney from his or her respective agency to sit in his or her place on the subcommittee; and

(3) The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible.

(d) In any matter not covered under (c) above, the chairperson may establish a subcommittee of 3 members, consisting of 2 state agency members and one public member, provided that

(1) Each state agency member may designate a senior administrative employee or staff attorney from his or her agency to sit in his or her place on the subcommittee; and

(2) The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible.

(e) Any party whose interests may be affected may object to a matter being assigned to a 3-person subcommittee pursuant to (d) above not less than 14 days before the first hearing before such subcommittee.

(f) If an objection as described in (e) above is received by the committee, the chairperson shall remove the matter from the 3-person subcommittee and either assign it to a subcommittee formed under (c) above or have the full committee decide the matter.

Site 103.04 Quorum.

(a) For purposes of conducting a hearing ~~and,~~ voting on motions, ~~a quorum~~ or conducting other business of the committee ~~or,~~ a ~~subcommittee~~quorum shall be ~~a majority of the~~7 members of the committee ~~or~~.

(b) For purposes of conducting the business of a subcommittee established under Site 103.03(c), 5 members of the subcommittee shall constitute a quorum.

~~(b~~ (c) For purposes of conducting the business of a subcommittee established under Site 103.03(d), 2 members of the subcommittee shall constitute a quorum.

(d) If a quorum of the committee or a subcommittee is lacking, the members present shall adjourn until a quorum is present.

Site 103.05 Committee Administrator and Staff.

(a) ~~Staff support~~ Administrative services for the ~~committee~~Committee shall be provided by the administrator.

(b) The administrator shall monitor the construction or operation of any energy facility issued a certificate under RSA 162-H and these rules, if and to the extent such monitoring duties are delegated to the administrator pursuant to RSA 162-H:4, III.

(c) The administrator shall specify the use of any technique, methodology, practice, or procedure approved within a certificate, if and to the extent such duty is delegated to the administrator pursuant to RSA 162-H:4, III-a.

(d) The administrator shall specify minor changes in route alignment to the extent that such changes are authorized by a certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate, if and to the extent such authority is delegated to the administrator pursuant to RSA 162-H:4, III-a.

(e) The administrator, with committee approval, shall engage additional technical, legal, or administrative ~~assistant to the commissioner of the department of environmental services~~support to fulfill the functions of the committee as are deemed necessary, provided that any such person to be hired by the administrator shall be approved by the chairperson.

~~(b) The committee shall retain additional administrative, technical and legal assistance as needed to fulfill its responsibilities.~~

~~(c) The committee~~ (f) The chairperson or the administrator shall appoint counsel to conduct all prehearing conferences ~~if it promotes~~, if such appointment would promote the orderly conduct of the proceeding.

Site 103.06 Counsel for the Public. Pursuant to RSA 162-H:9, the attorney general shall appoint an assistant attorney general as counsel for the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.

PART Site 104 PUBLIC REQUESTS FOR INFORMATION

Site 104.01 Requests for Committee Public Records.

(a) Requests for access to the public files and records of the committee shall be directed to the administrator, or to the chairperson of the committee ~~as custodian of the records~~if no administrator has been appointed, as follows:

Administrator [Chairperson]
~~Public Information and Permitting Unit~~
Site Evaluation Committee
c/o New Hampshire ~~Department of Environmental Services~~Public Utilities Commission
~~29 Hazen Drive~~
21 South Fruit Street, Suite 10
Concord, NH ~~03302-0095~~03301-2429
Tel. (603) 271-~~3306~~2431
Fax (603) 271-~~8013~~3878
TDD Access Relay N.H. 1-~~(~~800~~)~~-735-2964

(b) Any member of the public may request photocopies of minutes and records of the committee in any proceeding or in any other matter before the committee pursuant to (a) above upon a determination by the presiding officer, in the case of a proceeding, or the ~~chairman~~chairperson, with respect to all other

committee matters, that such requested documents are not exempt from disclosure pursuant to RSA 91-A:5.

(c) The committee shall provide the requested documents to the person requesting ~~them~~such documents upon payment of the cost of copying such documents pursuant to (b) above and (d) and (e) below.

(d) Copies shall be free for requests of 10 pages or less.

(e) A charge of $0.10 per page shall be assessed for every copy over the first 10 pages.

(f) The committee shall post public information on its website at ~~www.nhsec.state.nh.us.~~www.nhsec.nh.gov.

Readopt with amendments Site 201 – 204, effective 6-17-08 (Document #9183-A), cited and to read as follows:

CHAPTER Site 200 PRACTICE AND PROCEDURE RULES

PART Site 201 PUBLIC INFORMATION SESSIONS AND HEARINGS

Site 201.01 Public Information ~~Hearings~~Sessions Prior to Application.

(a) ~~Within~~At least 30 days ~~of a finding that~~prior to filing an application for a ~~bulk power facility or an energy facility is complete pursuant to 301.05~~certificate, the ~~committee, or, in the case of a bulk power supply facility, the commission, with representatives of other agencies that have jurisdiction over the subject matter,~~applicant shall hold at least one ~~joint~~ public information ~~hearing~~session in each county in which the proposed facility is to be located, ~~pursuant to RSA 162-H:10, I~~at which session the applicant shall present information regarding the project and receive comments from the public.

(b) ~~For applications for a renewable energy facility, the subcommittee shall hold at least one public information hearing, upon 30 days~~ The applicant shall publish a public notice~~,~~ not less than 14 days before each such session in one or more newspapers having a regular circulation in ~~each~~the county in which the ~~proposed facility~~session is to be ~~located, pursuant to RSA 162-H:6 a~~held, which notice shall~~:~~

~~(c) The purpose of public information hearings shall be to allow the applicant to~~ describe the nature and location of the proposed facility.

(c) ~~facilities~~Not less than 10 days before each such session, the applicant shall provide to the ~~committee or commission, as applicable, and to the public and to allow members~~chairperson of the committee a copy of the public ~~to raise questions and make comments about the proposal~~notice published pursuant to (b) above.

(d) The ~~presiding officer of a public information hearing~~applicant shall arrange~~:~~

~~(1) Require persons desiring to make comments to so indicate by signing a roster made available~~ for ~~this purpose prior to~~a transcript of such session to be prepared and shall include the ~~commencement of the public information hearing; and~~
transcript in its application
~~(2) Limit the time allowed at hearing~~ for ~~each person's comments when necessary to allow all persons with comments to make them~~a certificate.

Site 201.02 ~~Informational Meetings.~~Public Information Sessions After Application.

(a) Within 45 days after acceptance of an application for a certificate pursuant to Site 301.10, the applicant shall hold at least one public information session in each county in which the proposed facility is to be located, at which session the applicant shall present information regarding the proposed energy facility described in the application.

(b) The applicant shall ~~hold informational meetings upon request of the local governing body or~~ publish a public notice not less than 14 days before each such session in one or more newspapers having a regular circulation in the county in which the session is to be held, describing the nature and location of the proposed facility.

(c) Not less than 10 days before each such session, the applicant shall provide to the presiding officer of the committee a copy of the public notice published pursuant to (b) above.

(d) The administrator, or a designee of the presiding officer of the committee, shall act as presiding officer of the public information session, and shall explain to the attendees at such session the process to be used by the committee to review the application for the proposed facility.

Site 201.03 Public Hearings in Host Counties.

(a) Within 90 days after acceptance of an application for a certificate pursuant to ~~RSA 162-H:15~~Site 301.10, the committee shall hold at least one public hearing in each county in which the proposed facility is to be located.

(b) Each public hearing held under (a) above shall be a joint hearing with representatives of any agencies that have permitting or other regulatory authority over the subject matter, and shall be in lieu of and deemed to satisfy all initial requirements for public hearings under the statutes requiring permits relative to environmental impact applicable to the proposed facility.

(c) Notwithstanding (b) above, if any agency that has permitting or other regulatory authority over the subject matter does not otherwise have authority to conduct hearings, such agency may not join in the public hearing, provided that the ability or inability of any such state agency to join in the public hearing shall not affect the composition of the committee or the ability of any member of the committee to act in accordance with RSA 162-H and these rules.

(d) The committee shall publish a public notice not less than 14 days before each such public hearing in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facility.

Site 201.04 Additional Information Sessions. Upon request of the governing body of a municipality or unincorporated place in which the proposed energy facility is to be located, or on the committee's own motion, the committee shall have the authority to order the applicant to provide such additional information sessions as are reasonable to inform the public regarding the proposed energy facility.

PART Site 202 ADJUDICATIVE PROCEEDINGS

Site 202.01 Adjudicative Hearing. Except for petitions to intervene, which shall be governed by Site 202.11, the committee ~~and, in the case of a bulk power supply facility application, the commission,~~ shall conduct an adjudicative proceeding regarding an application or petition, or when determining whether to suspend or revoke a certificate, in accordance with the administrative procedure act, RSA 541-A, and these rules.

Site 202.02 Presiding Officer~~.~~ and Hearing Officer.

(a) The chairperson of the committee shall preside over adjudicative hearings conducted before the full committee or shall designate the vice-chairperson or another member as presiding officer for such proceedings. In the case of any adjudicative proceeding to be conducted before a subcommittee, the chairperson shall designate one member or designee to be the presiding officer, who shall be an attorney whenever possible.

(b) In the absence of the ~~chairperson and vice chairperson~~designated presiding officer, the members of the committee or subcommittee, as applicable, who are present shall select by majority vote a member of such committee or subcommittee to serve as presiding officer.

(c) In adjudicative proceedings, the presiding officer shall:

(1) ~~-~~ Facilitate informal resolution of contested issues;

(2) ~~-~~Conduct any hearing in a fair, impartial and efficient manner;

(3) Decide any disputed petitions for intervention;

(4) Admit relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;

(~~4)~~ 5) Provide opportunities for the parties and committee members to question any witness;

(~~5)~~ 6) Receive public statements; and

(~~6)~~ 7) Cause a complete record of any hearing to be made.

(d) In any matter before the committee or any subcommittee, the presiding officer, or a hearing officer designated by the presiding officer, shall hear and decide procedural matters that are before the committee, including the following:

(1) Procedural schedules for proceedings;

(2) Discovery schedules for proceedings;

(3) Discovery motions in proceedings;

(4) Consolidation of parties having substantially similar interests;

(5) Decisions on undisputed petitions for intervention; and

(6) Identification of significant disputed issues for hearing and decision by the committee.

Site 202.03 Withdrawal of ~~Presiding Officer or~~ Committee or Subcommittee Member.

(a) Upon his or her own initiative, or upon the motion of any party, a member of the committee or any subcommittee shall, for good cause, withdraw from a proceeding to consider an application or petition.

(b) Good cause shall exist if a committee or subcommittee member has:

(1) A direct interest in the outcome of the proceeding, including, but not limited to, a financial or family relationship within the third degree of relationships, with any party or representative; or

(2) Made statements or engaged in behavior which a reasonable person would believe indicates that he or she has prejudged the facts of the case; or

(3) Personally believes he or she cannot fairly judge the facts of the case.

(c) Mere knowledge of the issues, the parties, counsel, consultants, representatives or any witness shall not constitute good cause for withdrawal.

Site 202.04 Appearances and Representation.

(~~1~~a) A brief identification of the matter;

(~~2~~b) A statement as to whether or not the representative is an attorney and, if so, whether the attorney is licensed to practice in New Hampshire; and

(~~3~~c) The party or representative's daytime address ~~and,~~ telephone number, e-mail address, and other basic contact information.

Site 202.05 ~~Staff~~ Participation of Committee and Agency Staff.

~~(a) Staff~~ (a) The administrator and committee staff designated by the chairperson shall participate in adjudicative proceedings on an advisory basis.

~~(b) Staff shall be designated by the chairman.~~

(b) The commissioner or director of each state agency that intends to participate in a committee proceeding shall advise the presiding officer of the name of the individual on the agency's staff designated to be the agency liaison for the proceeding.

(c) The presiding officer may request the attendance of a participating state agency's designated liaison at a session of the committee or any subcommittee if that person could materially assist the committee or subcommittee in its examination or consideration of a matter.

(d) Within 30 days of receipt of notification of a committee proceeding, a state agency not having permitting or other regulatory authority but seeking to participate in the proceeding shall advise the presiding officer of the committee in writing of such intent to participate.

(e) The presiding officer shall permit the participation of a state agency in a committee proceeding pursuant to a request submitted under (d) above if the presiding officer finds that the agency has demonstrated a material interest in the proceeding and its participation conforms with the procedural rules of the committee.

(e) All communications between the committee and state agencies regarding a pending committee proceeding shall be included in the official record of the proceeding and shall be publicly available.

Site 202.06 Format of Documents.

(a) All correspondence, pleadings, motions, petitions or other documents filed under these rules shall:

(1) Include the title and docket number of the proceeding, if known;

(2) Be typewritten or clearly printed on paper 8 ½ by 11 inches in size;

(3) Be signed by the party or proponent of the document, or if the party appears by representative, by the representative; and

(4) Include a statement certifying that the document has been served on all parties to the proceeding.

(b) The signature on a document filed with the committee or subcommittee, as applicable, shall constitute certification that:

(1) The signer has read the document;

(2) The signer is authorized to file ~~it~~the document;

(3) To the best of the signer's knowledge, information and belief, there are good and sufficient grounds to support ~~it~~the document; and

(4) The document has not been filed for purposes of delay.

Site 202.07 Service of Documents.

(a) All petitions, motions, exhibits, memoranda, comments, correspondence or other documents filed by any party to a proceeding governed by these rules shall be served by that party upon all other parties on the service list.

(b) All notices, orders, decisions or other documents issued by the committee or subcommittee, as applicable, pursuant to ~~this chapter~~these rules shall be served by the presiding officer upon all parties on the service list.

(c) Service of all documents relating to a proceeding shall be made by electronic mail, unless a party or person listed on the service list has indicated an inability to receive service by electronic mail, in which case service shall be made by first class mail, postage prepaid, in the United States mail.

(d) If a party serving ~~documents~~any document does not have the ability to serve ~~them~~such document by electronic mail, service shall be made by first class mail, postage prepaid, in the United States mail.

(e) Notwithstanding paragraphs (a) through (c), when a party appears by a representative, service shall be upon the representative by electronic mail, unless the representative has indicated an inability to receive service by electronic mail, in which case service shall be made by first class mail, postage prepaid, in the United States mail at the address stated ~~on~~in the appearance filed by the representative.

Site 202.08 Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Site 202.09 Notice of Hearing. A notice of an adjudicative hearing issued by the committee or subcommittee, as applicable, shall contain the information required by RSA 541-A:31, III and a description of the nature and location of the proposed ~~facilities~~energy facility.

Site 202.10 Prehearing Conference.

(a) Prehearing conferences shall be conducted in accordance with RSA 541-A:31.

(b) The committee or subcommittee shall designate counsel or the administrator to serve as the presiding officer for a prehearing conference when it is necessary to assure the orderly process of the proceeding.

(c) Following the prehearing conference, the presiding officer shall issue in writing to the parties and intervenors a procedural schedule for the proceeding~~.~~, including a schedule for the conduct of discovery.

Site 202.11 Intervention.

(a) Persons seeking to intervene in a proceeding shall file petitions with the committee or subcommittee, as applicable, with copies served on all parties identified in the committee or subcommittee notice of hearing ~~pursuant to the issued~~or prehearing ~~schedule~~conference.

(b) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall grant a petition to intervene if:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the ~~presiding officer's~~ order of notice of the hearing or prehearing conference, at least 3 days before the hearing or prehearing conference;

(2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law, including a state agency pursuant to RSA 162-H:7-a, VI; and

(3) The presiding officer or hearing officer, as applicable, determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

(c) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall grant one or more late-filed petitions to intervene pursuant to RSA 541-A:32, II, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

(d) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall impose conditions upon ~~such~~an intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time, including the following conditions, if such conditions promote the efficient and orderly process of the proceeding:

(1) Limitation of such intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the ~~motion~~petition;

(2) Limitation of such intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring 2 or more such intervenors to combine their presentations of evidence and argument, cross-examination and other participation in the proceedings.

(e) Limitations imposed in accordance with paragraph (d) shall not be so extensive as to prevent such an intervenor from protecting the interest that formed the basis of the intervention.

(f) Any party aggrieved by a decision on a petition to intervene may within 10 days request that the decision be reviewed by the committee or subcommittee, as applicable.

Site 202.12 Discovery.

(a) The~~,~~ applicant or petitioner, the public counsel, and any person granted intervenor status shall have the right to conduct discovery in an adjudicative proceeding pursuant to this rule.

(b) Unless inconsistent with an applicable procedural order, any person entitled to conduct discovery pursuant to (a) above shall have the right to serve upon any party data requests, which may consist of a written interrogatory or request for production of documents.

(c) Data requests shall identify with specificity the information or materials sought.

(d) A person may serve more than one set of data requests on a party, but the total number of data requests served by each person shall not exceed 50, unless otherwise permitted for good cause shown by ruling of the presiding officer or any hearing officer designated by the presiding officer.

(e) In determining what constitutes a data request for the purpose of applying the number limitation set forth in (d) above, each question shall be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another question, and however the questions may be grouped, combined, or arranged.

(f) A copy of each data request, each objection to data requests, and each response to data requests shall be served upon every person designated for discovery filings on the committee's official service list for the proceeding.

(g) Responses to data requests and objections to data requests shall not be filed with the committee or subcommittee.

(h) A response to a data request shall be made within 10 days of the date of receipt or in accordance with a procedural schedule established by the presiding officer or any hearing officer designated by the presiding officer.

(i) Objections to data requests shall:

(1) Be served in writing on the propounder of the requests within 10 days following receipt of the request unless a different time period is specified in an applicable procedural order; and

(2) Clearly state the grounds on which the objections are based.

(j) Failure to object to a data request or requests for documents within 10 days of its receipt without good cause shall be deemed a waiver of the right to object.

(k) Motions to compel responses to data requests shall:

(1) Be made pursuant to Site 202.14;

(2) Be made within 10 days of receiving the applicable response or objection, or the deadline for providing the response, whichever is sooner;

(3) Specify the basis of the motion; and

(4) Certify that the movant has made a good-faith effort to resolve the dispute informally.

(l) The presiding officer or any hearing officer designated by the presiding officer shall authorize ~~data requests in the nature of interrogatories, requests for production of documents~~other forms of discovery, including technical sessions, requests for admission of material facts, depositions, and any other discovery method permissible in civil judicial proceedings before a state court, when such discovery is necessary to enable ~~a party~~the parties to acquire evidence admissible in a proceeding ~~and when~~.

(m) When a party has provided a response to a data request, and prior to the issuance of a final order in the proceeding, the party shall have a duty to reasonably and promptly amend or supplement the response if the party obtains information which the party would have been required to provide in such ~~method will not unduly delay the prompt and orderly conduct of the proceeding.~~response had the information been available to the party at the time the party served the response.

~~(b) The presiding officer shall issue a prehearing order prescribing the methods of discovery, the timing of discovery and the means for resolving discovery disputes.~~

Site 202.13 Site Inspections.

(a) The committee or subcommittee, as applicable, and public counsel shall conduct a site visit of any property which is the subject of a ~~hearing~~proceeding if requested by a party, or on its own motion, if the committee or subcommittee determines that the site visit will assist the committee or subcommittee in reaching a determination in the ~~hearing~~proceeding.

(b) The presiding officer shall determine who may attend any site visit conducted pursuant to (a) above and shall specify the conditions and restrictions applicable to the site visit.

(c) The applicant shall provide full access to the site of its proposed energy facility for any site visit conducted pursuant to (a) above at reasonable times and subject to reasonable conditions.

Site 202.14 Motions and Objections.

(a) Motions shall be in writing and filed with the committee unless made in response to a matter asserted for the first time at a hearing.

(b) Oral motions and any contemporaneous objection to such motions shall be recorded in full in the record of the hearing.

~~(c) The~~ (c) The presiding officer or any hearing officer designated by the presiding officer shall direct the moving party to submit the motion in writing, with supporting information, by the deadline established by the presiding officer or hearing officer if the presiding officer or hearing officer finds that the motion requires additional information in order to be fully and fairly considered. ~~The~~The presiding officer or hearing officer designated by the presiding officer shall establish a deadline that promotes the efficient and orderly process of the proceeding.

(d) The moving party shall make a good faith effort to obtain concurrence with the relief sought from ~~all of the parties~~other parties, if the relief sought involves a postponement or extension of time.

(e) The caption of a motion shall state whether it is assented-to or contested, and shall identify within the body of the motion those parties that:

(1) Concur in the motion;

(2) Take no position on the motion;

(3) Object to the motion; and

(4) Could not be reached despite a good faith effort to do so, if the motion requests a postponement or extension of time.

(f) Objections to written motions shall be filed within 10 days ~~of~~after the date of the motion, unless a different time period is prescribed by the presiding officer or any hearing officer designated by the presiding officer.

(g) Failure by an opposing party to object to a motion shall not in and of itself constitute grounds for granting the motion.

(h) The presiding officer~~,~~ or any hearing officer designated by the presiding officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion.

Site 202.15 Waiver of Rules.

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

(1) The waiver serves the public interest; and

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

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

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

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

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

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

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

Site 202.16 Postponements.

(a) A party requesting postponement of a hearing shall file a written request with the committee or subcommittee, as applicable, at least 7 days prior to the date of the hearing.

(b) The party requesting postponement shall make a good faith attempt to seek the concurrence of the other parties ~~to~~with the request.

(c) The committee or subcommittee, as applicable, shall grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the proceeding.

(d) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record.

(e) If the later date, time and place are not known at the time of the hearing that is being postponed, the committee shall issue a written order stating the date, time and place of the postponed hearing as soon as practicable.

Site 202.17. Continuances.

(a) ~~Any party~~The applicant or ~~intervenor~~any other party may make an oral or written motion at hearing that the hearing be continued to a later date or time, stating good cause for such requested continuance.

(b) A motion for continuance shall be granted if the ~~president~~presiding officer or any hearing officer designated by the presiding officer determines that ~~a~~good cause exists to grant the continuance and the continuance could assist in resolving the case fairly.

(c) If the later date, time and place are known when the hearing is continued, the information shall be stated on the record.

(d) If the later date, time and place are not known when the hearing is continued, the presiding officer or the designated hearing officer, as applicable, shall issue a written scheduling order stating the date, time and place of the continued hearing.

Site 202.18 Record of the Hearing. A record shall be kept of hearings and transcripts shall be made available in accordance with RSA 541-A:31.

Site 202.19 Burden and Standard of Proof.

(a) The party asserting a proposition shall bear the burden of proving the ~~truth of the~~ proposition by a preponderance of the evidence.

(b) An applicant for a certificate of site and facility shall bear the burden of proving facts sufficient for the committee~~, in the case of an energy facility, the commission, in the case of a bulk power supply facility; and, the designated subcommittee, in the case of a renewable energy facility~~ or subcommittee, as applicable, to make the findings required by RSA 162-H:16.

(c) In a hearing held to determine whether a certificate, license, permit or other approval that has already been issued should be suspended, revoked or not renewed, the committee or subcommittee, as applicable, shall make its decision based on a preponderance of the evidence in the record.

Site 202.20 Order of Proceeding. ~~Evidence~~Unless otherwise determined by the presiding officer, evidence shall be offered in the following order at any proceeding before the committee or subcommittee, as applicable:

(a) The applicant or other party bearing the overall burden of proof;

(b) Intervenors; and

(c) Counsel for the public.

Site 202.21 Testimony. All testimony shall be under oath or affirmation, and shall be subject to cross-examination by parties or their representatives and to questioning by members of the committee or subcommittee, as applicable.

Site 202.22 Prefiled Testimony.

(a) An original and ~~15~~10 copies of an applicant's prefiled testimony and exhibits shall be filed with its application.

(b) Prefiled testimony and exhibits from other parties or rebuttal testimony from the applicant or any other party shall be filed as determined by a procedural order issued by the presiding officer.

(c) One copy of prefiled testimony and exhibits shall also be forwarded by the applicant to each party and to each person listed on the service list.

Site 202.23 Filings and Applications. ~~All filings and applications shall be made to the following address:~~

(a) All applications, petitions and filings shall be made to the following address:

Site Evaluation Committee
~~N.H. Department of Environmental Services~~
~~29 Hazen Drive~~
c/o N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire ~~03302-0095~~03301-2429

(b) Each person filing a document shall, in addition to any required paper filing, electronically file the document, to the extent practicable, in an electronic file format compatible with the computer system of the commission.

(c) The committee shall maintain a list on its website of the types of electronic file formats compatible with the computer system of the commission.

Site 202.24 Evidence.

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A:33.

(b) All documents, materials and objects offered as exhibits shall be admitted into evidence, unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.

(c) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.

(d) Transcripts of testimony and documents or other materials admitted into evidence shall be public records, unless the presiding officer determines that all or part of a transcript or document is exempt from disclosure under RSA 91-A:5, as interpreted by case law.

Site 202.25 Public Statements.

(a) Members of the public who do not have intervenor status in a proceeding but ~~having~~have an interest in the subject matter shall be provided with an opportunity at a hearing or prehearing conference to state their ~~position~~positions.

~~(b~~ (b) The committee shall require members of the public desiring to make oral statements at a hearing or prehearing conference to so indicate by providing their names, contact information, and parties represented on a roster made available for this purpose prior to the commencement of the hearing or prehearing conference.

(c) Statements by members of the public shall be unsworn and shall not be subject to cross-examination.

(~~c~~d) Any written information or reports submitted by members of the public pursuant to RSA 162-H:10, III shall be presented prior to the close of the record ~~on~~of the ~~application~~proceeding.

(~~d~~e) Members of the public providing written information or reports pursuant to RSA 162-H:10, III shall provide copies of the written materials to the applicant.

~~(e~~ (f) Records shall be maintained of all submittals of information and reports by members of the public and of all other actions, proceedings, and correspondence of or before the committee.

(g) The committee shall post on its website all written documents submitted in connection with an adjudicative proceeding, including those submitted by members of the public, except as provided in 202.~~25~~24(d).

Site 202.26 Closing the Record.

(a) At the conclusion of a hearing, the record shall be closed and no other evidence, testimony, exhibits, or arguments shall be allowed into the record, except as allowed by ~~paragraph~~ (b) below.

(b) Prior to the conclusion of the hearing, a party may request that the record be left open to accommodate the filing of evidence, exhibits~~,~~ or arguments not available at the hearing.

(c) If the other parties ~~to~~in the ~~hearings have no objections~~proceeding do not object or if the presiding officer determines that such evidence, exhibits~~,~~ or arguments are necessary for a full consideration of the issues raised ~~at~~in the ~~hearing~~proceeding, the presiding officer shall specify a date no later than 30 days after the conclusion of the hearing for the record to remain open to receive the evidence, exhibits or arguments.

(d) If any other party ~~to~~in the ~~hearing~~proceeding requests time to respond to the evidence, exhibits or arguments submitted, the presiding officer shall specify a date no later than 30 days following the ~~filing of the material~~submission for the filing of a response.

(e) If any other party ~~to~~in the ~~hearing~~proceeding requests the opportunity to cross-examine on the additional evidence ~~or,~~ exhibits or arguments submitted, the presiding officer shall specify a date no later than 30 days following ~~filing of~~ the ~~materials~~submission for a hearing at which cross-examination on the additional evidence ~~or,~~ exhibits or arguments submitted shall be allowed.

Site 202.27 Reopening the Record.

(a) A party may request by written motion that the record in any proceeding be re-opened to receive relevant, material and non-duplicative testimony, evidence or argument ~~by written motion~~.

(b) If the presiding officer~~,~~ determines that additional testimony, evidence or ~~arguments are~~argument is necessary for a full consideration of the issues presented ~~at~~in the ~~hearing~~proceeding, the record shall be reopened to accept the offered ~~items~~testimony, evidence or argument.

(c) The presiding officer shall specify a date no later than 30 days from the date of receiving the additional testimony, evidence or argument by which other parties shall respond to or rebut the newly ~~received materials~~submitted testimony, evidence or argument.

Site 202.28 Issuance or Denial of Certificate.

(a) The committee or subcommittee, as applicable, shall make a finding regarding the criteria stated in RSA 162-H:16,~~IV~~ IV, and Site 301.13 through 301.16, and issue an order pursuant to RSA 541-A:35 issuing or denying a certificate.

(b) The committee shall keep an order and filings related to an application on file in its public records for at least 10 years following the date of the final order on any appeal.

Site 202.29 Rehearing.

(a) The rules in this section are intended to supplement RSA 541, which ~~require~~requires or ~~allow~~allows a person to request ~~a~~ rehearing of ~~a~~an order or decision of the committee prior to appealing the order or decision.

(b) The rules in this section shall apply whenever any person has a right under applicable law to request a rehearing of ~~a~~an order or decision prior to filing an appeal of the order or decision with the court having appellate jurisdiction.

(c) A motion for rehearing shall be filed within 30 days of the date of a committee decision or order.

(d) A motion for rehearing shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary, unreasonable or capricious;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

(e) A motion for rehearing in a case subject to appeal under RSA 541 shall be granted in writing if it demonstrates that the committee's order or decision is unlawful, unjust or unreasonable.

(f) The committee shall grant or deny a motion for rehearing, or suspend the order or decision~~, in writing,~~ pending further consideration, within 10 days of the filing of the motion for rehearing.

Site 202.30 Ex Parte Communications Prohibited.

(a) Committee members shall not communicate directly or indirectly with any person or party about the merits of an application or petition, unless all parties are given notice of the communication and are afforded an opportunity to participate ~~in the communication~~.

(b) Communications between or among committee members, or between committee members and their attorneys, the administrator or committee staff, or between or among the presiding officer and one or more personal assistants or support staff personnel are not prohibited under this section.

PART Site 203 DECLARATORY RULINGS

Site 203.01 Declaratory Rulings.

(a) Any person may submit a ~~motion~~petition for declaratory ruling from the committee on matters within its jurisdiction by filing an original written ~~request~~petition and ~~15~~10 copies with the committee.

(b) A ~~motion~~petition for declaratory ruling shall set forth the following information:

(1) The exact ruling being requested; and

(2) The statutory and factual basis for the requested ruling, including any supporting affidavits or memoranda of ~~a~~ law.

Site 203.02 Action on Requests.

(a) The person ~~requesting~~filing a petition to request a declaratory ruling shall provide such further information or participate in such evidentiary or other proceedings as the committee shall direct after reviewing the petition and any objections or other replies received with respect to the petition.

(b) Upon review and consideration, the committee shall issue a written ruling either granting or denying the ~~motion with~~petition, including an explanation of the factual and legal basis for granting or denying ~~such motion~~ the petition, within 90 days of ~~receiving~~receipt of the ~~motion~~petition.

(c) The committee may dismiss a petition for declaratory ruling that:

(1) Fails to set forth factual allegations that are definite and concrete;

(2) Involves a hypothetical situation or otherwise seeks advice as to how the committee would decide a future case;

(3) Does not implicate the legal rights or responsibilities of the petitioner; or

(4) Is not within the committee's jurisdiction.

PART Site 204 RULEMAKING

Site 204.01 How Adopted.

(a) A rule of the committee or any amendment or repeal thereof shall be adopted by the committee after notice and opportunity for hearing in accordance with this part.

(b) Rules may be proposed by any person or by the ~~agency~~committee.

Site 204.02 Manner for Adoption.

(a) The committee shall commence a rulemaking proceeding by drafting a proposed rule or by accepting as a proposed rule the draft of a rule proposed by any person.

(b) With respect to any proposed rule, the committee shall conduct rulemaking and adoption proceedings pursuant to RSA 541-A.

Site 204.03 Requests to Committee for Rulemaking. ~~Requests~~A request from an interested ~~persons requesting~~person proposing the adoption, amendment or repeal of a rule shall be submitted, received and ~~disposed of~~resolved in the following manner:

(a) Requests shall be submitted to the committee by letter addressed to the chairperson~~.~~;

(b) Requests shall contain the following:

(1) The date of the request;

(2) The name, address and telephone number of the person making the request; and

(3) ~~Name~~The name and address of any other person or organization represented by the person making the request~~.~~;

(c) The person making the request shall sign the request~~.~~;

(d) The request shall be typed or printed in a legible fashion~~.~~;

(e) ~~If possible, the~~The person making the request shall cite the rule and its provisions and specify any changes desired if repeal or amendment is sought, and, if possible, shall provide the text ~~or approximate text~~ of the proposed rule if promulgation is sought~~.~~;

(f) The person making the request shall include a detailed and complete statement of the reasons offered ~~by such person~~ in support of the requested action~~.~~;

(g) If the committee determines that any rulemaking request is deficient in any respect, the committee shall, within ~~10 working~~15 days of receipt of said request, notify the person making the request~~,~~ in writing~~,~~ of the specific deficiencies and allow such person to amend the ~~petition.~~request;

(h) Within 30 days of receipt of a request or amended request for rulemaking, the committee shall take one of the following actions:

(1) Initiate the requested rulemaking procedures, in accordance with this part; or

(2) Deny the request, in writing, stating the reasons for denial~~.~~;

(i) The committee shall grant the ~~petition~~rulemaking request if the ~~petition~~request is consistent with statute and case law and will assist the committee with its statutory duties.

Site 204.04 Request for Notice of Intended Rulemaking Action. Pursuant to the provisions of RSA 541-A:6, III, the committee shall maintain a current listing of all persons having made a request for advance notice of ~~the~~ rulemaking proceedings.

Site 204.05 Public Hearing.

(a) If the committee initiates rulemaking proceedings under RSA 541-A, or if rulemaking is initiated pursuant to a request for rulemaking, the committee shall hold at least one public hearing pursuant to RSA 541-A:11.

(b) Notice shall be given at least 20 days prior to the public hearing pursuant to RSA 541-A:6, I.

(c) The committee shall limit the time allowed at hearing for each person's comments when necessary to allow all persons ~~with~~who wish to make oral comments ~~to make them~~a reasonable opportunity to do so.

(d) The committee shall require persons desiring to make oral comments to so indicate by ~~signing~~providing their names, contact information, and parties represented on a roster made available for this purpose prior to the commencement of the public ~~comment~~ hearing.

(e) The committee shall permit persons to submit written comments in any rulemaking proceeding for a period of time ending not less than 5 days following the close of the public hearing.

APPENDIX

Rule	Statute
Site 101.01-02	RSA 162-H:3, 4, and 10,VI and VII; RSA 541-A:16, I (a)
Site 102.01-45	RSA 162-H:2 and 10,VI and VII
Site 103.01	RSA 162-H:3, 4, and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.02	RSA 162-H:3 and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.03	RSA 162-H:4-a and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.04	RSA 162-H:3, 4-a, and 10,VI and VII; RSA 541-A:16,I(a)
Site 103.05	RSA 162-H:3-a, 4, and 10,VI and VII; RSA 541-A:16,I(a)
Site 103.06	RSA 162-H:9 and 10,VI and VII; RSA 541-A:16, I (a)
Site 104.01	RSA 162-H:10,VI and VII, 13; RSA 541-A:16, I (a)
Site 201.01	RSA 162-H:10,I, VI and VII
Site 201.02	RSA 162-H:10,I-a, VI and VII
Site 201.03	RSA 162-H:10,I-c, VI and VII
Site 201.04	RSA 162-H:10,I-b, VI and VII
Site 202.01	RSA 162-H:10,VI and VII; RSA 541-A:30-a
Site 202.02	RSA 162-H:4, 4-a, 10,VI and VII; RSA 541-A:30-a
Site 202.03	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (k)
Site 202.04	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.05	RSA 162-H:7-a, 10,VI and VII; and RSA 541-A:30-a,III
Site 202.06-07	RSA 162-H:10,VI and VII; and RSA 541-A:30-a,III
Site 202.08	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (f)
Site 202.09	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III and 31, III
Site 202.10	RSA 162-H:10,VI and VII; RSA 541-A:31,V(c)
Site 202.11	RSA 162-H:4,V, 10,VI and VII; RSA 541-A:32
Site 202.12-14	RSA 162-H:10,VI and VII; RSA 541-A:30-a
Site 202.15	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (j)
Site 202.16	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.17	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (h)
Site 202.18	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.19	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (d) and (e)
Site 202.20-23	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.24-25	RSA 162-H:10,VI and VII; RSA 162-H:10, III
Site 202.26	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.27	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (i)
Site 202.28	RSA 162-H:10,VI and VII, 16, IV; RSA 541-A:35
Site 202.29	RSA 162-H:10,VI and VII; RSA 541
Site 202.30	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 203.01-02	RSA 162-H:10,VI and VII; RSA 541-A:16,I(d)
Site 204.01-05	RSA 162-H:10,VI and VII; RSA 541-A:16,I(c)