

March 23, 2015

New Hampshire Site Evaluation Committee
David K. Wiesner, Staff Attorney
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: New Hampshire Site Evaluation Committee Rulemaking
Written Comments

Dear Mr. Wiesner:

Enclosed please find proposed revisions to the Site Evaluation Committee's (Committee) Initial Proposed Rule, which it adopted December 22, 2014. The pdf of the Initial Proposed Rule issued by the Committee was converted to word format and the Committee's changes to the current rule have been accepted. Our proposed revisions were then made in track change to the document in order to facilitate the Committee's review. Following are some general comments, explanations for a number of the more substantive proposed changes, a list of other areas where clarification is sought, and a few drafting considerations.

ADJUDICATIVE NATURE OF SEC

The Committee has been directed to adopt rules "relative to the organization, practices, and procedures of the committee and criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV have been met by the applicant for a certificate of site and facility." RSA 162-H:10, VII.

The Initial Proposed Rule builds from the existing rules in a number of ways. Chapter 100 has been revised to reflect statutory changes concerning the organization of the Committee and includes a number of new definitions, many emanating from the Senate Bill 99 stakeholder process. Chapter 200 also reflects certain statutory changes concerning, among other things, broader applicant outreach requirements. Chapter 300 reflects the most extensive changes, setting forth in specific detail the evidence that an applicant must submit with respect to the statutory findings in RSA 162-H:16, IV and the considerations that the Committee must weigh in making its findings, which together comprise the specific criteria, i.e., the standard of judging to be applied by the Committee in determining whether to issue a certificate of site and facility.

The approach employed by the Committee in Chapter 300 recognizes its fundamental adjudicative nature, which is laid out comprehensively in PART Site 202 ADJUDICATIVE

PROCEEDINGS. The procedural rules recognize that the Committee's stock-in-trade is to render judgments on a case-by-case basis for projects where there are wide variations in the facts. It does so subject to the requirements of RSA 541-A, the Administrative Procedures Act, and due process as ultimately determined by the New Hampshire Supreme Court. An applicant must provide testimony, under oath, subject to cross examination, and it must prove its case by a preponderance of the evidence. The Committee must permit the intervention of parties with interests affected by the proceeding, it must hold hearings open to the public, and it must issue a comprehensive written decision that is then subject to rehearing and appeal to the New Hampshire Supreme Court. Hence, the SEC is a deliberative body, more akin to a court, comprising agency heads who are exercising judicial discretion. These are not circumstances where an agency employee is administering an executive function such as determining when lighting is required for a boat mooring field, which is the example of a discretionary decision set forth in the Joint Legislative Committee on Administrative Rules (JLCAR) Drafting and Procedure Manual.

The Committee has proposed objective standards in those areas that are conducive to numerical quantification, primarily with respect to the public health and safety of wind energy systems, including sound dBA levels, shadow flicker duration, and turbine setback distance from an occupied building. The bulk of the Committee's responsibility, however, is to make highly subjective judgments as to whether certain effects are unreasonably adverse or unduly interfere with the orderly development of the region, which are not reducible to objective standards that can be accurately quantified or uniformly applied.

The Appalachian Mountain Club (AMC) in its February 23, 2015 letter to the Committee argues that the proposed rules do not constitute specific criteria. Despite recognizing that "not all issues are amenable to objectively defined standards, such as those for noise or shadow flicker, and those cases may require more subjective judgment of available evidence to determine whether or not the standard has been met," AMC offers instead alternatives that are deficient because they are unclear or vague in ways inconsistent with the drafting requirements of JLCAR. Furthermore, AMC fails to acknowledge the fundamental judicial nature of the Committee and the task assigned to it, which requires the exercise of broad discretion because it is not possible to write rules that foresee every conceivable situation in the siting of energy facilities.

AMC reads RSA 162-H:10, VII far too narrowly. The statute requires the Committee to adopt rules in a number of areas, including specific criteria to be applied in making its findings. The Committee was not directed to employ a particular approach or to apply that approach to every subpart of every finding, nor was it authorized to change the fundamental nature of the judicial process. The Committee's overall approach: is consistent with the statute; provides guidance to applicants, the Committee, and the public; recognizes the advantages and practical

limitations of the judicial process; and, implements, interprets, and makes specific RSA 162-H:16, IV consistent with the JLCAR Drafting and Procedure Manual.

PUBLIC INTEREST

The proposed rules do not include sections describing the type of information an applicant must submit or the considerations the Committee must consider relative to whether a proposed facility would serve the public interest. We propose that Site 301.03 (h) (6) be expanded to specify the information that an applicant must submit and that it be renumbered as Site 301.10, which results in further renumbering. We also propose a new Site 301.18, which sets forth the considerations the Committee must consider in finding that a proposed facility would serve the public interest.

With respect to the public interest finding, we observe that AMC and others have recommended that the Committee adopt a net benefits approach as the criteria for determining whether a proposed facility would serve the public interest. In its consideration of Senate Bill 245 during the 2014 legislative session, the House and Senate considered many proposals to amend RSA Chapter 162-H. The legislative history of SB 245 demonstrates that the net benefits approach was considered and rejected. During the Senate Energy Committee hearing on February 19, 2014, for instance, Senator Bradley expressly asked Attorney Susan Geiger about the net public benefit standard and he observed that the public interest standard was much more defined in terms of case law and legal implications. Furthermore, the net benefits criteria proposed by AMC et al. is nearly identical to language offered as an amendment dated March 6, 2014, which was not adopted. Ultimately, the public interest standard was enacted instead of the net benefit standard.

It is fair to conclude that the Legislature intended the Committee to exercise some additional judgment when it added the fourth finding, i.e., that a proposed facility serve the public interest. It is not fair to conclude, however, that the Legislature intended the Committee to interpret the public interest in such a way that it would adopt rules defining the public interest contrary to legislative history.

In the context of the three existing findings under RSA 162-H:16, IV, which focus on the applicant's capabilities, and that the effects of the facility not be unreasonably adverse or unduly interfere with the orderly development of the region, the logical conclusion is that to serve the public interest a facility must provide some benefit. Such benefits, however, are not net benefits as weighed against some adverse effects or interference, but benefits viewed independently. Under the previous statutory regime, there was no requirement to demonstrate benefits and a certificate could be issued so long as the effects were not unreasonably adverse and there was no undue interference with the orderly development of the region. Under the new statutory regime,

an applicant must also show, and the Committee must find, that a project will serve the public interest by providing some benefit.

We propose that the renumbered Site 301.10 require applicants to file information describing the extent to which the proposed facility will benefit or promote one or more of the following: the economy; the environment; the stability, reliability or security of energy supply or delivery; or state, regional, or national policy. Correspondingly, we propose that the new Site 301.18 require the Committee to consider the effects of the facility on one or more of those areas in determining whether a proposed project serves the public interest.

BEST PRACTICAL MEASURES

House Bill 1602, codified as RSA 162-H-10-a, requires the Committee to address certain items when adopting rules for wind energy systems. Among other things, the Committee must address best practical measures to avoid, minimize, or mitigate adverse effects. The proposed rules, however, do not confine the concept of best practical measures to wind energy systems.

Introducing the concept of best practical measures into the Committee's rules may create a fundamental and potentially irreconcilable conflict if not done properly. RSA 162-H:16, IV establishes four findings the Committee must make in order to issue a certificate of site and facility. These four findings comprise the statutory standard or test that all applicants must pass. The focus of the findings, except for the applicant's capabilities, is on the effects of the facility. Best practical measures, however, focus on methods or means to an end.

It is not clear from the proposed rules what the Committee intends when it requires an applicant to submit information describing best practical measure to avoid, minimize or mitigate unreasonable adverse effects. Is the Committee creating a new test based on results? Does one override the other, and under what circumstances? It is not clear how the two approaches could be compatible. If a project uses best practical measures is the result *per se* reasonable? These are fundamental legal questions that merit a full exploration.

While the Committee has been directed to "address" best practical measures for wind energy systems, it has not been authorized to alter the findings it must make under RSA 162-H:16, IV. Accordingly, the Committee should clarify the intended application of best practical measures and revisit the proposed rules to ensure that it avoids unintended consequences. Furthermore, given the complexity of the issues, and the fact that in House Bill 1602 the Legislature confined best practical measures to wind energy systems, the Committee might be better served if the proposed rules followed the statute, by addressing only wind energy systems.

AGENCIES HAVING PERMITTING OR OTHER REGULATORY AUTHORITY

RSA 162-H:7 describes the review the Committee must undertake in determining whether an application for a certificate of site and facility is complete. The Committee is required to conduct a preliminary review to ascertain if there is sufficient information for it to carry out the statutory purposes.

The Committee is also required to forward a copy of an application to “state agencies having permitting or other regulatory authority.” Each such agency then conducts a “preliminary review to ascertain if the application contains sufficient information for its purposes.” Correspondingly, each application must “contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency’s completed application forms.”

Under the prior formulation of RSA 162-H:7, the Committee broadly, and perhaps erroneously, interpreted which agencies would receive copies of an application and could participate in the so-called completeness review. Reading the provisions of RSA 162-H:7 as a whole, specifically, sections IV, VI-b, and VI-c, along with RSA 162-H:16, I, and considering that the Committee was conceived to resolve all permitting issues in an integrated fashion, however, it becomes clear that agencies having permitting and other [such] regulatory authority comprise only those agencies that have a process for applying for a permit or petitioning for approval, and who then make a final decision by issuing a permit or an order. Such agencies, depending on the facts of a particular application, could include the Department of Environmental Services, which issues wetlands and alteration of terrain permits, the Public Utilities Commission, which grants a license to cross public waters and lands owned by the state, and the Department of Transportation, which grants a license or easement to cross highways. Other agencies may participate in an SEC proceeding pursuant to RSA 162-H:7-a, III, and may receive a copy of the application if directed by the Committee, but they may not participate in the completeness determination.

We propose a new definition be added to PART Site 102 DEFINITIONS, clarifying that the class of agencies having permitting or other regulatory authority is limited as described above. Furthermore, we propose amending Site 301.03 (d) and 301.11(c) for consistency with the definition.

SITE AND FACILITY

The current SEC rule, Site 301.03 (b) (6), requires that an applicant provide information stating whether the applicant “is the owner or lessee of the *site* or *facility* or has some legal or

business relationship to it.” The proposed rule amends this section slightly to limit it to the *facility* and creates a new section, Site 301.03 (c) (6), focusing on the applicant’s contractual rights of access to and control of the *site*. In creating two separate sections and focusing on contractual rights, however, the Committee appears to be conflating different concerns and overlooking the role of governmental approvals.

To resolve the issues raised by the proposed version of 301.03 (c) (6), we propose that subsection (6) focus on the applicant’s right to construct a facility on the site, acknowledging the role of governmental permission relative to public property. We also propose an additional subsection (7), which focuses on the applicant’s ability to provide access to the Committee for a site visit.

DECOMMISSIONING FINANCIAL ASSURANCES

In the proposed rule, Site 301.17, the Committee sets forth a limited list of financial instruments that would be acceptable forms of assurance that an applicant will decommission a facility. It is not clear if the items on the list were meant as examples of forms of assurance, or if the list was meant to be exclusive as to the forms that assurance could take. In either case, the list is too restrictive because there are other forms of financial assurance that the Committee should consider and, in the past, has approved. For example, in the *Groton* case, SEC Docket No. 2010-01, the Committee approved an agreement between the applicant and the Town of Groton that employed a parental guarantee as a form of decommissioning assurance. Other forms of assurance could include contractual arrangements with third parties, such as a purchase power agreement that demonstrates the long-term viability of a generation project, or, in the case of an electric transmission project, a FERC-approved transmission service agreement that includes an approved decommissioning plan.

We propose that the Committee clarify Site 301.17 so that it does not unnecessarily restrict the forms of financial assurance an applicant may propose. Setting forth a limited list of options at this juncture ties the hands of the Committee and applicants, eliminating the potential for flexibility and creativity in fashioning solutions that may serve the interests of all parties. There are at least two approaches to resolving the issue, which are, first, adopting the language from the RSA 162-H:7, V (g), or, second, expanding the list to include a catch-all phrase. The attached proposal employs the former approach.

HISTORIC SITES

The Committee in drafting proposed rule 301.14 did not include two considerations proposed by energy developers for the Committee to consider when finding whether a proposed facility would have unreasonable adverse effects on historic sites. One concerned the iterative

nature of the historic review process and the other concerned the imposition of conditions. We renew our proposal to include these provisions as described below.

First, in a number of instances, e.g., the *Lempster*, *Biomass* and *Antrim* cases, SEC Dockets No. 2006-01, 2009-01, and 2012-01, respectively, the Committee observed that the historic sites review conducted by the Division of Historical Resources (DHR) was an iterative or fluid process. Second, it has been common practice for the Committee to include conditions in its orders requiring applicants to consult with DHR and comply with any agreements reached. In addition to providing a fuller picture of the considerations to be considered by the Committee, and recognizing the Committee's practice and precedent, including these two provisions is contemplated by RSA 162-H:16, VII, which provides that the Committee may condition a certificate on "the results of required federal and state agency studies whose study period exceeds the application period."

OTHER CLARIFICATIONS

Following is a list of other areas where we briefly note some proposed changes to the proposed rules. In addition, there are other areas throughout the proposed rules where minor edits have been made for reasons of grammar or consistency.

- Site 102.02 Adaptive Management—delete and amend 301.14 (e) (8).
- Site 102.13 Cumulative Impacts—limit definition to wind energy systems.
- Site 102.31 Rare Natural Community—delete or clarify S3.
- Site 102.36 Scenic Resources—delete municipal reference.
- Site 202.05 (c) Agency Participation—clarify that liaisons may be examined.
- Site 202.22 (a) Prefiled Testimony—delete reference to 10 copies. See 301.03 (h) (6).
- Site 301.03 (c) (3) Adjacent—change to 100 feet.
- Site 301.03 (h) Preferred Choice—use statutory language.
- Site 301.04 (b) (6) Financial Capability—limit comparison to applicant's projects.
- Site 301.05 (b) (4) Width of Corridor Analysis—use original proposal.
- Site 301.09 Preface—delete reference to municipal views.
- Site 301.09 (b) Economic Effects—eliminate redundancy and focus on region.
- Site 301.10 (c) Sufficient Information for Purposes—use statutory language.
- Site 301.15 (e) (7) Fish & Game et al.—delete reference.

These comments and the attached edits to the proposed rules are submitted on behalf of the following entities. We appreciate the opportunity to make these comments and apologize in advance if we have overlooked any errors in the process of converting the text of the rules from pdf to Word. Please do not hesitate to contact any of us if you have questions.

Respectfully submitted,

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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, 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 facility in New Hampshire;

(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, concerning an energy 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 determination by the committee that it finds that an application is complete and ready for consideration.

~~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 102.0~~3~~² “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 102.0~~4~~³ “Administrator” means the administrator of the committee.

Site 102.0~~5~~⁴ “Applicant” means any person seeking to construct and operate any energy, facility within this state.

Site 102.0~~6~~⁵ “Application” means the written document filed with the committee seeking the issuance of a Certificate of Site and Facility.

Site 102.076 “Area of potential visual effect” means a geographic area from which a proposed facility would be visible, and would result in potential visual impacts, subject to the limitations in Site 301.05(b)(4).

Site 102.087 “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 102.098 “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 102.109 “Combined observation” means a viewer sees multiple energy facilities from a stationary point within a typical cone of vision.

Site 102.140 “Commission” means the New Hampshire public utilities commission.

Site 102.121 “Committee” means the site evaluation committee established under RSA 162-H and these rules.

Site 102.132 “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 102.143 “Cumulative impacts” means the totality of effects resulting from the proposed wind energy 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 102.154 “Energy facility” means “energy facility” as defined in RSA 162-H:2,VII, namely “

(a) any industrial structure 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, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a 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 102.165 “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 102.176 “Historic sites” means “historic property,” as such term is defined in 36 C.F.R. §800.16(l).

Site 102.187 “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 102.198 “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 102.2019 “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 102.240 “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 102.221 “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, II32, III.

Site 102.232 “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 102.243 “Petition” means:

(a) A request to the committee to rule on the applicability of this chapter to a particular proposed energy facility;

(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 102.254 “Petitioner” means:

(a) For a petition as defined in Site 102.24(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 governing body of a host community or 2 or more governing bodies of abutting communities; or
- (4) A petition filed by the potential applicant;”

(b) For a petition as defined in Site 102.24(b), a person who files a petition for intervention pursuant to RSA 541-A:32.; or

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

Site 102.265 “Photosimulations” means computer-enhanced images generated using professionally accepted software that illustrate the visible effects anticipated from a proposed facility.

Site 102.276 “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 102.287 “Proof by a preponderance of the evidence” means that what is sought to be proved is determined to be more probable than not.

Site 102.298 “Public information hearing” means a hearing scheduled pursuant to RSA 162H:10, I-c where the applicant presents information to the site evaluation committee and other agencies that have permitting or other regulatory authority over the subject matter and to the public about the proposed facility.

Site 102.3029 “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 102.310 “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 102.3~~2~~¹ “Rare natural community” means a natural community ranked by the New Hampshire Natural Heritage Bureau as S1 (critically imperiled), or S2 (imperiled), ~~or S3 (very rare and local).~~

Site 102.3~~3~~² “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 102.3~~4~~³ “Renewable energy facility” means “renewable energy facility” as defined in RSA 162-H:2, XII.

Site 102.3~~5~~⁴ “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 102.3~~6~~⁵ “Scenic resource” means resources designated by national, ~~or~~ 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 that possess a scenic quality and are established, protected or maintained in whole or in part with public funds; and, town and village centers that possess a scenic quality.

Site 102.3~~7~~⁶ “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 102.3~~8~~⁷ “Service list” means a list maintained by the committee containing the names and addresses of all parties and intervenors in a proceeding and all other interested persons or groups who request to be included on the service list.

Site 102.3~~9~~⁸ “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 102.4~~0~~³~~9~~ “Significant habitat resource” means habitat used by a wildlife species for critical life cycle functions.

Site 102.4~~1~~⁰ “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 102.41 “State agencies having permitting or other regulatory authority” means any New Hampshire state agency, such as the Department of Environmental Services, Department of Transportation, or Public Utilities Commission, that has a process by which an applicant may apply, petition or otherwise request that such agency grant permission or approval to take an action and the agency makes a final decision by issuing a permit, order, or decision within the time limits set forth in RSA 162-H:7, VI-c.

Site 102.42 “Subcommittee” means any subcommittee established under RSA 162-H:a for the purpose of reviewing an application for 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.”

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;
- (3) The commissioner of the department of resources and economic development;
- (4) The commissioner of the department of transportation;
- (5) The commissioner of the department of cultural resources or the director of the division of historical resources as designee; and
- (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 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 chairperson of the commission shall be chairperson of the committee.
- (b) The commissioner of the department of environmental services 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

Site 103.03 Subcommittee Formation and Authority.

- (a) A subcommittee 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:
 - (1) The 2 public members shall serve on each subcommittee with the remaining 5 or more members selected by the chairperson from among the state agency members of the committee;
 - (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, voting on motions, or conducting other business of the committee, a quorum shall be 7 members of the committee.

(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.

(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) Administrative services for the Committee shall be provided by the administrator and the Public Utilities Commission.

(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 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.

(f) The chairperson or the administrator shall appoint counsel to conduct all prehearing conferences, 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 if no administrator has been appointed, as follows:

|
Administrator [Chairperson]
Site Evaluation Committee
c/o New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
Tel. (603) 271-2431
Fax (603) 271-3878
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 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 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.

CHAPTER Site 200 PRACTICE AND PROCEDURE RULES

PART Site 201 PUBLIC INFORMATION SESSIONS AND HEARINGS

Site 201.01 Public Information Sessions Prior to Application.

(a) At least 30 days prior to filing an application for a certificate, 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 project and receive comments from the public.

(b) 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 the county in which the session is to be held, which notice shall describe the nature and location of the proposed facility.

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

(d) The applicant shall arrange for a transcript of such session to be prepared and shall include the transcript in its application for a certificate.

Site 201.02 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 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 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 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 541A, 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 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;
- (5) Provide opportunities for the parties and committee members to question any witness;
- (6) Receive public statements; and
- (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.

(a) A brief identification of the matter;

(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

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

Site 202.05 Participation of Committee and Agency Staff.

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

(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. The applicant, counsel for

the public, or any party to a proceeding may examine the agency liaison with respect to any matter for which the agency liaison's attendance has been requested.

(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.

(f) 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 1/2 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 the document;
- (3) To the best of the signer's knowledge, information and belief, there are good and sufficient grounds to support 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 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 any document does not have the ability to serve 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 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 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 or prehearing 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 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 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 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 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 the parties to acquire evidence admissible in a proceeding.

(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 response had the information been available to the party at the time the party served the response.

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 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 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 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 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 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 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 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 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) The applicant or 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 presiding officer or any hearing officer designated by the presiding officer determines that 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 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 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. 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 10 copies of an applicant's p~~ Prefiled testimony and exhibits shall be filed with ~~an~~^{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.

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

Site Evaluation Committee
c/o N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 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 have an interest in the subject matter shall be provided with an opportunity at a hearing or prehearing conference to state their positions.

(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.

(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 of the proceeding.

(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.

(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 202.2524(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 (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 in the 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 in the 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 in the 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 submission for the filing of a response.

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

(b) If the presiding officer determines that additional testimony, evidence or argument is necessary for a full consideration of the issues presented in the proceeding, the record shall be reopened to accept the offered 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 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, 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 requires or allows a person to request rehearing of 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 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.

(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 petition for declaratory ruling from the committee on matters within its jurisdiction by filing an original written petition and 10 copies with the committee.

(b) A 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 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 petition, including an explanation of the factual and legal basis for granting or denying the petition, within 90 days of receipt of the 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 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. A request from an interested person proposing the adoption, amendment or repeal of a rule shall be submitted, received and 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) 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) 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 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 in support of the requested action;

(g) If the committee determines that any rulemaking request is deficient in any respect, the committee shall, within 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 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 rulemaking request if the 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 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 who wish to make oral comments a reasonable opportunity to do so.

(d) The committee shall require persons desiring to make oral comments 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 public 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.

Site 205 EXPLANATION OF PROPOSED RULE

Site 205.01 Explanation of Proposed Rule.

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

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

(1) A concise statement of the principal reasons for and against the adoption of the rule in its final form; and

(2) An explanation of why the committee overruled the arguments and considerations against the rule.

CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY

PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES

Site 301.01 Filing.

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

(b) The committee or the administrator shall:

- (1) Acknowledge receipt of an application filed under Site 301.01(a) in writing directed to the applicant;
- (2) Forward a copy of the application and acknowledgment to each member of the committee; and
- (3) Post a copy of each application on the committee's website.

Site 301.02 Format of Application.

(a) Applications shall be prepared on standard 8 1/2 x 11 inch sheets, and plans shall be folded to that size.

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

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

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

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

Site 301.03 Contents of Application.

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

(b) Each application shall include the following information with respect to the applicantecontained in this subparagraph, and in (e) through (h) below, as follows:

- (1) The name of the applicant;
- (2) The applicant's mailing address, telephone and fax numbers, and e-mail address;
- (3) The name and address of the applicant's parent company, association or corporation if the applicant is a subsidiary;
- (4) If the applicant is a corporation:
 - a. The state of incorporation;
 - b. The corporation's principal place of business; and

- c. The names and addresses of the corporation's directors, officers and stockholders;
- (5) -If the applicant is a limited liability company:
- a. The state of the company's organization;
 - b. The company's principal place of business; and
 - c. The names and addresses of the company's members, managers and officers;
- (6) If the applicant is an association, the names and addresses of the residences of the members of the association; and
- (7) Whether the applicant is will be the owner or lessee of the proposed facility or has have some other legal or business relationship to the proposed facility, including a description of that relationship.

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

- (1) The location and address of the site of the proposed facility;
- (2) Site acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map;
- (3) The location, shown on a map, of residences, industrial buildings, and other structures and improvements within ~~or adjacent to 100 feet of~~ the site;
- (4) Identification of wetlands and surface waters of the state within or adjacent to the site;
- (5) Identification of natural and other resources ~~at or~~ within or adjacent to the site; ~~and~~
- ~~(6) (6) — Evidence that the applicant has a current right, of legal access to and control of~~ or the ability to acquire the right, to construct the facility-control of on, over, or under the proposed site, in the form of ownership, ground lease, easement, option, ~~or other contractual rights or interests, permission from a federal, state, or local government agency, or other recognizable legal right or instrument; and,~~
- ~~(7) Evidence that the applicant has a current or conditional right of access sufficient to accommodate a site visit by the committee.~~

(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 permitting or other regulatory authority, under state or federal or state law, to regulate any aspect of the construction or operation of the proposed energy facility;
- (2) Documentation that demonstrates compliance with the application or filing requirements of ~~all~~ such agencies;
- (3) A copy of the completed application, form-petition, or other filing for ~~each~~ such agencies; and
- (4) Identification of any requests for waivers from the information requirements of such agencies any state agency or department having permitting or other regulatory authority whether or not such agency or department is represented on the committee.

(e) If the application is for an energy facility that is not an electric generating facility, an electric transmission line, or an energy transmission pipeline, the application shall include:

- (1) The type of facility being proposed;
- (2) A description of the process to extract, produce, manufacture, transport or refine the source of energy;
- (3) The facility's size and configuration;
- (4) The ability to increase the capacity of the facility in the future;
- (5) Raw materials used, as follows:
 - a. An inventory, including amounts and specifications;
 - b. A plan for procurement, describing sources and availability; and
 - c. A description of the means of transportation;
- (6) Production information, as follows:
 - a. An inventory of products and waste streams;
 - b. The quantities and specifications of hazardous materials; and
 - c. Waste management plans.
- (f) If the application is for an electric generating facility, the application shall include the following information:
 - (1) Make, model and manufacturer of each turbine and generator unit;
 - (2) Capacity in megawatts, as designed and as intended for operation;
 - (3) Type of turbine and generator unit, including:
 - a. Fuel utilized;
 - b. Method of cooling condenser discharge; and
 - c. Unit efficiency
 - (4) Any associated new substations, generator interconnection lines, and transmission lines, whether identified by the applicant or through a system impact study conducted by or on behalf of the interconnecting utility or ISO New England, Inc.; and
 - (5) Construction schedule, including start date and scheduled completion date.
- (g) If the application is for a transmission line or an electric generating facility with an associated transmission line, the application shall include the following information:
 - (1) Location shown on U.S. Geological Survey Map;
 - (2) Corridor width for:
 - a. New route; or
 - b. Widening along existing route;
 - (3) Length of line;
 - (4) Distance along new route;
 - (5) Distance along existing route;
 - (6) Voltage (design rating);
 - (7) Any associated new electric generating unit or units;
 - (8) Type of construction (described in detail);
 - (9) Construction schedule, including start date and scheduled completion date; and
 - (10) ~~Impact on system stability and reliability~~ A copy of a Proposed Plan Application if required by the Independent System Operator of New England.
- (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 ~~choice location~~ and ~~any other alternatives locations~~ it considers available for the site and configuration of each major part of the proposed facility and the reasons for the preferred choice;
- (3) 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;
- (4) Documentation that written notification of the proposed facility, including a copy of the application, has been given to the governing body of each municipality in which the facility is proposed to be located;
- (5) Each application shall include the information described in Sections 301.04 through 301.09; and
- ~~(6) Each application shall include information describing how the proposed facility will be consistent with the public interest; and~~
- ~~(7)~~(6) Each application shall include pre-filed testimony and exhibits supporting the application.

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

- (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 it has 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:
 - (1) A description of the applicant's management structure for the construction and operation of the proposed facility, including an organizational chart for the applicant;
 - (2) A description of the qualifications of the applicant and its executive personnel to manage the construction and operation of the proposed facility; and
 - (3) To the extent the applicant plans to rely on contractors or consultants for the construction and operation of the proposed facility, a description of the experience and qualifications of the contractors and consultants, if known at the time.

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

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

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

- (1) A description and map depicting the locations of the proposed facility and all associated buildings, structures, roads, and other ancillary components, and all areas to be cleared and graded, that would be visible from any scenic resources, based on both bare ground conditions using topographic screening only and with consideration of screening by vegetation or other factors;
- (2) A description of how the applicant identified and evaluated the scenic quality of the landscape and potential visual impacts;
- (3) A narrative and graphic description, including maps and photographs, of both the physiographic and cultural features of the landscape surrounding the proposed facility to provide the context for evaluating any visual impacts;
- (4) A computer-based visibility analysis to determine the area of potential visual effect, which, for proposed wind energy systems, shall extend to a 10-mile radius from each wind turbine in the proposed facility, and, for electric transmission lines longer than 1 mile, shall be ~~1/2 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~~ up to 2 miles on either side of the right-of-way, depending on the terrain, the project design, and the professional judgment of the visual impact assessor;
- (5) Identification of all scenic resources within the area of potential visual effect and a description of those scenic resources from which the proposed facility would be visible;
- (6) Characterization of the potential visual impacts of the proposed facility on identified scenic resources as high, medium, or low, based on consideration of the following factors:
 - a. The expectations of the typical viewer;
 - b. The effect on future use and enjoyment of the scenic resource;
 - c. The extent of the proposed facility, including all structures and disturbed areas, visible from the scenic resource;
 - d. The distance of the proposed facility from the scenic resource;
 - e. The horizontal breadth (visual arc) of the visible elements of the proposed facility;
 - f. The scale of the proposed facility relative to surrounding topography and existing structures;
 - g. The duration and direction of the typical view of elements of the proposed facility; and
 - h. The presence of intervening topography between the scenic resource and elements of the proposed facility
- (7) Photosimulations from representative key observation points, and from other scenic resources for which the potential visual impacts are characterized as “high” pursuant to (6) above, to illustrate the potential change in the landscape that would result from

- construction of the proposed facility and associated infrastructure, including land clearing and grading and road construction;
- (8) If the proposed facility is required by Federal Aviation Administration regulations to install aircraft warning lighting, a description and characterization of the potential visual impacts of this lighting, including the number of lights visible from key observation points; and
 - (9) A description of the ~~best practical~~ measures planned to avoid, minimize, or mitigate the potential ~~adverse effects~~visual impacts of the proposed facility, ~~and any alternative measures considered but rejected by the applicant.~~

Site 301.06 Effects on Historic Sites. Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating ~~any unreasonable potential~~ adverse effects of, the proposed facility on historic sites:

- (a) Demonstrate ~~ion~~ that project review of the proposed facility has been initiated for purposes of compliance with Section 106 of the National Historic Preservation Act, 16 U.S.C. §470, or RSA 227-C:9, as applicable;
- (b) Identify ~~ication of~~ all areas of potential archaeological sensitivity located in the proposed facility area;
- (c) Identify ~~ication of~~ all historic resources located in the proposed facility area or within the area of potential effects as defined in 36 C.F.R. §800.16(d);
- (d) Identify ~~ication of~~ the ~~best practical~~ measures planned to avoid, minimize, or mitigate potential adverse effects on archaeological and historic resources; and
- ~~(e) — Describe the applicant’s plans to implement any measures identified pursuant to (d) above; and~~
- ~~(f)~~(e) Descri~~ption of~~ the status of the applicant’s consultations with the New Hampshire Division of Historical Resources, and, if applicable, with the lead federal agency.

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

- (a) Information, including the applications and permits, filed pursuant to Site 301.03(d) regarding issues of air quality;
- (b) Information, including the applications and permits, filed pursuant to Site 301.03(d) regarding issues of water quality;
- (c) Information regarding the natural environment, ~~including the following~~which shall:
 - (1) Describe how the applicant identified significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility, including communications with and documentation received from the New Hampshire Department of Fish and Game, the New Hampshire Natural Heritage Bureau, the United States Fish and Wildlife Service, and any

other federal or state agencies having permitting or other regulatory authority over fish, wildlife, and other natural resources;

- (+) (2) Identify significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility;
- (3) Identify critical wildlife habitat and significant habitat resources potentially affected by construction and operation of the proposed facility;
- (+) (4) 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;
- (5) 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
- (3) —
- (+) (6) Describe the status of the applicant's consultations with the New Hampshire Department of Fish and Game, the New Hampshire Natural Heritage Bureau, the United States Fish and Wildlife Service, and any other federal or state agencies having permitting or other regulatory authority over fish, wildlife, and other natural resources.

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

- (a) For proposed wind energy systems:
 - (1) Include a sound impact assessment prepared in accordance with professional standards by an expert in the field, which assessment shall include the reports of a preconstruction sound background study and a sound modeling study, as follows:
 - a. The preconstruction sound background study shall:
 - 1. Use measurement procedures that are consistent with the most recent versions of ANSI S12.18 and ANSI S12.9, Part 3 (with or without an observer present) guidelines;
 - 2. Include measurements taken using a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter; and
 - 3. Be conducted in locations that are representative of nearby sound receptors, including occupied permanent residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings;
 - b. The preconstruction sound background study report shall:
 - 1. Include a map showing proposed wind turbine locations and all permanently occupied residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings located within the study area;

2. Indicate topography, temperature, weather conditions, sources of ambient sound, and prevailing wind direction for the monitoring period; and
 3. Describe the test locations with GPS coordinates or a similar level of detail that permits others to identify the specific test locations;
- c. The sound modeling study shall:
1. Be performed based on the most recent version of International Organization for Standards ISO 9613-2; and
 2. Use wind turbine sound power levels determined according to the most recent version of International Electrotechnical Commission Standard IEC 61400, Part 11;
- d. The sound modeling study report shall:
1. Include the results of the modeling described in (c) above as well as a map with sound contour lines showing dBA sound emitted from the proposed wind energy system at 5 dBA intervals;
 2. Include locations out to the 35 dBA sound contour line or 2 miles from any wind turbine included in the proposed facility, whichever is closer to the nearest wind turbine; and
 3. Show proposed wind turbine locations and all occupied permanent residences, schools, day care centers, health care facilities, elderly care facilities, places of worship, operating businesses, and municipal buildings located within the study area;
- (2) Include a report evaluating the shadow flicker expected to be perceived at all buildings occupied or used for another purpose, which report shall be based upon computer modeling programs and input data defining the most conservative case scenario, including the astronomical maximum shading duration;
 - (3) Describe planned setbacks that indicate the distance between each wind turbine and the nearest nonparticipating landowner's existing occupied building and property line, and between each wind turbine and the nearest public road and overhead utility line, and explain why the indicated distances are adequate to protect the public from risks associated with the operation of the proposed wind energy facility;
 - (4) Include an assessment of the risks of ice throw, blade shear, and tower collapse on public safety, including a description of the best practical measures taken or planned to avoid or minimize the occurrence of such events, if necessary;
 - (5) Describe the lightning protection system planned for the proposed facility;
 - (6) Describe any determination made by the Federal Aviation Administration regarding whether any hazard to aviation is expected from any of the wind turbines included in the proposed facility, and describe the Federal Aviation Administration's lighting, turbine color, and other requirements for the wind turbines;
 - (7) Include a decommissioning plan providing for removal of all structures and restoration of the facility site with a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond; and
 - (8) Include a plan for fire protection for the proposed facility prepared by or in consultation with a fire safety expert;

- (b) For electric transmission facilities:
 - (1) Include an assessment of electric and magnetic fields and the potential impacts of such fields on public health and safety; and
 - (2) Include an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 dBA or more over ambient levels at the edge of the right-of-way, or at the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant;
- (c) For all energy facilities:
 - (1) Include an assessment of operational sound, except as provided elsewhere herein;
 - (2) Include a ~~facility decommissioning plan with a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond that describes in reasonable detail the elements of and financial assurances for facility decommissioning;~~
 - (3) Include a plan for fire safety prepared by or in consultation with a fire safety expert;
 - (4) Include a plan for emergency response to the proposed facility site; and
 - (5) Include a description of any additional plans or measures to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility.

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

- (a) Land use in the region, including the following:
 - (1) A description of the prevailing land uses in the host communities and communities abutting the proposed facility; and
 - (2) A description of how the proposed facility is consistent with such land uses and identification of how the proposed facility is inconsistent with such land uses;
- (b) The economy of the region, including an assessment of:
 - ~~(1)~~ (2) The ~~economic~~ effect of the facility on ~~the host communities and communities abutting the proposed facility;~~
 - ~~(2)~~ (1) The ~~economic effect of the proposed facility on in-state~~ economic activity during construction and operation ~~periods;~~
 - ~~(3)~~ (2) The effect of the proposed facility on State and local tax revenues;
 - ~~(4)~~ (3) The effect of the proposed facility on ~~regional~~ real estate values;
 - ~~(5)~~ (4) The effect of the proposed facility on tourism and recreation ~~in the host communities and communities abutting the facility;~~ and
 - ~~(6)~~ (5) The effect of the proposed facility on community services and ~~regional~~ infrastructure;

- (c) Employment in the region, including an assessment of:
 - (1) The number and types of full-time equivalent local jobs expected to be created, preserved, or otherwise affected by the construction of the proposed facility, including direct construction employment and indirect employment induced by facility-related wages and expenditures; and
 - (2) The number and types of full-time equivalent jobs expected to be created, preserved, or otherwise affected by the operation of the proposed facility, including direct employment by the applicant and indirect employment induced by facility-related wages and expenditures.

Site 301.10 Public Interest. Each application shall include information describing benefits the proposed facility may have on one or more of the following:

- (a) The economy;
- (b) The environment;
- (c) The stability, reliability, or security of energy supply or delivery; or,
- (d) State, regional, or national policy.

Site 301.11 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.

(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) (e)~~—Each state agency having permitting or other regulatory authority 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 its purposes~~agency to begin its review.

~~(d)~~

~~(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 301.1~~42~~ 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.

(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 301.1~~23~~ 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 301.134 Criteria Relative to Findings of Financial, Technical, and Managerial Capability.

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

- (1) The applicant's experience in securing funding to construct and operate energy facilities similar to the proposed facility;
- (2) The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;
- (3) The applicant's statements of current and pro forma assets and liabilities; and
- (4) Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.

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

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

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

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

| Site 301.145 Criteria Relative to Findings of Unreasonable Adverse Effects.

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

- (1) The existing character of the area of potential visual effect in the host community and communities abutting or in the vicinity of the proposed facility;
- (2) The significance of affected scenic resources and their distance from the proposed facility;
- (3) The extent, nature, and duration of public uses of affected scenic resources;
- (4) The scope and scale of the change in the landscape visible from affected scenic resources;
- (5) The evaluation of the overall visual impacts of the facility as described in the visual impact assessment submitted by the applicant and other relevant evidence submitted pursuant to Site 202.24;

- (6) Whether the proposed facility would be a dominant feature of a landscape in which existing human development is not already a prominent feature as viewed from affected scenic resources;
- (7) Whether the visibility of the proposed facility would offend the sensibilities of a reasonable person during daytime or nighttime periods; and
- (8) The effectiveness of ~~the best practical~~ measures planned by the applicant to avoid, minimize, or mitigate ~~potential 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 consider:

- (1) ~~Consider~~ Consider The nature and significance of the historic and archaeological resources identified by the applicant;
- (2) ~~Consider~~ Consider The effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on historic and archaeological resources; and
- ~~(3)~~ (3) ~~Consider~~ Consider The status of the applicant's consultations with the New Hampshire Division of Historical Resources and, if applicable, the federal lead agency.
- ~~(4)~~ (4) ~~The iterative nature of the process under section 106 of National Historic Preservation Act; and~~ The iterative nature of the process under section 106 of National Historic Preservation Act; and
- ~~(5)~~ (5) ~~Whether to include in its decision conditions requiring continuing consultation with the New Hampshire Division of Historical Resources and, if applicable, with the lead federal agency and compliance with any agreement or memorandum of understanding with the New Hampshire Division of Historical Resources and, if applicable, the lead federal agency.~~ Whether to include in its decision conditions requiring continuing consultation with the New Hampshire Division of Historical Resources and, if applicable, with the lead federal agency and 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)~~ (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~~ 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;

~~(4)~~

~~(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 measures ~~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 a wind energy facility for post-construction monitoring and reporting ~~and for adaptive management~~ to address potential unreasonable adverse effects identified by avian mortality studies that cannot reliably be predicted at the time of application.

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

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

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

a. Sound Standards: A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA above ambient levels between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above ambient levels at all other times during each day, as measured at the exterior wall of any existing permanently occupied building on a non-participating landowner's property, or at the 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 301.156 Criteria Relative to a Finding of Undue Interference. In determining whether a proposed energy facility will unduly interfere with the orderly development of the region, the committee shall consider:

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

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

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

Site 301.167 Additional Criteria Relative to Wind Energy Systems. In addition to the criteria set forth in Site 301.13 through 301.15, in determining whether to grant a certificate of site and facility for a proposed wind energy system, the committee shall consider:

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

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

Site 301.18 Criteria Relative to a Finding of Public Interest. In determining whether a proposed energy facility will serve the public interest, the committee shall consider whether the facility will benefit or promote one or more of the following:

(a) The economy;

(b) The environment;

(c) The stability, reliability or security of energy supply or delivery; or,

(d) State, regional, or national policy.

~~(b)~~

SITE 302 ENFORCEMENT OF TERMS AND CONDITIONS

Site 302.01 Determination of Certificate Violation.

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

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

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

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

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

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

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

Site 302.02 Determination of Misrepresentation or Non-Compliance.

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

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

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

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

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

Site 302.03 Revocation of Certificate.

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

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

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

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

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

Site 302.04 Emergencies.

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

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

Site 302.05 Waiver of Rules.

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

- (1) The waiver serves the public interest; and
- (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

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

- (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or
- (2) The purpose of the rule would be satisfied by an alternative method proposed.

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

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

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