

State of New Hampshire  
**Site Evaluation Committee**

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November 25, 2015

Rep. Carol M. McGuire, Chair  
Joint Legislative Committee on Administrative Rules  
State House Annex, Room 219  
25 Capitol Street  
Concord, NH 03301-6312

**Re: Response to Preliminary Objection to FP 2015-11 and FP 2015-12  
Site 100 and Site 201-204 - Organizational Rules and Rules of  
Practice and Procedure of the Site Evaluation Committee  
Site 205 and 300 - Explanation of Proposed Rule and Certificates  
of Site and Facility Rules of the Site Evaluation Committee  
SEC Docket No. 2014-04**

Dear Chair McGuire:

I write to you as Chairman of the Site Evaluation Committee (SEC) in response to the preliminary objection issued by the Joint Legislative Committee on Administrative Rules (Committee) to Final Proposals 2015-11 and 2015-12 regarding the SEC's Site 100-300 rules. The preliminary objection was entered on October 15, 2015, by vote of the Committee, pursuant to RSA 541-A:13, IV, based on the grounds as outlined in the Committee staff annotations to the final proposals, on the written testimony provided to the Committee prior to its meeting, on oral and written public testimony provided by the public at the Committee's meeting, and on the Committee's concerns as reflected by its comments at the meeting.

In order to address the Committee's preliminary objection, SEC Staff held a technical session with interested stakeholders on October 28, 2015, to seek resolution of the two primary bases of objections raised by public submissions and identified by the Committee: (1) the "public interest" siting criteria set forth in Site 301.16, and (2) the "cumulative impacts" analysis requirement set forth in Site 301.14(g). The technical session did not result in a consensus position regarding resolution of these two issues.

The SEC met on November 18, 2015, to consider the preliminary objection, and to develop and then approve the substance of this response to the preliminary objection. At that meeting, the SEC also established the text of rules language changes to be submitted in connection with its response and, as described below, authorized its Chairman to request revised objections at the relevant Committee meeting in order to avoid a final objection and/or joint resolution with respect to a number of issues covered by the preliminary objection.

The rules language changes approved by the SEC at its November 18 meeting, including a number of substantive revisions and certain editorial revisions, are incorporated in the annotated versions of the Site 100-204 rules and the Site 205-300 rules submitted herewith. Also attached are revised versions of Appendix A and Appendix B which address comments made by Committee staff counsel.

The following addresses in greater detail specific issues covered by the preliminary objection and the SEC's response to such issues:

Public Interest Criteria

The preliminary objection incorporated comments submitted by Northern Pass Transmission, the New England Ratepayers Association, Monadnock Paper Mills, and the International Brotherhood of Electrical Workers asserting that the public interest siting criteria in Site 301.16 in the Final Proposal were inconsistent with the legislature's intent based on the legislative history of Senate Bill 245 of 2014 (SB 245). Northern Pass also claimed that the public interest criteria were inconsistent with the other siting standards under RSA 162-H:16, IV.

EDP Renewables asserted that the public interest siting criteria were objectionable because they required consideration of a facility's consistency with local plans and policies and with municipal master plans and land use regulations. EDP Renewables also challenged the inclusion of a reference in the criteria to the state energy policy as contrary to legislative intent, based on the 2009 repeal of a requirement that the SEC determine that a proposed facility is consistent with this policy.

Joe Lukeman claimed that the public interest criteria were objectionable because they do not differentiate between essential and elective energy projects, and because they do not fully consider the economy of a town or the impact on a town's master plan.

In response to the preliminary objection, the SEC has revised the provisions of Site 301.16 to remove the language that was subject to the objections based on legislative intent and instead to require the SEC to consider a list of values and factors that is taken directly from the purpose section of the statute, RSA 162-H:1. The SEC also expressly authorized its Chairman to request that the Committee issue a revised objection if it appears that the Committee would find the revised language to be objectionable. Such a revised objection request could be either to restore the language included in the final proposal or to entirely remove Site 301.16 and not include any specific public interest siting criteria, as determined in the discretion of the Chairman during the Committee meeting.

The SEC approved these actions in response to the preliminary objection without finding that the public interest criteria set forth in the final proposal were inconsistent with the intent of the legislature in adopting the SB 245 amendments to RSA 162-H. The legislative history of SB 245, while perhaps not completely clear on this point, does not compel the conclusion that the final proposal criteria violate this legislative intent.

We note further that SB 245, in addition to requiring that the SEC find that issuance of a certificate “will serve the public interest,” also amended RSA 162-H:16, IV to include the following sentence (emphasis added):

After due consideration of *all relevant information* regarding the potential siting or routes of a proposed energy facility, *including potential significant impacts and benefits*, the site evaluation committee shall *determine if issuance of a certificate will serve the objectives of this chapter*.

SB 245 also amended the SEC rulemaking mandate in RSA 162-H:10, VII to require that the SEC adopt rules relative to the criteria for siting 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.” Notably, this amendment *broadened* the scope of the rulemaking directive to adopt specific criteria to encompass *all* of RSA 162-H:16, IV, including the “public interest” finding under subsection (e) and the sentence quoted above, while the prior language of this section had referenced only subsections (b) and (c) of RSA 162-H:16, IV.

This appears to be strong evidence of the legislature’s intent that the SEC adopt specific criteria regarding the required “public interest” finding and the determination called for under the quoted sentence. The SEC did so through its adoption of the final proposal language of Site 301.16 and, in response to the preliminary objection, it has now revised the language of this section to more explicitly cover the values and factors referenced in the statutory purpose section, RSA 162-H:1. We believe this revision has removed any potential basis for objection to the public interest siting criteria set forth in Site 301.16.

### Cumulative Impacts Analysis

The preliminary objection incorporated comments submitted by Northern Pass Transmission, New England Ratepayers Association, Monadnock Paper Mills, and the International Brotherhood of Electrical Workers asserting that the requirement set forth in Site 301.14(g) that the SEC analyze the “cumulative impacts” of all energy facilities on public health and safety, natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including aesthetic impacts and sound impacts, was inconsistent with legislative intent. Their assertion is based on the removal during the SB 245 legislative process of language that would have applied a cumulative impacts analysis to all energy facilities, as well as the inclusion through other legislative enactments of specific references to a cumulative impacts analysis for wind energy systems (RSA 162-H:10-a) and natural gas pipelines (RSA 162-H:10-b). Northern Pass also claimed that the required cumulative impacts analysis, as applied to non-wind energy facilities, was inconsistent with the other siting standards under RSA 162-H:16, IV.

The SEC was advised during its November 18 meeting that there may be a stronger basis to question whether the broader cumulative impacts analysis requirement is consistent with the legislature’s intent, in view of this legislative history and principles of statutory construction. The SEC decided to revise the language of Site 102.18, Site 301.03(h)(6), and Site 301.14(g), such that those rules

provisions regarding cumulative impacts would apply only to wind energy facilities and not to other types of energy facilities. We believe this revision has removed any potential basis for objection to the provisions of Site 301.14(g).

#### Municipal Preemption Impermissible

The preliminary objection incorporated comments submitted by the Towns of Easton, Littleton, Sugar Hill, Bethlehem, and Monroe, Executive Councilor Joe Kenney, and several other individuals, asserting that municipal master plans and other local land use regulations, plans and policies should not be preempted through the SEC's energy facility certificate process.

We would note as an initial matter that the final proposal does not include a rule that could fairly be characterized as one calling for preemption of municipal regulation. During the course of the rulemaking process, many individuals and entities proposed rules that would require projects subject to the SEC's jurisdiction to comply with local ordinances. The SEC declined to adopt any of those proposals.

Substantively, the SEC does not believe any change to the rules is appropriate regarding this issue. Under the New Hampshire Supreme Court precedent in *PSNH v. Town of Hampton*, 120 N.H. 68 (1980), it is clear that municipal planning and zoning are preempted by the pervasive state siting process implemented by the SEC. Since that judicial decision was issued, the legislature has not amended the statute in any way that affects this conclusion. The SEC therefore has made no revision to the proposed rules in response to these comments.

#### Municipal Veto Impermissible

The preliminary objection incorporated comments submitted by New England Ratepayers Association and EDP Renewables, asserting that the requirements for applicants to submit and the SEC to consider the municipal master plans and local zoning ordinances of certain host and affected communities are arguably irrelevant to the SEC process because of state preemption under the *Town of Hampton* case cited above. EDP Renewables argued that this requirement under Site 301.09 is beyond the SEC's authority.

These comments effectively present a "mirror image" of the municipal preemption issue addressed in the preceding section above. The SEC was advised that the proposed rules merely require filing of municipal master plans and zoning ordinances as written evidence of municipal views on relevant issues as permitted by statute. These are only factors to be considered by the SEC and are subject to SEC preemption under the Supreme Court precedent as noted above. The SEC therefore has made no revision to the proposed rules in response to these comments.

#### Transmission Setbacks Specific Criteria

The preliminary objection incorporated comments submitted by Pamela Martin, Kris Pastoriza, and a number of other individuals, asserting that the proposed SEC rules amendments should include

specific setback restrictions for electric transmission projects, and that the failure to do so is inconsistent with the SEC rulemaking directive under RSA 162-H:10, VII.

Through the public rulemaking process, the SEC was persuaded that specific setback distances would not be appropriate in all situations, so it would be preferable to permit specification of applicable setbacks and safety zones on an individualized, case-by-case basis, based on the record as developed for each application. The SEC believes that conclusion represents a policy determination made by the SEC and is not a proper ground for objection before the Committee. The SEC therefore has made no revision to the proposed rules in response to these comments.

#### Site Control and Eminent Domain

The preliminary objection incorporated testimony and comments presented by Senator Jeannie Forrester and by Dorothy McPhaul, effectively asserting that the SEC should not provide or recognize the exercise of eminent domain by applicants to secure site or route control. As stated by the SEC Chairman during the Committee's October 15<sup>th</sup> meeting and reiterated at the SEC's November 18<sup>th</sup> meeting, the SEC has no authority to grant eminent domain rights to an applicant or to any other party.

The site control requirements of proposed Site 301.03(c)(6) contain a narrow exception for applicants that can demonstrate they have taken action that may lead to eminent domain authority under a *separate* source of law, such as FERC interstate natural gas pipeline certification. Those applicants may submit an application to the SEC if they have initiated a federal regulatory proceeding or taken other action that would, if successful, provide the applicant with a right of eminent domain to acquire control of the site for the purpose of constructing, operating, and maintaining the proposed facility thereon. The SEC concluded that the related testimony and comments do not form a basis for objection, and therefore the SEC has made no revision to the proposed rules in response to these comments.

#### Decommissioning Plans for Energy Facilities

The preliminary objection incorporated comments submitted by Dorothy McPhaul and by EDP Renewables with respect to the decommissioning plan requirements set forth in Site 301.08(a)(7) and (c)(2). Ms. McPhaul argued that the rules should not permit applicants to provide decommissioning plan financial assurance in the form of corporate guaranties, and that the removal of structures and site restoration should be required for all energy facilities and not only for wind energy systems.

EDP Renewables argued that the express exclusion of potential salvage value when determining the required amount of decommissioning plan funding is inconsistent with legislative intent, because such exclusion was included in a prior version of the legislation which was eventually enacted through House Bill 1602 of 2014, but was removed prior to enactment. EDP Renewables also asserted that the listed forms of financial assurance are financially onerous and are not required by statute.

The SEC determined that the specific financial assurance requirements for energy facility decommissioning plans are policy decisions that it made after consideration of extensive and detailed comments submitted through the public rulemaking process. With respect to the exclusion of salvage

value from decommissioning plan funding amount calculations, the SEC concluded that this was not contrary to legislative intent but also falls within the purview of its policymaking authority. The SEC therefore has made no revision to the proposed rules in response to these comments.

#### EDP Renewables' Other Objections

The preliminary objection incorporated additional comments submitted by EDP Renewables, a developer and operator of wind energy facilities, objecting to the following proposed SEC rules provisions:

- (1) the eight-hour annual shadow flicker limit under Site 301.14(f)(2)b;
- (2) the inclusion of energy facilities for which the SEC has accepted an application in the definition of "cumulative impacts" under Site 102.18;
- (3) the requirement that wind energy facility applicants submit photosimulations from a sample of private property observation points, to the extent feasible, under Site 301.05(b)(7); and
- (4) the requirement that applicants provide notice of initial public information sessions to abutting property owners by certified mail, under Site 201.01(b).

The SEC determined that the specified shadow flicker hour limit, the inclusion of accepted applications in the "cumulative impacts" definition, and the requirement for submission of photosimulations from a sample of private property observation points, are all policy decisions squarely within the SEC's rulemaking authority that were made after consideration of comments submitted through the public rulemaking process. The SEC further determined that the requirement that abutting property owners be given notice of initial public information sessions by certified mail is not inconsistent with the statutory notice provisions under RSA 162-H:10, I. The SEC therefore has made no revisions to the proposed rules in response to these additional comments of EDP Renewables.

#### Committee Staff Issues

The preliminary objection included the grounds as outlined in Committee staff annotations to the SEC's final proposals. A number of those issues have been resolved by the SEC in rules language revisions incorporated in the attached annotated rules documents. Other such issues were addressed by the SEC as follows:

*"Scenic quality" definition (Site 102.44).* Committee staff commented that this definition is overly subjective, and that it includes substantive aspects and so should be moved to the Site 300 rules. The SEC determined that the concept of aesthetic significance embodied in this definition is to a great extent inherently subjective and does not lend itself to more definitive explication. The SEC also noted that this term is referenced in a number of other definitions in Site 102, and so should remain in this section of the proposed rules. The SEC therefore has made no revisions to the proposed rules in response to

these comments.

*Subcommittee formation (Site 103.03(a) and (d)).* Committee staff commented that these proposed rules provisions should specify the circumstances and criteria for formation of subcommittees. The SEC noted that the proposed rules language tracks and cites the relevant statutory provisions. The SEC therefore has made no revision to the proposed rules in response to these comments; however, the SEC expressly authorized its Chairman to request that the Committee issue a revised objection directing removal of these rules provisions, if it appears that the Committee would find the proposed rules language to be objectionable.

*State agency member designation of senior staff person (Site 103.03(d)(1)).* Committee staff commented that this proposed rules provision should specify the circumstances and criteria for designation by state agency SEC members of senior staff to serve in their stead. The SEC noted that the proposed rules language tracks and cites the relevant statutory provisions. The SEC therefore has made no revision to the proposed rules in response to this comment; however, the SEC expressly authorized its Chairman to request that the Committee issue a revised objection directing removal of this rules provision, if it appears that the Committee would find the proposed rules language to be objectionable.

*SEC public hearing in county or counties (Site 201.03(a) and (b)).* Committee staff commented that the procedures for the SEC's non-adjudicative public hearings in the energy facility host county or counties should be specified, as in the NHDES Env-C 205 rules. The SEC noted that the proposed rules language tracks the relevant statutory provisions and that the NHDES rules seem inapposite. The SEC, however, did approve additions to Site 201.03 regarding public comments, transcripts, and website posting of information submitted in connection with its public hearings held in the county or counties.

*Additional information sessions (Site 201.04).* Committee staff commented that this proposed rules provision should specify the factors to be considered by the SEC when determining if any additional sessions are reasonable. The SEC noted that the proposed rules language tracks and cites the relevant statutory provision. The SEC therefore has made no revision to the proposed rules in response to this comment; however, the SEC expressly authorized its Chairman to request that the Committee issue a revised objection directing removal of this rules provision, if it appears that the Committee would find the proposed rules language to be objectionable.

*Conditions of certificate (Site 301.17).* Committee staff commented that this proposed rules provision should specify under what circumstances the enumerated potential certificate conditions will be imposed, and what factors and criteria will be assessed when making these decisions. The SEC has addressed this comment by adding the phrase "in order to meet the purposes of RSA 162-H" to the introductory language in Site 301.17.

*Access to facility site for inspection and monitoring (Site 302.01(b)).* Committee staff commented that this proposed rules provision may violate the Fourth Amendment to the United States Constitution if no pre-compliance review is provided for prior to an agency search of business premises, citing the June 2015 decision of the Supreme Court of the United States in *City of Los Angeles v. Patel*. The SEC has addressed this comment through revision of this subsection in the proposed rules.

*Suspension of certificate by SEC (Site 302.01(f) and 302.02(d)).* Committee staff commented regarding the use of “may” rather than “shall” in these proposed rules provisions, and indicated that the SEC should specify the basis on which it might *not* suspend a certificate following a violation or misrepresentation. The SEC noted that these proposed rules track and cite the relevant statutory provisions. The SEC therefore has made no revision to the proposed rules in response to these comments; however, the SEC expressly authorized its Chairman to request that the Committee issue a revised objection directing removal of these rules provisions, if it appears that the Committee would find the proposed rules language to be objectionable.

Based on this response and the related rules language revisions shown in the enclosed documents, the SEC believes that the Committee’s preliminary objection has been fully addressed and resolved, and that no further basis exists for objection to the proposed Site 100-300 rules amendments. The SEC respectfully requests that the Committee approve the revised rules submitted with this response without further amendment or objection.

Thank you for your attention to this matter.

Sincerely,



Martin P. Honigberg  
Chairman

Enclosures  
cc: Service List

**Readopt Site 205, effective 6-17-08 (Document #9183-B), to read as follows:**

Site 205 EXPLANATION OF PROPOSED RULE

Site 205.01 Explanation of Proposed Rule.

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

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

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

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

**Readopt with amendments Site 300, effective 6-17-08 (Document #9183-B), to read as follows:**

**CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY**

**PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES**

**Site 301.01 Filing.**

(a) Each applicant for a certificate for an energy facility 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, after consultation by the chairperson or administrator with state agencies that are required to be provided a copy of the application under this chapter, in order to permit the timely and efficient review and adjudication of the application.

(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;
- (3) Forward a copy of the application to each state agency required to receive a copy under Site 301.10(a) and (b); and
- (4) Post a copy of each application on the committee's website.

**Site 301.02 Format of Application.**

(a) Paper copies of applications shall be prepared on standard 8 ½ x 11 inch sheets, and plans, maps, photosimulations, and other oversized documents shall be folded to that size or rolled and provided in protective tubes. Electronic copies of applications shall be submitted through electronic mail, on compact discs, or in an electronic file format compatible with the computer system of the commission.

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

(c) All information furnished shall appear in the same order as the requirements to provide that information appear 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 information contained in this paragraph, and in (c) 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 or will be the owner or lessee of the proposed facility or has or will 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 property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property;
  - (4) Identification of wetlands and surface waters of the state within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;
  - (5) Identification of natural, historic, cultural, and other resources at or within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;
  - (6) Evidence that the applicant has a current right, an option, or other legal basis to acquire the right, to construct, operate, and maintain the facility on, over, or under the site, in the form of:
    - a. Ownership, ground lease, easement, or other contractual right or interest;

b. A license, permit, easement, or other permission from a federal, state, or local government agency, or an application for such a license, permit, easement, or other permission from a state governmental agency that is included with the application; or

c. The simultaneous filing of a federal regulatory proceeding or taking of other action that would, if successful, provide the applicant with a right of eminent domain to acquire control of the site for the purpose of constructing, operating, and maintaining the facility thereon; and

(7) Evidence that the applicant has a current or conditional right of access to private property within the boundaries of the proposed energy facility site sufficient to accommodate a site visit by the committee, which private property, with respect to energy transmission pipelines under the jurisdiction of the Federal Energy Regulatory Commission, may be limited to the proposed locations of all above-ground structures and a representative sample of the proposed locations of underground structures or facilities.

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

(2) Documentation that demonstrates compliance with the application requirements of all such agencies;

(3) A copy of the completed application form for each such agency; and

(4) Identification of any requests for waivers from the information requirements of any state agency or department having permitting or other regulatory authority whether or not such agency or department is represented on the committee.

(e) If the application is for an energy facility, including an energy transmission pipeline, that is not an electric generating facility or an electric transmission line, 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 or transported, 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; and

(7) A map showing the entire energy facility, including, in the case of an energy transmission pipeline, the location of each compressor station, pumping station, storage facility, and other ancillary facilities associated with the energy facility, and the corridor width in the case of a proposed new route or widening along an existing route.

(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 electric 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.;
- (5) Copy of system impact study report for interconnection of the facility as prepared by or on behalf of ISO New England, Inc. or the interconnecting utility, if available at the time of application;
- (6) Construction schedule, including start date and scheduled completion date; and
- (7) Description of anticipated mode and frequency of operation of the facility.

(g) If the application is for an electric transmission line or an electric generating facility with an associated electric transmission or distribution line, the application shall include the following information:

- (1) Location shown on U.S. Geological Survey Map;
- (2) A map showing the entire electric transmission or distribution line project, including the height and location of each pole or tower, the distance between each pole or tower, and the location of each substation, switchyard, converter station, and other ancillary facilities associated with the project;
- (3) Corridor width for:
  - a. New route; or
  - b. Widening along existing route;
- (4) Length of line;
- (5) Distance along new route;

- (6) Distance along existing route;
  - (7) Voltage design rating;
  - (8) Any associated new electric generating unit or units;
  - (9) Type of construction described in detail;
  - (10) Construction schedule, including start date and scheduled completion date;
  - (11) Copy of any proposed plan application or other system study request documentation required to be submitted to ISO New England, Inc. in connection with construction and operation of the proposed facility; and
  - (12) Copy of system impact study report for the proposed electric transmission facility as prepared by or on behalf of ISO New England, Inc. or the interconnecting utility, if available at the time of application.
- (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 and other alternatives 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 copies of the application, has been given to the governing body of each municipality in which the facility is proposed to be located, and that written notification of the application filing, including information regarding means to obtain an electronic or paper version of the application, has been sent by first class mail to the governing body of each of the other affected communities;
  - (5) The information described in Sections 301.04 through 301.09;
  - (6) For a proposed wind energy facility, information regarding the cumulative impacts of the proposed energy facility on natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including, with respect to aesthetics, the potential impacts of combined observation, successive observation, and sequential observation of wind energy facilities by the viewer;
  - (7) Information describing how the proposed facility will be consistent with the public interest, including the specific criteria set forth in Site 301.16(a)-(d); and
  - (8) 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 energy 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 applicant's financing plan for the proposed facility, including the amounts and sources of funds required for the construction and operation of the proposed facility;
  - (4) An explanation of how the applicant's financing plan compares with financing plans employed by the applicant or its affiliates, or, if no such plans have been employed by the applicant or its affiliates, then by unaffiliated project developers if and to the extent such information is publicly available, for energy facilities that are similar in size and type to the proposed facility, 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 of application;
- (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 of application.

Site 301.05 Effects on Aesthetics.

- (a) Each application shall include a visual impact assessment of the proposed energy facility, prepared in a manner consistent with generally accepted professional standards by a professional trained or having experience in visual impact assessment procedures, regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed facility on aesthetics.
- (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 the physiographic, historical 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 impact, which, for proposed:
  - a. Wind energy systems shall extend to a minimum of a 10-mile radius from each wind turbine in the proposed facility;
  - b. Electric transmission lines longer than 1 mile shall extend to a  $\frac{1}{2}$  mile radius if located within any urbanized area;
  - c. Electric transmission lines longer than 1 mile shall extend to a 2 mile radius if located within any urban cluster;
  - d. Electric transmission lines longer than 1 mile if located within any rural area shall extend to:
    1. A radius of 3 miles if the line would be located within an existing transmission corridor and neither the width of the corridor nor the height of any towers, poles, or other supporting structures would be increased; or
    2. A radius of 10 miles if the line would be located in a new transmission corridor or in an existing transmission corridor if either or both the width of the corridor or the height of the towers, poles, or other supporting structures would be increased;
- (5) An identification of all scenic resources within the area of potential visual impact and a description of those scenic resources from which the proposed facility would be visible;
- (6) A characterization of the potential visual impacts of the proposed facility, and of any visible plume that would emanate from 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 or visual arc of the visible elements of the proposed facility;

- f. The scale, elevation, and nature 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, from other scenic resources for which the potential visual impacts are characterized as “high” pursuant to (6) above, and, to the extent feasible, from a sample of private property observation points within the area of potential visual impact, 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, and from any visible plume that would emanate from the proposed facility; ~~photographs used in the simulation shall be taken at high resolution and contrast, using a full frame digital camera with a 50 millimeter fixed focal length lens or digital equivalent that creates an angle of view that closely matches human visual perception, under clear weather conditions and at a time of day that provides optimal clarity and contrast, and shall avoid if feasible showing any utility poles, fences, walls, trees, shrubs, foliage, and other foreground objects and obstructions; photosimulations shall be printed at high resolution at 15.3 inches by 10.2 inches, or 390 millimeters by 260 millimeters; at least one set of photosimulations shall represent winter season conditions without the presence of foliage typical of other seasons; photosimulations shall meet the following additional requirements:~~

a. ~~Photographs used in the simulation shall be taken at high resolution and contrast, using a full frame digital camera with a 50 millimeter fixed focal length lens or digital equivalent that creates an angle of view that closely matches human visual perception, under clear weather conditions and at a time of day that provides optimal clarity and contrast, and shall avoid if feasible showing any utility poles, fences, walls, trees, shrubs, foliage, and other foreground objects and obstructions;~~

b. ~~Photosimulations shall be printed at high resolution at 15.3 inches by 10.2 inches, or 390 millimeters by 260 millimeters;~~

c. ~~At least one set of photosimulations shall represent winter season conditions without the presence of foliage typical of other seasons;~~

d. -Field conditions in which a viewpoint is photographed shall be recorded including:

1. Global Position System (GPS) location points with an accuracy of at least 3 meters for each simulation viewpoint to ensure repeatability;
2. Camera make and model and lens focal length;
3. All camera settings at the time the photograph is taken; and
4. Date, time and weather conditions at the time the photograph is taken; and

e. -When simulating the presence of proposed wind turbines, the following shall apply:

1. Turbines shall be placed with full frontal views and no haze or fog effect applied;

2. Turbines shall reasonably represent the shape of the intended turbines for a project including the correct hub height and rotor diameter;
  3. Turbine blades shall be set at random angles with some turbines showing a blade in the 12 o'clock position; and
  4. The lighting model used to render wind turbine elements shall correspond to the lighting visible in the base photograph;
- (8) If the proposed facility is required by Federal Aviation Administration regulations to install aircraft warning lighting or if the proposed facility would include other nighttime lighting, a description and characterization of the potential visual impacts of this lighting, including the number of lights visible and their distance from key observation points; and
- (9) A description of the measures planned to avoid, minimize, or mitigate potential adverse effects of the proposed facility, and of any visible plume that would emanate from the proposed facility, and the alternative measures considered but rejected by the applicant.

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

- (a) Demonstration that project review of the proposed facility has been initiated for purposes of compliance with Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108, or RSA 227-C:9, as applicable;
- (b) Identification of all historic sites and areas of potential archaeological sensitivity located within the area of potential effects, as defined in 36 C.F.R. §800.16(d), available as noted in Appendix B;
- (c) Finding or determination by the division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, that no historic properties would be affected, that there would be no adverse effects, or that there would be adverse effects to historic properties, if such a finding or determination has been made prior to the time of application.
- (d) Description of the measures planned to avoid, minimize, or mitigate potential adverse effects on historic sites and archaeological resources, and the alternative measures considered but rejected by the applicant; and
- (e) Description of the status of the applicant's consultations with the division of historical resources of the department of cultural resources, and, if applicable, with the lead federal agency, and, to the extent known to the applicant, any consulting parties, as defined in 36 C.F.R. §800.2(c), available as noted in Appendix B.

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

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

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

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

- (1) Description of 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) Identification of significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility;
- (3) Identification of critical wildlife habitat and significant habitat resources potentially affected by construction and operation of the proposed facility;
- (4) Assessment of 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) Description of the 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 the alternative measures considered but rejected by the applicant; and
- (6) Description of the status of the applicant's discussions 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 potential adverse effects of, the proposed energy facility on public health and safety:

(a) For proposed wind energy systems:

- (1) 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 specified in Site 301.18;
- (2) An assessment that identifies the astronomical maximum as well as the anticipated hours per year of shadow flicker expected to be perceived at each residence, learning space, workplace, health care setting, outdoor or indoor public gathering area (outdoor and indoor), other occupied building, and roadway, within a minimum of 1 mile of any turbine, based on shadow flicker modeling that assumes an impact distance of at least 1 mile from each of the turbines;

- (3) Description of planned setbacks that indicate the distance between each wind turbine and the nearest landowner's existing building and property line, and between each wind turbine and the nearest public road and overhead or underground energy infrastructure or energy transmission pipeline within 2 miles of such wind turbine, 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) An assessment of the risks of ice throw, blade shear, and tower collapse on public safety, including a description of the measures taken or planned to avoid or minimize the occurrence of such events, if necessary, and the alternative measures considered but rejected by the applicant;
- (5) Description of the lightning protection system planned for the proposed facility;
- (6) Description of 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) A decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in wind generation projects and cost estimates, which plan shall provide 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, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;
- (8) The decommissioning plan required under (7) above shall include each of the following:
  - a. 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;
  - b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;
  - ca. All turbines, including the blades, nacelles and towers, shall be disassembled and transported off-site;
  - db. All transformers shall be transported off-site;
  - ec. The overhead power collection conductors and the power poles shall be removed from the site;
  - fd. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place; and
  - ge. Areas where subsurface components are removed shall be filled, graded to match adjacent contours, reseeded, stabilized with an appropriate seed and allowed to re-vegetate naturally;

(9) A plan for fire protection for the proposed facility prepared by or in consultation with a fire safety expert; and

(10) An assessment of the risks that the proposed facility will interfere with the weather radars used for severe storm warning or any local weather radars.

(b) For electric transmission facilities, an assessment of electric and magnetic fields generated by the proposed facility and the potential impacts of such fields on public health and safety, based on established scientific knowledge, and an assessment of the risks of collapse of the towers, poles, or other supporting structures, and the potential adverse effects of any such collapse.

(c) For all energy facilities:

(1) Except as otherwise provided in (a)(1) above, 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 decibel A-weighted (dBA) or more over background levels, (measured at the L-90 sound level,) at the property boundary of the proposed facility site or, in the case of an electric transmission line or an energy transmission pipeline, at the edge of the right-of-way or 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;

(2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; which plan shall include 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, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating; the decommissioning plan shall include each of the following:

a. 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;

b. The provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;

ca. All transformers shall be transported off-site; and

db. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place;

(3) A plan for fire safety prepared by or in consultation with a fire safety expert;

(4) A plan for emergency response to the proposed facility site; and

(5) A description of any additional measures taken or planned to avoid, minimize, or mitigate public health and safety impacts that would result from the construction and operation of the proposed facility, and the alternative measures considered but rejected by the applicant.

Site 301.09 Effects on Orderly Development of Region. Each application shall include information regarding the effects of the proposed energy 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 master plans of the affected communities and zoning ordinances of the proposed facility host municipalities and unincorporated places, 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 affected communities; and
  - (2) A description of how the proposed facility is consistent with such land uses and identification of how the proposed facility is inconsistent with such land uses;
- (b) The economy of the region, including an assessment of:
  - (1) The economic effect of the facility on the affected communities;
  - (2) The economic effect of the proposed facility on in-state economic activity during construction and operation periods;
  - (3) The effect of the proposed facility on State and tax revenues and the tax revenues of the host and regional communities;
  - (4) The effect of the proposed facility on real estate values in the affected communities;
  - (5) The effect of the proposed facility on tourism and recreation; and
  - (6) The effect of the proposed facility on community services and 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 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, 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) The committee also shall forward a copy of the application to the department of fish and game, the department of health and human services, the division of historical resources of the department of cultural resources, the natural heritage bureau, the governor's office of energy and planning, and the division of fire

safety of the department of safety, unless any such agency or office has been forwarded a copy of the application under (a) above.

(c) 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.

(d) 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 its purposes.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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 301.11 Exemption Determination.

(a) 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 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, provided through written submissions or in the adjudicative proceeding provided for in (b) below, 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.

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

Site 301.12 Timeframe for Application Review.

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

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

(c) Pursuant to RSA 162-H:7, VI-d, the committee shall issue or deny a certificate for an energy facility within 365 days after application acceptance.

(d) Pursuant to RSA 162-H:14, I, the committee shall temporarily suspend its deliberations and the time frames set forth in this section at any time while an application is pending before the committee, if it finds that such suspension is in the public interest.

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

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

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

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

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

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

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

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects.

- (a) In determining whether a proposed energy facility will have an unreasonable adverse effect on aesthetics, the committee shall consider:
  - (1) The existing character of the area of potential visual impact;
  - (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 daytime and nighttime 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) The extent to which the proposed facility would be a dominant and prominent feature within a natural or cultural landscape of high scenic quality or as viewed from scenic resources of high value or sensitivity; and
  - (7) The effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics, and the extent to which such measures represent best practical measures.
- (b) In determining whether a proposed energy facility will have an unreasonable adverse effect on historic sites, the committee shall consider:
  - (1) All of the historic sites and archaeological resources potentially affected by the proposed facility and any anticipated potential adverse effects on such sites and resources;
  - (2) The number and significance of any adversely affected historic sites and archeological resources, taking into consideration the size, scale, and nature of the proposed facility;
  - (3) The extent, nature, and duration of the potential adverse effects on historic sites and archeological resources;
  - (4) Findings and determinations by the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, of the proposed facility's effects on historic sites as determined under Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108, or RSA 227-C:9; and

- (5) The effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on historic sites and archaeological resources, and the extent to which such measures represent best practical measures.
- (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 resident and migratory fish and wildlife species, rare plants, rare natural communities, and other exemplary natural communities, including the size, prevalence, dispersal, migration, and viability of the populations in or using the area;
  - (2) The nature, extent, and duration of the potential effects on the affected resident and migratory fish and 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 or migration corridors;
  - (4) The analyses and recommendations, if any, of the department of fish and game, the natural heritage bureau, the United States Fish and Wildlife Service, and other agencies authorized to identify and manage significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities;
  - (5) The effectiveness of 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, and the extent to which such measures represent best practical measures;
  - (6) The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on terrestrial or aquatic significant habitat resources, and the extent to which such measures represent best practical measures; and
  - (7) Whether conditions should be included in the certificate for post-construction monitoring and reporting and for adaptive management to address potential adverse effects that cannot reliably be predicted at the time of application.
- (f) In determining whether a proposed energy facility will have an unreasonable adverse effect on public health and safety, the committee shall:

(1) For all energy facilities, consider the information submitted pursuant to Site 301.08 and other relevant evidence submitted pursuant to Site 202.24, the potential adverse effects of construction and operation of the proposed facility on public health and safety, the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures;

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

a. With respect to sound standards, the 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 background levels, (measured at the L-90 sound level,) 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 background levels, (measured at the L-90 sound level,) at all other times during each day, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, on property that is used in whole or in part for permanent or temporary residential purposes, at a location between the nearest building on the property used for such purposes and the closest wind turbine; and

b. With respect to shadow flicker, the shadow flicker created by the applicant's energy facility during operations shall not occur more than 8 hours per year at or within any residence, learning space, workplace, health care setting, outdoor or indoor public gathering area (outdoor and indoor), or other occupied building;

(3) For wind energy systems, consider the proximity and use of buildings, property lines, public roads, and overhead and underground energy infrastructure and energy transmission pipelines, the risks of ice throw, blade shear, tower collapse, and other potential adverse effects of facility operation, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures; and

(4) For electric transmission lines, consider the proximity and use of buildings, property lines, and public roads, the risks of collapse of towers, poles, or other supporting structures, the potential impacts on public health and safety of electric and magnetic fields generated by the proposed facility, and the effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects, and the extent to which such measures represent best practical measures.

(g) In determining whether to grant a certificate of site and facility for a proposed wind energy facility, the committee shall consider cumulative impacts of or from multiple projects or multiple towers, or both, to public health and safety, natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including aesthetic impacts and sound impacts, and, with respect to aesthetics, the potential impacts of combined observation, successive observation, and sequential observation of energy facilities by the viewer.

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

(a) The extent to which the siting, construction, and operation of the proposed facility will affect land use, employment, and the economy of the region;

- (b) The provisions of, and financial assurances for, the proposed decommissioning plan for the proposed facility; and
- (c) The views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility.

Site 301.16 Criteria Relative to Finding of Public Interest. In determining whether a proposed energy facility will serve the public interest, the committee shall consider:

- (a) The welfare of the population;
- (b) Private property;
- (c) The location and growth of industry;
- (d) The overall economic growth of the state;
- (e) The environment of the state;
- (f) Historic sites;
- (g) Aesthetics;
- (h) Air and water quality;
- (i) The use of natural resources; and
- (j) Public health and safety.
  - (a) The beneficial and adverse environmental effects of the facility, including effects on air and water quality, wildlife, and natural resources;
  - (b) The beneficial and adverse economic effects of the facility, including the costs and benefits to energy consumers, property owners, state and local tax revenues, employment opportunities, and local and regional economies;
  - (c) The extent to which construction and operation of the facility will be consistent with federal, regional, state, and local plans and policies, including those specified in RSA 378:37 and RSA 362-F:1;
  - (d) The municipal master plans and land use regulations pertaining to (i) natural, scenic, historic, and cultural resources, and (ii) public health and safety, air quality, economic development, and energy resources; and
  - (e) The extent to which siting, construction, and operation of the facility will have impacts on and benefits to the welfare of the population, the location and growth of industry, historic sites, aesthetics, the use of natural resources, and public health and safety, consistent with RSA 162-H:1.

Site 301.17 Conditions of Certificate. In determining whether a certificate shall be issued for a proposed energy facility, the committee shall consider whether the following conditions should be included in the certificate in order to meet the objectives of RSA 162-H:

- (a) A requirement that the certificate holder promptly notify the committee of any proposed or actual change in the ownership or ownership structure of the holder or its affiliated entities and request approval of the committee of such change;
- (b) A requirement that the certificate holder promptly notify the committee of any proposed or actual material change in the location, configuration, design, specifications, construction, operation, or equipment components of the energy facility subject to the certificate and request approval of the committee of such change;
- (c) A requirement that the certificate holder continue consultations with the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the federal lead agency, and comply with any agreement or memorandum of understanding entered into with the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the federal lead agency;
- (d) Delegation to the administrator or another state agency or official of the authority to monitor the construction or operation of the energy facility subject to the certificate and to ensure that related terms and conditions of the certificate are met;
- (e) Delegation to the administrator or another state agency or official of the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within the certificate and with respect to any permit, license, or approval issued by a state agency having permitting or other regulatory authority;
- (f) Delegation to the administrator or another state agency or official of the authority to specify minor changes in route alignment to the extent that such changes are authorized by the 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;
- (g) A requirement that the energy facility be sited subject to setbacks or operate with designated safety zones in order to avoid, mitigate, or minimize potential adverse effects on public health and safety;
- (h) Other conditions necessary to ensure construction and operation of the energy facility subject to the certificate in conformance with the specifications of the application; and
- (i) Any other conditions necessary to serve the objectives of RSA 162-H or to support findings made pursuant to RSA 162-H:16.

Site 301.18 Sound Study Methodology.

- (a) The methodology for conducting a preconstruction sound background study for a wind energy system shall include:
  - (1) Adherence to the standard of ANSI/ASA S12.9-2013 Part 3, available as noted in Appendix B-standard, a standard that requires short-term attended measurements;
  - (2) Long-term unattended monitoring shall be conducted in accordance with the standard of ANSI S12.9-1992 2013 Part 2, available as noted in Appendix B-standard, provided that audio recordings are taken in order to clearly identify and remove transient noises from the data, with frequencies above 1250 hertz 1/3 octave band to be filtered out of the data;

- (3) Measurements shall be conducted at the nearest properties from the proposed wind turbines that are representative of all residential properties within 2 miles of any turbine; and
- (4) Sound measurements shall be omitted when the wind velocity is greater than 4 meters per second at the microphone position, when there is rain, or with temperatures below instrumentation minima; following the protocol of ANSI S12.9-2013 Part 3, available as noted in Appendix B: protocol,
- a. Microphones shall be placed 1 to 2 meters above ground level, and at least 7.5 meters from any reflective surface;
  - b. Aw windscreens of the type recommended by the monitoring instrument's manufacturer must be used for all data collection;
  - c. Microphones should be field-calibrated before and after measurements; and
  - d. An anemometer shall be located within close proximity to each microphone.
- (b) Pre-construction sound reports shall include a map or diagram clearly showing the following:
- (1) Layout of the project area, including topography, project boundary lines, and property lines;
  - (2) Locations of the sound measurement points;
  - (3) Distance between any sound measurement point and the nearest wind turbine;
  - (4) Location of significant local non-turbine sound and vibration sources;
  - (5) Distance between all sound measurement points and significant local sound sources;
  - (6) Location of all sensitive receptors including schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, and elderly care facilities;
  - (7) Indication of temperature, weather conditions, sources of ambient sound, and prevailing wind direction and speed for the monitoring period; and
  - (8) Final report shall provide A-weighted and C-weighted sound levels for L-10, Leq, and L-90.
- (c) The predictive sound modeling study shall:
- (1) Be conducted in accordance with the standards and specifications of ISO 9613-2 1996-12-15, available as noted in Appendix B: standards and specifications;
  - (2) Include an adjustment to the Leq sound level produced by the model applied in order to adjust for turbine manufacturer uncertainty, such adjustment to be determined in accordance with the most recent release of the IEC 61400 Part 11 standard (Edition 3.0 2012-11), available as noted in Appendix B;
  - (3) Include predictions to be made at all properties within 2 miles from the project wind turbines for the wind speed and operating mode that would result in the worst case wind turbine sound emissions during the hours before 8:00 a.m. and after 8:00 p.m. each day; and

(4) Incorporate other corrections for model algorithm error to be disclosed and accounted for in the model.

(d) The predictive sound modeling study report shall:

(1) Include the results of the modeling described in (c)(3) 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 2 miles from any wind turbine included in the proposed facility; and

(3) Show proposed wind turbine locations and the location of all sensitive receptors, including schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, and elderly care facilities;

(e) Post-construction noise compliance monitoring shall include:

(1) Adherence to the standard of ANSI/ASA S12.9-2013 Part 3, available as noted in Appendix B, standard that requires short-term attended measurements to ensure transient noises are removed from the data, and; measurements shall include at least one nighttime hour where turbines are operating at full sound power with winds less than 3 meters per second at the microphone;

(2) Unattended long-term monitoring shall also be conducted;

(3) Sound measurements shall be omitted when there is rain, or when temperatures are below instrumentation minima, and shall comply with the following additional specifications:;

a. Microphones shall be placed 1 to 2 meters above ground level and at least 7.5 meters from any reflective surface, following the protocols of ANSI/ASA S12.9-2013 Part 3, available as noted in Appendix B protocols;

b. Proper microphone screens shall be required;

c. Microphones shall be field-calibrated before and after measurements; and

d. An anemometer shall be located within close proximity to each microphone;

(4) Monitoring shall involve measurements being made with the turbines in both operating and non-operating modes, and supervisory control and data acquisition system data shall be used to record hub height wind speed and turbine power output;

(5) Locations shall be pre-selected where noise measurements will be taken that and shall be the same locations at which predictive sound modeling study measurements were taken pursuant to subsection (c) above, and the; measurements shall be performed at night with winds above 4.5 meters per second at hub height and less than 3 meters per second at ground level;

(6) All sound measurements during post-construction monitoring shall be taken at 0.125-second intervals measuring both fast response and Leq metrics; and

(7) Post-construction monitoring surveys shall be conducted once within 3 months of commissioning, and once during each season thereafter for the first year, provided that:

a. ~~s~~<sup>a</sup>Additional surveys shall be conducted at the request of the committee or the administrator; and

b. ~~a~~Adjustments to this schedule shall be permitted, subject to review by the committee or the administrator.

(f) Post-construction sound monitoring reports shall include a map or diagram clearly showing the following:

- (1) Layout of the project area, including topography, project boundary lines, and property lines;
- (2) Locations of the sound measurement points; and
- (3) Distance between any sound measurement point and the nearest wind turbine.

(g) For each sound measurement period during post-construction monitoring, reports shall include each of the following measurements:

- (1) LAeq, LA-10, and LA-90; and
- (2) LCeq, LC-10, and LC-90.

(h) Noise emissions shall be free of audible tones, and if the presence of a pure tone frequency is detected, a 5 dB penalty shall be added to the measured dBA sound level.

(i) Validation of noise complaints submitted to the committee shall require field sound surveys, except as determined by the administrator to be unwarranted, which field studies shall be conducted under the same meteorological conditions as occurred at the time of the alleged exceedance that is the subject of the complaint.

## 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 ~~administrator or another designated representative of the committee shall have the authority to inspect and monitor the construction and operation~~<sup>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.</sup>

(c) 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.

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

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

(f) Pursuant to RSA 162-H:12, I, 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) Pursuant to RSA 162-H:12, II, if the committee determines following the adjudicative hearing that a material misrepresentation or violation of RSA 162-H or its rules has occurred, the committee may issue an order that suspends the holder's certificate until such time as the holder has corrected and mitigated the consequences of such misrepresentation or violation.

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

Site 302.03 Revocation of Certificate.

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

(b) If the committee has suspended a certificate pursuant to Site 302.01 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 within the period of time specified in the suspension order, the committee shall initiate an adjudicative proceeding to revoke the suspended certificate and shall conduct an adjudicative hearing prior to determining whether to revoke the 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) 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 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.

**APPENDIX A**

<b>Rule</b>	<b>Statute</b>
Site 205.01	RSA 162-H:10, VI and VII; RSA 541-A:11, VII
Site 301.01-02	RSA 162-H:7, II, 10, VI and VII
Site 301.03	RSA 162-H:7, IV and V, 10, VI and VII
Site 301.04	RSA 162-H:7, IV and V, 10, VI and VII
Site 301.05	RSA 162-H:7, IV and V, 10, VI and VII
Site 301.06	RSA 162-H:7, IV and V, 10, VI and VII
Site 301.07	RSA 162-H:7, IV and V, 10, VI and VII
Site 301.08	RSA 162-H:7, IV and V, 10, VI and VII
Site 301.09	RSA 162-H:7, IV and V, 10, VI and VII
Site 301.10	RSA 162-H:7, IV and VI, 10, VI and VII
Site 301.11	RSA 162-H:4, IV, 10, VI and VII
Site 301.12	RSA 162-H:7, VI-b, VI-c and VI-d, 10, VI and VII, 14, I
Site 301.13	RSA 162-H:10, VI and VII, 16, IV(a)
Site 301.14	RSA 162-H:10, VI and VII, 10-a, 16, IV(c)
Site 301.15	RSA 162-H:10, VI and VII, 16, IV(b)
Site 301.16	RSA 162-H:10, VI and VII, 16, IV(e)
Site 301.17	RSA 162-H:10, VI and VII
Site 301.18	RSA 162-H:7, V, 10, VI and VII
Site 302.01-04	RSA 162-H:10, VI and VII, 12
Site 302.05	RSA 162-H:10, VI and VII; RSA 541-A:22, IV



**APPENDIX B: INCORPORATION BY REFERENCE INFORMATION**

<b>RULE</b>	<b>TITLE/CITATION (DATE)</b>	<b>SOURCE</b>
Site 301.06(b)	36 C.F.R. §800.16(d) (2014)	Available from U.S. Government Publishing Office, <a href="http://www.gpo.gov">http://www.gpo.gov</a>
Site 301.06(e)	36 C.F.R. §800.2(c) (2014)	Available from U.S. Government Publishing Office, <a href="http://www.gpo.gov">http://www.gpo.gov</a>
Site 301.18(a)(1), (a)(4), (e)(1), and (e)(3)	ANSI/ASA S12.9-2013 Part 3 Quantities and Procedures for Description and Measurement of Environmental Sound – Part 3: Short-term Measurements with an Observer Present	Published by American National Standards Institute, 25 West 43 <sup>rd</sup> Street, 4 <sup>th</sup> Floor, New York, NY 10036 Hard copy or electronic copy can be purchased for \$115.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>
Site 301.18(a)(2)	ANSI/ASA S12.9-1992 2013 Part 2, Quantities and Procedures for Description and Measurement of Environmental Sound. Part 2: Measurement of long-term, wide-area sound	Published by American National Standards Institute, 25 West 43 <sup>rd</sup> Street, 4 <sup>th</sup> Floor, New York, NY 10036 Hard copy or electronic copy can be purchased for \$100.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>
Site 301.18(c)(1)	ISO 9613-2 1996-12-15, Acoustics - Attenuation of sound during propagation outdoors - Part 2: General method of calculation	Published by International Organization for Standardization, Case Postale 56, CH-1211, Geneve 20, Switzerland Hard copy or electronic copy can be purchased for \$123.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>
Site 301.18(c)(2)	IEC 61400 Part 11 (Edition 3.0 2012-11), Wind turbines – Part 11: Acoustic noise measurement techniques	Published by International Electrotechnical Commission, 3, rue de Varembé, CH-1211, Geneva 20, Switzerland Hard copy or electronic copy can be purchased for \$303.00 at: <a href="http://webstore.ansi.org">http://webstore.ansi.org</a>

