

ATTORNEY MORRELL: I believe it was, and Denise can correct me if I'm wrong, but I believe it was Nur 302.05.

MS. NIES: 303.05.

ATTORNEY MORRELL: 303.05.

MS. NIES: I think letter (c) and letter (f).

ATTORNEY MORRELL: Right.

CHAIRWOMAN MCGUIRE: Ha. Okay. Fine. It looks relatively editorial.

** SEN. REAGAN: I move approval.

SEN. AVARD: Second.

CHAIRWOMAN MCGUIRE: Any discussion? Those in favor? Opposed?

MS. NIES: Thank you.

*** {MOTION ADOPTED}

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| 15. | (a) OR 2015-11 | SITE EVALUATION COMMITTEE
Organizational and Practice and
Procedure Rules |
| | (b) OR 2015-12 | Explanation of Proposed Rule and
Certificates of Site and Facility
Rules |

CHAIRWOMAN MCGUIRE: All right. The next one is the SEC rules. Scott, I believe you had something about the testimony at this point.

SCOTT EATON, ESQ., Director, JLCAR Staff, Office of Legislative Services: In other words, I can summarize the Committee's options if you would like at this stage. What you

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have before you is a response on a Preliminary Objection on two proposals, 2015-11, 2015-12. Your options at this stage are to either approve with or without a rulemaking petition or any other recommendations or understandings you'd like to make. Or, alternatively, make a final objection or a -- and/or with a both response or a Joint Resolution. However, as part of the response to the Preliminary Objection, the Site Evaluation Committee has offered two different requests for Revised Objections should the Committee be unsatisfied with their Preliminary Objection Response. But you would have to agree to such a request to have a Revised Objection voted upon. And -- but that is up to you.

There's technically another option. You don't have to take action today; but, again, that's strictly up to you. If you're of the mind to postpone action, you should probably do a motion to do that; but, strictly speaking, you took no action today because your deadline for action isn't until next month. It would just rollover to the next meeting; but those are your options today.

CHAIRWOMAN MCGUIRE: Okay.

MARTIN HONIGBERG, Chairman, Site Evaluation Committee: Madam Chair, Members of the Committee, Martin Honigberg, the Chair of the Site Evaluation Committee. Most of the time I'm Chair of the Public Utilities Commission, but by statute that also makes me the Chair of the Site Evaluation Committee.

To my right is Attorney David Wiesner who's an employee of the Public Utilities Commission who has been working with us to help get the SEC rules in order. Happy to respond to questions or -- or proceed in any other way the Chair would recommend.

Our meeting following your last meeting was long. It went through all of the possible grounds for objection, some of which I think most of us, including the lawyers at OLS, agreed probably weren't technically proper grounds for objection but were the kinds of things that were significant enough that they needed to be addressed. You'll see in our letter we dealt with all of those issues.

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We've seen OLS's, I think, comprehensive discussion of all of those responses. We are prepared to proceed as described in the letter and leave it to you to direct us as how you would like -- how you'd like us to go.

CHAIRWOMAN MCGUIRE: Thank you. Are there any questions or comments from the Committee? Thank you then. We may have some later.

I have a card for public comment. At this point, we are only taking comment that is new. I believe all of you have spoken at least once. And we've received a new stack of letters from people on this. If you have something that has not been previously brought up or is because of the Objection Response rather than the original rule, do you have -- is there anyone who has something to say today? Sir.

WILL ABBOTT, Vice-President of Policy and Reservation Stewardship, New Hampshire Forest Society: I put a card in. My name is Will Abbott from the Forest Society, and I would like to speak to the Committee about the modified final proposed rule.

CHAIRWOMAN MCGUIRE: Okay. Thank you. That's legitimate.

MR. ABBOTT: Madam Chairman, again, I'm Will Abbot from the Forest Society. I'm here today on behalf of the Nature Conservancy, the Audubon Society, the Appalachian Mountain Club, and the Forest Society. I won't read the letter that I'm circulating, but just quickly want to point out three things.

One that we've been involved in the -- all four organizations have been involved in SB 245 and in the rulemaking process for the two plus years it's been going on. And we're here today to support the modified rule before you presented by the Site Evaluation Committee as it relates to Site 301.16, which is the rule implementing or guiding the public interests finding that the SEC makes. And we think that this rule represents the best way for the public and for all stakeholders in an SEC proceeding to understand how the SEC would approach

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the task of issuing a finding relative to whether a project proposed serves the public interest.

We think the SEC took your advice at your last meeting seriously. As Chairman Honigberg suggested, a lot of time and effort went into reviewing the objection that you issued, the Preliminary Objection that you issued; and what came out we think is a worthwhile rule for you to act positively on today.

CHAIRWOMAN MCGUIRE: Okay. Thank you very much.

MR. ABBOTT: Yep.

CHAIRWOMAN MCGUIRE: Attorney Mitchell. Senator Reagan, you have something?

AARON MITCHELL, ESQ., Staff Attorney, JLCAR Staff, Office of Legislative Services: Sorry.

** SEN. REAGAN: I have a motion. And before I read the motion, I'd like to say is this has been in everyone's experience the most protracted exercise in a rule creation. It's strained everybody involved tremendously. It has caused rifts amongst groups that were always happy to work together and now for sometimes not even logical reasons people are opposed to what other people are in favor of and they're in favor of things that other people object to. And it's hard at some point to understand exactly what specifically anybody is talking about or if any of the fears could possibly come to fruition.

So I'm going -- I'm going to read this motion and ask the Committee Members to listen to what's being said and, of course, I would seek your approval of the motion.

I move to accept the Objection Responses from the Site Evaluation Committee and approve the rule. In so moving, I would like to briefly explain the basis for my motion which is informed by JLCAR staff attorneys, as well as Senator Feltes who was unable to be here today because of a family medical issue.

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First, the removal of a cumulative effects analysis for all projects is consistent with the statutory framework because the Legislature only specifically required a cumulative effects analysis for wind projects.

Second, the new public interest rules proposed by the Site Evaluation Committee is not beyond its statutory authority. Here, the Site Evaluation Committee appropriately uses the policy provisions of the statute, RSA 162-H:1, that says policy provisions are an allowable basis to inform agency rules, and the authority for this can be referenced in the New Hampshire Supreme Court case, Appeal of the New Hampshire Department of Transportation, with a case citation number 152 NH, 565, in the year 2005. The new proposal incorporates the list of impacts and benefits in the first sentence of that policy provision.

The second sentence of the policy provision referencing the public interest refers back to the first sentence. So the inclusion of this list in the public interest rule is an appropriate reading.

In the proposal, the words "shall consider" appear before the list. That means that all items on the list must be considered together and that no one item can be singularly qualifying or singularly disqualifying, and that is consistent with the plain language of the second sentence of the purpose provision, as well as -- as well as RSA 162-H:16, IV.

The new public interest rule proposal is also consistent with other statutory provisions. As just one example, a proposed project could be singularly disqualified if it had an unreasonable adverse effect on historic sites. However, if it just had an adverse effect, not an unreasonable adverse effect, it could be still qualifying under that separate standard. That impact on historic sites would then be considered in the public interest standard together with all of the items on the list, including any benefits.

As part of this approval, I would further move that we use our authority under RSA 541-A:4, to petition the Site Evaluation

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Committee to enter rulemaking to adopt clearer rules regarding the suspension and revocation of certificates. I believe the decision to suspend or revoke a license on this significance is an important decision for which clear standards should exist.

While I believe those rules are unclear, I also believe that at this point in the rulemaking process there is not enough time to draft language that would sufficiently address this concern. In my view, other than the rules on which I move we petition, the Objection Response from the Site Evaluation Committee does not violate any provision of 541-A. I will now take a second to my motion.

SEN. AVARD: Second.

CHAIRWOMAN MCGUIRE: Thank you. Any comments, questions, discussion? Representative Sytek.

REP. SYTEK: I wish I had stayed an alternate because there's -- Senator Reagan's motion sounds very reasonable and well thought out. But there's too much going on for me to cast a positive vote at this time. Probably just like to vote for it the next time and do the necessary study of the various facts that he's -- that he proposed in his both motion and, really, the discussion of it. I'm not prepared to vote for it today, however, how futile that might be.

CHAIRWOMAN MCGUIRE: One thing that was brought to my attention after the -- after we received the Objection Response was that it used the term policy decision. And without explanation that's -- a policy decision is not within the Site Evaluation Committee's authority.

MR. HONIGBERG: You're absolutely right, Madam Chair. That's probably a poor use of the word. I think in each of the instances where you see the word policy or policy decision if you were to substitute the word judgment, I think you would end up with the same result. In effect, the Legislature directed the SEC to adopt rules on a number of topics. For example, shadow flicker, that's one, shadow flicker for wind turbine. Somebody

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has to make a judgment call based on the information presented as to what type of standard to put into a rule. I think if you consider the poor choice of the word policy and substitute judgment, I think you understand what we were trying to get at. And I certainly understand that it is the Legislature that makes the policy, the Executive Branch that executes those laws, and it was not our intention to usurp that in any way.

CHAIRWOMAN MCGUIRE: Good. I believe our -- the committee staff has also addressed that particular issue.

SEN. REAGAN: It's in the motion, also.

CHAIRWOMAN MCGUIRE: And it's in the motion, yes. They're not making policy. They're implementing the policy. Okay. Representative Schmidt.

REP. SCHMIDT: Thank you. Madam Chair. I appreciate Senator Reagan's motion but also his clarifying statement. I would certainly hardly endorse the petition aspect of it, as well as the main motion; but I think at this point we have reached the point that we need to make a decision and not prolong this. But I certainly hope the SEC will get to work rapidly to set forth the types of, you know, issues that Senator Reagan's clarifying statement makes and that you just referenced.

CHAIRWOMAN MCGUIRE: Okay. Any other comments or questions? Yes, Representative Sad.

REP. SAD: Thank, you, Madam Chair. Might -- may we ask the staff attorneys their thoughts about the motion?

CHAIRWOMAN MCGUIRE: Why, yes, that seems appropriate. Attorney Mitchell.

MR. MITCHELL: Representative Sad, I would say the motion is appropriate at this time and that it's -- it's always the Committee's decision whether or not to approve or object to a rule, and I guess I'd just say the motion sounds to me as though it's perfectly legitimate.

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REP. SAD: Thank you.

CHAIRWOMAN MCGUIRE: Anyone else? We have a motion. Any further discussion? Those in favor? Opposed?

REP. KIDDER: No.

CHAIRWOMAN MCGUIRE: Representative Kidder and Representative Sytek are opposed.

MR. HONIGBERG: Thank you very much, Madam Chair, Members of the Committee.

*** {**MOTION ADOPTED**}

17. **Discussion on amendments to the Drafting and Procedure Manual for Administrative Rules.**

CHAIRWOMAN MCGUIRE: The next item on the agenda is discussion of the -- discussion --

REP. SAD: Was that both (a) and (b)?

CHAIRWOMAN MCGUIRE: Yes, I believe it is. We are in discussion of the *Manual*. You will pay attention, be excited about it. Director Eaton.

ATTORNEY EATON: Okay, okay. Committee Members, you have before you a copy of draft amendments to the --

REP. SCHMIDT: Just a moment Scott.

ATTORNEY EATON: -- Drafting and Procedure --

SEN. AVARD: We can't hear you.

ATTORNEY EATON: Okay.

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