



Martin Honigberg, Chairman

NH Site Evaluation Committee  
21 South Fruit Street, Suite 10  
Concord, NH 03301

July 23, 2015

Dear Chairman Honigberg:

The undersigned organizations appreciate the on-going rulemaking effort in which you and the rest of the SEC are engaged. Representatives of our organizations having attended the July 9th SEC meeting at which the draft rules were further considered, we are aware that SEC members have decided to adopt the formulation proposed in the draft rules for determining unreasonable adverse effect as required by RSA 162-H:16 (IV)(c). Our organizations had suggested taking a different, and more defined, criteria-based approach, and had submitted comments on the draft rules to that effect. However, given the decision made by the SEC on July 9th, we have revisited the draft rules as initially proposed and would like to offer what we believe are strengthening modifications while retaining the more flexible approach the SEC has chosen to use.

The attached document proposes these modifications for use in the context of determining unreasonable adverse effect on aesthetics and natural resources, as required by RSA 162-H:16 (IV)(c). It also includes comments to explain the supporting rationale for the proposed changes. We hope you will find them helpful as you prepare the next iteration of the draft rules.

Thank you for your consideration. Please feel free to contact any of us should you have any questions.

Sincerely,

Susan Arnold  
Appalachian Mountain Club

Will Abbot  
Society for the Protection of New Hampshire Forests

Carol Foss  
Audubon Society of New Hampshire

**Proposed changes to draft SEC rules**  
**Appalachian Mountain Club, Society for the Protection of New Hampshire Forests and Audubon**  
**Society of New Hampshire**  
**July 29, 2015**

**Section 102 Definitions**

Site 102.07 “Area of potential effect” means a geographic area from which a proposed facility would be visible, and would result in potential visual impacts, ~~subject to the limitations in Site 301.03 (i) (1) (d).~~

*Explanation: While the distance limits in Site 301.05 may be appropriate as guidelines for conducting the visual impact assessment, the rules should not establish a firm limit beyond which aesthetic impacts are treated as invisible, nor should a rules definition be defined by terms in a following Section. Wind turbines are getting ever larger and are clearly visible beyond 10 miles, as is night lighting. The SEC should have the option to consider impacts beyond the distance specified for the VIA, for example with even larger turbines, in very high value landscapes.*

Site 102.08 “Best practical measures” means available, effective and economically feasible on-site or off-site methods or technologies used during siting, design, construction and operation of an energy facility to effectively avoid, minimize, or mitigate relevant facility impacts.

*Explanation: We concur with this revision as of 7/9/2015.*

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

*Explanation: We concur with this definition and that it should not be limited only to wind projects.*

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

*Explanation: The definition of “Key observation point” should be revised. As written, the use of the word “and” means all three factors must coincide at a single point for that point to be considered a “key observation point”. This will not always be the case. A viewpoint from which a project is prominently visible may be readily accessible and receive a high level of public use, but it may not be the point that receives the highest level of public use or the point from which the facility would be most visible. There may also be viewpoints (such as mountain summits) that may not be readily accessible to a portion of the public, but which are nonetheless critical observation points.*

Site 102.36 “Scenic resource” means resources designated by national, state, or municipal authorities for their scenic quality and to which the public has a legal right of access; conservation lands or

easement areas that possess a scenic quality and to which the public has a legal right of access; lakes, ponds, rivers, parks, scenic byways and other tourism destinations noted for their scenic qualities recognized by the New Hampshire Division of Travel and Tourism as having scenic quality and to which the public has a legal right of access; recreational trails, parks, or areas established, protected or maintained in whole or in part with public funds; properties listed on the state or national register of historic places for which the scenic character of the surrounding landscape is an important component of the historic value of the property; and town and village centers that possess a scenic quality.

*Explanation: The only consideration given to lakes, ponds, and rivers is in the phrase “lakes, ponds, rivers, parks, and other tourism destinations recognized by the New Hampshire Division of Travel and Tourism as having scenic quality and to which the public has a legal right of access”. We are not clear what constitutes “recognition” by the NHDTT. While the department web site ([www.visitnh.gov](http://www.visitnh.gov)) has a section devoted to “Lakes, Beaches & Water Fun”, there is no specific mention of scenic values and no listing of lakes, ponds, and rivers noted for scenic quality. We propose that “lakes, ponds and rivers noted for their scenic quality” should be listed as a separate category.*

*We also feel strongly that the reference to the NHDTT should be deleted from the rules. NHDTT is not a regulatory or resource management agency, and the department web site does not provide a complete or consistent assessment of scenic values. Resources listed on the web site that are clearly valued for their scenic quality (such as “scenic drives and rides”) should be specifically included in the definition.*

### **Section 301 Application Requirements**

301.03(c)(6) Evidence that the applicant has a current right of legal access to and control of ~~or the ability to acquire control of~~ the site, in the form of ownership, ground lease, easement, option, or other contractual right. ~~s or interests.~~

*Explanation: It is not clear what is intended by the phrase “ability to acquire control” or “interests”. In theory any party has the ability to acquire control of any site, but whether that control is obtained should not be left undetermined. The legal (not the potential) right to use the proposed site should be clearly established in the application.*

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

- (a) A visual impact assessment of the proposed facility prepared in a manner consistent with generally accepted professional standards by a professional trained or having experience in visual impact assessment procedures;
- (b) The visual impact assessment shall contain the following components:
  - (1) A description and map depicting the locations of the proposed facility and all associated buildings, structures, roads, and other ancillary components, and all areas to be cleared and graded, that would be visible from any scenic resources, based on both bare ground conditions using topographic screening only and with consideration of screening by vegetation or other factors;
  - (2) A description of how the applicant identified and evaluated the scenic quality of the landscape and potential visual impacts;

- (3) A narrative and graphic description, including maps and photographs, of both the physiographic and cultural features of the landscape surrounding the proposed facility to provide the context for evaluating any visual impacts;
- (4) A computer-based visibility analysis to determine the area of potential visual effect, which, for proposed wind energy systems, shall extend to a minimum of a 10-mile radius from each wind turbine in the proposed facility, and, for electric transmission lines longer than 1 mile, shall be 10 miles~~½ mile in urban areas, 2 miles in suburban, rural residential, and village areas, 3 miles in lightly developed or undeveloped landscapes where the line follows an existing transmission corridor, and 5 miles in lightly developed or undeveloped landscapes where the line would be located in a new transmission corridor;~~
- (5) Identification of all scenic resources within the area of potential visual effect and a description of those scenic resources from which the proposed facility would be visible;
- (6) Characterization of the potential visual impacts of the proposed facility on private property and identified scenic resources as high, medium, or low, based on consideration of the following factors:
  - a. The expectations of the typical viewer;
  - b. The effect on future use and enjoyment of the scenic resource;
  - c. The extent of the proposed facility, including all structures and disturbed areas, visible from the scenic resource;
  - d. The distance of the proposed facility from the scenic resource;
  - e. The horizontal breadth (visual arc) of the visible elements of the proposed facility;
  - f. The scale of the proposed facility relative to surrounding topography and existing structures;
  - g. The duration and direction of the typical view of elements of the proposed facility; and
  - h. The presence of intervening topography between the scenic resource and elements of the proposed facility;

*Explanation for (b)(4): The SEC should have the option to consider impacts of wind power projects beyond 10 miles if conditions warrant. Turbine size is increasing dramatically, having gone from <400 feet a few years ago to almost 600 feet today, and even taller towers are now commercially available. Turbines can be clearly visible beyond 10 miles, as is nighttime aircraft warning lighting. These increases in turbine size extend their visual impact range, and the SEC should not be limited by rule to 10 miles.*

*The variable transmission corridor visual distance limit for analysis as determined by land use type or in existing ROW's is neither defensible nor supported. For example, a historic district in an urban area that is 0.6 miles away could be highly impacted by a 155 foot tall tower, but as written an analysis would not be required. Similarly, newly added tower/poles with much greater heights that extend well above tree height in existing ROW's can result in dramatically different visual impact distances (e.g. see DOE's DEIS Northern Pass visual analysis that demonstrates this fact). Differences in topographic elevations between viewer and corridor have substantial impacts on visibility, regardless of land use. Also, other recent transmission project studies have analyzed visual impacts to considerably greater distances than proposed in the draft rules; the US DOE Northern Pass DEIS used a 10 mile distance, and the US NPS Susquehanna-Roseland project EIS used 20 miles. As stated in the Northern Pass DEIS, "Based on a review of past studies evaluating the visual presence of transmission structures, it was determined that 10 miles (16 km) is an appropriate threshold to consider (Driscoll et al. 1976a; Sullivan 2014a). Structures have the potential to be detected past 10 miles (16 km) by someone with a critical eye who was looking for them. However, 10 miles (16 km) is a more reasonable*

*threshold for a casual observer with an interest in scenery.” Transmission line ROWs can be noticeably visible as linear forest openings for even greater distances.*

*Explanation for (b)(6): The law now requires consideration of impacts on private property, but the draft rules include no requirement for assessment of the impact on private property (including residential areas).*

(8) If the proposed facility is required by Federal Aviation Administration regulations to install aircraft warning lighting, a description and characterization of the potential visual impacts of this lighting, including the number of lights visible from key observation points and the distance from which lighting will be visible on a clear night; and

*Explanation: Nighttime lighting can be visible from considerable distances and this information should be included in the application.*

Site 301.08(a)(7) Include a decommissioning plan providing for removal of all structures and restoration of the facility site with a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond; and

*Explanation: We support this. However it is mostly duplicative of 301.08(c)(2) and we question the redundancy.*

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 effect in the host community and communities abutting or in the vicinity of the proposed facility;
- (2) The significance of affected scenic resources and their distance from the proposed facility;
- (3) The extent, nature, and duration of public uses of affected scenic resources;
- (4) The scope and scale of the change in the landscape visible from affected scenic resources;
- (5) The evaluation of the overall visual impacts of the facility as described in the visual impact assessment submitted by the applicant and other relevant evidence submitted pursuant to Site 202.24;
- (6) Whether the proposed facility would be a ~~dominant~~ prominent feature within a natural or cultural landscape of high scenic quality or as viewed from scenic resources of high value or sensitivity of a landscape in which existing human development is not already a prominent feature as viewed from affected scenic resources;
- (7) Whether the visibility of the proposed facility would offend the sensibilities of a reasonable person during daytime or nighttime periods; and
- (8) The effectiveness of the best practical measures planned by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics.

*Explanation: New Hampshire has been settled since the 1600s and most of NH’s landscape has some human influence/development. Without recognizing high value “cultural landscapes”, areas like the very scenic Connecticut River agricultural landscape would be precluded.*

*Also, the criterion as written makes no reference to the scenic quality of the landscape or the importance of the viewpoints from which the project would be seen. These are critical components for determining whether the project would have an unreasonable adverse effect and should be included.*

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

*Explanation: We understand that draft revised language has been proposed by the National Trust and Preservation NH that the Committee has agreed to and we concur.*

Site 301.14 (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, and viability of the populations in 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;

*Explanation: Not all biological resources are static in a particular location. Hydroelectric facilities, wind farms, etc. can impact both resident and migratory species. This needs to be acknowledged.*

Site 301.16 Additional Criteria Relative to Wind Energy Systems. In addition to the criteria set forth in Site 301.13 through 301.15, in determining whether to grant a certificate of site and facility for a proposed wind energy system, the committee shall consider:

- (a) Cumulative impacts to natural, scenic, recreational, and cultural resources, including with respect to aesthetics the potential impacts of combined observation, successive observation, and sequential observation of energy facilities by the viewer; and
- (b) Best practical measures to avoid, minimize, or mitigate adverse effects of the proposed wind energy system.

*Explanation: We concur with the discussion of 7/9/2015 that ‘cumulative impacts’ and ‘best practical measures’ should apply to all energy facilities , not just wind power.*

#### **Additional comment**

NH RSA 162-H: 16.IV (e) requires the SEC to make a finding relative to the “public interest”, and section 301.03(h)(6) of the proposed rules includes a requirement that the application include “information describing how the proposed facility will be consistent with the public interest”. However, there are no draft criteria for addressing this finding. Our suggested language to remedy that omission follows:

In determining whether a proposed energy facility will be in the public interest, the committee shall consider:

- (a) Whether the net environmental effects of the facility, considering both beneficial and adverse effects, serve the public interest.
- (b) Whether the net economic effects of the facility, including but not limited to costs and benefits to energy consumers, property owners, state and local tax revenues, employment opportunities, and local and regional economies, serve the public interest.
- (c) Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.
- (d) Whether the facility as proposed is consistent with master plans and land use regulations of affected municipalities pertaining to (i) natural, historic, scenic, cultural resources and (ii) public health and safety, air quality, economic development, and energy resources.
- (e) Such additional public interest criteria as may be deemed pertinent by the committee.