

SEC RULEMAKING PUBLIC COMMENT ISSUES LIST

I. Major Policy Issues To Be Resolved:

This section summarizes major policy issues to be considered and resolved by the SEC based on public comments received. For each issue, a sample of different commenters' proposals is presented as exemplary of various approaches to the issue. The summaries do not necessarily cover every textual revision suggested by commenters. Red-lined passages show proposed changes from the text of the current rules amendment proposals. Where deemed appropriate, further citations to particular comments are provided.

1. Site Access and Control - Site 301.03(c)(6)

<p>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 rights or interests. (AMC, Marino, P. Martin)</p>	<p>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 <u>of the site</u>; ground lease, easement, option, or other contractual rights or interests. (McLaren)</p> <p>Require attorney letter verifying that all necessary legal access has been secured, with submission of full documentation necessary to prove such legal access rights. (SPNHF)</p>	<p>Evidence that the applicant has a current right, of legal access to and control of or the ability to acquire <u>the right, to construct the facility on, over, or under control of</u> the site, in the form of ownership, ground lease, easement, option, or other contractual rights or interests; <u>permission from a federal, state, or local government agency, or other recognizable legal right or instrument; and</u> <u>(7) Evidence that the applicant has a current or conditional right of access sufficient to accommodate a site visit by the committee.</u> (Various Energy Companies)</p> <p>If legal access and control not yet obtained, applicant must provide evidence of reasonable good faith efforts to obtain legal access and control. Simultaneous taking of any other state or federal action that could provide applicant with legal access to and control of site shall be conclusive evidence that applicant has met requirement. (Nixon Peabody)</p>
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2. Electric Generating Facility Application Requirements – Site 301.03(f)

<p>Add back requirement that electric generation applicants address “whether the unit will serve base, intermediate or peaking loads;” “impact on system stability and reliability.” Require also that applicant document parasitic power consumption so that net value of project can be determined. (M. Watson)</p>	<p>Require applicants to describe “performance metrics”:</p> <ul style="list-style-type: none"> -Correlation of power produced by month/time of day with 3-year monthly average load/demand as defined by ISO-NE. -Clearly defined transmission costs in state and out. -Capacity factors by month versus other generation options -Output per square meter/acre of land versus other generation options. -If proposed plant is non-dispatchable and requires spinning reserve backup via a dispatchable generation source, projected "redundancy" costs for that back-up source. -If proposed plant requires electricity from the grid to help run it, then net gain/loss projection between what is required to run the plant and what the plant's output is. -If the plant requires a fixed cost PPA versus participating in ISO-NE day ahead market every day, then rationale as to why 98% of generation is priced in the day ahead market but this particular plant is not and how this benefits ratepayers. -For non-dispatchable sources, proposed plant needs to demonstrate how it will: <ul style="list-style-type: none"> *Perform in scarcity conditions as defined by ISO-NE. *Contribute to lower and/or stable pricing in the FCM. *Correlate with load/demand throughout year. *Provide reliability/security to the grid. <p>(Goodman)</p>
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3. Transmission Line Application Requirements – Site 301.03(g)

<p>Application should indicate whether for an “essential” or an “elective” project. “Elective” projects subject to municipal master plans, regulations, and votes. “Elective” projects must be buried unless proven not possible for a variety of reasons. For “elective” project, no negative effects on regional economy allowed. For “elective” project, neither private views nor public views may be damaged. (McPhaul)</p>	<p>Revise (g)(10) to read: (10) Impact on system stability and reliability<u>A copy of a Proposed Plan Application if required by the Independent System Operator of New England.</u> (Various Energy Companies)</p>
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4. Public Interest Standard – Site 301.03(h)(6) [and Site 301.17 or 18]

<p>In determining public interest, committee shall consider:</p> <p>(1) Whether the net environmental effects of the facility, considering both beneficial and adverse effects, serve the public interest.</p> <p>(2) 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.</p> <p>(3) Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.</p> <p>(4) Whether the facility as proposed is consistent with municipal master plans and land use regulations pertaining to (i) natural, historic, scenic, cultural resources and (ii) public health and safety, air quality, economic development, and energy</p>	<p>For the committee to find that the proposed facility will not have an unreasonable adverse effect on the public, the record must demonstrate that the proposed facility:</p> <p>(a) And the use of use of the Impact Easement will not have an unreasonable adverse effect on host town, abutting towns, impacted towns and the county with consideration for local ordinances and zoning, property tax abatements and orderly development.</p> <p>(b) Would not create a negative net environmental effect, considering both beneficial and adverse effects.</p> <p>(c) Would not create a negative net economic effect, 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.</p> <p>(d) Will construct and operate the facility consistent with federal, regional, state, and</p>	<p>In determining whether a proposed energy facility will serve the public interest, the committee shall consider whether the facility will benefit or promote one or more of the following:</p> <p>(a) The economy;</p> <p>(b) The environment;</p> <p>(c) The stability, reliability or security of energy supply or delivery; or,</p> <p>(d) State, regional, or national policy. (Various Energy Companies)</p> <p>In determining whether a proposed facility serves the public interest, the committee shall consider the project’s overall public benefits such as economic and environmental benefits to the State of New Hampshire and the New England region. (EDP Renewables)</p> <p>Consider public benefits of renewable energy project development (Renew)</p> <p>Public benefits identified in RSA 362-F:1 and RSA 378:37 should be considered as a source of state-identified public interest standards. (Wagner)</p>
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<p>resources. (5) Such additional public interest criteria as may be deemed pertinent by the committee. (AMC, CLF, etc.)</p> <p><u>Add</u> to the above criteria the net effects to historic properties and cultural resources caused by the proposed facility. (NH Preservation Alliance; National Trust for Historic Preservation)</p> <p>Public interest of NH and not of other states. (Goodman)</p>	<p>local policies. (d) Is consistent with municipal master plans and land use regulations pertaining to (i) natural, historic, scenic, cultural resources and (ii) public health and safety, air quality, economic development, and energy resources. “Public Interest” means the welfare or well-being of the general public, commonwealth, within the State of New Hampshire. The welfare of the public shall prevail when compared to the welfare of a private company. All of society has a stake in this interest and the government recognizes the promotion of and protection of the general public, as provided for in RSA 162-H:16.IV(e). (NHWW)</p>	<p>For the committee to find that the proposed facility will serve the public interest, the record must demonstrate that the proposed facility:</p> <p>(1) Is consistent with federal, regional, state and local policies (including but not limited to energy, economic and environmental policies); and (2) Either (a) meets a critical need related to energy supply, infrastructure or system reliability, or (b) provides net positive environmental and economic effects. (NH Audubon)</p>
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5. Decommissioning Plan and Security – Site 301.08(a)(7) and (c)(2)

Include a decommissioning plan prepared by an independent, qualified person(s) with appropriate knowledge and experience in wind generation projects and cost estimates. The plan may allow for contributions to the Decommissioning Fund ("Fund") as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The plan will provide ~~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; Decommissioning would consist of the following:

- (a) All turbines, including the blades, nacelles and towers, would be disassembled and transported off-site;
- (b) All of the transformers would also be transported off-site;
- (c) The overhead power collection conductors and the power poles would be removed from the site;
- (d) All underground infrastructure at depths less than four feet below grade would be removed from the site and all underground infrastructure at depths greater than four feet below finished grade would be abandoned in place. Areas where subsurface components are removed would be filled, graded to match adjacent contours, and reseeded, stabilized with an appropriate seed and allowed to re-vegetate

~~Include a facility decommissioning plan with a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance in the form of an irrevocable standby letter of credit, performance bond, or surety bond that describes in reasonable detail the elements of and financial assurances for facility decommissioning.~~

(Various Energy Companies)

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

(EDP Renewables, Wagner)

Incorporate a more flexible standard for financial security requirements, whereby a bond or letter of credit would not always be required if the applicant meets reasonable benchmarks for financial strength and reliability.

(Nixon Peabody)

Incorporate more flexible standards for financial assurance requirements, so a bond or letter of credit would not always be required if the applicant meets

<p><u>naturally.</u></p> <p><u>(e) The decommissioning fund will be managed independently and reviewed every five years to validate adequate funding. The fund will increase over time to account for inflation.</u></p> <p><u>(f) The fund shall be bankruptcy-remote to protect it against creditor claims in the event the facility encounters financial difficulty.</u></p> <p><u>(g) If the project fails to produce at least 65% of the output projected by the applicant during any consecutive 12-month period, then a decommissioning review may be instituted at the discretion of the committee.</u></p> <p>(NHWW, Town of Bridgewater)</p>	<p>reasonable standards for financial strength and reliability, in particular for FERC-regulated electric transmission providers. <i>See</i> federal Bureau of Ocean Energy Management financial assurance regulations for guidance.</p> <p>(National Grid)</p>
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6. Good Neighbor Agreements-Impact Easements – Site 301.14(f)(2)d.

<p>Rules should ban waivers of individual rights and practices, so no “good neighbor agreements” [or impact easements] and “participating landowners” not recognized under rules. Alternatively, require applicant to give property owner 21-day signing period followed by 7-day rescission period, encourage owner to seek legal assistance, and SEC should announce the full details of the agreement on its web site for a period of 30 days within 15 days of signing of agreement. (Cummings)</p>	<p>Applicant shall identify any Impact Easement entered into with participating landowners, abutters or other persons to include name and address, tax map lot #. Applicant shall notify the SEC of additional Impact Easements entered into after the certificate has been granted. Such notifications shall be made part of the SEC public record. [Impact Easement definition also proposed]</p> <p>If Impact Easement waives sound, shadow flicker, or setback requirements for wind energy system, then “the waiver of these requirements (Impact Easement) by participating landowners will be provided to the SEC for posting on the SEC website.” (NHWW; Town of Bridgewater)</p>
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7. VIA Scope and Area of Potential Visual Effect – Site 301.05(b) and Site 301.14(a)

<p>Size and scope of Area of Potential Visual Effect:</p> <p>At least 10 mile radius from any wind turbine (AMC)</p> <p>100 mile radius from any wind turbine (Ward)</p> <p>For electric transmission lines longer than 1 mile, shall be up to 2 miles on either side of the right-of-way, depending on the terrain, the project design, and the professional judgment of the visual impact assessor. (Various Energy Companies)</p> <p>Outside of urban areas, VIA study area should be limited to 1 mile where new line will be located in existing corridor; would not oppose a 2-mile VIA study area where a new line will be located in a new corridor. (National Grid)</p> <p>Must include impacts on <i>private property</i>, in particular residential neighborhoods. (AMC, Cummings, Harts, Sheldons, Smiths, Sanderson, et al.)</p>	<p>The visual impact assessment shall contain the following components, using as the height of the turbines, the height of the top of the blades of the highest turbine above the average elevation of the surrounding neighborhood out to at least 10 miles, but omitting from the average elevation the area included in the hill on which the site is to be located: [(1)-(9)] (Ward)</p> <p>VIA scope must cover at least a 20-mile radius, and 30 miles from scenic viewpoints, for wind projects. For electric transmission lines, VIA scope must cover 3 miles in suburban, rural residential, village areas; 5 miles in lightly developed or undeveloped landscapes, and from scenic viewpoints, where the line follows existing transmission corridor; and 10 miles in lightly developed or undeveloped landscapes, and from scenic viewpoints, where line located in a new corridor.</p> <p>All VIAs must assume an absence of foliage. (Pastoriza)</p>	<p>Base visual impact assessment modelling on Maine DEP use of Scenic Resources of State or National Significance (SRSNS) impacts; <i>see</i> Cashman comments for his description of this modelling. (Cashman)</p> <p>Aesthetic standards in proposed rules are restrictive enough; do not make more restrictive so as to effectively ban renewable energy developments. (Wagner)</p> <p>Delete Site 301.14(a)(6): Whether the proposed facility would be a dominant feature of a landscape in which existing human development is not already a prominent feature as viewed from affected scenic resources; (EDP Renewables)</p>
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8. Photosimulations for Application Submission – Site 301.05(b)(7)

<p>Photographs used in simulation shall be taken at an equivalent focal length of 50 mm (i.e., “normal view”). Simulations should represent equivalent of what would be taken with a 75mm focal length lens on a full-frame 35 mm camera and printed at 15.3” x 10.2” (390x260) for handholding. (Cummings, Pastoriza)</p>	<p>Photosimulations may be done in any season but must be done in winter, to avoid misleading characterizations of impacts. (Pastoriza)</p> <p>Photosimulations should also show visual impacts on residential neighborhoods and natural scenic resources, as well as from other public locations. (Harts)</p>
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9. Sound Study Methodology – Site 301.08(a)(1)

Include detailed study and modelling methodology language as agreed by consensus of acousticians during OEP SB 99 working group process; <i>see</i> NHWW Comments at pages 17-19. (NHWW, Blair, Pastoriza)	Revise (a)(1)d.2 to read: “Include locations out to the 35 dBA sound contour line or 12 miles from any wind turbine included in the proposed facility, whichever is closer to the nearest wind turbine; and (EDP Renewables)
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10. Wind Energy System Noise Level Siting Criteria – Site 301.14(f)(2)a.

<p>A-weighted equivalent sound levels produced by the applicant’s energy facility during operations shall not exceed the greater of 45 38 dBA or 5 dBA above ambient levels between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above ambient levels at all other times during each day, as measured at the <u>property line of a non-participating landowner; exterior wall of any existing permanently occupied building on a non-participating landowner’s property, or at the nonparticipating landowner’s property line if it is less than 300 feet from an existing occupied building, and these sound levels shall not be exceeded for more than 3 minutes within any 60 minute period;</u> (NHWW)</p>	<p>Specified sound levels are acceptable, but both levels should be measured from each nonparticipating landowner’s property line. Do not permit exceedance of levels for up to 3 minutes within any 60-minute period. (Blair)</p> <p>Reduce noise levels to lesser of 40 dBA or 5dBA above ambient during the day, and the lesser of 35 dBA or 5 dBA above ambient during the night (or in the alternative the lesser of 37 dBA or 5 dBA above ambient at all times), in each case as measured at the boundaries of the wind project. Require post-installation sound level testing within one month after operation begins and again after one year of operation. (Wilkas)</p>	<p>A-weighted equivalent sound levels produced by the applicant’s energy facility during operations shall not exceed the greater of <u>4555</u> dBA or 5 dBA above ambient levels between the hours of 8:00 a.m. and 8:00 p.m. each<u>during the</u> day, and the greater of <u>4045</u> dBA or 5 dBA above ambient levels at all other times during each day during the night, as measured at the exterior wall of any existing permanently occupied building on a non-participating landowner’s property, or at the nonparticipating landowner’s property line if it is less than 300 feet from an existing occupied building; and these sound levels shall not be exceeded for more than 3 minutes within any 60 minute period; (EDP Renewables)</p>
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11. Shadow Flicker Study Methodology – Site 301.08(a)(2)

<p>Include <u>an assessment that identifies the astronomical maximum as well as the anticipated hours per year of shadow flicker expected to be perceived at schools, day-care centers, health care facilities, private property, residential neighborhoods, places of worship, elderly care facilities, public gathering areas (outdoor and indoor), and roadways that fall within 1.5 miles of any turbine. Shadow flicker modeling will assume an impact distance of 1.5 miles from each of the turbines</u> report evaluating the shadow flicker expected to be perceived at all buildings occupied or used for another purpose, which report shall be based upon computer modeling programs and input data defining the most conservative case scenario, including the astronomical maximum shading duration;</p> <p>[Also include in “shadow flicker” definition a reference to <i>moon</i> as well as sun, and include a sub-definition of “astronomical maximum.”</p> <p>(NHWW)</p>	<p>[Alternative Proposed Language:]</p> <p>“Include a report evaluating the shadow flicker, including both its frequency, the time of year, the intensity ratio from bright to dark, on every non-owned property. This report can be based on a modeling program provided it takes into account the elevated source of the flicker with respect to each property, the effect of the shadows cast not only directly on these properties, but on properties which will be affected by the shadows cast on reflective snow, ice and water surfaces. This report must include data showing the effect on residents due to the substantially enhanced brightness contrast between light and shadow due to the sun's elevation above the apparent horizon of the viewer, and the drastically reduced apparent cloud cover due to their elevation.”</p> <p>(Ward)</p>
<p>[Add the following language to section:]</p> <p>Include a shadow flicker assessment that identifies the astronomical maximum (worst case) as well as the anticipated hours per year of shadow flicker expected to be perceived at schools, daycare centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, public gathering areas (outdoor and indoor), and roadways that fall within 2 miles of any turbine. (N. Watson)</p>	

12. Shadow Flicker Siting Criteria – Site 301.14(f)(2)

<p>Shadow flicker created by the applicant’s energy facility during operations shall not occur more than 30 hours <u>astronomical maximum per year and a limit of 30-minutes per day with an actual number of 8 hours per year at schools, day-care centers, health care facilities, private property, residential neighborhoods, playgrounds, places of worship, elderly care facilities, playgrounds, recreational areas, public gathering areas (outdoor and indoor), and roadways that fall within 1.5 miles of any turbine. If Shadow Flicker limits cannot be met via project layout and setback distances, curtailment technology or other mitigation tools may be considered per year or 30 minutes per day within any occupied permanent residence of a non-participating landowner;</u> (NHWW)</p> <p>[Same as above except cover roadways that fall within 2.0 miles of any turbine] (N. Watson, Bridgewater)</p>	<p>Shadow flicker must be completely eliminated by project layout, setback distances, and curtailment technology. (N. Watson)</p> <p>Standard should be expanded to cover shadow flicker on any public road or highway, or on any public or private conservation lands open to public use. (NH Audubon)</p> <p>Wind projects should not be required to demonstrate the absence or total elimination of shadow flicker; such a requirement would effectively prevent wind projects from being certificated in the state; criteria in proposed rules are reasonable and consistent with industry and other regulatory standards. (EDP Renewables).</p>
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13. Wind Project Setbacks and How Measured – Site 301.14(f)(2)c.

<p><u>Safety</u> Setback Standards: The setback distance between a wind turbine tower and a non-participating landowner’s existing permanently occupied building shall be no less than 3 times the turbine tower height as measured from the center of the wind turbine base to the nearest point of the foundation of the permanently occupied building, the setback distance between a wind turbine tower and a non-participating landowner’s property line shall be no less than 5+1 times the turbine tower height as measured from the center of the wind turbine base, and the setback distance between a wind turbine tower and the nearest public road shall be no less than 3+5 times the turbine tower height as measured from the center of the wind turbine base to the right-of-way line of the public road, in each case turbine elevation shall be taken into consideration. Greater safety setback distances may be imposed by the committee if supported by the evidence presented. with the “Turbine tower height” is measured from the base of the turbine foundation to the tip of the blade in the vertical position; and (NHWW)</p>	<p>Setbacks for wind projects should be set at a distance such that no risk of ice throw or shadow flicker onto <i>any</i> part of a non-participating landowner’s property; otherwise would effectively be end run around eminent domain. Measure setbacks from property line rather than occupied building. (Piehler, Tuthill, Baldwin, Smiths, etc.)</p> <p>Proposed setback standards are reasonable and proper as they are consistent with industry and other regulatory standards, citing NARUC 2012 Guidance document. (EDP Renewables)</p>
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14. Electric Transmission Line Setbacks – Site 301.08(b)

<p>Application should include description of proposed setbacks with reference to FERC and HUD standards, and assess tower collapse risk and calculated fall zones. (P. Martin)</p> <p>SEC should not adopt a setback rule for transmission towers based on “fall zone” as there is no need for such a rule. (National Grid)</p>	<p>Transmission line setbacks should follow “precautionary principle” and “prudent avoidance” policy with respect to potential EMF effects; comments contain summary background information re: approaches followed by other states; SB 99 working group report contains proposed rules outline [Table 4.a of Health and Safety Working Group Report; PDF page 61-62] (McLaren, Pastoriza)</p>
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15. Orderly Development Effects on Municipalities – Site 301.09 and Site 301.15

Each application shall include information regarding the effects of the proposed facility on the orderly development of the region, including the views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility, if such views have been expressed in writing (including, but not limited to, Master Plans and Zoning Ordinances of host, abutting, or impacted municipalities), and the applicant’s estimate of the effects of the construction and operation of the facility on:

(a) Land use in the region, including the following:

(1) A description of the prevailing land uses in the host communities and communities abutting and impacted by the proposed facility; and

(2) A description of how the proposed facility is consistent with such land uses and identification of how the proposed facility is inconsistent with such land uses;

(b) The economy of the region, including an assessment of:

(1) The economic effect of the facility on the host communities and communities abutting and impacted by the proposed facility;

(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, host, abutting and impacted community’s ~~and local~~ tax revenues;

(4) The effect of the proposed facility on host, abutting

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

(a) Land use in the region, including the following:

(1) A description of the prevailing land uses in the host communities and communities abutting the proposed facility; and

(2) A description of how the proposed facility is consistent with such land uses and identification of how the proposed facility is inconsistent with such land uses;

(b) The economy of the region, including an assessment of:

(1) The ~~economic~~ effect of the facility on ~~the host communities and communities abutting the proposed facility;~~

~~(2) The economic effect of the proposed facility on in-state~~ economic activity during construction and operation ~~periods;~~

~~(23)~~ The effect of the proposed facility on State and local tax revenues;

~~(34)~~ The effect of the proposed facility on ~~regional~~-real estate values;

~~(45)~~ The effect of the proposed facility on tourism and recreation ~~in the host communities and communities abutting the facility;~~ and

~~(56)~~ The effect of the proposed facility on community services and ~~regional~~ infrastructure;

(Various Energy Companies)

<p><u>and impacted communities and</u> regional real estate values;</p> <p>(5) The effect of the proposed facility on tourism and recreation in the host communities and <u>other impacted</u> communities abutting the facility; and</p> <p>(6) The effect of the proposed facility on community services and regional infrastructure;</p> <p>[Define “Impacted Community” as a municipality that is neither the host nor abutting town although it will potentially be impacted by aesthetics, financially or due to health/safety concerns.]</p> <p>(Town of Bridgewater, etc.)</p>	<p>Local zoning and local votes should be considered. (Franz)</p> <p>Local votes should be required by SEC to gauge local support or opposition to project. (Kudlik)</p>
<p>SEC should take into consideration the surrounding environment at the time the existing ROWs were given in relation to the surrounding environment presently, e.g., forest and farm land when easements granted or taken by eminent domain for rural electrification (1920s-1950s) are now residential neighborhoods. (Tuveson, et al., Holderness)</p> <p>Description of prevailing land uses and effects of facility on tourism and recreation should be limited to the host and abutting communities in the area of potential visual effect.</p> <p>Corresponding change to 301.14(a)(1). (EDP Renewables)</p>	<p>Applicants should be required to identify not just overall average impact on real estate valuation in a wide region, but the impact on specific local properties, such as the potential impact on all properties within a 2-mile impact zone, with assessments of before and after values (including effects on views). (Blocks)</p> <p>Decline in property values due to towers and transmission lines should be included in application, verified by a certified appraiser of the affected area, unrelated to the project. Loss of property value should be compensated to the owner by the offending project. (McPhaul)</p>

16. Siting Criteria Formulation (Considerations or Findings Based on Record) – 301.14(e)

~~For the committee to find that~~~~In determining whether construction and operation of~~ a proposed energy facility will not have an unreasonable adverse effect on the natural environment, the record must demonstrate that the proposed facility including wildlife species, rare plants, rare natural communities, and other exemplary natural communities, the committee shall consider:

(1) Would not reduce the likelihood of persistence of a rare plant species within the ecological subsection in which the proposed facility is located;

(2) Would not disturb a rare or exemplary natural community;

(3) Would not eliminate, fragment or degrade critical wildlife habitat or a significant habitat resource utilized by a significant wildlife species;

(4) Would not create a high risk of mortality to migrating or resident terrestrial or aquatic wildlife species that cannot be acceptably limited through the application of best practical measures;

(5) If a wind energy facility, is not located within 0.5 miles of a peregrine falcon or golden eagle aerie or active bald eagle nest, within 1.5 miles of a known bat maternity-nursery colony or hibernaculum, or within 0.25 miles of a known common nighthawk nest site;

(6) Utilizes the best practical measures to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics; and

(7) Provides for post-construction monitoring, reporting and adaptive management as necessary to

In determining whether construction and operation of a proposed energy facility will have an unreasonable adverse effect on the natural environment, including wildlife species, rare plants, rare natural communities, and other exemplary natural communities, the committee shall consider:

(1) The significance of the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities, including the size, prevalence, dispersal, and viability of the populations in the area;

(2) The nature, extent, and duration of the potential effects on the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(3) The nature, extent, and duration of the potential fragmentation or other alteration of terrestrial or aquatic significant habitat resources;

(4) The views of ~~the New Hampshire Department of Fish and Game, the New Hampshire Natural Heritage Bureau, the United States Fish and Wildlife Service, and other~~ agencies authorized to identify and manage significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(5) The ~~best practical~~ measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on the affected wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

(6) The ~~best practical~~ measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on terrestrial or aquatic significant habitat resources; and

<p><u>address potential adverse effects that cannot reliably be predicted at the time of the application.</u> (AMC, NH Audubon)</p>	<p>(7) Whether conditions should be included in the certificate for <u>a wind energy facility for post-construction monitoring and reporting</u> and for adaptive management to address potential <u>unreasonable adverse effects identified by avian mortality studies</u> that cannot reliably be predicted at the time of application. (Various Energy Companies)</p>
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17. Public Information Sessions – Site 201.01 and 02

<p>Require applicant to provide the public with complete unrestricted technical, environmental, financial and siting details of a project, and to answer all questions relative to the project. (M. Watson)</p> <p>Public information session transcripts should be accompanied by a professional quality videotape that has clear and discernible audio. (Goodman)</p>	<p>At least one public information session should be held in each town in which the proposed facility is to be located, at which applicant must present information and publicly answer questions regarding the proposed facility. Public notice to be sent to service list. (J. Tuthill)</p> <p>Public information in each town, applicant must answer questions, notice must be provided to each town 30-45 days prior. (Pastoriza)</p>
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18. Site Visits by Committee – Site 202.13

<p>The committee or subcommittee, as applicable, and public counsel shall conduct a site visit of any property which is the subject of a proceeding if requested by a party, or on its own motion, if the committee or subcommittee determines that the site visit will assist the committee or subcommittee in reaching a determination in the proceeding. (Pastoriza)</p> <p>Day and night visits to the project area should be made by SEC members. A balloon must demonstrate the highest point of the project. (McPhaul)</p>	<p>The committee or subcommittee, as applicable, and public counsel shall conduct a site visit of any property which is the subject of a proceeding if requested by a party <u>or impacted community</u>, or on its own motion, if the committee or subcommittee determines that the site visit will assist the committee or subcommittee in reaching a determination in the proceeding. (P. Martin)</p> <p>(a) The committee or subcommittee, as applicable, and public counsel shall conduct a site visit of any property <u>and/or any area of potential visual impact</u> which is the subject of a hearing if requested by a party, or on its own motion, if the committee or subcommittee determines that the site visit will assist the committee or subcommittee in reaching a determination in the hearing.</p> <p>[Add] <u>(d) Intervenors and/or abutters may request their property be subject to a site visit.</u> (NHWW)</p>
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19. Historical Resources Evaluation – Site 301.06 and 301.14(b)

<p>Align SEC review of historical resources with review under NHPA Section 106; consider adverse effects of proposed facility; include historical landscapes and landscape level effects; <i>see</i> NTHP comments for detail. (National Trust for Historic Preservation)</p>	<p>In addition to NTHP comments, emphasize landscape scale impacts of many proposed energy facilities, and need to review effects on rural historic landscapes and/or physical settings for historic resources. Consistency in definitions with NHPA. <i>See</i> NHPA Comments Attachment B. (NH Preservation Alliance)</p>
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20. Cumulative Impacts Definition and Application Requirements – Site 102.14

<p>Application should include cumulative impacts assessment. Guidance on conducting cumulative impacts in federal environmental analysis processes already exist, such as Considering Cumulative Effects Under NEPA, CEQ, January 1997. (AMC)</p> <p>“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 <u>that have spent more than \$10,000 on project promotion or land acquisition for which an application has been accepted.</u> (Pastoriza)</p> <p>Cumulative impact means the totality of, as well as the individual impact of, each of the visual, audio, economic, environmental, human and wildlife effects resulting from the proposed facility, as well as all/any existing local, regional and visually adjacent facilities, etc. (Goodman)</p>	<p>“Cumulative impacts” means the totality of effects resulting from the proposed <u>wind energy</u> 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. (Various Energy Companies)</p> <p>“Cumulative impacts” means the totality of effects resulting from the proposed facility, all existing energy facilities, <u>and</u> 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. (EDP Renewables)</p>
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21. Monitoring and Enforcement Provisions – Site 302

<p>Should be unannounced visits to the project construction site by an inspector unrelated to the project (no prior notice requirement). Any departure from the specific rules for a project should be fined on a daily basis and collected until the matter is corrected. Failure to correct the situation within 10 days should result in termination of the project with total restoration of the location to original condition. (McPhaul)</p>	<p>SEC should not be required to commence a certificate suspension proceeding if the certificate holder has provided a cure plan deemed sufficient by the SEC, even if the cure plan will take longer than 15 days to execute to completion. (Wagner)</p>
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22. Best Practical Measures (Definition and Requirement) – Site 102.08 and various application and siting criteria sections

<p>“Best practical measures” means <u>available, effective and economically feasible- on-site or off-site methods or technologies used during siting, design, construction and operation of an energy facility that control or reduce to the lowest practical level known or anticipated adverse impacts of the facility</u> actions that utilize available technology and have been demonstrated to effectively avoid, minimize, or mitigate relevant facility impacts. (AMC, NH Audubon)</p>	<p>“Best practical measures” means <u>technologically economically</u> economically feasible actions that <u>use</u> utilize available technology and have been demonstrated to effectively avoid, <u>or when avoidance is impossible,</u> minimize, or mitigate relevant facility impacts. (Pastoriza)</p>
<p>“Best practical measures” means <u>environmentally and socially responsible economically feasible</u> actions that utilize <u>the latest proven</u> available technology and have been demonstrated to effectively avoid, minimize, or mitigate relevant facility impacts. (P. Martin)</p>	<p>Best practical measures obligation for adverse effect mitigation or reduction should apply only to wind energy systems, pursuant to RSA 162-H:10-a, II (8), not to other types of energy facilities. (Various Energy Companies)</p>

23. Adaptive Management (Require or Not) – Site 102.02 and Site 301.14(e)(7)

<p>“Adaptive management” means a system of management practices based on specified desired outcomes, monitoring to determine if management actions are meeting the desired outcomes, and, if not, provisions for management changes designed to ensure that the desired outcomes are met or are re-evaluated.</p> <p>(7) <u>[Record must demonstrate that proposed facility provides for post-construction monitoring, reporting and adaptive management as necessary]</u>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 <u>the</u> application. (AMC)</p>	<p>“Adaptive management” means a system of management practices based on specified desired outcomes, monitoring to determine if management actions are meeting the desired outcomes, and, if not, provisions for management changes designed to ensure that the desired outcomes are met or are re-evaluated.</p> <p>(7) Whether conditions should be included in the certificate for <u>a wind energy for</u> post-construction monitoring and reporting and for adaptive management to address potential <u>unreasonable</u> adverse effects <u>identified by avian mortality studies that cannot reliably be predicted at the time of application.</u> (Various Energy Companies)</p> <p>Delete definition and 301.14(e)(7) criteria in their entirety. (EDP Renewables)</p>
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24. Second Home Issue (Permanently Occupied Building; Occupied Permanent Residence) – Site 301.08(a)(1)a.3, b.1., d.3., 301.14(f)(2)a, b and c

Many commenters have objected to this language because they believe it excludes consideration of seasonally-occupied vacation homes, etc. Committee should consider clarifying scope and intent of language used in these sections.

II. Other Language Changes Proposed by Public Commenters

This section summarizes proposed rules language changes that implicate relatively less significant policy issues to be considered and resolved by the SEC based on public comments received. For each issue, a sample of different commenters' proposals is presented as exemplary of various approaches to the issue. The summaries do not necessarily cover every textual revision suggested by commenters. Red-lined passages show proposed changes from the text of the current rules amendment proposals. Where deemed appropriate, further citations to particular comments are provided. Comments deemed to be editorial or semantic in nature are not included in the summary.

1. Area of Potential Visual Effect Definition – Site 102.07

<p>“Area of potential visual effect” means geographic area from which a proposed facility would be visible, and would result in potential visual impacts, subject to limitations in Site 301.05(b)(4). (AMC)</p>	
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2. Historic Resources Definition - Site 102.17

<p>“Historic sites” means “historic property,” as such term is defined in 36 C.F.R. §800.16(l). <u>Historic property includes buildings, structures, sites, districts, and objects as well as rural, designed and natural landscapes.</u> (NHPA)</p>	
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3. Key Observation Point Definition – Site 102.18

<p>“Key observation point” means a <u>viewpoint that receives regular public use and from which the facility would be prominently visible</u> 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. (AMC)</p>	
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4. Scenic Quality Definition – Site 102.35

<p>“Scenic quality” means a reasonable person’s perception, <u>and/or a host town's or neighboring town's perception, as measured by specific voting on a project's impact,</u> of the intrinsic beauty of landforms, water features, or vegetation in the landscape, as well as any visible human additions or alterations to the landscape. (Goodman)</p>	
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5. Scenic Resource Definition – Site 102.36

<p>“Scenic resource” means resources designated by national, <u>or state, or municipal</u> authorities for their scenic quality and to which the public has a legal right of access; conservation lands or easement areas that possess a scenic quality and to which the public has a legal right of access; lakes, ponds, rivers, parks, and other tourism destinations recognized by the New Hampshire Division of Travel and Tourism as having scenic quality and to which the public has a legal right of access; recreational trails, parks, or areas <u>that possess a scenic quality and are</u> established, protected or maintained in whole or in part with public funds; and town and village centers that possess a scenic quality. (Various Energy Companies, EDP Renewables)</p>	<p>“Scenic resource” means resources <u>to which the public has a legal right of access that are:</u> 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, <u>scenic drives and rides,</u> and other tourism destinations recognized by the New Hampshire Division of Travel and Tourism <u>that possess a scenic quality and to which the public has a legal right of access;</u> recreational trails, parks, or areas established, protected or maintained in whole or in part with public funds; and town and village centers that possess a scenic quality; <u>and properties listed on the state or national register of historic places</u></p>	
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	<p><u>for which the scenic character of the surrounding landscape is an important component of the historic value of the property.</u> (AMC)</p>	
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6. Sequential Observation - Site 102.37

<p>“Sequential observation” means a personviewer sees <u>or hears</u> multiple energy facilities from different viewpoints as the personviewer travels along a particular route such as a hiking trail, <u>snowmobile trail</u>, river, scenic byway, or on a lake. (NHWW)</p>	
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7. Successive Observation Definition – Site 102.43

<p>“Successive observation” means a viewer sees multiple energy facilities from a particular viewpoint, but not within the same viewing arc, by changing the viewer’s cone of vision. (Goodman)</p>	
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8. “Fragmentation” – Proposed New Definition

EDP Renewables has proposed a new definition as follows:

“Fragmentation” means an island of habitat that is cut off and surrounded by an expanse of unsuitable habitat.

9. “State Agencies Having Permitting or Other Regulatory Authority” – Proposed New Definition

Various Energy Companies have proposed a new definition as follows:

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

10. Committee Engagement of Outside Services – Site 103.02(c)(5) and 103.05(e)

Nixon Peabody comment recommends that the Committee adopt a mechanism whereby an applicant can fund the work and analysis of qualified third parties to aid a state agency in its review of the application. Upon application by any participating agency needing third party analysis to assist in its review of an application, the Committee after hearing from stakeholders, would have the authority to appoint such qualified third parties, as agreed upon with the applicant, and order that all reasonable expenses be paid by the applicant.

11. Quorum Requirements - Site 103.04

Add: (e) For purposes of writing draft rules or rules, a quorum must be present.
(Pastoriza)

12. Committee Administrator and Staff - Site 103.05

Rules should expressly clarify scope of the administrator’s authority as follows:

- (1) There cannot be deviation of site/structure placement from the agreed upon permit unless such deviations are brought directly to the Committee;
- (2) There can be no deviation in grade of road construction from original approved and permitted plans; and
- (3) The administrator will verify that the project complies with all state standards for inspection, safety, and certification regarding the standards of the state Fire Marshal.

Also, the specific qualifications required and submitted by applicants for the position of administrator should be clearly stated (e.g., PhD or Master’s level education and/or other specific experience and training).
(J. Tuthill)

13. Public Information Sessions Prior to Application - Site 201.01(b)

<p>The applicant shall publish a public notice not less than 14 days before each such session in one or more newspapers having a regular circulation in the county in which the session is to be held, <u>and made available at the host community’s public library or town hall,</u> which notice shall describe the nature and location of the proposed facility. (P. Martin)</p>	
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14. Withdrawal of Committee or Subcommittee Member - Site 202.03

<p>(a) Upon his or her own initiative, or upon the motion of any party, a member of the committee or any subcommittee shall, for good cause, withdraw from a proceeding to consider an application or petition.</p> <p>(b) Good cause shall exist if a committee or subcommittee member has:</p> <p>(1) A direct interest in the outcome of the proceeding, including, but not limited to, a financial or family relationship within the third degree of relationships, with any party or representative; or</p> <p>(2) Made statements or engaged in behavior which a reasonable person would believe indicates that he or she has prejudged the facts of the case; or</p> <p>(3) Personally believes he or she cannot fairly judge the facts of the case; <u>or</u></p> <p><u>(4) Has formerly served on the Site Evaluation Committee with any party or representative.</u></p> <p>(Pastoriza)</p>	<p>(a) Upon his or her own initiative, or upon the motion of any party, a member of the committee or any subcommittee shall, for good cause, withdraw, <u>or be removed by the public's representative,</u> from a proceeding to consider an application or petition.</p> <p>(P. Martin)</p>
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15. Appearances and Representation - Site 202.04

<p><u>A party or the party's representative shall file an appearance that includes the following information:</u></p> <p>(1) A brief identification of the matter;</p> <p>(2) A statement as to whether or not the representative is an attorney and, if so, whether the attorney is licensed to practice in New Hampshire; and</p> <p>(3) The party or representative's daytime address, telephone number, e-mail address, and other basic contact information.</p>	<p>(EDP Renewables)</p>
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16. Participation of Committee and Agency Staff - Site 202.05

<p>(a) The administrator and committee staff designated by the chairperson shall participate in adjudicative proceedings on an advisory basis. (EDP Renewables)</p> <p><u>Add:</u> No SEC committee member shall go before the SEC as a private attorney or consultant within 5 years of their service to the SEC. (Goodman)</p>	<p>(c) The presiding officer may request the attendance of a participating state agency's designated liaison at a session of the committee or any subcommittee if that person could materially assist the committee or subcommittee in its examination or consideration of a matter. <u>The applicant, counsel for the public, or any party to a proceeding may examine the agency liaison with respect to any matter for which the agency liaison's attendance has been requested.</u> (Various Energy Companies)</p>
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17. Intervention (Review of Decision) - Site 202.11(f)

<p>(f) Any party aggrieved by a decision on a petition to intervene may within 30¹⁰ days request that the decision be reviewed by the committee or subcommittee, as applicable. (Pastoriza)</p>	
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18. Discovery – Site 202.12(a)-(d)

<p>(a) The applicant or petitioner, the public counsel, and any person granted intervenor status shall have the right to conduct discovery in an adjudicative proceeding pursuant to this rule <u>and in accordance with an applicable procedural order</u>.</p> <p>(b) Unless inconsistent with an applicable procedural order, aAny person entitled to conduct discovery pursuant to (a) above shall have the right to serve upon any party data requests, which may consist of a written interrogatory or request for production of documents.</p> <p>(c) Data requests shall identify with specificity the information or materials sought.</p> <p>(d) A person <u>or group of persons who are voluntarily or by order participating in the proceeding together</u> may serve more than one set of data requests on a party, but the total number of data requests served by each person <u>or group, as the case may be</u>, shall not exceed 50, unless otherwise permitted for good cause shown by ruling of the presiding officer or any hearing officer designated by the presiding officer. (EDP Renewables)</p>	<p><u>Add</u> the following:</p> <p>Technical sessions shall be recorded with written transcripts paid by Applicant and updated to SEC website within 14 days.</p> <p>SEC will engage in enforcement action, including severe fines, if it is determined data requests have not been amended, supplemented, or answered truthfully and in a timely manner.</p> <p>All discovery information shall automatically become part of the official record. (Goodman)</p>
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19. Waiver of Rules - Site 202.15

<p>(d) The committee or subcommittee, as applicable, shall accept for consideration any waiver request made orally during a hearing or prehearing conference. <u>In general, interested parties will be discouraged from requesting waivers orally</u>.</p> <p>(e) A request for a waiver shall specify the basis for the waiver and the proposed alternative, if any. <u>Other parties will be granted the opportunity to present their support or objection to any waiver requests before the committee</u>. (NHWW)</p>	<p>(a) The committee or subcommittee, as applicable, shall waive any of the provisions of these rules, except where precluded by statute, on its own motion or upon request by an interested party, if the committee or subcommittee finds that:</p> <p>(1) The waiver serves the public interest; and</p> <p>(2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee; and</p> <p><u>(3) All parties must be notified of the request for waiver and given the opportunity to comment.</u> (P. Martin)</p>
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20. Prefiled Testimony - Site 202.22.

<p>(a) An original and 10 copies of an applicant's pPrefiled testimony and exhibits shall be filed with its application.</p> <p>(b) Prefiled testimony and exhibits from other parties or rebuttal testimony from the applicant or any other party shall be filed as determined by a procedural order issued by the presiding officer.</p> <p>(c) One copy of prefiled testimony and exhibits shall also be forwarded by the applicant to each party and to each person listed on the service list.</p> <p>(Various Energy Companies)</p>	
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21. Evidence (Public Availability of Specific Wind Data) - Site 202.24

<p>All of the meteorological data collected by the meteorological tower on the proposed wind energy system site should be made available, at least a month prior to any application for a facility, in a form which can be easily analyzed by concerned residents. The location on the site, and its surrounding topography, should also be indicated, including any changes in the site or in the measured meteorological data over the period of its collection.</p> <p>(Ward)</p>	<p>Competitively sensitive proprietary wind data should not be required to be disclosed. Public disclosure of such information could provide a project's competitors with an unfair advantage in responding to solicitations for competitive bids for power purchase agreements. A party seeking this type of data should be free to do so during the discovery phase of a proceeding; however, if an applicant objects and if the SEC determines information is relevant, then an appropriate protective order should be issued.</p> <p>(EDP Renewables)</p>
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22. Public Statements - Site 202.25(b)

<p>(b) The committee shall require members of the public desiring to make oral statements at a hearing or prehearing conference to so indicate by providing their names, contact information, and parties represented on a roster made available for this purpose prior to the commencement of the hearing or prehearing conference. <u>Socially disabled members who do not wish to speak in public may submit a statement to be read by a person of their choice or public counsel.</u> (Pastoriza)</p>	
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23. Ex Parte Communications Prohibited - Site 202.30

Add: Communications between or among SEC members should be prohibited. (Goodman)

24. Filing Requirements (Notice to Agencies) - Site 301.01

<p>(a) Each applicant for a certificate for an energy facility shall file with the committee one original and 1615 paper copies of its application and an electronic version of its application in PDF format, unless otherwise directed by the chairperson or the administrator.</p> <p>(b) The committee or the administrator shall:</p> <p>(1) Acknowledge receipt of an application filed under Site 301.01(a) in writing directed to the applicant;</p> <p>(2) Forward a copy of the application and acknowledgment to each member of the committee <u>and to the Fish and Game Department</u>; and</p> <p>(3) Post a copy of each application on the committee’s website. (NHF&G)</p>	
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25. Contents of Application (Facility Description) – Site 301.03(b)(7) and (c)(3)-(5)

<p>(b)(7) Whether the applicant will be <u>is</u> the owner or lessee of the proposed facility or have <u>has</u> some other legal or business relationship to the proposed facility, including a description of that relationship.</p> <p>(c) Each application shall contain the following site information with respect to the site of the proposed energy facility and alternative locations the applicant considers available for the proposed facility:</p> <p>(1) The location and address of the site of the proposed facility;</p> <p>(2) Site acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map;</p> <p>(3) The location, <u>shown on a map</u>, of residences, industrial buildings, and other structures and improvements within <u>100 feet of or adjacent to</u> the site;</p> <p>(4) Identification of wetlands and surface waters of the state within or adjacent to the site;</p> <p>(5) Identification of natural and other resources at or within or adjacent to the site; and</p> <p>(Various Energy Companies)</p>	<p>(c)(3) The location, <u>shown on a map</u>, of residences, industrial buildings, and other structures and improvements within or adjacent to the site <u>and on property abutting the site</u>;</p> <p>(EDP Renewables)</p> <p>(c) Each application shall contain the following information with respect to the site <u>and other necessary infrastructure</u> of the proposed energy facility and alternative locations the applicant considers available for the proposed facility:</p> <p>(3) The location <u>of property lines</u>, residences, industrial buildings, and other structures and improvements within or adjacent to the site;</p> <p>(NHWW)</p>
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26. Content of Application (Generation Equipment Specifications) – Site 301.03(f)(1)

<p>Proposed rule requires description of make, model and manufacturer of each turbine and generator unit. Should permit applicant to provide an illustrative example of turbines and generators the application. If certificate is granted, alternate equipment could be substituted, so long as replacement equipment has equal or less impact than previously specified for each of the major criteria being reviewed (e.g., sound, visual impact, shadow flicker, etc.). (Wagner Forest Management)</p>	
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27. Contents of Application (Transmission Lines) – Site 301.03(g)

Add the following:

Every project with transmission lines and towers shall submit with the application a map of the entire project with the height and location of each tower and the distance between each tower.

Every project shall submit with the application a map of the entire project showing buildings in the affected areas with their distance from the project. They shall also include the buildings' purpose.

If additional lines or voltage is to be added to the lines and towers, there shall be a further application made to the SEC to consider the new parameters.

Transmission lines in areas with residences or public buildings shall have a routine inspection by an electrical engineer, unrelated to the project, to ascertain the EMFs or mGs are within the updated (at that time) guidelines for safety.
(McPhaul)

28. Contents of Application (Preferred and Alternative Sites) – Site 301.03(h)(2)

<p>Identification of the applicant’s preferred choice/location and other alternatives locations it considers available for the site <u>and configuration</u> of each major part of the proposed facility <u>and the reasons for the preferred choice</u>; (Various Energy Companies)</p>	<p>Identification of the applicant’s preferred <u>site and configuration choices, location</u> and any <u>other</u> alternatives locations it considers available for the site <u>and configuration</u> of each major part of the proposed facility, <u>as well as the reasons for the applicant’s preferred choices</u>; (EDP Renewables)</p>
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29. Contents of Application (Municipality Notification) – Site 301.03(h)(4)

<p>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 <u>unless that governing body has opted to receive only electronic copies of the application</u>; (EDP Renewables)</p>	
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30. Financial, Technical and Managerial Capability (Financial Information) – Site 301.04(a)

Applicant should be required to disclose the total amount of money spent on a proposed energy facility, and how much of the project will be paid for by federal tax incentives and subsidies, to aid in determining whether or not these projects are viable to create a sound energy policy.

[Also, actual energy production numbers for each year in operation for existing and new wind projects should be collected and made public, so comparisons can be made with original proposed energy numbers supplied by the project owners. This would aid in determining whether or not the original proposals were accurate and in building a database for determining what future proposed facilities will produce]
(Merkl, Mateyk)

31. Effects on Aesthetics - Site 301.05

<p>Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating potentialany unreasonable adverse effects of, the proposed facility on aesthetics:</p> <p>(b)(9) A description of the best practical measures planned to avoid, minimize, or mitigate the potential adverse effectsvisual impacts of the proposed facility, and any alternative measures considered but rejected by the applicant.</p> <p>(Various Energy Companies)</p>	<p>Polluting facilities should perform a visual impact analysis that includes their smokestacks and visible plumes emanating from the proposed facility.</p> <p>(Wagner Forest Management)</p>
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32. Effects on Historic Sites - Site 301.06

<p>Each application shall include the following information regarding the effects of the, and plans for avoiding, minimizing, or mitigating any potentialunreasonable adverse effects of, the proposed facility on historic sites:</p> <p>(d) Identif<u>ication ofy</u> the best practical measures planned to avoid, minimize, or mitigate potential adverse effects on archaeological and historic resources; <u>and</u></p> <p>(e) Describe the applicant's plans to implement any measures identified pursuant to (d) above; and</p> <p>(Various Energy Companies)</p>	<p>Each application shall include the following information regarding the effects of the, and plans for avoiding, minimizing, or mitigating any unreasonable adverse effects of, the proposed facility on historic sites:</p> <p>(f) Describe the status of the applicant's consultations with the New Hampshire Division of Historical Resources, and, if applicable, with the lead federal agency, <u>and interested parties.</u></p> <p>(NHPA)</p>
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33. Effects on Environment - Site 301.07

<p>Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating potentialany unreasonable adverse effects of, the proposed facility on air quality, water quality, and the natural environment: (Various Energy Companies)</p>	<p>Applicant should identify not only the environmental impacts of a project on the project site and abutting lands, but on the larger region, as far as contiguous wildlife corridors and relatively undeveloped expanses of land. (Blocks)</p>
<p><u>Add:</u> In support of the information required in Site 301.07, the applicant shall: (1) include documentation summarizing communications with natural resource agency personnel and other natural resource professionals; (2) include a copy of an information request to the N.H. Natural Heritage Bureau regarding known or potential occurrences of rare, threatened, and endangered plants and exemplary natural communities in the project area; a list of rare, threatened, and endangered plants and exemplary natural communities potentially affected by the project; an assessment of potential effects on such plants and natural communities; and proposed best practical mitigation for any adverse effects; (3) include copies of information requests to the New Hampshire Fish and Game Department, U.S. Fish and Wildlife Service, and N.H. Natural Heritage Bureau regarding known or potential occurrences of significant wildlife species in the project area; a list of significant wildlife species potentially affected by the project; an assessment of potential effects on such wildlife species; and proposed best practical mitigation for any adverse effects; (4) include a report, prepared by a qualified professional, identifying and describing any critical wildlife habitat (as designated by the U.S. Fish and Wildlife Service) and any significant habitat resources within the project area; a list of</p>	

<p>critical wildlife habitat and significant habitat resources potentially affected by the project; an assessment of potential effects on such habitats and habitat resources; and proposed best practical mitigation for any adverse effects;</p> <p>(5) conduct pre-application surveys for evidence of significant wildlife species following pertinent, available protocols recommended by state and federal wildlife agencies, unless waived in writing by state and federal wildlife agencies;</p> <p>(6) prepare a cumulative impacts assessment, in consultation with state and federal wildlife agencies, addressing the scope and scale of potential effects of the facility, in combination with other existing or proposed energy development, on populations of significant wildlife species.</p> <p>(Griffin, citing AMC, et al.)</p>	
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34. Effects on Public Health and Safety - Site 301.08

<p>Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating potentialany unreasonable adverse effects of, the proposed facility on public health and safety: (Various Energy Companies)</p> <p>(a)(2) Include a report evaluating the shadow flicker expected to be perceived at all <u>occupied</u> buildings occupied or used for another purpose, which report shall be based upon computer modeling programs and input data defining the most conservative case scenario, including the astronomical maximum shading duration; (EDP Renewables)</p> <p>(a)(3) Describe planned setbacks that indicate the distance between each wind turbine and the nearest nonparticipating landowner’s existing occupied buildings and property lines, and between each wind turbine and the nearest public road and overhead <u>infrastructure and underground</u> utility line, and explain why the indicated distances are adequate to protect the public from risks associated with the operation of the proposed wind energy facility; (NHWW)</p>	<p>(a)(4) (4) Include an assessment of the risks of ice throw, blade shear, and tower collapse on public safety, including a description of the best practical measures taken or planned to avoid or minimize the occurrence of such events, if necessary, <u>and this assessment must include an explanation of the data derived from observations from weather sites located at the planned elevation of the tops of the blades, and account for the very high speeds of the blades through the atmosphere;</u> (Ward)</p> <p>Polluting facilities and other generators should be subject to the same requirements as wind energy systems with respect to setbacks, structure collapse, lightning protection, and FAA compliance (but not shadow flicker). (Wagner Forest)</p> <p>If setback distance is great enough (> 2 miles), then sound and shadow flicker studies should not be required at all. (Wagner Forest Management)</p>
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35. Completeness Review and Acceptance of Applications for Energy Facilities – Site 301.10(c)

<p>Each state agency <u>having permitting or other regulatory authority</u> 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 <u>its purposes</u>the agency to begin its review. (Various Energy Companies)</p>	
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36. Timeframe for Application Review (Temporary Suspension of Review) - Site 301.12(d)

<p>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.</p> <p>[Committer claims inconsistent with enabling statute; <i>but see</i> RSA 162-H:14, I] (Nixon Peabody)</p>	
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37. Criteria for Findings of Unreasonable Adverse Effects (Aesthetics) – Site 301.14(a)

<p>(a) For the committee to find thatIn determining whether a proposed energy facility will <u>not</u> have an unreasonable adverse effect on aesthetics, the <u>record must demonstrate that the proposed facility</u>committee shall consider:</p> <p>(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;</p> <p>(2) The significance of affected scenic resources and their distance from the proposed facility;</p> <p>(3) The extent, nature, and duration of public uses of affected scenic resources;</p> <p>(4) The scope and scale of the change in the landscape visible from affected scenic resources;</p> <p>(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;</p> <p>(16) Whether the proposed facility would be a dominant feature <u>Would not be a prominent and inharmonious feature</u> of a</p>	<p>(a) In determining whether a proposed energy facility, <u>regardless of whether it's over a route already occupied by a transmission line or lines or not</u>, will have an unreasonable adverse effect on aesthetics, the committee shall consider:</p> <p>(8) The effectiveness of the <u>latest proven technology</u>best practical measures planned by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics. (P. Martin)</p>
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landscape in which existing human development is not already a prominent feature as viewed from affected scenic resources of high importance or sensitivity;

~~(27) Whether the visibility of the proposed facility w~~ould not offend the sensibilities of a reasonable person during daytime or nighttime periods; ~~and~~

~~(83) Utilizes The effectiveness of~~ the best practical measures ~~planned by the applicant~~ to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics; ~~and-~~

In making its finding, the committee shall consider:

i. The existing character of the area of potential effect in the host community and communities abutting or in the vicinity of the proposed facility;

ii. The significance of affected scenic resources and their distance from the proposed facility;

iii. The extent, nature, and duration of public uses of affected scenic resources;

iv. The scope and scale of the change in the landscape visible from affected scenic resources; and

v. 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. (AMC)

38. Criteria for Findings of Unreasonable Adverse Effects (Historic Sites) – Site 301.14(b)

<p>In determining whether a proposed energy facility will have an unreasonable adverse effect on historic sites, the committee shall <u>consider</u>:</p> <p>(1) Consider†The nature and significance of the historic and archaeological resources identified by the applicant;</p> <p>(2) Consider†The effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on historic and archaeological resources; and</p> <p>(3) Consider†The status of the applicant’s consultations with the New Hampshire Division of Historical Resources and, if applicable, the federal lead agency;:-</p> <p><u>(4) The iterative nature of the process under section 106 of National Historic Preservation Act; and</u></p> <p><u>(5) Whether to include in its decision conditions requiring continuing consultation with the New Hampshire Division of Historical Resources and, if applicable, with the lead federal agency and compliance with any agreement or memorandum of understanding with the New Hampshire Division of Historical Resources and, if applicable, the lead federal agency.</u></p> <p>(Various Energy Companies)</p>	<p>[Criteria should read as follows:]</p> <p>For the committee to find that the proposed facility will not have an unreasonable adverse effect on historic sites, the record must demonstrate that the proposed facility</p> <p>(1) would not be a prominent and inharmonious intrusion on the nature and significance of the historic and archaeological resources identified by the applicant; and</p> <p>(2) utilizes the best practical measures to avoid, minimize, or mitigate unreasonable adverse effects on historic and archaeological resources as determined in consultation with the New Hampshire Division of Historical Resources and, if applicable, the federal lead agency.</p> <p>(AMC)</p> <p>(3) Consider the status of the applicant’s consultations with the New Hampshire Division of Historical Resources and, if applicable, the federal lead agency, <u>and interested parties.</u></p> <p>(NHPA)</p>
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39. Additional Criteria Relative to Wind Energy Systems - Site 301.16(a)

<p>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:</p> <p>(a) Cumulative impacts to natural, scenic, recreational, and <u>historiceultural</u> resources, including with respect to aesthetics the potential impacts of combined observation, successive observation, and sequential observation of energy facilities by the viewer; and (NHPA)</p>	<p>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:</p> <p>(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, <u>and these cumulative impacts are exacerbated by the siting of these facilities on elevated sites, expanding their prominence, their visible distance, and their contrast with their neighboring environment, and the cumulative impact of nighttime surges on the ISO New England grid;</u> and (Ward)</p>
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