

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2015-06**

Joint Application of Northern Pass Transmission, LLC and Public Service Company of New  
Hampshire d/b/a Eversource Energy for a Certificate of Site and Facility

**COUNSEL FOR THE PUBLIC'S OBJECTION TO APPLICANTS'  
MOTION FOR CLARIFICATION AND/OR REHEARING ORDER ON  
MOTION TO STRIKE FORWARD NH PLAN**

Counsel for the Public, by his attorneys, the Office of the Attorney General and Primmer  
Piper Eggleston & Cramer PC, hereby responds to the Applicants' Motion for Clarification  
and/or Rehearing Order on Motion to Strike Forward NH Plan.

**INTRODUCTION**

1. Applicants' motion asks the Subcommittee to reconsider its May 26, 2017 Order, which set forth the Subcommittee's responsibility with respect to the public interest analysis the Subcommittee must make. In essence, Applicants' motion asks the Subcommittee to hold that its public interest analysis should be limited to considering only the benefits offered by a proposed project without consideration of the offsetting impacts that would result from the proposed project. Applicants' position is untenable on its face, and it is contrary to the relevant statute and its legislative history, as well as the Subcommittee's governing regulation on the issue. Applicants' proffered interpretation should be rejected and the Subcommittee's prior recognition of the correct standard in its May 26, 2017 Order must stand.

**BACKGROUND**

2. By order dated May 26, 2017, the Subcommittee ruled in favor of Applicants and denied the Forest Society's motion to strike portions of the Applicants' Forward NH Plan. In doing so, the Subcommittee's order hewed closely to the text of RSA 162-H and recognized the

critical interrelationship between RSA 162-H:1 and RSA 162-H:16, IV established by the Legislature. *See* May 26, 2017 Order at 3-4. The Order properly recognized that “[i]n order to consider the statutory areas of concern, the Subcommittee must consider both direct and indirect impacts and benefits.” *Id.* at 3. As the Order explained, the language of RSA 162-H:16, IV “requires the Subcommittee to consider the objectives of the statute [found in RSA 162-H:1], which as noted above, are broad and concern direct and indirect impacts and benefits that accrue both locally and to the State as a whole.” *Id.* at 4.

3. Having considered the statutory text and arguments offered in support of and opposition to striking portions of the Applicants’ proffered Forward NH Plan, the Subcommittee appropriately held that “[u]ltimately the Subcommittee will consider all of the impacts and benefits of the Project in determining whether to grant or deny a Certificate.” *Id.* at 5. “In doing so, the Subcommittee will be able to analyze” all relevant information “and determine whether the benefits of the Project outweigh any adverse impacts.” *Id.*

4. The Subcommittee recognized explicitly that “[e]xcluding evidence of the proposed benefits [of the Project] would prohibit consideration of these benefits by the Subcommittee and undermine the objectives of the statute.” *Id.* Applicants’ request that the Subcommittee now rule that it cannot consider the “adverse impacts” of the Project would also undermine the objectives of the statute and is contrary to the statutory scheme. The Subcommittee accurately assessed its obligation in the May 26, 2017 Order, and no revision of that determination is required.



## ARGUMENT

### **I.     The Plain Meaning of RSA 162-H Requires a Balance Between Potential Impacts and Benefits of Proposed Projects.**

5.     The governing statute applicable to these proceedings is RSA 162-H. As Applicants acknowledge, the New Hampshire Supreme Court “interpret[s] statutes not in isolation, but in the context of the overall statutory scheme [and the] analysis must start with consideration of the plain meaning of the relevant statutes, construing them, where reasonably possible, to effectuate their underlying policies.” *Appeal of New Hampshire Right to Life*, 166 N.H. 308, 311 (2014) (quoting *Petition of Mooney*, 160 N.H. 607, 609-10 (2010)). In fact, the Court will “not look to legislative history to modify the meaning of a statute that is plain on its face.” *State Employees’ Ass’n of NH, Inc. v. State*, 127 N.H. 565, 568 (1986).

6.     As the Subcommittee appropriately recognized in its May 26, 2017 Order, the Legislature saw fit to link RSA 162-H:1 and RSA 162-H:16, IV together, joining the requisite findings requirement in RSA 162-H:16, IV with the stated objectives provided by the Legislature in RSA 162-H:1.<sup>1</sup> Among other things, those provisions expressly require a “balance” among “potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire.” RSA 162-H:1; RSA 162-H:16, IV.

7.     RSA 162-H:1 provides:

***The legislature recognizes that the selection of sites for energy facilities may have significant impacts on and benefits to the following:*** the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety. ***Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in***

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<sup>1</sup> Applicants seek to minimize RSA 162-H:1 as a mere “introduction” to the statute, but as the analysis contained herein reveals, the linkage between RSA 162-H:1 and RSA 162-H:16, IV alone demonstrates otherwise.

***decisions about the siting, construction, and operation of energy facilities in New Hampshire***; that undue delay in the construction of new energy facilities be avoided; that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion. ***In furtherance of these objectives, the legislature hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.***

RSA 162-H:1 (emphasis added).

8. Among other things, the Legislature enacted RSA 162-H:16, IV with RSA 162-H:1 and “[i]n furtherance of [RSA 162-H:1’s stated] objectives.” RSA 162-H:16, IV directs the Subcommittee to “determine if issuance of a certificate will serve the objectives of this chapter,” *i.e.*, the objectives stated in RSA 162-H:1 and expressly noted as such. “In order to issue a certificate,” the Subcommittee must make the four findings found in RSA 162-H:16, IV. Critically for the purposes of Applicants’ motion, the Subcommittee cannot make the required determination or findings until *after* it has first given “due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, *including potential significant impacts and benefits.*” RSA 162-H:16, IV (emphasis added).

9. As a matter of plain language interpretation, as required by New Hampshire law, RSA 162-H unquestionably requires consideration of *both* the potentially significant impacts as well as any potentially significant benefits in connection with the Subcommittee’s determination and findings pursuant to RSA 162-H:16, IV.

10. Applicants offer little by way of actual statutory construction of the text of the statute itself to justify their position that the public interest analysis required by RSA 162-H:16, IV(e) should consider only the potential benefits of the project and not the potential negative

impacts of the project.<sup>2</sup> Instead, Applicants claim the legislative history and the existence of three other factors are enough to curtail the public interest requirement.

11. As noted above, the Court will not even consider legislative history where “the meaning of the statute is plain on its face.” *State Employees’ Ass’n of NH, Inc.*, 127 N.H. at 568. The statute here plainly calls for balancing on its face, as directed by RSA 162-H:1 and its incorporation in RSA 162-H:16, IV, so resort to legislative history is ultimately unnecessary. But even beyond that axiom, and as discussed in more detail below, Applicants have cut their analysis of that history short and consequently misread the legislative history making their position incorrect. *See infra* Part II.

12. There are four required findings that must be made by the Subcommittee “[i]n order to issue a certificate.” RSA 162-H:16, IV. Those findings are:

- (a) The applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.
- (b) The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.
- (c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.
- (d) [Repealed.]
- (e) Issuance of a certificate will serve the public interest.

RSA 162-H:16, IV.

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<sup>2</sup> Applicants also offer no explanation for why RSA 162-H:16, IV(e)’s finding requirement that “[i]ssuance of a certificate will serve the public interest” is stated broadly and without limiting language limiting the analysis only to benefits or excluding impacts from the analysis. Stated as Applicants would have it, the finding would require that “[i]ssuance of a certificate will provide some public benefit.” Those are not the words the Legislature chose, and there is no basis to re-draft the legislation now.

13. Applicants essentially argue that if the Subcommittee weighs and balances the potentially significant impacts and benefits of the proposed Project in making its decision and finding on whether or not the issuance of the certificate will “serve the public interest,” the other three factors would be “subsumed by the fourth” and “make the fourth finding superior to the others.” Mtn. at 8. Applicants’ argument is inconsistent because Applicants’ proposed “answer” to its perceived problem is to subjugate the public interest finding to the other three factors. *See, e.g.,* Mtn. at 14 (“Ultimately, in the event that an applicant has the financial, technical, and managerial capability to construct and operate a facility, and that facility will not unduly interfere with the orderly development of the region or have unreasonable adverse effects on any areas contemplated in RSA 162-H:16, IV(c), the facility will serve the public interest, and the SEC may issue a certificate, if the facility will provide benefits. The benefits, however, are viewed independently; they are not netted, weighed or balanced against impacts, but considered in relation to the factors listed in Site 301.16.”).

14. Applicants cannot justify ignoring the plain meaning of the broad language of the actual text of RSA 162-H:16, IV(e) by claiming that provision impermissibly encroaches on the other three factors while simultaneously asking the Subcommittee to permit the three other factors to encroach on the fourth factor.

15. While it is true that the New Hampshire Supreme Court will avoid interpreting statutes in such a fashion as to render statutory provisions “meaningless,” Applicants are simply incorrect that an analysis and balancing of all of the “potential significant impacts and benefits” related to a Project would subsume the other three findings and effectively nullify them. *Holt v. Keer*, 167 N.H. 232, 242 (2015). And while all four findings overlap with each other to some extent that fact does not prevent any of the provisions from having independent effects and it

does not render any of the provisions superfluous or redundant. *Winnacunnet Coop. Sch. Dist. v. Town of Seabrook*, 148 N.H. 519, 525-26 (2002).

16. For example, Applicants focus on Finding (c), which requires a finding that “[t]he site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.” RSA 162-H:16, IV(c). While an analysis of Finding (e), that the “[i]ssuance of a certificate will serve the public interest,” will undoubtedly include an analysis of potential impacts of overlapping significance to Finding (c), the two Findings are distinct and require separate analyses. RSA 162-H:16, IV(e).

17. For Finding (c) the inquiry is whether the Project will have “*unreasonable* adverse effect[s]” on the noted items. RSA 162-H:16, IV(c) (emphasis added). For Finding (e) *any* adverse effects on the noted items, as well as additional items set forth in RSA 162-H:1, will be considered as part of the comprehensive balancing of all potential impacts and benefits of the Project.

18. Accordingly, the Subcommittee could appropriately find in connection with Finding (c) that while the Project has significant adverse effects on “aesthetics, historic sites, air and water quality, the natural environment, and public health and safety,” the adverse effects are not quite extensive enough to be “unreasonable.” RSA 162-H:16, IV(c). Similarly, the Subcommittee could note numerous ways in which the Project interferes with “the orderly development of the region” but nevertheless determine that the evidence was not sufficient to find that the Project “*unduly* interfere[d] with the orderly development of the region.” RSA 162-H:16, IV(b) (emphasis added).

19. But despite those determinations, the statute now requires the Subcommittee to then consider the adverse effects on the noted items, as well as the interference with the orderly

development of the region, along with all other pertinent impacts of the Project as set forth in RSA 162-H:1 that do not fall within the other three findings, and “balance” those impacts against the asserted benefits of the Project. While the decisions of adverse effects in Findings (b) and (c) may not be sufficient to deny the issuance of a site certificate, they could be sufficient to deny the issuance of a site certificate under Finding (e) if hypothetically no benefits were offered by the Project.

20. Weighing and considering zero benefits to the public from a project against adverse effects to the noted items in Finding (c) and interference with orderly development of the region under Finding (b) must of course tip the balance against the Project because the scales would contain *something* in the impacts column against *nothing* on the benefits side. Applicants’ proffered interpretation of the statute would prevent such an outcome, because it would artificially circumscribe the Finding (e) by precluding consideration of impacts considered in any fashion in Findings (a)-(c). Under Applicants’ proffered interpretation, if they can avoid a finding of unreasonableness and ‘unduly-ness,’ they can remove any consideration of negative impacts from the public interest analysis completely. That is not the statutory directive.

21. The findings contained in RSA 162-H:16, IV can be harmonized in the manner outlined above without nullifying the findings under any of the four sections, contrary to Applicants’ strained interpretation. This is particularly so where RSA 162-H:16, IV expressly calls for “due consideration” of all “potential significant impacts and benefits” in connection with the Subcommittee’s requirement to determine that issuance of the certificate “will serve the

objectives of this chapter,” which are set forth in RSA 162-H:1 and reference the Legislature’s stated public interest.<sup>3</sup>

**II. The Relevant Legislative History of RSA 162-H Reveals the Legislature Intended the Public Interest Finding to Entail Full Consideration of the Impacts and Benefits of a Proposed Project.**

22. The language in RSA 162-H:1 and RSA 162-H:16, IV that is pertinent to Applicants’ motion was enacted by amendment to the statute with an effective date of July 1, 2014. The relevant legislative history of RSA 162-H as demonstrated by its amended language and the official legislative history materials reveals that the Legislature intended a comprehensive impact and benefits analysis to be conducted by the Subcommittee with respect to its public interest finding.

**A. The Actual Alterations Made to the Text of RSA 162-H by the July 2014 Amendments Reflect a Coupling of the “Public Interest” Finding Requirement and Analysis of the Potential Impacts and Benefits of the Project in Question.**

23. When considering the legislative history of a particular statute, there is no better indicator of the intended change than a comparison of the language that predated the amendment in question with the changed language that results from the amendment. *Cagan’s, Inc. v. Dep’t of Revenue Admin.*, 126 N.H. 239, 247 (1985) (“our touchstone is the language of the statute itself”). There were several critical changes to the statute that were accomplished by the July 2014 Amendments, and the following redlines demonstrate those changes graphically for ease of reference:

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<sup>3</sup> Applicants also claim that “[u]nder a net benefits or balancing approach, the SEC could arguably weigh the impacts and benefits of an energy facility in a manner of its own devising.” Mtn. at 9. Applicants are mistaken, as RSA 162-H:16, IV calls for a determination that the issuance of a certificate will serve the objectives of the chapter, directing the Subcommittee to RSA 162-H:1 which sets forth specific objectives. The SEC explicitly recognized this statutory directive when it promulgated N.H. CODE ADMIN. RULES Site 301.16, which specifically constrains the SEC’s analysis under RSA 162-H:16, IV(e) and explicitly imports the directives set forth in RSA 162-H:1.



24. For RSA 162-H:16, IV:

~~IV. The site~~ After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee, ~~after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether shall determine if issuance of a certificate will serve~~ the objectives of this chapter ~~would be best served by. In order to issue a certificate, the issuance of the certificate, must~~ committee shall find that ~~the site and facility~~:

(a) ~~Applicant~~ The applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.

(b) ~~Will~~ The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.

(c) ~~Will~~ The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.

(d) [Repealed.]

(e) Issuance of a certificate will serve the public interest.

RSA 162-H:16, IV (eff. Aug. 8, 2009 to June 30, 2014); RSA 162-H:16, IV (as altered by July 2014 Amendments).

25. As the above redline reveals, the July 2014 Amendments to RSA 162-H:16, IV not only added the requirement that the Subcommittee specifically find that “[i]ssuance of a certificate will serve the public interest,” it further amended that provision of the statute at the same time to include consideration of “potential significant impacts and benefits.” *Id.*

26. For RSA 162-H:1:

The legislature recognizes that the selection of sites for energy facilities, ~~including the routing of high voltage transmission lines and energy transmission pipelines, will~~ may have a significant ~~impact upon~~ impacts on and benefits to the following: the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety. Accordingly, the legislature finds that it is in the public interest to maintain a balance ~~between~~ among those potential significant impacts and benefits in decisions about the environment siting, construction, and the need for new operation of energy facilities in New Hampshire; that undue delay in the construction of ~~needed~~ new energy facilities be avoided ~~and~~; that full and timely consideration of environmental consequences be provided; that all entities



planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion, ~~all to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles. The legislature, therefore,. In furtherance of these objectives, the legislature~~ hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

RSA 162-H:1 (eff. Aug. 8, 2009 to June 30, 2014); RSA 162-H:1 (as altered by July 2014 Amendments).

27. As the above redline reveals, the July 2014 Amendments to RSA 162-H:1 specifically changed the Legislature’s finding from a finding “that it is in the public interest to maintain a balance between the environment and the need for new energy facilities in New Hampshire” to a finding “that it is in the public interest to maintain a balance among [specified prior and new] potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire.” *Id.* In other words, at precisely the same time the Legislature added the required Finding (e) – that “[i]ssuance of a certificate will serve the public interest,” RSA 162-H:16, IV(e), it changed its legislative finding *of what that public interest was* to “maintain[ing] a balance” among the specified “potential significant impacts and benefits” set forth in RSA 162-H:1. RSA 162-H:1.<sup>4</sup> Additionally, RSA 162-H:1 added an express reference to the “furtherance of these objects” as the purpose of the subsequent provisions (including RSA 162-H:16, IV).

28. The changes from the July 2014 Amendments alone demonstrate the coupling of RSA 162-H:1 and RSA 162-H:16, IV and the direction by the Legislature that Finding (e) entails

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<sup>4</sup> Applicants correctly note that the SEC Rule relative to public interest criteria used language from RSA 162-H:1, but they incorrectly assert that “RSA 162-H:1 has followed the same formula for decades.” Mtn. at 11. The change noted above requiring balancing of impacts and benefits is new and was newly enacted contemporaneously with the creation of the public interest finding in RSA 162-H:16, IV(e).

a balancing of impacts and benefits to ensure that issuance of a certificate will serve the public interest. The legislative history of the legislative process leading to those changes further supports that direction.

**B. The Legislative History of the July 2014 Amendments Further Reflects a Coupling of the “Public Interest” Finding Requirement and Analysis of the Potential Impacts and Benefits of the Project in Question.**

29. The legislative efforts that ultimately culminated in the July 2014 Amendments to RSA 162-H were precipitated by the previously enacted SB99 in the prior General Court session. *See Exhibit A.* “Last Session the General Court enacted SB99, mandating a stakeholder process to examine the Site Evaluation Committee (SEC) and the tools it has to serve the public and project developers as it goes about its work. That process, led by the Office of Energy and Planning, engaged the public, energy industry, state agencies, and the non-government organization community and culminated in a comprehensive report at the end of December of 2013 that identified a number of concerns about the structure of the SEC and how it functions and a number of potential solutions.” *See Exhibit A.*

30. In early 2014, a bill was introduced in the New Hampshire Senate, SB 245, to address concerns laid out in the SB 99 report. That initial bill made only a minor change to RSA 162-H:1 of no practical consequence here. It made no change with respect to RSA 162-H:16, IV. *See Exhibit B.*

31. On February 13, 2014 an amendment was introduced to SB 245, Amendment 2014-0568s. That Amendment changed the text of RSA 162-H:1 (in relevant part) by altering the finding of the legislature with respect to the “public interest.” *See Exhibit C.* Instead of finding that it is in the public interest to maintain a balance between the environment and the “need for” new energy facilities in New Hampshire, the Amendment found that it is in the public

interest to maintain a balance between the environment and the “potential benefits of” new energy facilities in New Hampshire (emphasis added). It further changed the finding that undue delay in the construction of “needed” facilities be avoided and that full and timely consideration of environmental consequences be provided to a finding that undue delay in the construction of facilities “that provide net public benefits” be avoided and that full and timely consideration of environmental consequences be provided. The shift from consideration of whether new energy facilities were “needed” to a consideration of the “potential benefits” of proposed new energy facilities and the requirement that delay be avoided only for facilities “that provide net public benefits” was significant enough to generate some discussion in the Senate testimony considered by the Legislature.

32. In addition to those proposed changes, Amendment 2014-0568s further changed the text of RSA 162-H:16, IV by expressly including potential consideration of alternatives not described in the application and by adding a new subsection to RSA 162-H:16, IV, subsection (e). *See Exhibit C*. The new subsection (e) was to require that the proposed site and facility:

(e) Will provide demonstrable net public benefits when considering the costs and benefits of the project to the environment, the New Hampshire economy, New Hampshire energy consumers, and the communities affected by the project, with such benefits reflected in enforceable conditions of the certificate.

*See Exhibit C*. Again, the addition of this provision was significant enough to generate references in the testimony presented to the legislature.

33. The Senate Committee considered the testimony received and on March 6, 2014 issued a Report with the recommendation that the bill “ought to pass” with a new amendment, Amendment 2014-0921s. *See Exhibit D*. That proposed Amendment significantly altered both RSA 162-H:1 and RSA 261-H:16, IV in relevant ways. First, it contained a legislative recognition that the selection of sites for energy facilities may have significant “impacts and

benefits on the following” and added to the prior categories to include “property values,” “historic sites,” “aesthetics,” “air and water quality,” and “public health and safety.” It then further altered the legislative finding to read that “it is in the public interest to maintain a balance between those potential significant impacts and the need for new energy facilities in New Hampshire” instead of a balance between just the environment and the need for new energy facilities.

34. With respect to RSA 162-H:16, IV, the March 6 proposal maintained the prior change referencing other alternatives in the prior proposed bill that was initially proposed in Amendment 2014-0568s, but jettisoned the proposed subsection (e) from Amendment 2014-0568s and replaced it with the following new subsection and added subsection (f):

(e) The site and facility will serve the public interest when taking into account:

- (1) The net environmental effects of the facility, considering both beneficial and adverse effects.
- (2) 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.
- (3) Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.
- (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 resources.
- (5) Such additional public interest considerations as may be deemed pertinent by the committee.

(f) The site and facility will be consistent with the state energy strategy established in RSA 4-E:1.<sup>5</sup>

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<sup>5</sup> Applicants’ discussion of the legislative history reaches this point in the process and effectively ends, jumping instead to the end with no discussion of the intervening events that took place, which events explain why Applicants’ interpretation of that process is incomplete and therefore inaccurate in the final analysis.

35. Between March 13, 2014 and March 20, 2014, however, a new amendment, Amendment 2014-1125s was proposed that retained many of the changes to RSA 162-H:1 from Amendment 2014-0921s, but altered the legislative finding to read: “Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in the siting, construction and operation of new energy facilities in New Hampshire... .” See Exhibit E.

36. Amendment 2014-1125s further cut back the proposed amendments to RSA 162-H:16, IV, by making only the following limited change to the text of RSA 162-H:16, IV, but notably changing the site evaluation committee’s test from considering whether the “objectives of this chapter” would be best served by issuance of the certificate to whether the “public interest” would be best served by issuance of the certificate:

IV. The site evaluation committee, after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the ~~objectives of this chapter~~ public interest would be best served by the issuance of the certificate, must find that the site and facility:

37. It further added subsection (e), which simply required that the SEC find that the site and facility:

(e) Will serve the public interest.

38. According to a prepared statement authored by the bill’s chief sponsor, Senator Jeanie Forrester, Chairman, Senate Finance, addressing that Amendment 2104-1125s and included in the House’s official legislative history materials, “[t]he “amended bill mandates that the SEC make a finding that a proposed project serves the public interest, *after considering all environmental, social, and economic impacts and benefits.*” Exhibit A (emphasis added). Senator Forrester explained that “[t]his is a workable, common-sense requirement that

*recognizes that*, even in a restructured energy market, *all major energy projects should provide a strong package of public benefits* – whether for our natural resources, for ratepayers and businesses, for public health, or for the state’s economy, or for all of the above – *and that these benefits must be weighed against the projects’ potential adverse impacts*. Other states, including Maine and Vermont, have such a requirement, *ensuring that the greater good of the state and its communities is weighed as part of every siting decision.*” *Id.* (emphasis added).

39. That statement, following both the elimination of the purported net benefit language cited by Applicants and the inclusion of essentially the current language of RSA 162-H:16, IV(e) is from the bill’s chief sponsor and directly supports an interpretation of RSA 162-H that ties the “impacts and benefits” stated in RSA 162-H:1 with the requirement of a finding that the issuance of a certificate will serve the public interest found in RSA 162-H:16, IV(e). It is also consistent with the comprehensive nature of any public interest analysis under RSA 162-H:16, IV(e) reflected in the legislative history.

40. There is no clear explanation in the legislative history of the July 2014 Amendments to RSA 162-H to account for the change from the detailed factors provided to the public interest test found in Amendment 2014-0921s, which was not enacted, and the simple reference to “public interest” found in Amendment 2014-1125s, but there is also no indication that the change was an actual rejection of a “net benefits test.” The legislative history instead reflects that interested individuals and organizations noted the potential vagueness of the “net public benefit” test found in Amendment 2014-0568s and it is likely that the detailed factors laid out in Amendment 2014-0921s were drafted to address that very concern. *See, e.g.*, Testimony of S. Geiger of EBP Renewables in Senate Energy Committee Minutes; Letter from then

Chairman and Vice Chairman of the SEC dated February 18, 2014 in Senate Legislative History Testimony Materials, at 2.

41. While there was no intervening testimony to account for the departure from Amendment 2014-0921s to the pared down version of Amendment 2014-1125s, the catch-all provision of RSA 162-H:16, IV(e)(5) found in Amendment 2014-0921s of “[s]uch additional public interest considerations as may be deemed pertinent by the committee” appears to have led to some on the committee to question the need for specifically enumerated factors in the public interest test where a catch-all category encompassed them all. Coupled with this were the changes that had also been developing to the legislature’s finding of purpose in RSA 162-H:1, which identified specific areas of potential impact that must be balanced in the considerations by the SEC relative to the public interest. The change in Amendment 2014-1125s to the “siting, construction and operation” of new energy facilities appears to have been an attempt to tie in those impacts and benefits to the analysis that must be undertaken by the SEC in section 162-H:16, IV.

42. Despite that tie-in attempt, several interested individuals provided written testimony in the House in April of 2014 that identified the lack of definition of the public interest test of RSA 162-H:16, IV(e) in Amendment 2014-1125s as a potential interpretative problem that should be addressed. *See, e.g.*, Written Testimony of Lisa Linowes on SB 245, as amended by Amendment 2014-1125s, dated April 7, 2014 at 5; Written Testimony of Karen Lukemon at 2; Written Testimony of Lori Lerner on SB 245, as amended by Amendment 2014-1125s, dated April 8, 2014. Linowes and Lerner saw the potential linkage between RSA 162-H:16, IV and RSA 162-H:1 and Lerner suggested that “there needs to be consistency between the language in



the Declaration of Purpose and the Findings to ensure the SEC has given due consideration to all aspects of the ‘Purpose.’” *Id.*

43. In apparent response to those concerns, and consistent with Sen. Forrester’s statement on the issue, the tie-in attempt was made even more explicit in the subsequent amendment to SB 245, Amendment 2014-1442h. *See Exhibit F.* That amendment altered RSA 162-H:1 to its present form, and changed the balance from “the siting, construction and operation of new energy facilities in New Hampshire ...” to “decisions about the siting, construction, and operation of energy facilities in New Hampshire ... .” Additionally, Amendment 2014-1442h changed RSA 162-H:16, IV to require “due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits ... .” The amendment also included subsection (e) in its present form, requiring that “[i]ssuance of a certificate will serve the public interest.” The reference in RSA 162-H:1 to “decisions about the siting, construction, and operation of energy facilities” was clearly a reference ahead to RSA 162-H:16, IV, where the factors for decision making are enumerated, and the reference in RSA 162-H:16, IV to “potential significant impacts and benefits” was clearly a reference back to RSA 162-H:1. Those changes appear to have been a direct attempt to provide the linkage between RSA 162-H:1 and RSA 162-H:16, IV(e) called for by the statements in the House testimony.

44. A subsequent amendment, Amendment 2014-1795h, made no change to the relevant text. The House Committee Report’s Statement of Intent discussed many benefits of the bill but made no mention of the public interest test. The only “official” statement on the public interest issue was Sen. Forrester’s statement, which concerned what is essentially the current test of the statute and which rejects any interpretation in the nature of the one offered by Applicants.



**C. The SEC Cannot Disregard the Statute's Purpose Section, RSA 162-H:1.**

45. Applicants also seek to avoid the linkage between RSA 162-H:1 and RSA 162-H:16, IV by claiming RSA 162-H:1 is a mere “purpose section” that should essentially be disregarded, citing the SEC’s decision in *Groton Wind, LLC*, SEC Docket No. 2010-01. Their attempt to minimize RSA 162-H:1 and their reliance on that decision are both misplaced.

46. First, RSA 162-H:1 is no mere “purpose section” because the text and structure of the statute links the definition of “public interest” in RSA 162-H:1 and the balancing required therein with the requirement in RSA 162-H:16, IV(e) to find that the issuance of the certificate will serve the public interest.

47. Second, the Legislature regularly includes critical operative text in the purpose section and the New Hampshire Supreme Court often relies on the purpose section in its statutory analysis. *See, e.g., Kearsarge Soaring Ass’n v. Kearsarge Valley Golf Club, Inc.*, 123 N.H. 263, 266 (1983) (“The defendant’s literal interpretation of the statutory language could lead to results which do violence to the expressed legislative intent underlying RSA chapter 422.”); *Foster v. Town of Henniker*, 132 N.H. 75, 77, 562 A.2d 163, 165 (1989) (“The ‘Declaration of Public Interest’ which comprises section one of the chapter is clear and forthright”); *Blue Mountain Forest Ass’n v. Town of Croydon*, 117 N.H. 365, 376 (1977). Similarly, the SEC regularly looks to the purposes section to decide issues. *See SEA-3, Inc.*, Docket No. 2015-01 (Order on Pending Motions August 10, 2015) (looking to the purpose section, RSA 162-H:1, to determine that Counsel for the Public can hire RR safety inspectors and noting that the statute recognizes “it is in the public interest to maintain a balance among ... impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire...”).

48. Third, the *Groton Wind* decision was issued on May 6, 2011, more than three years *before* the operative text in RSA 162-H:1 and RSA 162-H:16, IV was added expressing the balancing public interest test and including it among other required findings. *See Decision Granting Certificate of Site and Facility with Conditions*, pp. 27-31 (May 6, 2011). Indeed, the *Groton Wind* decision was discussed and criticized in the legislative history of RSA 162-H. Any prior determination on the linkage between RSA 162-H:1 and RSA 162-H:16, IV is irrelevant because the operative language is now different and includes the linkage discussed above.

49. Moreover, the *Groton Wind* decision hinged on reference to RSA 362-F:1, which states “[i]t is ... in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, in New Hampshire, whether at new or existing facilities.” *See also Decision Granting Certificate of Site and Facility with Conditions*, p. 30 (May 6, 2011) (quoting RSA 362-F:1). In light of this “public interest” stated in RSA 362-F:1, the *Groton Wind* decision held “[t]herefore, the construction of the Project is consistent with legislative objectives insofar as it will supply renewable power for New England.” *Id.*

50. RSA 362-F:1 is the purpose section of RSA 362-F. *See* RSA 362-F:1 (titled “Purpose”). The SEC relied on the statement of public interest found in that purpose section even though that purpose section was from a different statute and not found within RSA 162-H. The Subcommittee here cannot ignore the statement of public interest that was added to the purpose section of RSA 162-H:1 following the *Groton Wind* decision, particularly since RSA 162-H:1 is contained in the same statute as RSA 162-H:16, IV.

**III. The Decisions and Statutes Cited by Applicants do not Alter the Result Required by the Plain Text of RSA 162-H and its Legislative History.**

51. Applicants cite other New Hampshire statutes and decisions as examples of a public interest inquiry. Applicants' discussion of them is incomplete and fails to address factors that distinguish those statutes and decisions from RSA 162-H, and thus does not alter the necessary conclusion from the statutory text and legislative history discussed above.

**A. Other Statutes with a Public Interest Inquiry do not Demonstrate an Intent to Limit the SEC's Inquiry under RSA 162-H:16, IV(e).**

52. Applicants first reference other statutes that only inquire as to whether permission or authority would be for the public good or in the public interest, and argue that such statutes permit broader discretion than RSA 162-H:16, IV(e). By including the three other required findings, in addition to the public interest finding, Applicants contend that the "four-part test" in RSA 162-H:16 is more guided and constrained and therefore provides less discretion to the SEC. Mtn at 6-7. Applicants are incorrect as a matter of statutory interpretation.

53. RSA 162-H:16, IV broadly requires "due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits" before the SEC can "determine if issuance of a certificate will serve the objectives of this chapter." Those objectives are specifically laid out in RSA 162-H:1 and include the public interest analysis and its relevant factors.

54. In addition, RSA 162-H:16, IV requires the Subcommittee to make four separate findings "[i]n order to issue a certificate." Contrary to Applicants' assertion, one of those required findings mandates that the Subcommittee independently find that "[i]ssuance of a certificate will serve the public interest." RSA 162-H:16, IV(e). The fact that RSA 162-H:16, IV also requires three other required findings does not minimize any component of the separate public interest finding requirement.

55. The statutes cited by Applicants have similar requirements. Transfers pursuant to RSA 374:30 must not only meet the public good requirement of RSA 374:30, but they also must meet the various requirements set forth in RSA 374:32, which provides that “if the commission shall find that the public good so requires, such transfer, lease, or contract shall first be authorized by the vote of 2/3 of the shares of the capital stock of each of the interested corporations present and voting at meetings duly called to consider the subject; and all statutes regulating, protecting, and determining the rights of a dissenting stockholder of a railroad in the case of a lease or union with another railroad shall be applicable, and the rights of any stockholder of such corporation dissenting from such transfer, lease, or contract, if the same shall be authorized as above provided, shall be regulated, protected, and determined by such statutes.”

56. Similar to RSA 162-H:16, IV(a)-(c), RSA 374:32 sets forth additional independent requirements to the public good requirement of RSA 374:30, which do not eviscerate or minimize the public good test under RSA 374:30.

**B. Balancing Benefits and Impacts When Determining the Public Interest is Consistent with New Hampshire Case Law.**

57. Applicants cite *Grafton Cty. Elec. Light & Power Co. v. State* for the proposition that the public good “is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case.” 77 N.H. 539, 94 A. 193, 195 (1915). More relevant is *Grafton’s* explanation that “[t]he question of public good is not to be answered by looking only to the immediate interests of the public served by these companies, nor by a mere consideration of advantage to those who furnish the service. As before stated, *it is a question of what is reasonable taking all interests into consideration.*” *Id.* (emphasis added). Determining what is

a reasonable taking by considering *all* interests is precisely what the Legislature has directed the Subcommittee to do under RSA 162-H:1 and RSA 162-H:16, IV.

58. Applicants cite *Pinetree Power, Inc.* as an example of the New Hampshire Supreme Court rejecting a net benefits test. The “net benefit” test proposed in *Pinetree Power*, however, was a net economic benefit to rate payers test. *In re Pinetree Power, Inc.*, 152 N.H. 92, 97 (2005). The Court rejected that test because it was insufficiently broad, not because it was overly broad. *Id.* at 95, 97. The Court held that the “statutory scheme [at issue] support[ed] the conclusion that the ‘public interest’ of PSNH’s customers encompasses more than simply rates.” *Id.* at 97. The Court specifically considered expressed legislative purposes in relevant statutes and noted the expressed intention of the Legislature for “commitments to renewable energy resources [] to ‘be balanced against the impact on generation prices’ and can have ‘significant environmental, economic, and security benefits.’” *Id.* (quoting RSA 374-F:3, IX (Supp.2004)).<sup>6</sup>

59. The broad inquiry of all impacts and benefits called for by RSA 162-H:1 and RSA 162-H:16, IV is consistent with the approach taken by the Court in *Pinetree Power*. The Court’s rejection of a narrower “net benefits” test is essentially a rejection of Applicants’ attempted narrowing of the broad statutory directive found in RSA 162-H:16, IV(e).

### **CONCLUSION**

60. The text of the statute and its legislative history tie the public interest test found in RSA 162-H:16, IV(e) with the Declaration of Purpose set forth in RSA 162-H:1. Accordingly,

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<sup>6</sup> It is also noteworthy that the Court specifically lamented that “RSA 369-B:3—a does not define what constitutes the ‘public interest’ of PSNH’s retail customers,” and had to rely instead on the guidance of other “statutes governing utility restructuring.” *In re Pinetree Power, Inc.*, 152 N.H. at 96. By contrast, RSA 162-H:1 expressly states “the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire.” That definition of the “public interest” in RSA 162-H should be followed.

RSA 162-H:16, IV(e) requires that (at a minimum) the Subcommittee find that issuance of a certificate will “maintain a balance” between the potential impacts on and the benefits to these factors specifically set forth in RSA 162-H:1. The SEC has recognized this requirement. See N.H. CODE ADMIN. RULES Site 301.16. That Code provision includes the same impacts and benefits factors from RSA 162-H:1 and recognizes that all impacts and benefits to those factors must be considered when “determining whether a proposed energy facility will serve the public interest.” The Subcommittee’s ruling in its May 26, 2017 Order was therefore correct and rehearing or clarification of that order is not warranted.

WHEREFORE, Counsel for the Public respectfully requests that the Site Evaluation Subcommittee:

- A. Deny Applicants’ motion;
- B. Reject Applicants’ proffered interpretation of RSA 162-H and proposed public interest analysis to be undertaken by the Committee; and
- C. Grant such other relief as the Court deems just.

Respectfully submitted,

COUNSEL FOR THE PUBLIC,

By his attorneys,




Dated: July 6, 2017

By: Peter C.L. Roth, Senior Assistant Attorney General  
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PRIMMER PIPER EGGLESTON & CRAMER PC,

Dated: July 6, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing OBJECTION TO APPLICANTS' MOTION FOR CLARIFICATION AND/OR REHEARING ORDER ON MOTION TO STRIKE FORWARD NH PLAN has this day been forwarded via e-mail to persons named on the Distribution List of this docket.

Dated: July 6, 2017

By:

  
Thomas J. Pappas, Esq. (N.H. Bar No. 4111)

# EXHIBIT A



## SENATOR JEANIE FORRESTER

April 8, 2014

Dear Chairman Borden & Members of the Science, Technology and Energy Committee:

As you are aware, the Senate passed SB 245, relative to procedures and authority of the site evaluation committee. I believe New Hampshire citizens and energy developers deserve an energy facility siting process that serves them more effectively than the process currently in place under RSA 162-H.

In the coming years, the Site Evaluation Committee (SEC) will hear numerous complex proposals for energy facilities, each with its own specific impacts to our state's environment and quality of life. SB 245 presents a framework of reform that will help New Hampshire meet this challenge.

Last session the General Court enacted SB 99, mandating a stakeholder process to examine the Site Evaluation Committee (SEC) and the tools it has to serve the public and project developers as it goes about its work. That process, led by the Office of Energy and Planning, engaged the public, energy industry, state agencies, and the non-government organization community and culminated in a comprehensive report at the end of December, identifying a number of concerns about the structure of the SEC and how it functions and a number of potential solutions.

Many of the issues raised and solutions identified in the SB 99 report are addressed by SB 245, as amended, including four key reforms:

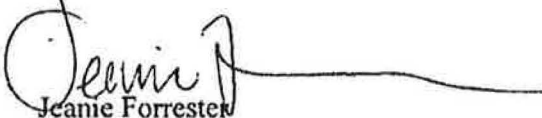
- **The amended bill mandates that the SEC make a finding that a proposed project serves the public interest**, after considering all environmental, social, and economic impacts and benefits. This is a workable, common-sense requirement that recognizes that, even in a restructured energy market, all major energy projects should provide a strong package of public benefits – whether for our natural resources, for ratepayers and businesses, for public health, or for the state's economy, or for all of the above – and that these benefits must be weighed against the projects' potential adverse impacts. Other states, including Maine and Vermont, have such a requirement, ensuring that the greater good of the state and its communities is weighed as part of every siting decision.
- **The amended bill reconstitutes the SEC with a more manageable, cost-effective panel that includes well qualified members from around the state, while ensuring appropriate input from state agencies.** The current structure and membership of the SEC is cumbersome and a burden to the 15 key state officials who presently serve, as well as to applicants and other participants trying to navigate through the process. The unreimbursed costs to the state and affected agencies of these officials' time is estimated to run to the

hundreds of thousands of dollars, and those costs will increase as additional project applications are filed in the coming years. Under the amended bill, the SEC will gain the time and expertise of members of the public with the experience and capacity to serve. At the same time, all of our state agencies will continue to play important roles as they will still be charged with providing input and expertise to SEC decision-makers, but without the awkward constraints and extraordinary time commitments that now apply.

- **The amended bill enhances public participation in the SEC process.** Under current law, the SEC must hold one public hearing in each county where the proposed project will be located. We do not feel that this requirement is adequate to ensure that the public is well-informed and engaged. The amended bill provides a logical schedule that ensures project developers inform the public of the details of a project both before and after a proposed project's voluminous application is filed at the SEC, providing a more meaningful opportunity for well-informed public comment on the specifics of an application at the public hearing and during the adjudicatory process.
- **The amended bill provides staff and financial resources for the SEC to do its job, funded by reasonable application fees and agency cost savings.** As demands on the SEC continue to grow in the coming years, it is unrealistic for the State of New Hampshire to expect important and long lasting energy siting decisions to be made rigorously and efficiently when the SEC itself has no permanent staff or financial resources to do its work. The amended bill authorizes the SEC to collect application fees and allows the reconstituted SEC to realize significant cost savings over the current structure. These resources will provide the technical and administrative foundation that the SEC desperately needs to make prompt, well-informed decisions, and to make sure that the conditions placed on permits are met and adequately enforced.

As energy markets change and mature, and as the market-based development of energy generation and transmission facilities provide the opportunity to meet our energy needs with innovative and cleaner resources, the process by which New Hampshire makes the critical decisions about the siting of such facilities must also change with the times. Public trust and confidence in the SEC and its decisions will be well served by adopting the reforms proposed in Senate Bill 245.

Sincerely,



Jeanie Forrester  
Chairman, Senate Finance  
NH State Senate  
District 2  
107 N Main Street  
Room 105  
Concord, NH 03301  
271-4980

# EXHIBIT B

SB 245-FN - AS INTRODUCED

2014 SESSION

14-2666  
06/03

SENATE BILL        **245-FN**

AN ACT            relative to procedures and authority of the site evaluation committee.

SPONSORS:        Sen. Forrester, Dist 2; Sen. Bradley, Dist 3; Sen. Woodburn, Dist 1;  
Sen. Fuller Clark, Dist 21; Rep. Vadney, Belk 2; Rep. Ladd, Graf 4;  
Rep. Suzanne Smith, Graf 8; Rep. Ford, Graf 3; Rep. G. Chandler, Carr 1

COMMITTEE:      Energy and Natural Resources

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ANALYSIS

This bill:

I. Adds to the duties of the site evaluation committee.

II. Modifies requirements for energy facility certificates.

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Explanation:      Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~(in brackets and struck through.)~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT relative to procedures and authority of the site evaluation committee.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1       1 Energy Facility Evaluation and Siting, Construction and Operation. Amend RSA 162-H:1 to  
2 read as follows:

3       162-H:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy  
4 facilities, including the routing of high voltage transmission lines and energy transmission pipelines,  
5 will have a significant impact upon the welfare of the population, the location and growth of  
6 industry, the overall economic growth of the state, the environment of the state, and the use of  
7 natural resources. Accordingly, the legislature finds that it is in the public interest to maintain a  
8 balance between the environment and the need for new energy facilities in New Hampshire; that  
9 undue delay in the construction of needed facilities be avoided and that full and timely consideration  
10 of environmental consequences be provided; that all entities planning to construct facilities in the  
11 state be required to provide full and complete disclosure to the public of such plans; and that the  
12 state ensure that the construction and operation of energy facilities is treated as a significant aspect  
13 of land-use planning in which all environmental, economic, and technical issues are ~~[resolved]~~  
14 *evaluated* in an integrated fashion, all to assure that the state has an adequate and reliable supply  
15 of energy in conformance with sound environmental principles. The legislature, therefore, hereby  
16 establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the  
17 planning, siting, construction, and operation of energy facilities.

18       2 Site Evaluation Committee; Duties. Amend RSA 162-H:4, I(a) to read as follows:

19               (a) Issue *or deny* any certificate under this chapter for an energy facility.

20       3 New Subparagraph; Site Evaluation Committee; Duties. Amend RSA 162-H:4, I by inserting  
21 after subparagraph (d) the following new subparagraph:

22               (e) Require the applicant to present alternatives, including but not limited to the burial  
23 of energy transmission facilities in publicly-owned transportation rights of way.

24       4 Application for Certificate. Amend RSA 162-H:7, VI-a to read as follows:

25               VI-a. Within ~~[30]~~ 60 days after acceptance of the application, the committee shall hold at  
26 least one public hearing in each county in which the proposed facility is to be located, in accordance  
27 with RSA 162-H:10.

28       5 New Paragraph; Application for Certificate. Amend RSA 162-H:7 by inserting after paragraph  
29 VI-e the following new paragraph:

30               VI-f. The committee shall require a one-time application fee which shall cover  
31 administrative costs borne by the state in reviewing the application.

**SB 245-FN - AS INTRODUCED**

**- Page 2 -**

1       **6 Public Hearings.** Amend RSA 162-H:10, I to read as follows:

2           I. Within [30] **60** days after acceptance of an application for a certificate of site and facility,  
3 pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one joint public hearing  
4 in each county in which the proposed facility is to be located and shall publish a public notice not less  
5 than 14 days before said hearing in one or more newspapers having a regular circulation in the  
6 county in which the hearing is to be held, describing the nature and location of the proposed  
7 facilities. The public hearings shall be joint hearings, with representatives of the other agencies that  
8 have jurisdiction over the subject matter and shall be deemed to satisfy all initial requirements for  
9 public hearings under statutes requiring permits relative to environmental impact. The hearings  
10 shall be for public information on the proposed facilities with the applicant presenting the  
11 information to the site evaluation committee and to the public. Notwithstanding any other provision  
12 of law, the hearing shall be a joint hearing with the other state agencies and shall be in lieu of all  
13 hearings otherwise required by any of the other state agencies; provided, however, if any of such  
14 other state agencies does not otherwise have authority to conduct hearings, it may not join in the  
15 hearing under this chapter; provided further, however, the ability or inability of any of the other  
16 state agencies to join shall not affect the composition of the committee under RSA 162-H:3 nor the  
17 ability of any member of the committee to act in accordance with this chapter.

18       **7 Effective Date.** This act shall take effect 60 days after its passage.

LBAO  
14-2666  
12/18/13

**SB 245-FN - FISCAL NOTE**

AN ACT                    relative to procedures and authority of the site evaluation committee.

**FISCAL IMPACT:**

The Department of Environmental Services states this bill, as introduced, may increase state restricted revenue by an indeterminable amount in FY 2014 and each year thereafter. There is no impact on county and local revenue, or state, county, and local expenditures.

**METHODOLOGY:**

The Department of Environmental Services states this bill allows the site evaluation committee to charge a one-time application fee to the applicant to cover the administrative costs of the State. The Department states, pursuant to RSA 162-H:7, VIII, agencies that may also require an application or permit related to the establishment of an energy facility are allowed to charge their usual statutory fees. The Department states these fees do not cover all administrative costs, such as staff time, that may be involved with an application under review by the site evaluation committee. The Department states the bill does not define administrative costs, indicate how much the fee will be, how it will be calculated or where the fee will be deposited. As a result, the Department is not able to predict how much additional revenue may result from this bill.

The Public Utilities Commission states this bill does not require any additional costs or revenues to the state, county or local governmental units.

# EXHIBIT C



Sen. Forrester, Dist. 2  
February 13, 2014  
2014-0568s  
06/05

Amendment to SB 245-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the siting of energy facilities.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 Energy Facility Evaluation and Siting, Construction and Operation. Amend RSA 162-H:1 to  
8 read as follows:

9 162-H:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy  
10 facilities, including the routing of high voltage transmission lines and energy transmission pipelines,  
11 will have a significant impact upon the welfare of the population, the location and growth of  
12 industry, the overall economic growth of the state, the environment of the state, and the use of  
13 natural resources. Accordingly, the legislature finds that it is in the public interest to maintain a  
14 balance between the environment and the ~~[need for]~~ **potential benefits** of new energy facilities in  
15 New Hampshire; that undue delay in the construction of ~~[needed]~~ facilities **that provide net public**  
16 **benefits** be avoided and that full and timely consideration of environmental consequences be  
17 provided; that all entities planning to construct facilities in the state be required to provide full and  
18 complete disclosure to the public of such plans; and that the state ensure that the construction and  
19 operation of energy facilities is treated as a significant aspect of land-use planning in which all  
20 environmental, economic, and technical issues are resolved in an integrated fashion, all to assure  
21 that the state ~~[has an]~~ **develops** adequate ~~[and]~~, reliable ~~[supply of energy]~~ **and cost-effective**  
22 **energy resources** in conformance with sound environmental principles. The legislature, therefore,  
23 hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance  
24 in the planning, siting, construction, and operation of energy facilities.

25 2 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation;  
26 Definitions; Participating State Agency. Amend RSA 162-H:2 by inserting after paragraph VIII the  
27 following new paragraph:

28 VIII-a. "Participating state agency" means each state agency having jurisdiction, under state  
29 or federal law, to regulate any aspect of the construction or operation of the energy facility.

30 3 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation;  
31 Definitions; Staff Director. Amend RSA 162-H:2 by inserting after paragraph XII the following new  
32 paragraph:

33 XIII. "Staff director" means the staff director of the committee established by this chapter.

34 4 Site Evaluation Committee. RSA 162-H:3 is repealed and reenacted to read as follows:

Amendment to SB 245-FN

- Page 2 -

1 162-H:3 Site Evaluation Committee.

2 I. The site evaluation committee shall consist of the commissioner of the department of  
3 environmental services, the commissioner of the department of resources and economic development  
4 the chairperson of the public utilities commission, one public member-at-large, and one local public  
5 member. The public member-at-large shall be a resident of the state and shall be appointed by the  
6 governor with the consent of the executive council for a term of 3 years. The local public member  
7 shall be appointed for each committee proceeding regarding an energy facility, shall be a resident of  
8 a municipality where such energy facility is located or is proposed to be located, and shall be  
9 appointed by the chairperson of the committee with input from governing bodies of the  
10 municipalities where such energy facility is located or is proposed to be located. The chairperson  
11 shall not designate a local public member for rulemaking or other proceedings not specific to an  
12 energy facility. The chairperson of the public utilities commission shall be chairperson of the  
13 committee, and the commissioner of the department of environmental services shall be vice-  
14 chairperson.

15 II. The public members of the committee shall not derive any significant portion of their  
16 income from persons applying for a certificate or, who are subject to any certificates, and shall not  
17 serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or  
18 contractual relationship with any person applying for a certificate or who is subject to any  
19 certificates granted by the committee. The public members shall receive no compensation except for  
20 mileage and other expenses incurred while performing duties of the committee that are chargeable to  
21 an applicant for a certificate under this chapter. Mileage shall be paid from committee funds at the  
22 rate set for state employees.

23 III. The committee shall appoint a staff director responsible for administration of  
24 proceedings before the committee and other committee business, for facilitating participation of the  
25 public, stakeholders, and municipalities in committee proceedings, and for assisting the chairperson  
26 of the committee. The staff director shall serve at the pleasure of the committee and shall be  
27 qualified by reason of professional competence, education, and experience. The committee shall  
28 submit a plan for appointing a staff director, including salary grade, a proposal for administrative  
29 attachment to an existing state agency, and one or more funding sources, to the governor and to the  
30 chairpersons of the house finance committee and the senate finance committee by September 1,  
31 2014. Such funding sources may include a state appropriation, an assessment on existing energy  
32 facilities, payments as conditions of certificates, or a combination thereof.

33 5 Powers of the Committee. Amend RSA 162-H:4, III and III-a to read as follows:

34 III. The committee may delegate the authority to monitor the construction or operation of  
35 any energy facility granted a certificate under this chapter to *the staff director or* such state  
36 agency or official represented on the committee as it deems appropriate, but, subject to RSA 162-  
37 H:10, it may not delegate authority to hold hearings, issue certificates, determine the terms and

Amendment to SB 245-FN

- Page 3 -

1 conditions of a certificate, or enforce a certificate. Any authorized representative or delegate of the  
2 committee shall have a right of entry onto the premises of any part of the energy facility to ascertain  
3 if the facility is being constructed or operated in continuing compliance with the terms and  
4 conditions of the certificate. During normal hours of business administration and on the premises of  
5 the facility, such a representative or delegate shall also have a right to inspect such records of the  
6 certificate-holder as are relevant to the terms or conditions of the certificate.

7 III-a. The committee may delegate to *the staff director* or an agency or official represented  
8 on the committee the authority to specify the use of any technique, methodology, practice, or  
9 procedure approved by the committee within a certificate issued under this chapter, or the authority  
10 to specify minor changes in the route alignment to the extent that such changes are authorized by  
11 the certificate for those portions of a proposed electric transmission line or energy transmission  
12 pipeline for which information was unavailable due to conditions which could not have been  
13 reasonably anticipated prior to the issuance of the certificate.

14 6 Powers of Committee. RSA 162-H:4, V is repealed and reenacted to read as follows:

15 V. Once an energy facility application has been accepted, the staff director may designate a  
16 hearing officer to hear and decide procedural matters that are before the committee, including  
17 procedural schedules, petitions for intervention, consolidation of parties with substantially similar  
18 interests, discovery schedules and motions, and identification of disputed issues for decision by the  
19 committee.

20 7 New Paragraph; Application for Certificate. Amend RSA 162-H:7 by inserting after paragraph  
21 I the following new paragraph:

22 I-a. At least 30 days prior to filing an application, an applicant for a certificate shall hold at  
23 least one information and listening session open to the public in a municipality where the energy  
24 facility is located or will be located. The applicant shall publish a public notice not less than 14 days  
25 before such session in one or more newspapers having a regular circulation in the county in which  
26 the session is to be held, describing the nature and location of the proposed facility. At such session,  
27 the applicant shall present information regarding the project and receive comments from the public.  
28 The applicant shall notify the chairperson of the committee in advance of the time and place of such  
29 session and arrange for a transcript of the session to be prepared.

30 8 Application for Certificate. Amend RSA 162-H:7, IV through VI-e to read as follows:

31 IV. Each application shall contain sufficient information to satisfy the application  
32 requirements of each state agency having jurisdiction, under state or federal law, to regulate any  
33 aspect of the construction or operation of the proposed facility, and shall include each agency's  
34 completed application forms. Upon the filing of an application, the committee shall expeditiously  
35 forward a copy to the *participating* state agencies [~~having jurisdiction~~] *and to other state*  
36 *agencies that may have comments or information requests regarding the application.* Upon  
37 receipt of a copy, each agency shall conduct a preliminary review to ascertain if the application

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1 contains sufficient information for its purposes. If the application does not contain sufficient  
2 information for the purposes of any of the *participating* state agencies ~~[having jurisdiction]~~, that  
3 agency shall, in writing, notify the committee of that fact and specify what information the applicant  
4 must supply; thereupon the committee shall provide the applicant with a copy of such notification  
5 and specification. Notwithstanding any other provision of law, for purposes of the time limitations  
6 imposed by this section, any application made under this section shall be deemed not accepted either  
7 by the committee or by any of the *participating* state agencies ~~[having jurisdiction]~~ if the applicant  
8 is seasonably notified that it has not supplied sufficient information for any of the *participating*  
9 state agencies having jurisdiction in accordance with this paragraph.

10 V. Each application shall also:

11 (a) Describe in reasonable detail the type and size of each major part of the proposed  
12 facility.

13 (b) Identify both the preferred choice and any other choices for the site of each major  
14 part of the proposed facility.

15 (c) Describe in reasonable detail the impact of each major part of the proposed facility on  
16 the environment for each site proposed.

17 (d) Describe in reasonable detail the applicant's proposals for studying and solving  
18 environmental problems.

19 (e) Describe in reasonable detail the applicant's financial, technical, and managerial  
20 capability for construction and operation of the proposed facility.

21 (f) Document that written notification of the proposed project, including appropriate  
22 copies of the application, has been given to the appropriate governing body of each community in  
23 which the facility is proposed to be located.

24 (g) *Provide the transcript of the pre-application information and listening*  
25 *session and a statement from the applicant regarding any changes made to the proposed*  
26 *project in response to such session.*

27 (h) *Present alternatives to the proposed facility, including overhead electric*  
28 *transmission lines and underground alternatives.*

29 (i) Provide such additional information as the committee may require to carry out the  
30 purposes of this chapter.

31 V-a. *Each application shall be accompanied by an application fee sufficient to*  
32 *cover the committee's costs with respect to that application for application processing,*  
33 *administration, public and municipal engagement and technical assistance, and hearing*  
34 *services. By order of the committee, the committee may establish a tiered fee schedule for*  
35 *projects of different geographic extent or energy capacity and may adjust such schedule*  
36 *from time to time.*

37 VI. The committee shall decide whether or not to accept the application within 60 days of

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1 filing. If the committee rejects an application because it determines it to be administratively  
2 incomplete, the applicant may choose to file a new and more complete application or cure the defects  
3 in the rejected application within 10 days of receipt of notification of rejection.

4 VI-a. Within 30 days after acceptance of the application, the committee shall hold at least  
5 one public ~~[hearing]~~ *information session* in each county in which the proposed facility is to be  
6 located, in accordance with RSA 162-H:10. *Within 30 days after the last public information*  
7 *session, the committee shall hold at least one public hearing in each county in which the*  
8 *proposed facility is to be located, in accordance with RSA 162-H:10.*

9 VI-b. All participating state agencies shall report their progress to the committee within 5  
10 months of the acceptance of the application, outlining draft permit conditions and specifying  
11 additional data requirements necessary to make a final decision.

12 VI-c. All participating state agencies shall make and submit to the committee a final  
13 decision on the parts of the application that relate to its jurisdiction, no later than 8 months after the  
14 application has been accepted.

15 VI-d. Within [9] *12* months of the acceptance of an application, the committee shall issue or  
16 deny a certificate for an energy facility.

17 VI-e. Notwithstanding any other provision of this chapter, the committee shall employ the  
18 time frames specified under RSA 162-H:6-a to any proposal for the upgrade of the transmission  
19 system considered part of the Coos county loop.

20 VI-f. *All state agencies that wish to provide input to the committee but are not*  
21 *participating state agencies shall submit any comments or requests for further information*  
22 *regarding the application within 90 days after acceptance of the application.*

23 VI-g. *For each application for a certificate, each participating state agency and each*  
24 *state agency otherwise providing input to the committee shall designate a staff liaison*  
25 *responsible for providing timely reports, comments, and submissions to the committee. The*  
26 *committee shall not consider untimely submissions from state agencies not having*  
27 *jurisdiction.*

28 9 Counsel for the Public. Amend RSA 132-H:9, I to read as follows:

29 I. Upon notification that an application for a certificate has been filed with the committee in  
30 accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a  
31 counsel for the public. The counsel shall represent the public in seeking to protect ~~[the quality of the~~  
32 ~~environment and in seeking to assure an adequate supply of energy]~~ *the interests of the state as a*  
33 *whole.* The counsel shall be accorded all the rights and privileges, and responsibilities of an  
34 attorney representing a party in formal action and shall serve until the decision to issue or deny a  
35 certificate is final.

36 10 Public Hearing; Studies; Rules. Amend RSA 162-H:10 to read as follows:

37 162-H:10 Public Hearing; Studies; Rules.

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1 I. Within 30 days after acceptance of an application for a certificate of site and facility,  
2 pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one ~~[joint]~~ public  
3 ~~[hearing]~~ *information session* in each county in which the proposed facility is to be located and  
4 shall publish a public notice not less than 14 days before said ~~[hearing]~~ session in one or more  
5 newspapers having a regular circulation in the county in which the hearing is to be held, describing  
6 the nature and location of the proposed facilities. *The session shall be for public information on*  
7 *the proposed facilities with the applicant presenting the information to the site evaluation*  
8 *committee and to the public.*

9 I-a. *Within 30 days after the last public information session pursuant to paragraph I,*  
10 *the site evaluation committee shall hold at least one joint public hearing in each county in*  
11 *which the proposed facility is to be located and shall publish a public notice not less than 14*  
12 *days before such session in one or more newspapers having a regular circulation in the*  
13 *county in which the hearing is to be held, describing the nature and location of the proposed*  
14 *facilities.* The public hearings shall be joint hearings, with representatives of the ~~[other agencies~~  
15 ~~that have jurisdiction over the subject matter]~~ *participating state agencies* and shall be deemed  
16 to satisfy all initial requirements for public hearings under statutes requiring permits relative to  
17 environmental impact. ~~[The hearings shall be for public information on the proposed facilities with~~  
18 ~~the applicant presenting the information to the site evaluation committee and to the public.]~~  
19 Notwithstanding any other provision of law, the hearing shall be a joint hearing with the other state  
20 agencies and shall be in lieu of all hearings otherwise required by any of the other state agencies;  
21 provided, however, if any of such other state agencies does not otherwise have authority to conduct  
22 hearings, it may not join in the hearing under this chapter; provided further, however, the ability or  
23 inability of any of the other state agencies to join shall not affect the composition of the committee  
24 under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this  
25 chapter.

26 II. Except for informational ~~[hearings]~~ *meetings*, subsequent hearings shall be in the nature  
27 of adjudicative proceedings under RSA 541-A and may be held in the county or one of the counties in  
28 which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site  
29 evaluation committee. The committee shall give adequate public notice of the time and place of each  
30 subsequent session. *In lieu of the full committee, a hearing officer designated by the staff*  
31 *director may preside at hearings concerning procedural matters before the committee and*  
32 *the identification of significant disputed issues for consideration by the full committee. The*  
33 *full committee shall preside at all hearings regarding the significant disputed issues*  
34 *identified by the hearing officer.*

35 III. The site evaluation committee shall consider and weigh all evidence presented at public  
36 hearings and shall consider and weigh written information and reports submitted to it by members  
37 of the public before, during, and subsequent to public hearings. The committee shall grant free



1 access to records and reports in its files to members of the public during normal working hours ~~[and]~~,  
2 shall permit copies of such records and reports to be made by interested members of the public at  
3 their expense, *and shall post all such records and reports regarding pending applications*  
4 *for certificates on a website.*

5 IV. The site evaluation committee shall require from the applicant whatever information it  
6 deems necessary to assist in the conduct of the hearings, and any investigation or studies it may  
7 undertake, and in the determination of the terms and conditions of any certificate under  
8 consideration.

9 V. The site evaluation committee and counsel for the public shall jointly conduct such  
10 reasonable studies and investigations as they deem necessary or appropriate to carry out the  
11 purposes of this chapter ~~[and may employ a consultant or consultants, legal counsel and other staff~~  
12 ~~in furtherance of the duties imposed by this chapter]~~, the cost of which shall be borne by the  
13 applicant in such amount as may be approved by the committee. The site evaluation committee and  
14 counsel for the public are further authorized to assess the applicant for all travel and related  
15 expenses associated with the processing of an application under this chapter.

16 V-a. *The site evaluation committee may use funds collected through application fees*  
17 *to employ a consultant or consultants, legal counsel, hearing officers, staff responsible for*  
18 *public and municipal engagement with committee matters, and other staff in furtherance of*  
19 *the duties imposed by this chapter.*

20 VI. The site evaluation committee shall issue such rules to administer this chapter,  
21 pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required.

22 VII. No later than January 1, 2015, the committee shall adopt rules, pursuant to RSA 541-A,  
23 relative to criteria for the siting of energy facilities, including specific criteria to be applied in  
24 determining if the requirements of RSA 162-H:16, IV(b) and (c) have been met by the applicant for a  
25 certificate of site and facility. Prior to the adoption of such rules, the office of energy and planning  
26 shall hire and manage one or more consultants to conduct a public stakeholder process to develop  
27 recommended regulatory criteria, which may include consideration of issues identified in attachment  
28 C of the 2008 final report of the state energy policy commission, as well as others that may be  
29 identified during the stakeholder process. The office of energy and planning shall submit a report  
30 based on the findings of the public stakeholder process to the committee by January 1, 2014.

31 11 Enforcement. Amend RSA 162-H:12, I to read as follows:

32 I. Whenever the committee, *or the staff director as designee*, determines that any term or  
33 condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the  
34 person holding the certificate of the specific violation and order the person to immediately terminate  
35 the violation. If, 15 days after receipt of the order, the person has failed or neglected to terminate  
36 the violation, the committee may suspend the person's certificate. Except for emergencies, prior to  
37 any suspension, the committee shall give written notice of its consideration of suspension and of its

1 reasons therefor and shall provide opportunity for a prompt hearing.

2 12 Informational Meetings. Amend RSA 162-H:15 to read as follows:

3 162-H:15 Informational Meetings. Upon request of the governing body of a community in which  
4 the proposed facility is to be located, or upon request of the committee, the applicant shall provide  
5 informational meetings to inform the public of the proposed project *in addition to the required*  
6 *information and listening sessions required by RSA 162-H:7 and RSA 162-H:10.*

7 13 Findings and Certificate Issued. Amend RSA 162-H:16, IV to read as follows:

8 IV. The site evaluation committee, after having considered available alternatives,  
9 *including reasonable alternative not described in the application*, and fully reviewed the  
10 environmental impact of the site or route, and other relevant factors bearing on whether the  
11 objectives of this chapter would be best served by the issuance of the certificate, must find that the  
12 site and facility:

13 (a) Applicant has adequate financial, technical, and managerial capability to assure  
14 construction and operation of the facility in continuing compliance with the terms and conditions of  
15 the certificate.

16 (b) Will not unduly interfere with the orderly development of the region with due  
17 consideration having been given to the views of ~~[municipal and]~~ regional planning commissions and  
18 municipal ~~[governing]~~ legislative bodies.

19 (c) Will not have an unreasonable adverse effect, *including unreasonable adverse*  
20 *cumulative effects*, on aesthetics, historic sites, air and water quality, the natural environment,  
21 and public health and safety.

22 (d) [Repealed.]

23 (e) *Will provide demonstrable net public benefits when considering the costs and*  
24 *benefits of the project to the environment, the New Hampshire economy, New Hampshire*  
25 *energy consumers, and the communities affected by the project, with such benefits reflected*  
26 *in enforceable conditions of the certificate.*

27 13 Findings and Certificate Issued. Amend RSA 162-H:16, VI to read as follows:

28 VI. A certificate of site and facility may contain such reasonable terms and conditions as the  
29 committee deems necessary and may provide for such reasonable monitoring procedures as may be  
30 necessary. Such certificates, when issued, shall be final and subject only to judicial review.

31 14 Repeal. The following are repealed:

32 I. RSA 162-H:6-a, relative to time frames for review of renewable energy facilities.

33 II. RSA 4-C:6, II(e) relative to energy facility evaluation committee.

34 III. RSA 162-H:7, VI-e, relative to upgrades of transmission systems that are part of the  
35 Coos county loop.

36 15 Effective Date. This act shall take effect 60 days after its passage.



# EXHIBIT D

Amendment to SB 245-FN

1 Amend the title of the bill by replacing it with the following:

2  
3 AN ACT relative to the siting of energy facilities.  
4

5 Amend the bill by replacing all after the enacting clause with the following:

6  
7 1 Energy Facility Evaluation and Siting, Construction and Operation. Amend RSA 162-H:1 to  
8 read as follows:

9 162-H:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy  
10 facilities, including the routing of high voltage transmission lines and energy transmission pipelines,  
11 ~~[will]~~ *may* have ~~[a]~~ significant ~~[impact upon]~~ *impacts and benefits on the following:* the welfare  
12 of the population, *property values*, the location and growth of industry, the overall economic growth  
13 of the state, the environment of the state, ~~[and]~~ *historic sites, aesthetics, air and water quality*,  
14 the use of natural resources, *and public health and safety*. Accordingly, the legislature finds that  
15 it is in the public interest to maintain a balance between ~~[the environment]~~ *those potential*  
16 *significant impacts* and the need for new energy facilities in New Hampshire; that undue delay in  
17 the construction of needed facilities be avoided and that full and timely consideration of  
18 environmental consequences be provided; that all entities planning to construct facilities in the state  
19 be required to provide full and complete disclosure to the public of such plans; and that the state  
20 ensure that the construction and operation of energy facilities is treated as a significant aspect of  
21 land-use planning in which all environmental, economic, and technical issues are resolved in an  
22 integrated fashion, all to assure that the state has an adequate and reliable supply of energy in  
23 conformance with sound environmental principles. The legislature, therefore, hereby establishes a  
24 procedure for the review, approval, monitoring, and enforcement of compliance in the planning,  
25 siting, construction, and operation of energy facilities.

26 2 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation;  
27 Definitions; Participating State Agency. Amend RSA 162-H:2 by inserting after paragraph VIII the  
28 following new paragraph:

29 VIII-a. "Participating state agency" means each state agency having regulatory or other  
30 jurisdiction over, or interest in, an energy facility, including any aspect of construction, operation, or  
31 impacts of such facility, or a state agency that is consulted by an applicant for an energy facility  
32 certificate.

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1       3 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation;  
2 Definitions; Staff Director. Amend RSA 162-H:2 by inserting after paragraph XII the following new  
3 paragraph:

4       XIII. "Staff director" means the staff director of the committee established by this chapter.

5       4 Site Evaluation Committee. RSA 162-H:3 is repealed and reenacted to read as follows:

6       162-H:3 Site Evaluation Committee Established.

7       I. There is hereby established a committee to be known as the New Hampshire site  
8 evaluation committee to evaluate petitions for certificates for site and facility, exemption from  
9 jurisdiction, and declaratory rulings; to oversee the operations of certificated facilities to ensure they  
10 are meeting the conditions of their certificates; to assist the public in understanding the  
11 requirements of this chapter; and to engage in rulemaking as needed.

12       II. The committee shall consist of 7 members, who shall be appointed by the governor, with  
13 the consent of the council, one of whom shall be designated as chairman by the governor. All  
14 members shall be residents of the state of New Hampshire. No committee member nor any member  
15 of his or her family shall receive income from energy facilities within the jurisdiction of the  
16 committee. All members shall refrain from ex parte communications regarding any matter pending  
17 before the committee. All members shall comply with RSA 15-A and RSA 15-B.

18       III. Members shall serve 4 year terms and until their successors are appointed and qualified,  
19 provided that, for the initial appointments, one shall be appointed to a one year term, 2 shall be  
20 appointed to 2 year terms, 2 shall be appointed to 3 year terms, and 2 shall be appointed to 4 year  
21 terms.

22       IV. Any member chosen to fill a vacancy occurring other than by expiration of term shall be  
23 appointed for the unexpired term of the member who is to be succeeded.

24       V. Three of the members shall be appointed based on geographic regions of the state such  
25 that one shall reside in Coos, Carroll, Grafton, or Belknap county; one shall reside in Sullivan,  
26 Cheshire, or Hillsborough county; and one shall reside in Merrimack, Strafford, or Rockingham  
27 county. The remaining 4 members shall be appointed based on their expertise or experience, to  
28 represent each of the following disciplines:

29           (a) Environmental protection or natural resource conservation, or both.

30           (b) Energy facility design, construction, operation, or management.

31           (c) Community and regional economic development.

32           (d) Regional planning.

33       VI. Five members of the committee shall constitute a quorum for the purpose of conducting  
34 the committee's business, with the exception of administrative actions which may be taken by the  
35 chairman, or designated presiding officer, or procedure rulings which may be made by a hearing  
36 officer.

37       VII. Any member of the committee may be removed by the governor and council for

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inefficiency, neglect of duty, or misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard.

VIII. The committee shall be administratively attached to the public utilities commission pursuant to RSA 21-G:10.

IX. Committee members shall be compensated at a per diem rate for any day involving more than 7 hours spent on committee matters and 1/2 the per diem rate for any day involving 7 hours or fewer spent on committee matters. The per diem rate shall be at a rate equal to the daily salary rate for a commissioner of the public utilities commission at the initial step.

X. The Chairman may:

(a) Serve as the chief executive of the committee.

(b) Delegate to other members the duties of presiding officer, as appropriate.

(c) Establish, with the consent of the panel, the budgetary requirements of the agency.

(d) Engage personnel in accordance with this chapter.

XI. Each application or petition shall be considered by the full committee. In the event that fewer than 5 members are available to sit, the governor shall appoint one or more alternates with the consent of the executive council.

XII. The committee shall have a full time staff director who, with committee approval, may engage additional technical, legal, or administrative support to fulfill the functions of the committee as necessary.

5 New Section; Staff Director. Amend RSA 162-H by inserting after section 3 the following new section:

162-H:3-a Staff Director. The site evaluation committee shall establish the position of staff director. The staff director shall be a classified state employee at labor grade 34. The salary of the staff director shall be paid from the site evaluation committee fund established in RSA 162-H:21.

6 Powers of the Committee. Amend RSA 162-H:4, III and III-a to read as follows:

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate under this chapter to *the staff director or* such state agency or official represented on the committee as it deems appropriate, but, subject to RSA 162-H:10, it may not delegate authority to hold hearings, issue certificates, determine the terms and conditions of a certificate, or enforce a certificate. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.

III-a. The committee may delegate to *the staff director or* an agency or official represented on the committee the authority to specify the use of any technique, methodology, practice, or

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1 procedure approved by the committee within a certificate issued under this chapter, or the authority  
2 to specify minor changes in the route alignment to the extent that such changes are authorized by  
3 the certificate for those portions of a proposed electric transmission line or energy transmission  
4 pipeline for which information was unavailable due to conditions which could not have been  
5 reasonably anticipated prior to the issuance of the certificate.

6 7 Powers of Committee. RSA 162-H:4, V is repealed and reenacted to read as follows:

7 V. Once an energy facility application has been accepted, the staff director may designate a  
8 hearing officer to hear and decide procedural matters that are before the committee, including  
9 procedural schedules, petitions for intervention, consolidation of parties with substantially similar  
10 interests, discovery schedules and motions, and identification of disputed issues for decision by the  
11 committee.

12 8 New Paragraph; Application for Certificate. Amend RSA 162-H:7 by inserting after paragraph  
13 I the following new paragraph:

14 I-a. At least 30 days prior to filing an application, an applicant for a certificate shall hold at  
15 least one public information session open to the public in a municipality where the energy facility is  
16 located or will be located. The applicant shall publish a public notice not less than 14 days before  
17 such session in one or more newspapers having a regular circulation in the county in which the  
18 session is to be held, describing the nature and location of the proposed facility. At such session, the  
19 applicant shall present information regarding the project and receive comments from the public. The  
20 applicant shall notify the chairperson of the committee in advance of the time and place of such  
21 session and arrange for a transcript of the session to be prepared.

22 9 Application for Certificate. Amend RSA 162-H:7, IV through VI-e to read as follows:

23 IV. Each application shall contain sufficient information to satisfy the application  
24 requirements of each state agency having jurisdiction, under state or federal law, to regulate any  
25 aspect of the construction or operation of the proposed facility, and shall include each agency's  
26 completed application forms. Upon the filing of an application, the committee shall expeditiously  
27 forward a copy to the *participating* state agencies ~~[having-jurisdiction]~~ *and to other state*  
28 *agencies that may have comments or information requests regarding the application.* Upon  
29 receipt of a copy, each agency shall conduct a preliminary review to ascertain if the application  
30 contains sufficient information for its purposes. If the application does not contain sufficient  
31 information for the purposes of any of the *participating* state agencies ~~[having-jurisdiction]~~, that  
32 agency shall, in writing, notify the committee of that fact and specify what information the applicant  
33 must supply; thereupon the committee shall provide the applicant with a copy of such notification  
34 and specification. Notwithstanding any other provision of law, for purposes of the time limitations  
35 imposed by this section, any application made under this section shall be deemed not accepted either  
36 by the committee or by any of the *participating* state agencies ~~[having-jurisdiction]~~ if the applicant  
37 is ~~[seasonably]~~ *reasonably* notified that it has not supplied sufficient information for any of the

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1 *participating* state agencies having jurisdiction in accordance with this paragraph.

2 V. Each application shall also:

3 (a) Describe in reasonable detail the type and size of each major part of the proposed  
4 facility.

5 (b) Identify both the preferred choice and any other choices for the site of each major  
6 part of the proposed facility.

7 (c) Describe in reasonable detail the impact of each major part of the proposed facility on  
8 the environment for each site proposed.

9 (d) Describe in reasonable detail the applicant's proposals for studying and solving  
10 environmental problems.

11 (e) Describe in reasonable detail the applicant's financial, technical, and managerial  
12 capability for construction and operation of the proposed facility.

13 (f) Document that written notification of the proposed project, including appropriate  
14 copies of the application, has been given to the appropriate governing body of each community in  
15 which the facility is proposed to be located.

16 (g) *Provide the transcript of the pre-application public information session and*  
17 *a statement from the applicant regarding any changes made to the proposed project in*  
18 *response to such session.*

19 (h) *In the case of projects proposing overhead transmission facilities, present*  
20 *underground alternatives and site alternatives.*

21 (i) Provide such additional information as the committee may require to carry out the  
22 purposes of this chapter.

23 *V-a. Each application shall be accompanied by an application fee under RSA 162-*  
24 *H:21, II.*

25 VI. The committee shall decide whether or not to accept the application within 60 days of  
26 filing. If the committee rejects an application because it determines it to be administratively  
27 incomplete, the applicant may choose to file a new and more complete application or cure the defects  
28 in the rejected application within 10 days of receipt of notification of rejection.

29 VI-a. Within 30 days after acceptance of the application, the committee shall hold at least  
30 one public ~~hearing~~ *information session* in each county in which the proposed facility is to be  
31 located, in accordance with RSA 162-H:10. *Within 30 days after the last public information*  
32 *session, the committee shall hold at least one public hearing in each county in which the*  
33 *proposed facility is to be located, in accordance with RSA 162-H:10.*

34 VI-b. All participating state agencies shall report their progress to the committee within [~~5~~  
35 ~~months~~] *150 days* of the acceptance of the application, outlining draft permit conditions and  
36 specifying additional data requirements necessary to make a final decision.

37 VI-c. All participating state agencies shall make and submit to the committee a final

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1 decision on the parts of the application that relate to its jurisdiction, no later than ~~[8-months]~~ 240  
2 days after the application has been accepted.

3 VI-d. Within ~~[9-months]~~ 365 days of the acceptance of an application, the committee shall  
4 issue or deny a certificate for an energy facility.

5 VI-e. Notwithstanding any other provision of this chapter, the committee shall employ the  
6 time frames specified under RSA 162-H:6-a to any proposal for the upgrade of the transmission  
7 system considered part of the Coos county loop.

8 VI-f. All state agencies not having regulatory jurisdiction that elect to be  
9 participating state agencies shall comply with the provisions of RSA 162-H:7-a.

10 VI-g. For each application for a certificate, each participating state agency and each  
11 state agency otherwise providing input to the committee shall designate a staff liaison  
12 responsible for providing timely reports, comments, and submissions to the committee.

13 10 New Section; Role of State Agencies. Amend RSA 162-H by inserting after section 7 the  
14 following new section:

15 162-H:7-a Role of Participating State Agencies.

16 I. Participating state agencies shall participate in committee proceedings as follows:

17 (a) Receive proposals or permit requests within the agency's jurisdiction, expertise, or  
18 both; determine completeness of elements required for their permitting or other programs; and  
19 report on such issues to the committee;

20 (b) Review proposals or permit requests and submit recommended draft permit terms  
21 and conditions to the committee;

22 (c) Identify issues of concern on the proposal or permit request or notify the committee  
23 that the application raises no issues of concern;

24 (d) For those agencies identifying issues of concern, appear before the committee at a  
25 hearing to provide input and answer questions of parties and committee members; and

26 (e) Review and comment on proposed certificate conditions or rulings to confirm the  
27 proposed rulings are in conformity with the laws and regulations applicable to the project and state  
28 whether they conclude that the certificate or ruling is appropriate in light of their respective  
29 statutory responsibilities.

30 II. The commissioner or director of each participating agency shall advise the chairperson of  
31 the name of the individual on the participating agency staff designated to be the participating  
32 agency representative on the docket for each docketed proceeding. The committee chairman may  
33 request the attendance of an agency's designated representative or designee at a session of the  
34 committee if that person's availability could materially assist the committee in its examination or  
35 consideration of a matter.

36 III. All communications between the committee and participating agencies regarding a  
37 pending committee matter shall be included in the official record and be publicly available.



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1 IV. Each participating agency has the right to rehearing and appeal of a certificate or other  
2 decision of the committee.

3 11 Counsel for the Public. Amend RSA 162-H:9, I to read as follows:

4 I. Upon notification that an application for a certificate has been filed with the committee in  
5 accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a  
6 counsel for the public. The counsel shall represent the public in seeking to ~~[protect the quality of the~~  
7 ~~environment and in seeking to assure an adequate supply of energy]~~ *assure that the committee*  
8 *has acquired all necessary information to make its decision and has fulfilled all other*  
9 *requirements of this chapter.* The counsel shall be accorded all the rights and privileges, and  
10 responsibilities of an attorney representing a party in formal action and shall serve until the decision  
11 to issue or deny a certificate is final.

12 12 Public Hearing; Studies; Rules. Amend RSA 162-H:10 to read as follows:

13 162-H:10 Public Hearing; Studies; Rules.

14 I. Within 30 days after acceptance of an application for a certificate of site and facility,  
15 pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one ~~[joint]~~ public  
16 ~~[hearing]~~ *information session* in each county in which the proposed facility is to be located and  
17 shall publish a public notice not less than 14 days before said ~~[hearing]~~ *session* in one or more  
18 newspapers having a regular circulation in the county in which the hearing is to be held, describing  
19 the nature and location of the proposed facilities. *The session shall be for public information on*  
20 *the proposed facilities with the applicant presenting the information to the site evaluation*  
21 *committee and to the public.*

22 *I-a. Within 30 days after the last public information session pursuant to paragraph I,*  
23 *the site evaluation committee shall hold at least one joint public hearing in each county in*  
24 *which the proposed facility is to be located and shall publish a public notice not less than 14*  
25 *days before such session in one or more newspapers having a regular circulation in the*  
26 *county in which the hearing is to be held, describing the nature and location of the proposed*  
27 *facilities.* The public hearings shall be joint hearings, with representatives of the ~~[other agencies~~  
28 ~~that have jurisdiction over the subject matter]~~ *participating state agencies* and shall be deemed  
29 to satisfy all initial requirements for public hearings under statutes requiring permits relative to  
30 environmental impact. ~~[The hearings shall be for public information on the proposed facilities with~~  
31 ~~the applicant presenting the information to the site evaluation committee and to the public.]~~  
32 Notwithstanding any other provision of law, the hearing shall be a joint hearing with the other state  
33 agencies and shall be in lieu of all hearings otherwise required by any of the other state agencies;  
34 provided, however, if any of such other state agencies does not otherwise have authority to conduct  
35 hearings, it may not join in the hearing under this chapter; provided further, however, the ability or  
36 inability of any of the other state agencies to join shall not affect the composition of the committee  
37 under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this



1 chapter.

2 II. Except for informational [hearings] *meetings*, subsequent hearings shall be in the nature  
3 of adjudicative proceedings under RSA 541-A and may be held in the county or one of the counties in  
4 which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site  
5 evaluation committee. The committee shall give adequate public notice of the time and place of each  
6 subsequent session. *In lieu of the full committee, a hearing officer designated by the staff*  
7 *director may preside at hearings concerning procedural matters before the committee and*  
8 *the identification of significant disputed issues for consideration by the full committee. The*  
9 *full committee shall preside at all hearings regarding the significant disputed issues*  
10 *identified by the hearing officer.*

11 III. The site evaluation committee shall consider and weigh all evidence presented at public  
12 hearings and shall consider and weigh written information and reports submitted to it by members  
13 of the public before, during, and subsequent to public hearings. The committee shall grant free  
14 access to records and reports in its files to members of the public during normal working hours [and],  
15 shall permit copies of such records and reports to be made by interested members of the public at  
16 their expense, *and shall post all such records and reports regarding pending applications*  
17 *for certificates on a website.*

18 IV. The site evaluation committee shall require from the applicant whatever information it  
19 deems necessary to assist in the conduct of the hearings, and any investigation or studies it may  
20 undertake, and in the determination of the terms and conditions of any certificate under  
21 consideration.

22 V. The site evaluation committee and counsel for the public shall jointly conduct such  
23 reasonable studies and investigations as they deem necessary or appropriate to carry out the  
24 purposes of this chapter [~~and may employ a consultant or consultants, legal counsel and other staff~~  
25 ~~in furtherance of the duties imposed by this chapter~~], the cost of which shall be borne by the  
26 applicant in such amount as may be approved by the committee. The site evaluation committee and  
27 counsel for the public are further authorized to assess the applicant for all travel and related  
28 expenses associated with the processing of an application under this chapter.

29 *V-a. The site evaluation committee may use funds collected through application fees*  
30 *to employ a consultant or consultants, legal counsel, hearing officers, staff responsible for*  
31 *public and municipal engagement with committee matters, and other staff in furtherance of*  
32 *the duties imposed by this chapter.*

33 VI. The site evaluation committee shall issue such rules to administer this chapter,  
34 pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required.

35 VII. No later than January 1, 2015, the committee shall adopt rules, pursuant to RSA 541-A,  
36 relative to criteria for the siting of energy facilities, including specific criteria to be applied in  
37 determining if the requirements of RSA 162-H:16, IV(b) and (c) have been met by the applicant for a

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1 certificate of site and facility. Prior to the adoption of such rules, the office of energy and planning  
2 shall hire and manage one or more consultants to conduct a public stakeholder process to develop  
3 recommended regulatory criteria, which may include consideration of issues identified in attachment  
4 C of the 2008 final report of the state energy policy commission, as well as others that may be  
5 identified during the stakeholder process. The office of energy and planning shall submit a report  
6 based on the findings of the public stakeholder process to the committee by January 1, 2014.

7 13 Enforcement. Amend RSA 162-H:12, I to read as follows:

8 I. Whenever the committee, *or the staff director as designee*, determines that any term or  
9 condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the  
10 person holding the certificate of the specific violation and order the person to immediately terminate  
11 the violation. If, 15 days after receipt of the order, the person has failed or neglected to terminate  
12 the violation, the committee may suspend the person's certificate. Except for emergencies, prior to  
13 any suspension, the committee shall give written notice of its consideration of suspension and of its  
14 reasons therefor and shall provide opportunity for a prompt hearing.

15 14 Informational Meetings. Amend RSA 162-H:15 to read as follows:

16 162-H:15 Informational Meetings. Upon request of the governing body of a community in which  
17 the proposed facility is to be located, or upon request of the committee, the applicant shall provide  
18 informational meetings to inform the public of the proposed project *in addition to the required*  
19 *public information sessions required by RSA 162-H:7 and RSA 162-H:10.*

20 15 Findings and Certificate Issued. Amend RSA 162-H:16, IV to read as follows:

21 IV. The site evaluation committee, after having considered available alternatives,  
22 *including reasonable alternative not described in the application*, and fully reviewed the  
23 environmental impact of the site or route, and other relevant factors bearing on whether the  
24 objectives of this chapter would be best served by the issuance of the certificate, must find that ~~the~~  
25 ~~site and facility~~:

26 (a) *The* applicant has adequate financial, technical, and managerial capability to assure  
27 construction and operation of the facility in continuing compliance with the terms and conditions of  
28 the certificate.

29 (b) *The site and facility* will not unduly interfere with the orderly development of the  
30 region with due consideration having been given to the views of ~~municipal and~~ regional planning  
31 commissions and municipal ~~governing~~ *legislative* bodies.

32 (c) *The site and facility* will not have an unreasonable adverse effect, *including*  
33 *unreasonable adverse cumulative effects*, on aesthetics, historic sites, air and water quality, the  
34 natural environment, and public health and safety.

35 (d) [Repealed.]

36 (e) *The site and facility will serve the public interest when taking into account:*

1                   (1) *The net environmental effects of the facility, considering both beneficial*  
2 *and adverse effects.*

3                   (2) *The net economic effects of the facility, including but not limited to costs*  
4 *and benefits to energy consumers, property owners, state and local tax revenues,*  
5 *employment opportunities, and local and regional economies.*

6                   (3) *Whether construction and operation of the facility will be consistent with*  
7 *federal, regional, state, and local policies.*

8                   (4) *Whether the facility as proposed is consistent with municipal master*  
9 *plans and land use regulations pertaining to (i) natural, historic, scenic, cultural*  
10 *resources and (ii) public health and safety, air quality, economic development, and energy*  
11 *resources.*

12                   (5) *Such additional public interest considerations as may be deemed*  
13 *pertinent by the committee.*

14                   (f) *The site and facility will be consistent with the state energy strategy*  
15 *established in RSA 4-E:1.*

16           16 New Sections; Fees; Applicability; Transitional Responsibilities. Amend RSA 162-H by  
17 inserting after section 20 the following new sections:

18           162-H:21 Fund Established; Fees.

19           I. There is hereby established in the office of the state treasurer a nonlapsing fund to be  
20 known as the site evaluation committee fund. All moneys in such fund shall be continually  
21 appropriated to the site evaluation committee for the purposes of the committee. The fund shall be  
22 established with an advance from the renewable energy fund established in RSA 362-F:10 in an  
23 amount not to exceed \$500,000. Repayment of the initial renewable energy fund advance shall be  
24 made over time, whenever the site evaluation committee fund shall exceed 2 years of committee  
25 operations.

26           II. Any entity seeking an application for a certificate of site and facility, an amendment to a  
27 certificate of site and facility, a ruling for exemption from the committee's requirements, or a  
28 declaratory or other ruling shall be accompanied by an application fee. The application fee shall be  
29 paid upon filing. Application fees shall be established by the committee through rules, based on a  
30 number of factors, including but not limited to:

31                   (a) Nameplate capacity.

32                   (b) Capacity and length of transmission lines or pipelines.

33                   (c) Capacity for processing fuels.

34                   (d) Anticipated time required before the committee for the application or petition to be  
35 acted upon.

36           III. An annual operating fee shall be assessed on all energy facilities as defined by RSA 162-  
37 H:2, VII that are currently operating within the state. The formula for the assessment of the

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operating fee shall be set forth in administrative rules. The operating fee shall collect sufficient revenues to enable the committee to oversee and ensure compliance with respect to all such facilities, and shall be available to the committee to hear and consider all applications or petitions filed with the committee.

IV. All fees shall be deposited to the site evaluation committee fund. The site evaluation committee fund shall always maintain a balance sufficient to cover 2 years of committee operations. The committee may waive assessments of operating fees if the balance of the site evaluation committee fund is sufficient in the view of the committee to meet committee needs in the next biennium.

162-H:22 Applicability.

I. The provisions of this chapter shall apply to any application or petitions received on or after June 1, 2014.

II. Matters pending prior to July 1, 2014 shall be governed by the standards in place prior to the enactment of this section and shall be addressed by the committee in effect at the time the matters were filed.

III. The committee in existence prior to July 1, 2014 shall cease to exist when all matters pending as of July 1, 2014 have been resolved, through ruling on requests for rehearing or reconsideration.

162-H:23 Transitional Responsibilities. Any matter filed after June 1, 2014 shall be reviewed by the committee; all time frames shall be tolled until the committee is established and staffed.

17 Repeal. The following are repealed:

I. RSA 162-H:6-a, relative to time frames for review of renewable energy facilities.

II. RSA 4-C:6, II(e), relative to energy facility evaluation committee.

III. RSA 162-H:7, VI-e, relative to upgrades of transmission systems that are part of the Coos county loop.

18 Effective Date. This act shall take effect July 1, 2014.

# EXHIBIT E

Senate Finance

March 20, 2014

2014-1125s

06/01

Amendment to SB 245-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Energy Evaluation and Siting. RSA 162-H:1 is repealed and reenacted to read as follows:

162-H:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy facilities, including the routing of high voltage transmission lines and energy transmission pipelines, may have significant impacts and benefits on the following: the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety. Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in the siting, construction and operation of new energy facilities in New Hampshire; that undue delay in the construction of new energy facilities be avoided and that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion, all to assure that new energy facilities are sited, constructed, and operated in conformance with sound environmental principles. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

2 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Administrator. Amend RSA 162-H:2 by inserting after paragraph I the following new paragraph:

I-a. "Administrator" means the administrator of the committee established by this chapter.

3 Site Evaluation Committee. RSA 162-H:3 is repealed and reenacted to read as follows:

I. There is hereby established a committee to be known as the New Hampshire site evaluation committee to evaluate applications for certificates of site and facility and

petitions for exemption from jurisdiction and declaratory rulings; to oversee the operations of certificated facilities to ensure they are meeting the conditions of their certificates; to assist the public in understanding the requirements of this chapter; and to engage in rulemaking as needed. The committee shall consist of 9 members, as follows:

(a) The commissioners of the public utilities commission, the chairman of which shall be the chairman of the committee;

(b) The commissioner of the department of environmental services, who shall be the vice-chairman of the committee;

(c) The commissioner of the department of resources and economic development;

(d) The commissioner of the department of transportation;

(e) The director of the division of historic resources; and

(f) Two members of the public, appointed by the governor, with the consent of the council, at least of one of whom shall be an attorney licensed to practice in New Hampshire, and both of whom shall be residents of the state of New Hampshire with expertise or experience in one or more of the following areas: public deliberative or adjudicative proceedings; business management; environmental protection; natural resource protection; energy facility design, construction, operation, or management; or community and regional planning or economic development.

II. The public members shall serve 4 year terms and until their successors are appointed and qualified. Any public member chosen to fill a vacancy occurring other than by expiration of term shall be appointed for the unexpired term of the member who is to be succeeded.

III. No public member nor any member of his or her family shall receive income from energy facilities within the jurisdiction of the committee. The public members shall comply with RSA 15-A and RSA 15-B.

IV. All members shall refrain from ex parte communications regarding any matter pending before the committee.

V. Seven members of the committee shall constitute a quorum for the purpose of conducting the committee's business, with the exception of administrative actions that may be taken by the chairman or designee as presiding officer, or procedural rulings that may be made by a hearing officer.

VI. Any public member of the committee may be removed by the governor and council for inefficiency, neglect of duty, or misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard.

VII. The committee shall be administratively attached to the public utilities commission

pursuant to RSA 21-G:10.

VIII. Public members of the committee shall be compensated at on a pro rata basis, based upon a rate equal to the daily salary rate for a commissioner of the public utilities commission at the initial step.

IX. The chairman may:

- (a) Serve as the chief executive of the committee.
- (b) Delegate to other members the duties of presiding officer, as appropriate.
- (c) Establish, with the consent of the committee, the budgetary requirements of the committee.
- (d) Engage personnel in accordance with this chapter.

X. The committee may exercise its powers through subcommittees of no fewer than 7 members established at any time by the chairperson. The 2 public members shall serve on each subcommittee so established. The remaining 5 or more members shall be selected from among the members of the committee, or their designees, including the senior administrator positions of the department of environmental services, the public utilities commission, the department of resources and economic development, division of historic resources, and the department of transportation. At least one member of a subcommittee shall be an attorney licensed to practice in New Hampshire. For purposes of statutory interpretation and executing the regulatory functions of this chapter, the subcommittee shall assume the role and be considered the committee, with all of its associated powers and duties. Five members of the subcommittee shall constitute a quorum for the purpose of conducting the committee's business, with the exception of administrative actions that may be taken by the chairperson of the subcommittee or designee as presiding officer, or procedural rulings that may be made by a hearing officer.

4 New Section; Site Evaluation Committee; Administrator. Amend RSA 162-H by inserting after section 3 the following new section:

162-H:3-a Administrator. The site evaluation committee may establish the position of administrator. The administrator shall be a classified state employee at labor grade 34, or an independent consultant, hired at the discretion of the chairperson through a competitive bid process. The salary of the administrator shall be paid from the site evaluation committee fund established in RSA 162-H:21. The administrator, with committee approval, may engage additional technical, legal, or administrative support to fulfill the functions of the committee as necessary.

5 Powers of the Committee. Amend RSA 162-H:4, III and III-a to read as follows:

III. The committee may delegate the authority to monitor the construction or operation of



any energy facility granted a certificate under this chapter to *the administrator or* such state agency or official ~~[represented on the committee]~~ as it deems appropriate, but, subject to RSA 162-H:10, it may not delegate authority to ~~[hold hearings,]~~ issue certificates, determine the terms and conditions of a certificate, or enforce a certificate. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.

III-a. The committee may delegate to ~~[an]~~ *the administrator or such state* agency or official ~~[represented on the committee]~~ *as it deems appropriate* the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter, or the authority to specify minor changes in the route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

6 Powers of Committee. RSA 162-H:4, V is repealed and reenacted to read as follows:

V. Once an energy facility application has been accepted, the administrator may designate a hearing officer to hear and decide procedural matters that are before the committee, including procedural schedules, petitions for intervention, consolidation of parties with substantially similar interests, discovery schedules and motions, and identification of significant disputed issues for hearing and decision by the committee.

7 Application for Certificate. Amend RSA 162-H:7, IV and V to read as follows:

IV. Each application shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency's completed application forms. Upon the filing of an application, the committee shall expeditiously forward a copy to the state agencies having jurisdiction *and to other state agencies identified in committee rules*. Upon receipt of a copy, each agency shall conduct a preliminary review to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of the state agencies having jurisdiction, that agency shall, in writing, notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by this section, any application made under this section shall be deemed not accepted either by the committee or by any of the state agencies having jurisdiction if the applicant is ~~[seasonably]~~ *reasonably* notified that it has not supplied sufficient information for any of the state agencies having jurisdiction in

accordance with this paragraph.

V. Each application shall also:

- (a) Describe in reasonable detail the type and size of each major part of the proposed facility.
- (b) Identify both the *applicant's* preferred choice and ~~[any other choices]~~ *other alternatives it considers available* for the site *and configuration* of each major part of the proposed facility, *and the reasons supporting the applicant's preferred choice.*
- (c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment for each site proposed.
- (d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems.
- (e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility.
- (f) Document that written notification of the proposed project, including appropriate copies of the application, has been given to the appropriate governing body of each community in which the facility is proposed to be located.
- (g) Provide such additional information as the committee may require to carry out the purposes of this chapter.

8 Application for Certificate. Amend RSA 162-H:7, VI-a through VI-d to read as follows:

VI-a. ~~[Within 30 days after acceptance of the application, the committee shall hold at least one public hearing in each county in which the proposed facility is to be located,]~~  
***Public information sessions shall be held*** in accordance with RSA 162-H:10.

VI-b. All ~~[participating]~~ state agencies ***having jurisdiction*** shall report their progress to the committee within ~~[5 months]~~ ***150 days*** of the acceptance of the application, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision ***on the parts of the application that relate to its jurisdiction.***

VI-c. All ~~[participating]~~ state agencies ***having jurisdiction*** shall make and submit to the committee a final decision on the parts of the application that relate to its jurisdiction, no later than ~~[8 months]~~ ***240 days*** after the application has been accepted.

VI-d. Within ~~[9 months]~~ ***365 days*** of the acceptance of an application, the committee shall issue or deny a certificate for an energy facility.

9 New Section; Role of State Agencies. Amend RSA 162-H by inserting after section 7 the

following new section:

**162-H:7-a Role of State Agencies.**

**I. State agencies having jurisdiction may participate in committee proceedings as follows:**

- (a) Receive proposals or permit requests within the agency's jurisdiction, expertise, or both; determine completeness of elements required for such agency's permitting or other programs; and report on such issues to the committee;
- (b) Review proposals or permit requests and submit recommended draft permit terms and conditions to the committee;
- (c) Identify issues of concern on the proposal or permit request or notify the committee that the application raises no issues of concern;
- (d) When issues of concern are identified, appear before the committee at a hearing to provide input and answer questions of parties and committee members; and
- (e) Review and comment on proposed certificate conditions or rulings to confirm that such conditions or rulings are in conformity with the laws and regulations applicable to the project and state whether the conditions or rulings are appropriate in light of the agency's statutory responsibilities.

**II. When initiating a proceeding for a committee matter, the committee shall expeditiously notify state agencies having jurisdiction or that are identified in committee rules.**

**III. Within 30 days of receipt of a notification of proceeding, a state agency not having jurisdiction but wishing to participate in the proceeding shall advise the chairperson of the committee.**

**IV. The commissioner or director of each state agency that intends to participate in a committee proceeding shall advise the chairperson of the name of the individual on the agency's staff designated to be the agency liaison for the proceeding. The committee chairman may request the attendance of an agency's designated liaison or designee at a session of the committee if that person's availability could materially assist the committee in its examination or consideration of a matter.**

**V. All communications between the committee and participating agencies regarding a pending committee matter shall be included in the official record and be publicly available.**

**VI. A state agency may intervene as a party in any committee proceeding in the same manner as other persons under RSA 541-A. An intervening agency shall have the right to rehearing and appeal of a certificate or other decision of the committee.**

**10 Public Hearing; Information Sessions; Studies; Rules. Amend RSA 162-H:10 to read**

as follows:

162-H:10 Public Hearing; Studies; Rules.

***I. At least 30 days prior to filing an application for a certificate of site and facility, an applicant shall hold at least one public information session open to the public in each county where the proposed facility is to be located and shall publish a public notice not less than 14 days before such session in one or more newspapers having a regular circulation in the county in which the session is to be held, describing the nature and location of the proposed facilities. At such session, the applicant shall present information regarding the project and receive comments from the public. Not less than 10 days before said session, the applicant shall provide a copy of the public notice to the chairman of the committee. The applicant shall arrange for a transcript of said session to be prepared and shall include the transcript in its application for a certificate.***

***I-a. Within [30] 45 days after acceptance of an application for a certificate of site and facility, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one [joint] public [hearing] information session in each county in which the proposed facility is to be located and shall publish a public notice not less than 14 days before said [hearing] session in one or more newspapers having a regular circulation in the county in which the [hearing] session is to be held, describing the nature and location of the proposed facilities. Not less than 10 days before said session, the applicant shall provide a copy of the public notice to the chairman of the committee. The session shall be for public information on the proposed facilities with the applicant presenting the information to the public.***

***I-b. Upon request of the governing body of a municipality or unincorporated place in which the proposed facility is to be located, or on the committee's own motion, the committee may order the applicant to provide such informational meetings as are reasonable to inform the public of the proposed project in addition to the required public information sessions required by RSA 162-H:10.***

***I-c. Within 90 days after acceptance of an application for a certificate of site and facility, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one joint public hearing in each county in which the proposed facility is to be located and shall publish a public notice not less than 14 days before such session in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facilities. The public hearings shall be joint hearings, with representatives of the other agencies that have jurisdiction over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. [The hearings shall be for public information on the proposed facilities with the applicant presenting the information to the site evaluation committee and to the public.] Notwithstanding any other provision of law, the hearing shall be a joint hearing with the other state agencies and shall be in lieu of all hearings***

otherwise required by any of the other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of the other state agencies to join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter.

II. Except for informational ~~hearings~~ *meetings*, subsequent hearings shall be in the nature of adjudicative proceedings under RSA 541-A and may be held in the county or one of the counties in which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site evaluation committee. The committee shall give adequate public notice of the time and place of each subsequent session. *In lieu of the full committee or subcommittee, a hearing officer designated by the administrator may preside at hearings concerning procedural matters before the committee pursuant to RSA 162-H:4, V. The full committee or subcommittee shall preside at all hearings regarding the significant disputed issues identified by the hearing officer.*

III. The site evaluation committee shall consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings *but prior to the closing of the record of a proceeding*. The committee shall grant free access to records and reports in its files to members of the public during normal working hours ~~and~~, shall permit copies of such records and reports to be made by interested members of the public at their expense *and shall post all such records and reports regarding pending applications for a certificate on a website*.

IV. The site evaluation committee shall require from the applicant whatever information it deems necessary to assist in the conduct of the hearings, and any investigation or studies it may undertake, and in the determination of the terms and conditions of any certificate under consideration.

V. The site evaluation committee and counsel for the public shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee. The site evaluation committee and counsel for the public are further authorized to assess the applicant for all travel and related expenses associated with the processing of an application under this chapter.

VI. The site evaluation committee shall issue such rules to administer this chapter, pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required.

VII. No later than January 1, 2015, the committee shall adopt rules, pursuant to RSA



541-A, relative to *the reorganizing of the committee and to* criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV(b) and (c) have been met by the applicant for a certificate of site and facility. Prior to the adoption of such rules, the office of energy and planning shall hire and manage one or more consultants to conduct a public stakeholder process to develop recommended regulatory criteria, which may include consideration of issues identified in attachment C of the 2008 final report of the state energy policy commission, as well as others that may be identified during the stakeholder process. The office of energy and planning shall submit a report based on the findings of the public stakeholder process to the committee by January 1, 2014.

11 Enforcement. Amend RSA 162-H:12, I to read as follows:

I. Whenever the committee, *or the administrator as designee*, determines that any term or condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the person holding the certificate of the specific violation and order the person to immediately terminate the violation. If, 15 days after receipt of the order, the person has failed or neglected to terminate the violation, the committee may suspend the person's certificate. Except for emergencies, prior to any suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing.

12 Findings and Certificate Issuance. Amend the introductory paragraph of RSA 162-H:16, IV to read as follows:

IV. The site evaluation committee, after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the ~~[objectives of this chapter]~~ *public interest* would be best served by the issuance of the certificate, must find that the site and facility:

13 New Subparagraph; Findings and Certificate Issuance. Amend RSA 162-H:16, IV by inserting after subparagraph (d) the following new subparagraph:

(e) Will serve the public interest.

14 New Sections; Fund Established; Funding Plan; Applicability; Transitional Responsibilities. Amend RSA 162-H by inserting after section 20 the following new sections:

162-H:21 Fund Established; Funding Plan.

I. There is hereby established in the office of the state treasurer a nonlapsing fund to be known as the site evaluation committee fund. All moneys in such fund shall be continually appropriated to the site evaluation committee for the purposes of the committee. The fund shall be established with an advance from the renewable energy fund established in RSA 362-F:10 in an amount not to exceed \$1,000,000. Repayment of the initial renewable energy fund advance shall be made over a period of not more than

10 years.

II. By December 1, 2014, the committee shall submit a permanent funding plan, including recommendations for legislation, to the governor and to the chairpersons of the house and senate finance committees. The committee shall consider potential funding sources, including but not limited to the imposition of reasonable application fees and other funding sources. The plan shall describe the costs of the ongoing administration of the committee's duties, including state agency expenses associated with processing an application under this chapter. The plan shall include recommendations for the ongoing funding of the committee's operations, including reimbursement for the hearing and review time of members of the committee and state agency staff. The plan shall make recommendations for funding sources to meet those needs, except that such funding sources shall not include annual operating fees imposed on energy facilities. The plan shall provide an estimate of revenues from application fees and additional funding sources.

#### 162-H:22 Applicability.

I. The provisions of this chapter shall apply to any application or petitions received on or after July 1, 2014.

II. Pending matters for which a public hearing was held prior to July 1, 2014 shall be governed by the standards in place prior to the enactment of this section and shall be addressed by the committee in effect at the time the matters were filed.

III. The committee in existence prior to July 1, 2014 shall cease to exist when all matters for which a public hearing was held prior to July 1, 2014 have been resolved, through ruling on requests for rehearing or reconsideration.

#### 162-H:23 Transitional Responsibilities.

I. Any pending matter for which a public hearing was not held prior to July 1, 2014, and all matters filed after July 1, 2014 shall be reviewed by the committee as re-organized under this chapter. The parties in any pending matter for which a public hearing was not held prior to July 1, 2014 shall have a reasonable opportunity to supplement filings under the provisions of this chapter as effective July 1, 2014.

II. The re-organization of the committee, including the appointment of a administrator and public members, shall occur no later than November 1, 2014.

III. All time frames under this chapter shall be tolled until the date that committee is re-organized.

IV. Notwithstanding any other provision of this chapter, the committee in existence prior to July 1, 2014 shall continue the process of adopting rules pursuant to RSA 162-H:10, VII, until such time as the re-organized committee is established. Notwithstanding any other provision of law, the actions of the committee in existence prior to July 1, 2014

shall be deemed the actions of the committee for the purposes of appointing an administrator and of adopting rules pursuant to RSA 162-H:10, VII.

V. Any application for approval of a transfer pursuant to RSA 162-H:5, I shall be reviewed and decided by the committee in existence prior to July 1, 2014 provided such application is filed no later than December 31, 2014.

15 New Subparagraph; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (316) the following new subparagraph:

(317) Moneys deposited in the site evaluation committee fund established in RSA 162-H:21, I.

16 Repeal. The following are repealed:

I. RSA 4-C:6, II(e), relative to energy facility evaluation committee.

II. RSA 162-H:6-a, relative to time frames for review of renewable energy facilities.

III. RSA 162-H:7, VI-e, relative to time frames for applications for certificates.

IV. RSA 162-H:15, relative to informational meetings.

17 Effective Date. This act shall take effect July 1, 2014.

2014-1125s

#### AMENDED ANALYSIS

This bill:

I. Modifies the membership and duties of the site evaluation committee.

II. Modifies requirements for energy facility certificates.



# EXHIBIT F

Science, Technology and Energy  
April 17, 2014  
2014-1442h  
06/09

Amendment to SB 245-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Energy Evaluation and Siting. RSA 162-H:1 is repealed and reenacted to read as follows:

162-H:1 Declaration of Purpose. The legislature recognizes that the selection of sites for energy facilities may have significant impacts on and benefits to the following: the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety. Accordingly, the legislature finds that it is in the public interest to maintain a balance among those potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire; that undue delay in the construction of new energy facilities be avoided; that full and timely consideration of environmental consequences be provided; that all entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion. In furtherance of these objectives, the legislature hereby establishes a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities.

2 New Paragraph; Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Administrator. Amend RSA 162-H:2 by inserting after paragraph I the following new paragraph:

I-a. "Administrator" means the administrator of the committee established by this chapter.

3 Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Energy. Amend RSA 162-H:2, VI to read as follows:

VI. "Energy" means power, including mechanical power ~~[or]~~, useful heat, *or electricity* derived from any resource, including, but not limited to, oil, coal, and gas.

4 Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Petitioner. Amend RSA 162-H:2, XI(c) to read as follows:

(c) A petition endorsed by the governing body of ~~[the]~~ a host community or 2 or more governing bodies of abutting communities.

5 Energy Facility Evaluation and Siting, Construction and Operation; Definitions; Renewable Energy Facility. Amend RSA 162-H:2, XII to read as follows:

XII. "Renewable energy facility" means electric generating station equipment and associated facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 megawatts ~~[but less than 120 megawatts]~~ and powered by wind energy, geothermal energy, hydrogen derived from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas, biomass technologies, solar technologies, or hydroelectric energy. "Renewable energy facility" shall also include electric generating station equipment and associated facilities of 30 megawatts or less nameplate capacity but at

least 5 megawatts which the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI.

6 Site Evaluation Committee. RSA 162-H:3 is repealed and reenacted to read as follows:

162-H:3 Site Evaluation Committee Established.

I. There is hereby established a committee to be known as the New Hampshire site evaluation committee consisting of 9 members, as follows:

(a) The commissioners of the public utilities commission, the chairperson of which shall be the chairperson of the committee;

(b) The commissioner of the department of environmental services, who shall be the vice-chairperson of the committee;

(c) The commissioner of the department of resources and economic development;

(d) The commissioner of the department of transportation;

(e) The commissioner of the department of cultural resources or the director of the division of historical resources as designee; and

(f) Two members of the public, appointed by the governor, with the consent of the council, at least one of whom shall be a member in good standing of the New Hampshire Bar Association, and both of whom shall be residents of the state of New Hampshire with expertise or experience in one or more of the following areas: public deliberative or adjudicative proceedings; business management; environmental protection; natural resource protection; energy facility design, construction, operation, or management; or community and regional planning or economic development.

II. The public members shall serve 4-year terms and until their successors are appointed and qualified. The initial term of one member shall be 2 years. Any public member chosen to fill a vacancy occurring other than by expiration of term shall be appointed for the unexpired term of the member who is to be succeeded.

III. No public member nor any member of his or her family shall receive income from energy facilities within the jurisdiction of the committee. The public members shall comply with RSA 15-A and RSA 15-B.

IV. All members shall refrain from ex parte communications regarding any matter pending before the committee.

V. Seven members of the committee shall constitute a quorum for the purpose of conducting the committee's business.

VI. Any public member of the committee may be removed by the governor and council for inefficiency, neglect of duty, or misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard.

VII. The committee shall be administratively attached to the public utilities commission pursuant to RSA 21-G:10.

VIII. Public members of the committee shall be compensated on a pro rata basis, based upon the daily salary rate for a commissioner of the public utilities commission at the initial step.

IX. The chairperson shall serve as the chief executive of the committee and may:

(a) Delegate to other members the duties of presiding officer, as appropriate.

(b) Perform administrative actions for the committee, as may a presiding officer.

(c) Establish, with the consent of the committee, the budgetary requirements of the committee.

(d) Engage personnel in accordance with this chapter.

(e) Form subcommittees pursuant to RSA 162-H:4-a.

X. An alternate public member who satisfies the qualification requirements of subparagraph I(f),

excluding the New Hampshire Bar membership requirement, shall be appointed by the governor, with consent of the council. The alternate public member shall only sit on the committee or a subcommittee as provided for in paragraph XI.

XI. If at any time a member must recuse himself or herself on a matter or is not otherwise available for good reason, such person, if a state employee, may designate a senior administrative employee or a staff attorney from his or her agency to sit on the committee. In the case of a public member, the chairperson shall appoint the alternate public member, or if such member is not available, the governor and council shall appoint a replacement upon petition of the chairperson. The replacement process under this paragraph shall also be applicable to subcommittee members under RSA 162-H:4-a.

7 New Section; Site Evaluation Committee; Administrator. Amend RSA 162-H by inserting after section 3 the following new section:

162-H:3-a Administrator and Other Employees. There is hereby established within the site evaluation committee the position of administrator who shall be an unclassified state employee. In the alternative, the position may be filled by an independent contractor. The administrator shall be hired by and under the supervision of the chairperson. The administrator, or chairperson in the absence of an administrator, with committee approval, may engage additional technical, legal, or administrative support to fulfill the functions of the committee as necessary. Any person to be hired by the administrator shall be approved by the chairperson. The administrator and any employees or contractors shall be paid from the site evaluation committee fund established in RSA 162-H:21.

8 Section Heading. Amend the section heading of RSA 162-H:4 to read as follows:

162-H:4 Powers and Duties of the Committee.

9 Powers and Duties of the Committee. Amend RSA 162-H:4, I through IV to read as follows:

I. The committee shall:

- (a) *Evaluate and* issue any certificate under this chapter for an energy facility.
- (b) Determine the terms and conditions of any certificate issued under this chapter.
- (c) Monitor the construction and operation of any energy facility granted a certificate under this chapter *to ensure compliance with such certificate.*
- (d) Enforce the terms and conditions of any certificate issued under this chapter.
- (e) *Assist the public in understanding the requirements of this chapter.*

II. The committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate.

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate under this chapter to *the administrator or* such state agency or official ~~[represented on the committee]~~ as it deems appropriate, but ~~[, subject to RSA 162-H:10, it may not delegate authority to hold hearings, issue certificates, determine the terms and conditions of a certificate, or enforce a certificate]~~ *shall ensure that the terms and conditions of the certificate are met.* Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.

III-a. The committee may delegate to ~~[an]~~ *the administrator or such state* agency or official ~~[represented on the committee]~~ *as it deems appropriate* the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter, or the authority to specify minor changes in the route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or

energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

*III-b. The committee may not delegate its authority or duties, except as provided under this chapter.*

IV. In cases where the committee determines that other existing statutes provide adequate protection of the objectives of RSA 162-H:1, the committee may, within 60 days of acceptance of the application, or filing of a request for exemption with sufficient information to enable the committee to determine whether the proposal meets the requirements set forth below, and after holding a public [informational] hearing in a county where the energy facility is proposed, exempt the applicant from the approval and certificate provisions of this chapter, provided that the following requirements are met:

(a) Existing state or federal statutes, state or federal agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1;

(b) A review of the application or request for exemption reveals that consideration of the proposal by only selected agencies represented on the committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;

(c) Response to the application or request for exemption from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and

(d) All environmental impacts or effects are adequately regulated by other federal, state, or local statutes, rules, or ordinances.

10 Powers of Committee. RSA 162-H:4, V is repealed and reenacted to read as follows:

V. In any matter before the committee, the presiding officer, or a hearing officer designated by the presiding officer, may hear and decide procedural matters that are before the committee, including procedural schedules, consolidation of parties with substantially similar interests, discovery schedules and motions, and identification of significant disputed issues for hearing and decision by the committee. Undisputed petitions for intervention may be decided by the hearing officer and disputed petitions shall be decided by the presiding officer. Any party aggrieved by a decision on a petition to intervene may within 10 calendar days request that the committee review such decision. Other procedural decisions may be reviewed by the committee at its discretion.

11 New Section; Subcommittees. Amend RSA 162-H by inserting after section 4 the following new section:

162-H:4-a Subcommittees.

I. The chairperson may establish subcommittees to consider and make decisions on applications, including the issuance of certificates, or to exercise any other authority or perform any other duty of the committee under this chapter, except that no subcommittee may approve the budgetary requirements of the committee, or any support staff positions paid for through the site evaluation committee fund, propose the funding plan under RSA 162-H:21, or adopt initial or final rulemaking proposals. For purposes of statutory interpretation and executing the regulatory functions of this chapter, the subcommittee shall assume the role of and be considered the committee, with all of its associated powers and duties in order to execute the charge given it by the chairperson.

II. When considering the issuance of a certificate or a petition of jurisdiction, a subcommittee shall have no fewer than 7 members. The 2 public members shall serve on each subcommittee with the remaining 5 or more members selected by the chairperson from among the state agency members of the committee. Each selected member may designate a senior administrative employee or staff attorney from his or her respective agency to sit in his or her place on the subcommittee. The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible. Five

members of the subcommittee shall constitute a quorum for the purpose of conducting the subcommittee's business.

III. In any matter not covered under paragraph II, the chairperson may establish subcommittees of 3 members, consisting of 2 state agency members and one public member. Each state agency member may designate a senior administrative employee or staff attorney from his or her agency to sit in his or her place on the subcommittee. The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible. Two members of the subcommittee shall constitute a quorum. Any party whose interests may be affected may object to the matter being assigned to a 3-person subcommittee no less than 14 days before the first hearing. If objection is received, the chairperson shall remove the matter from the 3-person subcommittee and either assign it to a subcommittee formed under paragraph II or have the full committee decide the matter.

12 Application for Certificate. Amend RSA 162-H:7, II to read as follows:

II. All applications for a certificate for an energy facility shall be filed with the ~~chairman~~ **chairperson** of the site evaluation committee.

13 Application for Certificate. Amend RSA 162-H:7, IV and V to read as follows:

IV. Each application shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency's completed application forms. Upon the filing of an application, the committee shall expeditiously forward a copy to the state agencies having ~~jurisdiction~~ **permitting or other regulatory authority and to other state agencies identified in administrative rules**. Upon receipt of a copy, each agency shall conduct a preliminary review to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of the state agencies having ~~jurisdiction~~ **permitting or other regulatory authority**, that agency shall, in writing, notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by this section, any application made under this section shall be deemed not accepted either by the committee or by any of the state agencies having ~~jurisdiction~~ **permitting or other regulatory authority** if the applicant is ~~seasonably~~ **reasonably** notified that it has not supplied sufficient information for any of the state agencies having ~~jurisdiction~~ **permitting or other regulatory authority** in accordance with this paragraph.

V. Each application shall also:

(a) Describe in reasonable detail the type and size of each major part of the proposed facility.

(b) Identify both the **applicant's** preferred choice and ~~any~~ other ~~choices~~ **alternatives it considers available** for the site **and configuration** of each major part of the proposed facility **and the reasons for the applicant's preferred choice**.

(c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment for each site proposed.

(d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems.

(e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility.

(f) Document that written notification of the proposed project, including appropriate copies of the application, has been given to the appropriate governing body of each community in which the facility is proposed to be located.

(g) **Describe in reasonable detail the elements of and financial assurances for a**



*facility decommissioning plan.*

(h) Provide such additional information as the committee may require to carry out the purposes of this chapter.

14 Application for Certificate. Amend RSA 162-H:7, VI-a through VI-d to read as follows:

VI-a. ~~[Within 30 days after acceptance of the application, the committee shall hold at least one public hearing in each county in which the proposed facility is to be located.]~~ *Public information sessions shall be held* in accordance with RSA 162-H:10.

VI-b. All ~~[participating]~~ state agencies *having permitting or other regulatory authority* shall report their progress to the committee within ~~[5 months]~~ *150 days* of the acceptance of the application, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision *on the parts of the application that relate to its permitting or other regulatory authority.*

VI-c. All ~~[participating]~~ state agencies *having permitting or other regulatory authority* shall make and submit to the committee a final decision on the parts of the application that relate to its ~~[jurisdiction]~~ *permitting and other regulatory authority*, no later than ~~[8 months]~~ *240 days* after the application has been accepted.

VI-d. Within ~~[9 months]~~ *365 days* of the acceptance of an application, the committee shall issue or deny a certificate for an energy facility.

15 New Section; Role of State Agencies. Amend RSA 162-H by inserting after section 7 the following new section:

162-H:7-a Role of State Agencies.

I. State agencies having permitting or other regulatory authority may participate in committee proceedings as follows:

(a) Receive proposals or permit requests within the agency's permitting or other regulatory authority, expertise, or both; determine completeness of elements required for such agency's permitting or other programs; and report on such issues to the committee;

(b) Review proposals or permit requests and submit recommended draft permit terms and conditions to the committee;

(c) Identify issues of concern on the proposal or permit request or notify the committee that the application raises no issues of concern;

(d) When issues of concern are identified by the agency or committee, designate one or more witnesses to appear before the committee at a hearing to provide input and answer questions of parties and committee members; and

(e) If the committee intends to impose certificate conditions that are different than those proposed by state agencies having permitting or other regulatory authority, the committee shall promptly notify the agency or agencies in writing to seek confirmation that such conditions or rulings are in conformity with the laws and regulations applicable to the project and state whether the conditions or rulings are appropriate in light of the agency's statutory responsibilities. The notified state agencies shall respond to the committee's request for confirmation as soon as possible, but no later than 10 calendar days from the date the agency or agencies receive the notification described above.

II. When initiating a proceeding for a committee matter, the committee shall expeditiously notify state agencies having permitting or other regulatory authority or that are identified in administrative rules.

III. Within 30 days of receipt of a notification of proceeding, a state agency not having permitting or other regulatory authority but wishing to participate in the proceeding shall advise the presiding officer of the committee in writing of such desire and be allowed to do so provided that the presiding officer determines that a material interest in the proceeding is demonstrated and such participation conforms



with the normal procedural rules of the committee.

IV. The commissioner or director of each state agency that intends to participate in a committee proceeding shall advise the presiding officer of the name of the individual on the agency's staff designated to be the agency liaison for the proceeding. The presiding officer may request the attendance of an agency's designated liaison at a session of the committee if that person could materially assist the committee in its examination or consideration of a matter.

V. All communications between the committee and agencies regarding a pending committee matter shall be included in the official record and be publicly available.

VI. A state agency may intervene as a party in any committee proceeding in the same manner as other persons under RSA 541-A. An intervening agency shall have the right to rehearing and appeal of a certificate or other decision of the committee.

16 Public Hearing; Studies; Rules. Amend RSA 162-H:10 to read as follows:

162-H:10 Public Hearing; Studies; Rules.

*I. At least 30 days prior to filing an application for a certificate, an applicant shall hold at least one public information session in each county where the proposed facility is to be located and shall, at a minimum, publish a public notice not less than 14 days before such session in one or more newspapers having a regular circulation in the county in which the session is to be held, describing the nature and location of the proposed facility. At such session, the applicant shall present information regarding the project and receive comments from the public. Not less than 10 days before such session, the applicant shall provide a copy of the public notice to the chairperson of the committee. The applicant shall arrange for a transcript of such session to be prepared and shall include the transcript in its application for a certificate.*

*I-a. Within [30] 45 days after acceptance of an application for a certificate [of site and facility], pursuant to RSA 162-H:7, the [site evaluation committee] applicant shall hold at least one [joint] public [hearing] information session in each county in which the proposed facility is to be located and shall, at a minimum, publish a public notice not less than 14 days before said [hearing] session in one or more newspapers having a regular circulation in the county in which the [hearing] session is to be held, describing the nature and location of the proposed [facilities] facility. Not less than 10 days before such session, the applicant shall provide a copy of the public notice to the presiding officer of the committee. The administrator, or a designee of the presiding officer of the committee, shall act as presiding officer of the information session. The session shall be for public information on the proposed facility with the applicant presenting the information to the public. The presiding officer shall also explain to the public the process the committee will use to review the application for the proposed facility.*

*I-b. Upon request of the governing body of a municipality or unincorporated place in which the proposed facility is to be located, or on the committee's own motion, the committee may order the applicant to provide such additional information sessions as are reasonable to inform the public of the proposed project.*

*I-c. Within 90 days after acceptance of an application for a certificate, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one public hearing in each county in which the proposed facility is to be located and shall publish a public notice not less than 14 days before such session in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facilities.*

The public hearings shall be joint hearings, with representatives of the [other] agencies that have [jurisdiction] permitting or other regulatory authority over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to

environmental impact. ~~[The hearings shall be for public information on the proposed facilities with the applicant presenting the information to the site evaluation committee and to the public.]~~ Notwithstanding any other provision of law, the hearing shall be a joint hearing with the other state agencies and shall be in lieu of all hearings otherwise required by any of the other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of the other state agencies to join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter.

II. ~~[Except for informational hearings,]~~ Subsequent hearings shall be in the nature of adjudicative proceedings under RSA 541-A and may be held in the county or one of the counties in which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site evaluation committee. The committee shall give adequate public notice of the time and place of each subsequent ~~[session]~~ *hearing*.

III. The site evaluation committee shall consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings *but prior to the closing of the record of the proceeding*. ~~[The committee shall grant free access to records and reports in its files to members of the public during normal working hours and shall permit copies of such records and reports to be made by interested members of the public at their expense.]~~ *The committee shall consider, as appropriate, prior committee findings and rulings on the same or similar subject matters, but shall not be bound thereby.*

IV. The site evaluation committee shall require from the applicant whatever information it deems necessary to assist in the conduct of the hearings, and any investigation or studies it may undertake, and in the determination of the terms and conditions of any certificate under consideration.

V. The site evaluation committee and counsel for the public shall ~~[jointly]~~ conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee. The site evaluation committee and counsel for the public are further authorized to assess the applicant for all travel and related expenses associated with the processing of an application under this chapter.

VI. The site evaluation committee shall issue such rules to administer this chapter, pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required.

VII. *As soon as practicable but no later than [January] July 1, 2015*, the committee shall adopt rules, pursuant to RSA 541-A, relative to *the organization, practices, and procedures of the committee and* criteria for the siting of energy facilities, including specific criteria to be applied in determining if the requirements of RSA 162-H:16, IV have been met by the applicant for a certificate of site and facility. Prior to the adoption of such rules, the office of energy and planning shall hire and manage one or more consultants to conduct a public stakeholder process to develop recommended regulatory criteria, which may include consideration of issues identified in attachment C of the 2008 final report of the state energy policy commission, as well as others that may be identified during the stakeholder process. ~~[The office of energy and planning shall submit a report based on the findings of the public stakeholder process to the committee by January 1, 2014.]~~

17 Enforcement. Amend RSA 162-H:12, I to read as follows:

I. Whenever the committee, *or the administrator as designee*, determines that any term or condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the person

holding the certificate of the specific violation and order the person to immediately terminate the violation.

If, 15 days after receipt of the order, the person has failed or neglected to terminate the violation, the committee may suspend the person's certificate. Except for emergencies, prior to any suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing.

18 Enforcement. Amend RSA 162-H:12, IV to read as follows:

IV. Notwithstanding any other provision of this chapter, each of the other state agencies having ~~[jurisdiction]~~ **permitting or other regulatory authority** shall retain all of its powers and duties of enforcement.

19 Records; Temporary Suspension of Deliberations. Amend RSA 162-H:13 and RSA 162-H:14 to read as follows:

162-H:13 Records. Complete verbatim records shall be kept by the committee of all hearings, and records of all other actions, proceedings, and correspondence of the committee, **including submittals of information and reports by members of the public**, shall be maintained, all of which records shall be open to the public inspection **and copying** as provided for under RSA 91-A. **Records regarding pending applications for a certificate shall also be made available on a website.**

162-H:14 Temporary Suspension of Deliberations.

I. If the site evaluation committee, at any time ~~[during its deliberations relative to]~~ **while** an application for a certificate **is before it**, deems it to be in the public interest, it may temporarily suspend its deliberations and time frame established under RSA 162-H:7.

II. ~~[Repealed.]~~

20 Findings and Certificate Issuance. Amend RSA 162-H:16, I to read as follows:

I. The committee shall incorporate in any certificate such terms and conditions as may be specified to the committee by any of the ~~[other]~~ state agencies having ~~[jurisdiction]~~ **permitting or other regulatory authority**, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate under this chapter if any of the ~~[other]~~ state agencies denies authorization for the proposed activity over which it has ~~[jurisdiction]~~ **permitting or other regulatory authority**. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency.

21 Findings and Certificate Issuance. Amend RSA 162-H:16, IV to read as follows:

IV. ~~[The site evaluation committee, after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that the site and facility]~~ **After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if issuance of a certificate will serve the objectives of this chapter. In order to issue a certificate, the committee shall find that:**

(a) The applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.

(b) **The site and facility** will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.

(c) **The site and facility** will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.

(d) ~~[Repealed.]~~

22 New Subparagraph; Findings and Certificate Issuance. Amend RSA 162-H:16, IV by inserting after subparagraph (d) the following new subparagraph:

(e) Issuance of a certificate will serve the public interest.

23 New Section; Fund Established; Funding Plan. Amend RSA 162-H by inserting after section 20 the following new section:

**162-H:21 Fund Established; Funding Plan.**

I. There is hereby established in the office of the state treasurer a nonlapsing fund to be known as the site evaluation committee fund. All moneys in such fund shall be continually appropriated to the site evaluation committee for the purposes of the committee. The fund shall be established with a transfer from the renewable energy fund established in RSA 362-F:10 in an amount not to exceed \$1,000,000. Repayment of the initial renewable energy fund transfer shall be made over a period of not more than 10 years.

II. By December 1, 2014, the committee shall submit a permanent funding plan, including recommendations for legislation, to the governor and to the chairpersons of the house and senate finance committees. The committee shall consider potential funding sources, including but not limited to the imposition of reasonable application fees and other funding sources. The plan shall describe the costs of the ongoing administration of the committee's duties, including state agency expenses associated with processing an application under this chapter. The plan shall include recommendations for the ongoing funding of the committee's operations, including reimbursement for the hearing and review time of members of the committee and state agency staff. The plan shall make recommendations for funding sources to meet those needs, except that such funding sources shall not include annual operating fees imposed on energy facilities or further use of the renewable energy fund. The plan shall provide an estimate of revenues from application fees and additional funding sources.

**24 Site Evaluation Committee; Application for Certificate; Applicability.**

I. The provisions of this chapter shall apply to any application or petition received on or after July 1, 2014.

II. Pending matters for which an adjudicative hearing was held prior to July 1, 2014 shall be governed by the laws in place prior to the enactment of this section and shall be addressed by the committee in effect at the time the matters were filed.

III. The committee in existence prior to July 1, 2014 shall cease to exist when all matters for which it is responsible have been resolved, through rulings on requests for rehearing or reconsideration.

**25 Site Evaluation Committee; Transitional Responsibilities.**

I. Any pending matter for which an adjudicative hearing was not held prior to July 1, 2014, and all matters filed on or after July 1, 2014 shall be reviewed by the committee as re-organized under this act; provided, however, that the committee in existence prior to July 1, 2014, shall be responsible for any matter filed before July 1, 2014, for which an adjudicative hearing commences on or after July 1, 2014, but before the establishment of the committee as reorganized in this act. The parties in any pending matter for which an adjudicative hearing was not held prior to July 1, 2014 shall have a reasonable opportunity to supplement filings under the provisions of this chapter as effective July 1, 2014.

II. The re-organization of the committee under this act, including the appointment of an administrator and public members, shall occur no later than November 1, 2014.

III. Notwithstanding any other provision of RSA 162-H, the committee in existence prior to July 1, 2014 shall continue to process all matters filed on or after July 1, 2014 until such time as the re-organized committee is established, and for the process of adopting rules pursuant to RSA 162-H:10, VII, until such time as the re-organized committee is established. Notwithstanding any other provision of law, the actions of the committee in existence prior to July 1, 2014 shall be deemed the actions of the committee for the

purposes of appointing an administrator and of adopting rules pursuant to RSA 162-H:10, VII.

26 New Subparagraph; Application of Receipts. Amend RSA 6:12, I(b) by inserting after subparagraph (316) the following new subparagraph:

(317) Moneys deposited in the site evaluation committee fund established in RSA 162-H:21,

I.

27 Repeal. The following are repealed:

I. RSA 4-C:6, II(e), relative to energy facility evaluation committee.

II. RSA 162-H:6-a, relative to time frames for review of renewable energy facilities.

III. RSA 162-H:7, VI-e, relative to time frames for applications for certificates.

IV. RSA 162-H:15, relative to informational meetings.

28 Effective Date. This act shall take effect July 1, 2014.