THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2018-0468

Appeal of Northern Pass Transmission, LLC & a.

Rule 10 Appeal from the New Hampshire Site Evaluation Committee

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OPPOSING BRIEF FOR MUNICIPAL GROUPS 1 SOUTH, 2, 3 SOUTH AND 3 NORTH FOR THE CITY OF CONCORD AND TOWNS OF BETHLEHEM, BRISTOL, DEERFIELD, EASTON, FRANCONIA, NEW HAMPTON, LITTLETON, NORTHUMBERLAND, PEMBROKE, PLYMOUTH, SUGAR HILL AND WHITEFIELD

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RELEVANT STATUTES AND ADMINISTRATIVE RULES

RSA chapter 162-H

Please see addendum to this brief for the full statute.

N.H. Admin Rule, Site 100-300

Please see addendum to this brief for the full rules.

21:2 Common Usage

Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed and understood according to such peculiar and appropriate meaning.

231:161 Procedure.

Any such person, copartnership or corporation desiring to erect or install any such poles, structures, conduits, cables or wires in, under or across any such highway, shall secure a permit or license therefor in accordance with the following procedure:

I. Jurisdiction.

(a) Town Maintained Highways. Petitions for such permits or licenses concerning town maintained highways shall be addressed to the selectmen of the town in which such highway is located; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint.

(b) City Maintained Highways. Petitions for such permits or licenses concerning city maintained highways shall be addressed to the board of mayor and aldermen or board of mayor and council of the city in which such highway is located and they shall exercise the powers and duties prescribed in this subdivision for selectmen; and they are hereby authorized to delegate all or any part of the powers conferred upon them by the provisions of this section to such agents as they may duly appoint.

(c) State Maintained Highways. Petitions for such permits or licenses concerning all class I and class III highways and state maintained portions of class II highways shall be addressed to the commissioner of transportation who shall have exclusive jurisdiction of the disposition of such petitions to the same effect as is provided for selectmen in other cases, and also shall have like jurisdiction for changing the terms of any such license or for assessing damages as provided herein. The commissioner shall also have the same authority as conferred upon the selectmen by RSA 231:163 to revoke or change the terms and conditions of any such license. The commissioner is hereby authorized to delegate all or any part of the powers conferred upon him by the provisions of this section to such agent or agents as he may duly appoint in writing; he shall cause such appointments to be recorded in the office of the secretary of state, who shall keep a record thereof.

(d) The word "selectmen" as used in the following paragraphs of this section shall be construed to include all those having jurisdiction over the issuance of permits or licenses under paragraph I hereof.

II. Permits. The petitioner may petition such selectmen to grant a permit for such poles, structures, conduits, cables or wires. If the public good requires, the selectmen shall grant a permit for erecting or installing and maintaining such poles, structures, conduits, cables or wires. Such permit shall designate and define in a general way the location of the poles, structures, conduits, cables or wires described in the petition therefor. Such permit shall be effective for such term as they may determine, but not exceeding one year from the date thereof, and may, upon petition, be extended for a further term not exceeding one year. A permit shall not be granted to replace an existing utility pole on any public highway unless such replacement pole is erected at least 20 feet from the surfaced edge or the edge of public easement therein, provided, however, that for good cause shown the selectmen may waive the 20-foot requirement.

III. Effect of Permit. Except as otherwise provided herein, the holder of such permit shall during the term thereof be entitled to have and exercise all the rights, privileges and immunities and shall be subject to all the duties and liabilities granted or imposed hereby upon the holder of a license hereunder.

IV. Licenses. The petitioner may petition such selectmen to grant a license for such poles, structures, conduits, cables or wires. If the public good requires, the selectmen shall grant a license for erecting and installing

or maintaining the poles, structures, conduits, cables or wires described in the petition.

V. Provision of Licenses. The selectmen in such license shall designate and define the maximum and minimum length of poles, the maximum and minimum height of structures, the approximate location of such poles and structures and the minimum distance of wires above and of conduits and cables below the surface of the highway, and in their discretion the approximate distance of such poles from the edge of the traveled roadway or of the sidewalk, and may include reasonable requirements concerning the placement of reflectors thereon. Such designation and definition of location may be by reference to a map or plan filed with or attached to the petition or license.

VI. Effect of License. All licenses granted under the provisions hereof shall be retroactive to the date the petition therefor is filed. The word "license" as hereinafter used herein, except in RSA 231:164 shall be construed to include the word "permit". The holder of such a license, hereinafter referred to as licensee, shall thereupon and thereafter be entitled to exercise the same and to erect or install and maintain any such poles, structures, conduits, cables, and wires in approximately the location designated by such license and to place upon such poles and structures the necessary and proper guys, cross-arms, fixtures, transformers and other attachments and appurtenances which are required in the reasonable and proper operation of the business carried on by such licensee, together with as many wires and cables of proper size and description as such poles and structures are reasonably capable of supporting during their continuance in service; and to place in such underground conduits such number of ducts, wires and cables as they are designed to accommodate, and to supply and install in connection with such underground conduits and cables the necessary and proper manholes, drains, transformers and other accessories which may reasonably be required.

541:13 Burden of Proof

Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be

set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.

672:1 Declaration of Purpose.

The general court hereby finds and declares that:
I. Planning, zoning and related regulations have been and should continue to be the responsibility of municipal government;
II. Zoning, subdivision regulations and related regulations are a legislative tool that enables municipal government to meet more effectively the demands of evolving and growing communities;
III. Proper regulations enhance the public health, safety and general welfare and encourage the appropriate and wise use of land
***

STATEMENT OF THE CASE

It is undisputed that large-scale energy projects can directly or indirectly impact many residents in the state. The impacts may involve the supply of energy, the economy or general health and welfare. To address the widespread impacts, the legislature enacted a state siting law intended to ensure that new energy facilities are fully evaluated and designed and built in a manner that will protect and preserve the quality of life enjoyed by New Hampshire's residents and visitors. The siting of energy facilities in New Hampshire follows a unique review process. The standards under RSA chapter 162-H for review of an application are deferential to the administrative process and flexible because the legislature delegated the regulation of large-scale energy projects to the informed judgment of the SEC.

The SEC is given broad discretion to make choices when determining whether to issue a certificate. The SEC may deny a certificate when it finds that the issuance of a certificate will not serve the "objectives" of RSA chapter 162-H after giving "due consideration" to all relevant information. RSA 162-H:16, IV. The objectives of the statute are wide-ranging and include balancing the potential significant impacts and benefits to the welfare of the population, private property concerns, the location and growth of industry, the overall economic growth of the state, the environment, historic sites, aesthetics, air and water quality, natural resources, and public health and safety. RSA 162-H:1. The statute also ensures that the construction and operation of facilities are treated as a significant aspect of land use planning. *Id.* In addition to the overarching

general objectives for determining whether to issue a certificate, the SEC is required to deny a certificate unless it finds the project "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*." RSA 162-H:16, IV(b) (emphasis added).

Few other statutes in New Hampshire provide such flexibility to an administrative agency in making a permitting determination. There is no right to construct a large energy facility in New Hampshire, and unlike some other permitting or licensing programs, an applicant is not entitled to a certificate simply because it can "check all of the boxes" on a form. The SEC is vested with the authority to deny an application after considering all relevant information including potential significant impacts and benefits to determine whether a project serves the objectives of RSA chapter 162-H and is in the public's best interest.

The SEC must consider siting concerns raised by municipalities, and the fact that some local ordinances may be preempted does not diminish the significance of local views. For that reason, most applicants seeking to construct an energy facility garner municipal support for their project before filing their application. DK-tab-1385-at-67-69. In this case, the applicant took the position that it had no obligation to consider and/or account for municipal views. In doing so, the applicant took risks by disregarding the concerns raised by the impacted municipalities. The applicant will likely argue that it attempted public outreach, but those efforts were frequently inadequate and superficial. DK-tab-1385-at-7-17; DK-tab-1432-at-119. Most importantly, the applicant did not address the

fundamental concerns about the proposed design and route of the project raised by many of the host communities. Contrary to the applicant's argument, the SEC did not "defer" to the views of municipalities, but rather, listened and agreed with many of the concerns raised by municipal witnesses. In doing so, the SEC acted within its authority by finding that the applicant did not meet its burden of proving that the project would not unduly interfere with orderly development. *In re Londonderry Neighborhood Coalition*, 145 N.H. 201, 206 (2000) (SEC's decision was not unjust or unreasonable based on weight it gave to views of municipalities and regional planning commissions).

STATEMENT OF FACTS

On October 19, 2015, Northern Pass filed an application to install a 192 mile high voltage transmission line ("HVTL") and related facilities from the Canadian border to Deerfield. DK-tab-1432-at-8. The proposed line would carry 1,090 megawatts of power generated by Hydro-Quebec to the regional power grid for wholesale buyers in New England. DK-tab-1432-at-8, APP-Ex.4-at-2-3,5-6-Fortier. This project is not a traditional "reliability project" that is necessary to meet an identified need for additional power in New Hampshire, or to solve long term problems of reliability or functionality in the electrical grid. DK-Tr.4/14/17-Day2-afternoon-at-39-40; DK-Tr.4/19/17-Day5-morning-at-69; DK-tab-1373-at-143. Rather, the project is an elective business venture designed to bring a profit to Eversource and its shareholders. DK-Tr.4/14/17-Day2-afternoon-at-39-40; APP-Ex.7-at-4-5.

The Underground Route: In 2010, Eversource first announced the project as a proposal to construct the HVTL using overhead utility lines. APP-Ex.11-at-3. The project changed in June 2013, when Eversource announced a "significant route change" to include two underground sections of .7 miles and 7.5 miles in the towns of Pittsburg, Clarksville and Stewartstown. APP- Ex.4-at-3-4-Muntz; APP-Ex.4-at-4-Fortier. Two years later, and only two months before filing the application with the SEC, Eversource again revised the route. APP-Ex.11-at-8. The redesign included the burial of 52 miles of the line from Bethlehem to Bridgewater. APP-Ex.6 at 6; DK-Tr.4/13/17-Day1–morning-at-107. The proposed 52 mile section was on public roads in tourist destinations such as Franconia

along Routes 18 and 116, and North Woodstock on Routes 3 and 112, which is the "major entry point for summer tourists to reach the White Mountains." DK-Tr.7/18/17-Day 21-morning-at-13-17; DK-tab-1432-at-104.

Eversource estimated that construction would last for at least two working seasons (April 15 through November 15). DK-tab-1432-at-83. During construction, the project would require one to two-lane closures with open trenches, splice splits, horizontal directional drilling ("HDD") and a potential micro tunnel. DK-tab-1432-at-82-83,104. In downtown Plymouth, the construction would be "complicated" because a roundabout would be temporarily blocked, with detours through residential communities and the university campus, and the removal of parking spots in downtown Plymouth.[1] DK-tab-1432-at-83-85. The control of traffic in Franconia and North Woodstock was also a "challenge" because the HDD in those areas would require closures near fire stations, and one to two-lane closures would create traffic delays for commuters and tourists. DK-tab-1432-at-104-106; DK-Tr.5/4/17-Day9-afternoon-at-112-130. The project

[1] The applicant proposed an alternative to construct the project on Green Street, which parallels Main Street in Plymouth. That option was not feasible because of land rights the applicant would need to acquire, and because a town meeting in Plymouth determined to oppose any route other than burial along Interstate 93. DK-Tr.6/1/17-Day-11-afternoon-at-240; DK-Tr. 6/2/17-Day12-morning-at-239-40; DK-Tr.12/21/17-Day70-afternoon-at-32,65. The alternative was further complicated because it involved a municipally-controlled road. DK-Tr.12/21/17-Day70-afternoon-at-63. The applicant's right to bury utilities under municipal roads without permission from the town as required by RSA 231:161 was contested throughout the proceeding.

would require detours in Stewartstown, including a 16 mile detour on Class VI roads. DK-tab-1432-at-79-83; 104-105. Many roads would be completely closed for at least five weeks. DK-tab-1432-at-79-83.

When the application was filed, the applicant submitted construction plans locating the project under the paved surface of the roads although it knew the Department of Transportation's ("DOT") Utility Accommodation Manual required construction outside of paved areas and as close to the edge of the right-of-way as possible. DK-tab-1432-at-114. DOT rejected the applicant's plans for all state-owned roads because it was concerned that one or two-lane closures would impact its mission to ensure adequate transportation. DK-tab-1432-at-114; DK-tab-1362-at-3(DOT-Report-3/22/16).

After the DOT rejected the plans, the applicant was required to come up with revised plans. DK-tab-1432-at-114. At the close of the record and conclusion of deliberations, the exact location for the construction of the line, the layouts for areas of HDD drilling along these roadways and the methods for construction remained unknown. DK-tab-1432-at-16,47,87-88,114. The DOT also rejected the applicant's request that it take jurisdiction and authorize the construction plans on municipally-controlled roads. DK-tab-1353-at-1. The applicant was unable to file a traffic management plan with the subcommittee because of the many uncertainties. DK-tab-1432-at-118.

The subcommittee's written decision denied the application in part because of its concerns about "inadequate traffic management strategies." These concerns, combined with the applicant's demonstrated lack of communication and consideration of business access, led to the finding that

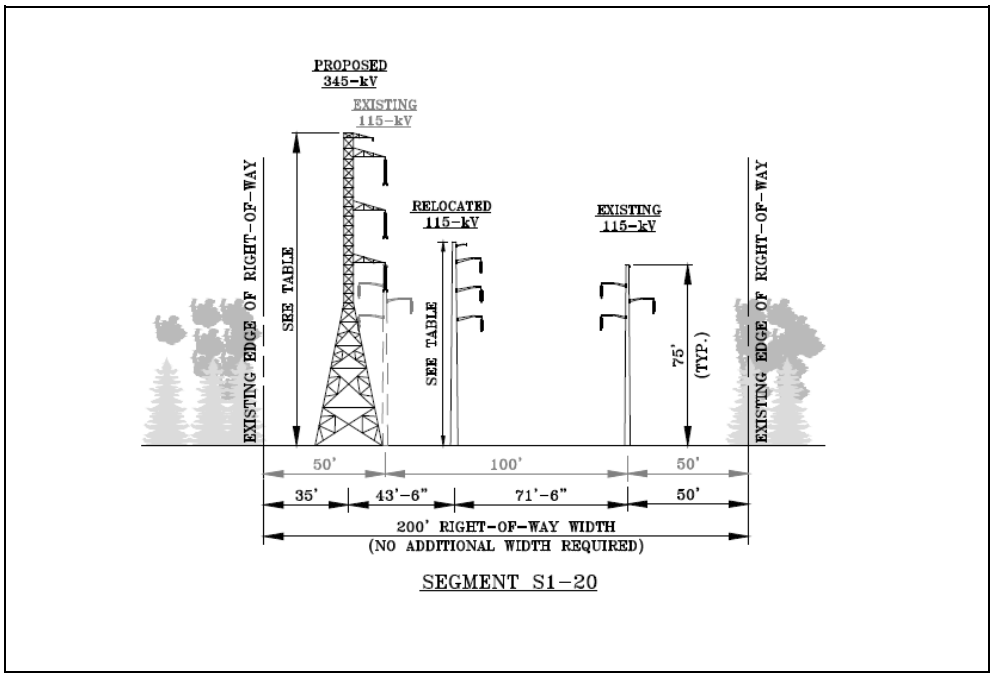
the project may have an unreasonable impact on certain communities. DK-tab-1432-at-119. The subcommittee found that the applicant failed to present sufficient information to demonstrate that the degree of traffic interference caused by the construction would not unduly interfere with the orderly development of the region. DK-tab-1432-at-119. The subcommittee also criticized the applicant for failing to provide an adequate solution for addressing complex construction over municipally-controlled roads and the substantial disagreement regarding regulation and oversight of construction over and under these roads. DK-tab-1432-at-116-17.

The Overhead Route: The remaining 132 miles of the route was proposed to be overhead. The applicant proposed to add 858 new towers in the DC portion of the project with the most common height of 80-85 feet and heights ranging up to 135 feet high, and 345 additional new towers in the AC portion of the project with the most common heights of 80 or 130 feet, and towers as high as 160 feet high. DK-tab-1432-at-17; APP-Ex.1-Vol.1-at-42-43. The heights of the towers were on average double (and sometimes triple) the heights of existing structures in the corridor. DK-tab-1432-at-17,19,280; DK-tab-1385-at-40,52-53. These new structures would be constructed primarily with "large industrial metal structures" made out of lattice, as well as some tubular steel monopole structures and H-frame structures. DK-tab-1432-at 17,279. Photographic simulations showing sample designs of lattice (Photo 1) and weathered steel monopole (Photo 2) structures follow:

Photo-1-APP-Ex.205-EISVol.2-DE(1)(e)-APP69802

Photo-2-APP-Ex.71-at-8-17

To make room for the new Northern Pass transmission line, the applicant proposed relocating the existing 115 kV and 34.5 kV transmission structures along 84 miles of the corridor. APP-Ex.1-Vol.1-at-43; DK-tab-1432-at-19. The wooden poles would also be replaced with metal monopole structures double the height of the existing structures. DK-tab-1432-at-17,19,172,270,280. In some areas, the new or relocated structures would also be installed closer to the edge of the corridor and would require the removal of vegetation that currently screens the structures from adjacent homes. DK-tab-1432-at-279 . The following diagram is Segment S1-20 in Deerfield which shows the new 345 kV line constructed using lattice structures, and the relocation of one of the existing 115 kV lines relocated and replaced with a higher steel monopole. APP-Ex.201-Sheet177. The project in this rural and residential area of Deerfield proposed to use towers up to 140 feet high. APP-Ex.201-Sheet177.



The project also required an entirely new 32 mile right-of-way from the international border through the towns of Pittsburg, Clarksville, Stewartstown, Dixville, and Millsfield through Dummer. APP-Ex.1-Vol.1-at-23; DK-tab-1432-at-15. Additionally, the existing right-of-way in portions of Deerfield, Pembroke and Whitefield would be widened between 45-515 feet. DK-tab-1432-at-16.

Along with the widening and new right-of-ways, the project proposed to construct six transition stations (approximately 9,750 square feet) in locations where the project transitioned from overhead lines to underground cable, a new converter station in Franklin and an expanded substation in Deerfield (increasing the size by approximately 8 acres). APP-Ex.4-Fortier-at-4; DK-tab-1432-at-18-19. The project would also include up to 20 laydown areas (5-50 acres in size) to be used for the long-term storage of construction materials along with a number of staging areas (up to two acres in size), and approximately 1200 crane pads (approximately 12,000 square feet) for installing each transmission structure. DK-tab-1432-at-19-20; DK-Tr.5/1/17-Day-6-morning-at-146; APP-Ex.14-at-15-17,21-22. The applicant failed to identify 17 of the 20 laydown locations, and the subcommittee voiced its concerns about the applicant's ability to manage construction at the unidentified locations. DK-tab-1432-at-19-20,64.

Party Positions: After the application was filed, the New Hampshire Attorney General appointed Counsel for the Public ("CFP") to represent the interests of the public pursuant to RSA 162-H:9. DK-tab-1432-at-8-9. CFP submitted testimony from a number of experts, including Kavet, Rockler & Associates ("KRA") and the Brattle Group, who

analyzed the economic impacts from the project, including construction and energy market impacts. DK-tab-1432-at-23,143-51. CFP presented evidence that energy market savings had been overinflated by the applicant because in actuality they would be "relatively small," and that the proposed construction would interfere with the orderly development of the region. DK-tab-1432-at-25; DK-tab-1373-at-68. A large number of private landowners and organizations focused on historic preservation, environmental protection, conservation and energy intervened to address concerns about adverse impacts. DK-tab-1432-at-28-42. These intervening parties identified their specific concerns through the introduction of testimony of experienced and knowledgeable witnesses as well as the cross-examination of the applicant's expert witnesses. DK-tab-1432-at-22-42. There were also over 3,000 public comments submitted overwhelmingly opposed to the project, including concerns from local businesses that traffic impacts from the underground construction would devastate their businesses. DK-Tr.1/31/18-Day2-morning-at-22,23; DK-tab-1432-at-119, 162.

Of the 31 host municipalities and unincorporated places, 22 intervened in the SEC proceeding to raise concerns about the project: Ashland, Bethlehem, Bridgewater, Bristol, Canterbury, Clarksville, Concord, Dalton, Dixville, Deerfield, Easton, Franconia, Millsfield, New Hampton, Northumberland, Pembroke, Pittsburg, Plymouth, Stewartstown,

Sugar Hill, Whitefield, and Woodstock.[2] DK-tab-1432-at-10-11. Grafton County and Coos County Commissioner Rick Samson also intervened in opposition to the project. DK-tab1432-at-10. The City of Franklin was the only host municipality to support the project.

Nearly every party involved in the proceeding, including CFP, host municipalities, counties, private landowners and organizations, voiced wide-ranging concerns about the project's detrimental impacts on property values, tourism and land use. DK-tab-1432-at-163-194,199-224,231-275.

Economic Benefits of Project: On appeal, the applicant contends that these concerns are overcome by the "uncontested $1.5 billion" in economic benefits. Applicant's Brief at 12-14. This argument fails to acknowledge the role of the SEC, which is required to give due consideration to the views of the municipalities and regional planning commissions and the welfare of the population and public interest, for which no dollar value calculation is possible or should be imposed. The record further demonstrates that the purported amount of $1.5 billion in economic benefits *was contested.* Many of those alleged "financial benefits" are estimates. The subcommittee made findings that the specific amount of many of the benefits could not be calculated with precision because they were speculative. There was also testimony that the potential financial benefits would be diminished by the negative impacts of the project.

[2] The Coos County Commissioners intervened for the unincorporated places of Dixville and Millsfield. Woodstock and Bridgewater withdrew their interventions for financial reasons, but still opposed the project. PC-tab-1515; PC-tab-2875.

For example, the applicant touts as economic benefits the creation of a Forward New Hampshire Fund at $10 million annually for twenty years and a Job Creation Fund at $7.5 million. Applicant's Brief at 13. CFP's experts raised concerns about the Job Creation Fund because it was seen "as merely designed to curry local favor and facilitates the permit approval" and the "small number of grants made thus far seem haphazard and poorly targeted for achievement of meaningful economic development outcomes." CFP-Ex.148-at-53. The Forward New Hampshire Fund was similarly criticized by one subcommittee member because it lacked "rigor and process," including the lack of procedures resulting in uncertainty over whether a $2 million payment to the Balsams Resort was truly a loan. DK-Tr.1/31/18-Day2-afternoon-at-33. It also became apparent that the applicant used financing from the Forward New Hampshire Fund to leverage support of the project. For example, Les Otten, one of the owners of the Balsams Resort, admitted under cross-examination that future additional funding of $3 million required him to testify at the SEC proceedings consistent with his pre-filed testimony supporting the project. DK-Tr.1/31/18-Day2-afternoon-at-33; DK-Tr.10/6/18-Day44-morning-at-20-28. The subcommittee found the benefits of those funds limited because neither "had a transparent structure of governance and were not associated with any economic or governmental entity that would be accountable." DK-tab-1432-at-162.

The applicant also incorrectly claims that the allegedly "uncontested" financial benefits of the project should include $15 million in annual increases to New Hampshire's gross state product (GSP) while the Forward New Hampshire Fund and Job Create Fund are operational.

Applicant's Brief at 13; DK-tab-1432-at-125. CFP's experts testified that the increases to the GSP would not reach $15 million unless the funds were "maintained and administered by independent economic development professionals following best practices for rural economic development." DK-tab-1432-at-125; CFP-Ex.148-at-53-55. Although CFP proposed conditions to ensure that the funds were appropriately administered, the applicant argued that such conditions were inappropriate because the funds were from independent entities and "it is solely within the purview of the [funds] to make decisions about the disbursements of funds." DK-tab-1386-at-413-14; DK-tab-1432-at-150, n.60-61. Based on the applicant's argument, the subcommittee discussed during its deliberations whether it had power to only make non-binding suggestions about the funds because they were separate business entities. DK-Tr.1/31/18-Day2-afternoon-at-32.

The applicant also asserts that the allegedly "uncontested benefits" include $280 million from construction jobs during the three years of construction of the proposed line, $48 million from operations and $58 million in electricity cost savings. Applicant's Brief at 12-13. The term "uncontested" used by the applicant grossly overstates the value of the benefits that the project will bring to New Hampshire. The applicant derived these figures from CFP's experts who rendered an opinion on *estimated impacts* to New Hampshire's GSP due to induced spending. For example, the $48 million estimated increase in the GSP was based on the estimate that ***five jobs*** would be created in New Hampshire by the project during the operation of the line. DK-tab-1432-at-147. CFP's economists estimated that, as a result of induced consumption expenditures from the creation of those five jobs (for example, workers buying food), the GSP

would increase by $48 million over 11 years. DK-tab-1432-at-147. This is clearly an estimate that includes a number of assumptions which are far from guaranteed.

The applicant also argues that the uncontested annual energy market savings in New Hampshire from the project would be $5.8 million, which is considerably less than the $80 million in annual savings (using nominal dollars) originally publicized by the applicant in support of the project. DK-tab-1432-at-160-161. The subcommittee found the applicant failed to prove that *any* energy savings would result from the project's participation in the forward capacity market, which is an annual auction in New England at which electricity producers sell the option to buy a quantity of energy three years in advance. DK-tab-1432-at-161; NEPGA-Ex.1-at-5-8. Under a model prepared by CFP's experts, the estimated residential energy savings for a customer assuming 621 kWh use/month would be less than $5 a year. DK-Tr.1/31/2018-Day2-morning-at-80-82; DK-tab-1432-at-145; CPF-Ex.144-at-4. Even under the different model calculated by the applicant's expert (assuming 300 kWh use/month and incorrectly-assumed savings from the forward capacity market), the residential savings would only be $18 a year. DK-Tr.6/13/2017-Day15-morning-at-68-69. The subcommittee found that "the project would have a small, but positive impact on the economy although a much less significant impact than that predicted by the applicant." DK-tab-1432-at-160-61. In contrast to these small statewide savings, Eversource and its shareholders would enjoy "strong cash flows provided under the TSA" which included profit from the rate of return charged on its capital investment of $1.6 billion with rates ranging from 11.74% and 12.56%. Tr.4/14/17-Day2-afternoon-at-117-120;

Tr.4/15/17-Day3-morning-at-113-115; APP-Ex.7-at-3,7-8; CFP-Ex.9 (Confidential).

The issue of whether host communities would benefit from the payment of $564 to $692 million in property taxes over a twenty year period was also contested. DK-tab-1432-at-139; Applicant's Brief at 12. Several municipal officials testified that the financial benefits associated with the property taxes would be reduced by the project's negative impact on property values, abatements and potential litigation concerning the applicant's proposed methodology for taxation. DK-tab-1432-at-139,162. Even though municipal officials were unable to quantify those reductions, the subcommittee weighed the valid concerns, and found that "*all we can conclude* about the economic benefits of property taxes based on the record before us, is that the Project, if constructed as proposed, *would likely have a positive effect* because of substantial real estate taxes it would pay to the affected communities." DK-tab-1432-at-162.

There was also extensive testimony from municipal officials that the overall tax benefits did not outweigh the other non-monetary negative aspects of the project such as the degradation of the character and aesthetics of their communities. DK-tab-1385-at-81. The tax impact to individual taxpayers in several communities would be minimal. In Concord, for example, during the first year of the project's operation, the taxes paid by the owner of a home assessed at $100,000 would be reduced by $20. APP-Ex.103-at-Att.C-54089. The applicant proposed a depreciation schedule that would diminish those savings over twenty years. APP-Ex.6-Att I. The Town of Bethlehem would have seen a reduction of $270 for a home assessed at $100,000, but it still remains opposed to the project because

"[w]e want our town to be consistent with what our master plan and the town wants, which is a rural, quiet, orderly development community that doesn't have 105-foot towers and thousand–volt lines going across it. . . . It really is not just about money." APP-Ex.103-at-Att.C-54089; DK-Tr.11/8/17-Day58-afternoon-at-25-28. That Eversource might become the largest taxpayer in the host communities through the addition of "large industrial metal structures" did not buy the support of the municipal officials because that type of development was inconsistent with the long-term vision of the communities. DK-tab-1385-at-80-81.

Tourism: The applicant hired Mitch Nichols, the owner of Nichols Tourism Group in Bellingham, Washington, to estimate tourism impacts. APP-Ex.31-at-1. His work as a tourism expert over the last twenty years involved advising "tourism destinations on how to maximize tourists at their destination." DK-Tr.7/18/17-Day 21-morning-at-20-21; APP-Ex.31-at-1. This was the first project in which Mr. Nichols was hired to justify a utility development project by assessing the impact on tourism due to the siting of new utility infrastructure. DK-Tr.7/18/17-Day21-morning-at-21-26. Mr. Nichols failed to convince the subcommittee that the project would not affect regional travel demand or have a measurable effect on New Hampshire's tourism industry. APP-Ex. 31-at-1. Mr. Nichols also failed to convince the subcommittee that local construction traffic delays and tourist destinations near the project would not detract from a visitor's experience by claiming, "it's the collective mix of destination attributes" that influence a visitor's choice of destination. APP-Ex.31-at-5; DK-tab-1432-at-225-27.

During the deliberations, the individual subcommittee members identified flaws in Mr. Nichols' expertise, exercise of judgment and overall

opinion. DK-tab-1432-at-15-17. One of the subcommittee members, Christopher Way, explained that Mr. Nichols' reports "did not resonate with me" and he "saw it flawed in quite a few areas." DK-Tr.1/31/18-Day2-afternoon-at-84. Another subcommittee member, Kate Bailey, stated that "of all the witnesses, Mr. Nichols was the least credible in my mind. And not credible almost at all," and that the survey he relied upon was "completely superficial." DK-Tr.1/31/18-Day2-afternoon-at-88-89. Subcommittee member Craig Wright found the listening sessions Mr. Nichols conducted were "hardly worth anything." DK-1/31/18-Tr.Day2-afternoon-at-88. Subcommittee member Patricia Weathersby found that the survey was not at all helpful because it was "useless," "confusing" and "poorly worded." DK-Tr.1/31/18-Day2-afternoon-at-96-97.

In its unanimous written decision, the subcommittee stated it "did not find the report and testimony submitted by Mr. Nichols credible." DK-tab-1432-at-225. Mr. Nichols "did not exhibit familiarity with the New Hampshire tourism industry and tourism destinations in the North Country." DK-tab-1432-at-225. He relied on the "results of a poorly designed listening session" attended by a limited amount of people and "did not provide a variety of information and views on tourism and concerns about the projects impacts." DK-tab-1432-at-225. He also relied on a "dubious online survey" that was poorly worded and misleading. DK-tab-1432-at-225. His review of projects such as the Hydro-Quebec Phase II, Maine Reliability Project, Estes Park and North Cascades National Park was "flawed" because those projects are "substantially different." DK-tab-1432-at-226. The subcommittee ultimately found it was unable to assess potential impacts to tourism based on the testimony and reports presented

by Mr. Nichols, and that "we are no better off than we were before the evidentiary hearing." DK-tab-1432-at-226-227.

Property Values: The applicant hired James Chalmers, Ph.D. of Chalmers & Associates, LLC from Billings, Montana as its expert on property valuation issues. APP-Ex.30-at-1. His work over the last forty years has primarily been for utility companies, and he has never found measurable property effects resulting from a high voltage transmission line. APP-Ex.30-at-1; DK-Tr.8/2/17-Day26-afternoon-at-10. Dr. Chalmers testified that there is no evidence that HVTL results in consistent measurable effects on property values. APP-Ex.30-at-10. The subcommittee rejected this conclusion as "unreliable" and "shallow" despite Dr. Chalmers' review of: (1) professional literature; (2) case studies that analyzed the sale of 58 properties and 4 subdivisions in New Hampshire crossed by or abutting an HVTL utility corridor; and (3) market activity research within one mile of an HVTL utility corridor. DK-tab-1432-at-194-199; APP-Ex.30-at-1-10.

To the contrary, the subcommittee concluded that the professional literature relied upon by Dr. Chalmers actually "supports the intuitive position that HVTLs negatively impact real estate values." DK-tab-1432-at-194-95. The subcommittee found the case studies unpersuasive because of the "substantial differences" between the utility corridors in the studies versus the project, as well as errors in the underlying data such as the use of non-arms-length sales, incorrect sale years, and inaccurate descriptions of the utility structures in comparative sales. DK-Tr.7/31/17-Day-24-afternoon-at-109-166; DK-tab-1432-at-195-97. Although a number of properties indicated that the HVTL negatively impacted sales prices, no

such effect was found by those appraisers. DK-Tr.7/31/17-Day24-morning-at-96-97,105-116. Dr. Chalmers was unable to explain the rationale for many of the conclusions on price effect reached by those appraisers. DK-Tr.7/31/17-Day24-morning-at-84-116. If those properties were properly identified in the case studies as having a price or market time impact, it would have expanded the number of potentially impacted properties that were the foundation of Dr. Chalmers opinion. DK-Tr.7/31/17-Day24-morning-at-96-97, 105-116. Ultimately, the subcommittee found that the methodology Dr. Chalmers used for his opinion that only approximately 11 single family homes along the entire 192 mile proposed route would have a small property value impact was based on "neither a reliable nor a credible method." DK-tab-1432-at-170,n.70, 198. The subcommittee determined that, because of the flaws with his methodologies, his conclusion on property value impacts was "no more than a guess." DK-tab-1432-at-198.

With respect to the property value guarantee program touted by the applicant to "mitigate" the project's impact on property values, the subcommittee concluded that the program was fundamentally flawed. DK-tab-1432-at-198-99. That program was offered to address impacts on property values, but was limited to single family homes located within 100 feet of the right-of-way. DK-tab-1432-at-175-177. The applicant proposed that only 6 to 9 properties along the entire 192 mile route satisfied the eligibility requirements for the program, and the program did not include condominiums. DK-tab-1432-at-176,198. The subcommittee found the program inadequate because it was conditioned on the flawed and unreliable method used by Dr. Chalmers to determine whether the project

might impact the value of a property. DK-tab-1432-at-198. The subcommittee determined it had "insufficient evidence upon which to structure a broader property value guarantee program" because the evidence was inadequate to determine which properties should be included in the program and/or the amount of remuneration. DK-tab-1432-at-198-99.

Land Use: The applicant hired Robert Varney of Normandeau Associates, Inc. to provide an assessment of and opinion on potential impacts of the project on local land use, as well as a general opinion regarding the ultimate issue of whether the project would unduly interfere with the orderly development of the region. APP-Ex.96-at-3. Mr. Varney was the Chairman of the SEC between 1989 to 2001. APP-Ex.96-at-1-2. He testified that the project was consistent with existing land use because over 83% of the project would be located within an existing transmission corridor. For those areas, Mr. Varney stated that he did not look at details regarding the height of the new structures or the removal of vegetative buffers. DK-tab-1432-at-237. Mr. Varney disagreed that "an increase in the intensity of the use within the right-of-way or increase in height of towers compared to the currently existing towers would reach a point where it would change the extent, scope and scale of the right-of-way." DK-tab-1432-at-236-37. Mr. Varney also testified that vegetation and buffer removal, usage of different types of structures, the addition and relocation of existing structures and the reconfiguration of existing structures would not affect land use "because it would all be done within the existing right-of-way." DK-tab-1432-at-277. When pressed by the subcommittee on this point, Mr. Varney testified that even the installation of 300 foot towers would not adversely affect or change the land use. DK-tab-1432-at-277.

Mr. Varney's opinions failed to recognize that infrastructure within an existing corridor can impact surrounding land uses and development. For example, Mr. Varney argued that development around the Hydro-Quebec Phase II transmission line from Concord to Londonderry had not been impacted since the expansion of the line in 1990, by relying on the construction of a Market Basket grocery store in Bedford. APP-Ex.96-at-2-3. Mr. Varney provided the following photograph showing approximately 95-foot tall towers (lower than tower heights proposed in many areas by Northern Path) near the Market Basket as part of his testimony. DK-Tr.9/22/17-Day38-morning-at-137-42; JTMUNI-Ex.291.

APP-Ex.96-Att.A-at-17. Despite Mr. Varney's attempt to argue that there have been no impacts from the Hydro-Quebec Phase II transmission line, the record showed that it has created unique challenges for development in

Bedford. For example, the developer of the Market Basket explained the following at a hearing in Bedford seeking a variance:

> I don't believe there is another commercial parcel in Town that has this easement running through it, *and if you can visualize following this easement down through the Town of Bedford, you won't see any other development under it.* There is a little bit of parking off one of the lots on Constitution Drive, but other than that, it goes right through Town *and no one has tried to do any kind of any development under it because you can't*. So this development allows us to make some good use of land that nobody else has found a use for except hitting golf balls.

JTMUNI-Ex.292-at-23 (emphasis added). A member of the Bedford Zoning Board further noted that "it looks like a moonscape" and "with those huge power lines, it would be hard to say you're making the neighborhood look worse by building a 78,000 square foot building." JTMUNI-Ex.292-at-40. Furthermore, Concord's Assistant City Planner conducted a study that found an extremely limited amount of residential development adjacent to the Hydro-Quebec Phase II corridor from Concord to Litchfield since the 1990s, further discrediting Mr. Varney's opinion that the expansion of a corridor does not impact land use. DK-Tr.11/16/17-Day60-morning-at-98-108; DK-tab-1385-at 30-31.

Mr. Varney did not waiver in his opinion despite evidence in the record showing that expanding a utility corridor with large industrial utility infrastructure can impact surrounding properties. The subcommittee members expressed frustration that they were unable to receive a thoughtful assessment from Mr. Varney about those impacts. Subcommittee member

Craig Wright described the responses to questions regarding whether new construction in a right-of-way could impact land use as being a generic response of "It's a right-of-way, it's a right-of-way." DK-Tr.1/31/18-Day2-morning-at-33. Chairman Honigberg explained that Mr. Varney "had one answer to a number of questions . . . that if it was placed in the existing right-of-way and it was a transmission line, it was consistent with the prevailing land use. And that was the answer to all of those questions." DK-Tr.1/31/18-Day2-morning-at-34. The subcommittee did not agree with Mr. Varney's opinion, but rather, had legitimate concerns about the expansion of the right-of-way where wooden poles would be replaced with industrial metal poles often twice the height. DK-Tr.1/31/18-Day2-morning-at-40-51.

Mr. Varney also testified that 8 miles of the new proposed utility corridor would not have an adverse impact on local land use because it would be located in "sparsely populated" land. APP-Ex.96-at-4-5. The subcommittee disagreed that the new right-of-way would not impact land use in the North Country. DK-tab-1432-at-282. Subcommittee member Patricia Weathersby described Mr. Varney's position as "shortchanging" the people who live in the North Country: "I don't think just because an area is sparsely populated that the effect on those people should be discounted as compared to an urban area." DK-Tr.1/31/18-Day2-morning-at-71-72. The subcommittee found the applicant had failed to establish that the project would be consistent with the land use in this area simply because fewer people enjoy such uses. DK-tab-1432-at-281-282. This finding was supported by testimony and a powerful video submitted by a number of intervening property owners from the North Country showing

the detrimental impacts the project would have on the rural character of that region. CS-Ex.3; DK-Tr.10/20/17-Day49-morning.

Municipal and Regional Planning Views: With respect to the views of municipalities and regional planning commissions, the subcommittee found Mr. Varney's opinion that the project would be consistent with local, regional and statewide long-range plans was "directly contradicted by the testimony of municipal officials." DK-tab-1432-at-276. The subcommittee found the predominant view of local governing agencies was "quite clear" that the project would unduly interfere with the orderly development of the region. DK-tab-1432-at-276. Although the applicant attempts to defend Mr. Varney's testimony by asserting that he considered comments from the community and local and regional planners, Applicant's Brief at 22, the record supports the subcommittee's finding that Mr. Varney and other representatives failed to engage in any meaningful discussions with local planning agencies to solicit their views on the project. DK-tab-1432-at-277. Mr. Varney's meetings with regional planning commissions and municipal planners were not intended to elicit their concerns and have a meaningful discussion about how the applicant might resolve those concerns, but rather to obtain the most recent version of any relevant local planning documents in a "check the box" manner so he could say that he had reviewed them. DK-tab-1432-at-238-239, 244, DK-Tr.9/18/17- Day35-afternoon-at-33-37; CFP-Ex.471-at-1-4. Mr. Varney also only met with professional planners in 7 of the 32 host communities. DK-Tr.9/21/17-Day-37-afternoon-at-128; CFP-Ex.471. He did not solicit input from any host community that did not employ a professional planner.

Furthermore, the subcommittee found that Mr. Varney was not forthright about sharing information with the subcommittee about concerns expressed by municipalities and regional planning commissions. DK-tab-1432-at-238-40, 276-77. For example, the North Country Council discussed a number of concerns during a meeting with Mr. Varney, including the cumulative impact of various large energy projects in the region, visual impacts on scenic resources and impacts to property values and tourism. CFP-Ex.471. Mr. Varney's report and testimony did not address these concerns, and it was "not until cross-examination that he shared the concerns expressed by the North Country Council." DK-tab-1432-at-276. Mr. Varney also acknowledged on cross-examination that various planners expressed concerns about the impact of the project on aesthetics, the rural character of the communities and tourism, but he did not solicit or consider those opinions in his analysis. DK-Tr.9/18/17-Day35-afternoon-at-33-36.

The applicant attempts to diminish the views presented by the municipal officials about impacts to land use and orderly development by arguing that they "offered no expert testimony." Applicant's Brief at 23. The applicant's argument that the opinions of these witnesses should be dismissed because they are not paid "experts" demonstrates the level of indifference it has consistently shown to concerns raised by municipalities. Applicant's Brief at 22-23. A large number of professional planners, commission members and town administrators testified about specific impacts of the project to their communities. These municipal witnesses presented the most credible testimony regarding the project's potential impacts in their respective communities. The subcommittee gave weight to

the concerns raised by municipal officials because it found them "relevant to the issues, thoughtful, and consistent." DK-tab-1432-at-285. In contrast, the subcommittee found that Mr. Varney "made no accommodation for differences between communities along the route," "made no effort to identify where impacts of the project might be large or small," and "did little in the way of applying the details of the project to the [master] plans and ordinances." DK-tab-1432-at-278,280.

SUMMARY OF THE ARGUMENT

The legal issues presented in this appeal are simple although the underlying project is large and complex. The applicant faces the burden of showing that the findings of the subcommittee which are "deemed to be prima facie reasonable" under RSA 541:13 are not supported by evidence. The applicant frames this appeal as being an "as applied" violation of its due process rights and argues that many of the subcommittee's findings should be vacated because they are *ad hoc* or arbitrary. While the arguments in this appeal are numerous, none of them are well developed and most are made only in passing. *Snow v. American Morgan Horse Assoc. Inc.*, 141 N.H. 467 (1996) (this court will not review on appeal constitutional issues not presented below); *cf. State v. Laurent*, 144 N.H. 517, 521 (1999) (declining to review vague and undeveloped argument).

Each of the municipalities raised specific concerns about the location of the project, harm to the character of their communities and the welfare of their citizens. The municipalities also raised concerns that the negative impacts would occur despite the speculative economic and energy benefits that would allegedly come from the project.

The applicant claims that the SEC gave "more" consideration to municipal views than is required. That argument ignores the legitimate concerns raised by the municipalities. There is no bright-line test for how much weight or consideration the SEC should accord the concerns raised by municipalities. The legislature used the phrase "due consideration" to give the SEC broad discretion and flexibility in determining whether a proposed project should be approved after considering issues raised by

municipalities that support and/or oppose a project. The subcommittee was well within its discretion to find the municipal concerns credible and well founded, and the applicant has not set forth any basis to overturn that factual finding on appeal. DK-tab-1432-at-285. The subcommittee's decision should be affirmed.

ARGUMENT

I. Standard of Review

The subcommittee's decision is reviewed in accordance with RSA chapter 541. RSA 162-H:11. The applicant bears the burden of challenging the findings of the subcommittee, which are "deemed to be prima facie lawful and reasonable" by RSA 541:13. That burden is greater when the review is of a decision made by a specialized agency like the SEC which, by statute is created to "maintain a balance among [the] significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities." RSA 162-H:1. As this Court stated in commenting on the statutory presumption regarding another such specialized agency:

> The statutory presumption, and the corresponding obligation of judicial deference are the more acute when we recognize that discretionary choices of policy necessarily affect such decisions, and that the legislature has entrusted such policy to the informed judgment of the Commission, and not to the preferences of reviewing courts.

Appeal of Conservation Law Found. of New England, Inc., 127 N.H. 606, 616 (1986) (quotations omitted).

This Court reviews an agency's interpretation of a statute *de novo.* However, where a party contests the interpretation of a statute by the agency charged with its administration, as the applicants do in this case, the agency's interpretation is entitled to substantial deference. *Appeal of Town of Seabrook*, 163 N.H. 635, 644 (2012); *Appeal of Weaver*, 150 N.H. 254, 256 (2003) ("statutory construction by those charged with its administration is entitled to substantial deference."). In reviewing the subcommittee's

factual findings, which required weighing the testimony of witnesses, this Court's task is not to determine whether it "would have found differently or to reweigh the evidence, but, rather, to determine whether the findings are supported by competent evidence in the record." *Appeal of Allen*, 170 N.H. 754, 758 (2018); *see also In re Londonderry Neighborhood Coal.*, l45 N.H. at 206.

II. The SEC Considered Relevant Evidence and Its Findings Are Supported by the Record

The applicant presents a highly biased and one-sided portrayal of the record throughout its brief, often mischaracterizing testimony and taking out of context statements made during deliberations. In arriving at its decision, the SEC considered and weighed significant evidence, evaluated the credibility and reliability of witnesses and experts, and made factual findings. Although the applicant does not agree with the SEC's findings, it fails to acknowledge that the Court's role is not to determine whether it would have made the same findings as the subcommittee, but rather, to determine whether there is evidence in the record that reasonably supports the subcommittee's decision. *Appeal of Malo*, 169 N.H. 661, 668 (2017). The record contains competent evidence amply supporting the subcommittee's finding that the applicant failed to meet its burden of proof that the Northern Pass project would not unduly interfere with the orderly development of the region.

A. The SEC Was Not Required to Deliberate on All Statutory Criteria in RSA 162-H:16, IV Prior to Denial

The applicant argues that the subcommittee was required to deliberate on all four of the statutory findings in RSA 162-H:16, IV. The applicant also argues in its brief that the subcommittee chose to rush through or "cut short" deliberations because it had "tired of its task" and was "focused on expediency." Applicant's Brief at 28-29, 32. This attack on the subcommittee is unwarranted.

On February 1, 2018, on the third day of deliberations, the subcommittee voted to end deliberations because it unanimously found the applicant failed to provide reliable evidence to satisfy the orderly development standard. DK-2/1/18-Tr.Day3-afternoon-at-24. Each member of the subcommittee evaluated and weighed the evidence and each concluded that the applicant failed to present sufficient evidence to support a determination that the project would not unduly interfere with orderly development. DK-2/1/18-Tr.Day3-morning-at-3-33. The subcommittee was not "tired of its task." A fair assessment of those deliberations shows that each member carefully evaluated the evidence and considered the evidence in reaching a decision. The result was neither unjust nor unreasonable.

Like other administrative agencies, the SEC's enabling statute and rules do not prohibit a subcommittee from terminating deliberations when it determines an applicant has not met its burden on one of the criteria. RSA 162-H:16, IV requires consideration of all of the criteria "in order to issue a certificate." Nothing in the statute requires the continuation of deliberations after the subcommittee decides that a certificate *cannot* be

issued because the applicant has failed to meet its burden of proof on one of the required findings. *See, e.g.*, Order, SEC Docket 2012-01 (9/10/13) ("Antrim Wind I") at 6 (finding on financial capability not required when project could not be approved because of unreasonable adverse impacts to aesthetics). Were the law otherwise, the subcommittee would have been required to undertake the time consuming and futile task of making findings on a multitude of complex and controverted issues such as whether the site and facility would have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety, as well as whether issuance of the certificate would serve the public interest.

The applicant also argues that the subcommittee should have considered whether the project's impact on aesthetics would be unreasonably adverse under RSA 162-H:16, IV(c) before denying the certificate. Applicant's Brief at 32. Nothing in the law requires this.

The subcommittee's deliberations about impacts to land use did address aesthetic considerations specifically as they pertained to orderly development, and to the master plans and ordinances adopted to maintain community aesthetics and attractiveness, "rural character," and appropriate buffers. DK-9/22/17-Tr.Day38-morning-at-105-107. Under the SEC statutes and rules, the issue of aesthetics is focused on defined "scenic resources" under Site 102.45, and involves a specific process for evaluating impacts to those scenic resources. RSA 162-H:16, IV(c); Site 301.05. The discussion of "community aesthetics" and "community attractiveness" is

significantly broader, and includes residential and commercial regions in a community that are not necessarily identified as "scenic resources."[3] DK-9/22/17-Tr.Day38-morning-at-105-107. Ultimately, the subcommittee found Mr. Varney did not provide a reliable expert opinion that the project would not undermine the rural character of the host communities or contradict other visually-oriented goals expressed in those communities' master plans and zoning ordinances. Indeed, Mr. Varney admitted he did not conduct a study of how the project would impact aesthetic values expressed in the host communities' master plans and zoning ordinances because that type of analysis was not in the "scope" of his review. DK-tab-1432-at-280-81; DK-9/22/17-Tr.Day38-morning-at-105-107. The subcommittee's discussion about community aesthetics during its evaluation of impacts to land use was consistent with the purpose of RSA 162-H:1 to "ensure that the construction and operation of energy facilities is treated as a significant aspect of land use planning," and should have been a central focus by Mr. Varney in the first instance. DK-tab-1432-at-247-272,280-81.

B. The SEC Adequately Considered Mitigating Conditions

The applicant argues that to resolve concerns discussed by the subcommittee members during deliberations, the subcommittee was required to create new conditions or overhaul and revise proposed conditions regarding the property value guarantee program, the business

[3] Terrance DeWan, the applicant's expert on aesthetics, acknowledged he did not analyze impacts to community aesthetics because that was not his "area of expertise." DK-9/12/17-Tr.Day32-afternoon-at-109-11.

claims process and the Forward New Hampshire Fund. Applicant's Brief at 34-38. The subcommittee considered the conditions proposed by applicant, and found them insufficient to mitigate the concerns identified in the proceeding. DK-tab-1432-at-162-63,175-76.

In its deliberations, the subcommittee was not required to revise proposed conditions or develop new conditions that would allow it to grant the application. The applicant also fails to provide any explanation for why it argues now that the subcommittee should have imposed the same or nearly identical conditions that the applicant opposed in its post-hearing brief. For example, with respect to the property value guarantee, discussed more extensively at pages 31-32, the applicant argues that the subcommittee should have expanded the program to include additional properties estimated by CFP's experts to be impacted, or alternatively, all properties within a specified distance of the right-of-way. Applicant's Brief at 36-37. The applicant neglects to mention that during the SEC hearings, it disagreed with CFP's recommendation and opposed the methodology used by KRA, the experts hired by CFP. In its post-hearing brief, the applicant argued that any part of KRA's testimony "that purports to be an opinion of property value impact . . . should be disregarded." DK-tab-1386-at-116. The applicant cannot have it both ways, insisting that KRA's testimony should be ignored, and then arguing that the subcommittee should have adopted the KRA methodology as a condition for the property value guarantee program.

The applicant's argument that the subcommittee should have imposed a claims process similar to the one imposed in the Seacoast Reliability Project is similarly unpersuasive. Applicant's Brief at 37. The

Seacoast Reliability Project is significantly different. It was a reliability project to construct a new 115kV electric transmission line in four seacoast towns that is 12.9 miles in length and included a combination of aboveground, underground and underwater segments. In that proceeding, the subcommittee adopted as a condition a "Dispute Resolution Process" to address property and business value impacts. Decision, SEC Docket 2015-04 (1/31/19) at 263-265,276-78,287. In its post-hearing brief in this proceeding, the applicant objected to a similar "Independent Claims Process" proposed by CFP *that contains almost the same requirements* as the provisions of the "Dispute Resolution Process" stipulated to in the Seacoast Reliability Project. DK-tab-1432-at-150; DK-tab-1373-at-168 For Northern Pass, the applicant took the position that the proposed claims process would be "unworkable, cumbersome, and inefficient." DK-1432-tab-at-149,n.59. Again, the applicant cannot have it both ways.

The applicant also argues the subcommittee should have considered placing conditions on the Forward New Hampshire Fund to address potential losses to tourism. Applicant's Brief at 37-38. However, the applicant argued in its post-hearing brief that any conditions relating to the issuance of grants by the Forward New Hampshire Fund would be inappropriate because it was "solely within the purview of the Forward New Hampshire Fund to make decisions about disbursements of funds." DK-tab-1432-at-150,n.60; DK-1384-at-414. It is not arbitrary or unreasonable for the subcommittee to avoid imposing a condition that the applicant argued is prohibited.

Finally, the conditions referenced by the applicant do not resolve the fundamental failures in the application identified by the subcommittee. The

concerns raised by the subcommittee during its deliberations cannot be simply "fixed" or "mitigated" through the imposition of conditions, particularly with respect to widespread potential detrimental impacts to land use and views of the municipalities.

C. The SEC's Findings on the Capacity Market Benefits and Financial Impacts Are Supported by the Record

The applicant contends that the subcommittee failed to make factual findings supporting its conclusion that the project would not provide quantifiable savings from the forward capacity market. Applicant's Brief at 38-41.[4] The subcommittee found that, "*Based on the record before us*, and the Applicant's admission that qualifying and clearing the Capacity Market is merely an intellectual exercise, *we cannot conclude there will be savings from the Capacity Market*." DK-tab-1432-at-161 (emphasis added). Evidence in the record supports this finding.

As discussed fully in the subcommittee's written order, the subcommittee concluded that the estimate of forward capacity benefits advanced by Julia Frayer, the applicant's expert, was flawed. At the hearing, Ms. Frayer confirmed that many of her specific estimates were incorrect because she failed to predict correctly the amount of new generation entering the market for the forward capacity auctions #10 and #11. DK-tab-1432-at-130. The errors in her report, coupled with the speculative nature of the claimed benefits, discredited her testimony

[4] As discussed in the motion to strike filed on February 14, 2019, this argument was not properly preserved. This brief addresses the merits of this argument.

estimating the amount of forward capacity market benefits resulting from the project. The experts for CFP and New England Power Generators Association also presented evidence that the project was unlikely to clear 1000 megawatts in the forward capacity auction based on the clearing price used by ISO-NE. DK-tab-1432-at-130-31,143,157-158; NEPGA-Ex.1; CFP-Ex.144-at-2&Att. A. There is ample evidence in the record to support the subcommittee's finding that they could not conclude by a preponderance of the evidence that there would be any capacity market savings, or alternatively, savings of the magnitude claimed by Ms. Frayer. DK-tab-1432-at-161.

The applicant also submits that the subcommittee had an obligation to calculate mathematically the value of the impacts and benefits to determine whether the project would unduly interfere with orderly development. Applicant's Brief at 33-34, 40-41. Had the subcommittee done this calculation, the applicant contends that it would have shown $1.5 billion in economic benefits, which the applicant argues "dwarfs" any financial losses resulting from property value and tourism impacts. Applicant's Brief at 40. In making this argument, the applicant claims that the subcommittee should have considered evidence that would serve as a "bookend" regarding the potential economic impacts of the proposed project, such as the financial losses to tourism and property values estimated by KRA, the economic experts hired by CFP. Applicant's Brief at 33-34. In other words, having failed to convince the subcommittee of the reliability of the project's benefits submitted by its own economic experts, the applicant seeks to invoke the testimony of KRA to prove that even the "worst case financial scenario" warrants approval.

Setting aside the disputed $1.5 billion dollar estimate, the applicant's claim that orderly development can be mathematically quantified shows that it still does not appreciate or understand the issues considered by the subcommittee and now under review pertaining to orderly development. The issuance of a certificate does not depend on a quantitative analysis based on a mathematical calculation of potential benefits versus potential impacts. Of all of the detrimental impacts caused by this project – including the degradation of the character of rural communities – the absence of a specific dollar value for economic impacts likely ranked as one of the least significant concerns addressed by the subcommittee. DK-tab-1432-at-284. The subcommittee did not deny the application because the math showed more financial losses than benefits, but instead denied it because the applicant failed to provide credible evidence that would allow the subcommittee to conclude that the project would not unduly interfere with orderly development. No dollar value can be placed on many of the concerns raised by the parties and municipalities about the negative impacts of the project, such as its inconsistency with land use planning and the character of the community. [5]

[5] The argument that the subcommittee acted unreasonably by failing to rely on KRA's economic impacts is also absurd considering the applicant argued that such estimates should be disregarded because they were "fundamentally unreliable." DK-tab-1386-at-70-71,76-82,116-117,124,127-128,130-133.

III. The Subcommittee Did Not Impose Ad Hoc Standards

The applicant argues generally that the manner in which the SEC applied the statutes and rules violates its due process rights. Applicant's Brief at 41-55. The applicant raises a litany of challenges, many of them vague and not well developed. *In re Thayer*, 146 N.H. 342, 347 (2001) (declining to rule on due process arguments that were not sufficiently developed). The applicant's challenges to due process are as follows: (1) the subcommittee failed to define key terms in the statute; (2) the subcommittee failed to identify the specific information that the applicant's experts should have supplied to meet its burden of proof; and (3) the subcommittee applied the incorrect standard for determining whether there would be an undue impact on orderly development relative to impacts to land use, tourism, property values and views of the municipalities. Both individually and collectively, these arguments are not grounds for second guessing the subcommittee's decision.

A. The Subcommittee Properly Analyzed Key Terms in the Statute and Rules

The applicant first argues that the subcommittee's decision violates its due process rights because it "avoided the hard work of defining terms" in the statute such as "region."[6] Applicant's Brief at 42, 46. That argument is meritless. There is no requirement for courts or administrative agencies to provide a specific definition for every undefined term in the

[6] The applicant focuses on the term "region" in the statute throughout its brief. Although it also references that the term "development" is undefined, Applicant's Brief at 43, this argument is raised only in passing and is not developed.

statute or administrative rule. Were such a mandate to exist, every decision or order would require an attached glossary of defined terms.

The fact that the term "region" is undefined in the statute does not make it ambiguous. One of the best recognized canons of statutory construction is that words and phrases should be given their common and approved meaning. *See* RSA 21:2; *see also N.H. Right to Life v. Dir. v. N.H. Charitable Trusts Unit*, 169 N.H. 95, 103 (2016). In addition, words and phrases are not considered in isolation "but rather within the context of the statute as a whole." *Appeal of Local Gov't Ctr.,* 165 N.H. at 790, 804 (2014). The statute and administrative rules provide sufficient guidance for parties to understand that the SEC's consideration of potential regional impacts of a project will include both statewide and more localized impacts.

RSA 162-H:16, IV(b) requires the SEC to find that 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." The plain language of this statute makes it clear that the review of orderly development on the "region" includes impacts that affect a municipality as well as larger geographic areas such as territories of regional planning commissions.

The plain language in Site 301.09 provides guidance that the definition of "region" may vary depending on the project being reviewed and the impact of that project. The language of RSA 162-H:16, VI(b) provides the SEC with the flexibility to apply the term on a macro and micro level. For example, the SEC must consider impacts to *land use in the region* by reviewing the prevailing land uses in *each affected community.*

Site 301.09(a)(1); Site 102.07. The SEC must consider impacts to the *economy of the region* by reviewing the effects on *affected communities, host communities, regional communities and statewide* depending on the economic activity. Site 301.09(b). The SEC is required to consider impacts to *employment in the region* by looking at *local jobs* expected to be created, as well as by reviewing all jobs created *regardless of the location*. Site 301.09(c).

Whether a project will unduly interfere with the orderly development of a "region" can involve an analysis of both widespread and localized impacts. For example, in a decision on Portland Natural Gas Transmission System's application to site a 100-mile underground pipeline, the SEC found that two small sections of the route would unduly interfere with orderly development. In the town of Shelburne, 5.7 miles of new proposed right-of-way for the underground pipeline would impact the town's planning efforts to maintain the rural character of that area. In the town of Newton, the proposed route would have interfered with a possible new location for a public library. Decision, SEC Docket 1996-01 and 1996-03 (7/16/17) at 12-18. That decision demonstrates it is appropriate for the SEC to consider localized concerns when addressing the regional impact of a statewide project. It bears noting that the *Portland Natural Gas* decision was issued by a SEC subcommittee chaired by Mr. Varney, the applicant's expert on land use in this proceeding. It is ironic that the applicant now asserts this subcommittee's decision is arbitrary because it failed to specifically define the term region, even though that term has been used by its own expert without definition in past decisions, including the *Portland Natural Gas* application.

By statute, the legislature delegated its authority to the SEC to issue a certificate for large energy projects, and the SEC has sole responsibility in that regard. The subcommittee's interpretation of the term "region" is entitled to deference unless it is in clear conflict with express statutory language. *Appeal of Old Dutch Mustard Co., Inc.*, 166 N.H. 501, 294-95 (2014) (discussing interpretation of the undefined term "facility" in statute); *Appeal of Hampton Falls*, 126 N.H. 805, 809-10 (1985) (discussing interpretation of undefined term "pollution" in statute) ; *see also Com. of Mass., Dept. of Educ. v. United States Dept. of Educ.*, 837 F.2d 536, 541-45 (1st Cir. 1988) (discussing interpretation of undefined term "obligated and expended" in statute). The applicant has failed to cite any express statutory language that conflicts with the subcommittee's usage of this term.

B. The Applicant was Notified of the Information Required to Support Its Application

The applicant incorrectly contends that the subcommittee imposed arbitrary and *ad hoc* requirements amounting to "we know it when we see it" because the subcommittee allegedly failed to identify the standards it would apply when reviewing the application. Applicant's Brief at 41-47. That argument has no support in New Hampshire law. As stated by this Court, "a law is not necessarily vague because it does not precisely apprise an individual of the standards by which a permitting authority will make its decision." *Bleiler v. Chief, Dover Police Department*, 155 N.H. 693, 702-03 (2007) (plain language of concealed carry statute was not vague either facially or as applied); *see also Derry Sand & Gravel, Inc. v. Town of Londonderry*, 121 N.H. 501, 505 (1981) (the term "good cause and sufficient reason" in the license for operation of a dump was not vague in

light of the purpose of the ordinance, to establish provisions for orderly and sanitary disposal of garbage); *Dow v. Town of Effingham*, 148 N.H. 121, 132–33, (2002) (race track ordinance is not void for vagueness if it does not specify the exact standards required by selectmen evaluating permit application; implied that selectmen will exercise discretion consistent with the purpose of the ordinance). The applicable SEC statute and rules inform an applicant that its application must contain sufficient information to enable the SEC to conclude that the project will comply with the goals of the statute set forth in RSA 162-H:1.

The subcommittee had no obligation beyond what is set forth in the statute to identify the specific information that the applicant's experts should have supplied or to provide the applicant with a list of items it found deficient so the applicant could then include "the various items the [subcommittee] found lacking in their reports." Applicant's Brief at 45. This Court has held that administrative agencies do not have an obligation to identify the specific proof required by an applicant to meet its burden of proof for a license. For example, in *In re New Hampshire Dept. of Transp.*, 152 N.H. 565, 575-76 (2005), this Court held that the DOT could rely on generalized concerns about safety when denying an application for a driveway permit and did not need to identify specific safety concerns to establish that an applicant did not meet his burden of proof.

The applicant's reliance on *In re Petition of Support Officers I & II*, 147 N.H. 1 (2001) and the *City of Vernon, Cal. V. FERC*, 845 F.2d 1042 (D.C. Cir. 2014) is misplaced. Unlike those cases, the subcommittee in this case extensively analyzed the facts, made factual findings and provided sufficient information about the legal standards that it was applying. Each

application for a certificate under RSA chapter 162-H must be analyzed individually to ensure it meets the objectives of the statute. The application was not denied because the subcommittee applied *ad hoc* requirements, or incorrectly applied a new burden of proof on each subsection of Site 301.09(a-c). The application was denied because the applicant did not provide the subcommittee with a reliable and honest assessment of the potential impacts of the project on tourism, property values and land use with which the subcommittee could assess properly whether issuance of the certificate would serve the objectives of the chapter, as well as whether any specific conditions could be imposed to mitigate those detrimental impacts. DK-tab-1432-at-284-85. Rather than providing the subcommittee with a reliable assessment, the applicant hired experts who prepared reports containing unreliable opinions that in many instances defied common sense.

The applicant does not dispute that it bears the burden of proof under Site 202.19(b). After 70 days of hearings, testimony from 154 witnesses and review of more than 2,000 exhibits, the subcommittee correctly determined that much of the applicant's evidence on orderly development was insufficient, unreliable and lacked credibility. DK-tab-1432-at-199,226-227,283-285. The applicant's failure to carry its burden left the subcommittee with no choice but to deny the certificate. The subcommittee had no obligation to provide the applicant with a roadmap identifying the specific evidence the applicant should present to support a finding that its request for a certificate meets the requirement of RSA chapter 162-H. The applicant had the sole obligation to provide reliable and credible expert testimony. It failed to do so and the subcommittee denied its application.

C. The Subcommittee Correctly Evaluated Testimony on Property Values, Tourism, Land Use and the Views of Municipalities and Regional Planning Commissions

1. Tourism

The subcommittee properly exercised its discretion when it rejected Mr. Nichols' testimony on tourism impacts. The subcommittee needed a reliable assessment about the project's potential tourism impacts to make required findings on orderly development, and the subcommittee's questions during the hearings demonstrate that it was actively engaged in trying to identify the potential impacts and to find a way to address them. Instead of providing a realistic assessment of the impacts to tourism, the applicant hired Mr. Nichols who provided an overgeneralized, whitewashed conclusion that there would be no measurable impacts to tourism.[7] As described herein at pages 28-30, the subcommittee found it was unable to assess potential impacts to tourism based on Mr. Nichols' testimony and reports because his testimony was unreliable and lacked credibility, and concluded that "we are no better off than we were before the evidentiary hearing." DK-tab-1432-at-225-227.

Realizing that its tourism expert was not credible and that no valid basis exists to overturn the subcommittee's factual findings on appeal, the applicant now attempts to use the testimony of KRA, CFP's expert, to

[7] For example, Mr. Nichols did not obtain specific data such as visitation trends and occupancy levels from businesses and attractions that would be potentially impacted, nor did he analyze the impact of traffic delays during construction. DK-Tr.7/19/17-Day22-morning-at-137-38; DK-Tr.7/19/17-Day22-afternoon-at-16,81-82.

assert that the subcommittee "imposed an impossible burden of proof" because "all experts" allegedly found that the impact of transmission lines on tourism was virtually impossible to measure. Applicant's Brief at 48. This argument mischaracterizes the testimony of KRA, and ignores other evidence in the record supporting the subcommittee's concerns about potential impacts to tourism.

The applicant focuses on KRA's testimony that tourism impacts from HVTLs "would be difficult to quantify," and that the incremental degradation of the scenic landscape would affect only a "teeny tiny percentage" of tourism. CFP-Ex.147-at-8; DK-Tr.10/11/17-Day 45-afternoon-at-17-18. Those isolated statements do not support the applicant's claim that the impact to tourism could not be evaluated by the subcommittee. While KRA generally agreed it would be difficult to generate exact numbers on the financial losses to tourism based on a decrease of visitors to New Hampshire due to the project, only Mr. Nichols stated flatly that the project would have no measurable impacts on tourism.

More importantly, when considered in its full context, KRA explained that only a small number of tourists might not visit New Hampshire because of the project's visual encumbrances, but that "even a fairly small effect can be fairly significant, especially when you don't have a lot of longer term benefits that are accruing from [the project]." DK-Tr.10/11/17-Day45-afternoon-at-14,17. KRA submitted a report that the financial harm to New Hampshire from impacts to tourism could result in an annual loss of 80 jobs and $5 million during the construction of the project, and an annual loss of 189-320 jobs and $14-33 million during the forty years of operations. DK-tab-1432-at-126; DK-tab-1296-at-Table 24;

CFP-Ex.147-at-11; CFP-Ex.148-at-4. KRA testified that long-term impacts would persist forever, or "as long as that visual encumbrance exists." DK-Tr.10/11/17-Day45-afternoon-at-16-17. KRA also explained that the risk of visual degradation could impact "a really important segment of the economy," and discussed some of those impacts as follows:

> New Jersey used to be the summer capital where all the presidents would summer and the Garden State, you know, beautiful scenery and all the rest. It doesn't have that now. And it's not the result of one decision or one transmission line. It's an accumulation. Each one has some incremental negative impact, but at some point, there are only 15 percent of the people who . . . regard New Jersey as being scenic and beautiful. And it's in the 90s, upper 90s in New Hampshire.

DK-Tr.10/11/17-Day45-afternoon-at-14. This testimony makes it clear that KRA never opined that there would be no measurable impacts to tourism. Evidence in the record therefore supports the subcommittee's concerns about potential impacts to tourism.[8]

2. Property Values

The subcommittee also properly rejected the testimony of Dr. Chalmers, the expert on property values whom it found was unreliable and lacked credibility. The applicant, apparently realizing that the subcommittee's findings cannot be overcome, spends a total of five sentences in the argument section of its brief to assert that the subcommittee's decision on property values was arbitrary. Applicant's Brief at 48-49. The applicant argues that the subcommittee failed to make

[8] In addition to KRA, a large number of other witnesses raised concerns about tourism impacts. DK-tab-1432-at-151,153,160,220-224.

findings to support its statement that "we believe that properties that are encumbered by the right-of-way and properties that are not encumbered by the right-of-way will be affected by the Project." DK-tab-1432-at-199. The subcommittee made adequate findings on this issue, and there is competent evidence in the record upon which those findings reasonably could have been made. *Appeal of Allen*, 170 N.H. at 757-758. For example, the literature studies showed a reduction in the sales price of residential properties ranging from 1-6%, 3-6% and 20-25% due to the presence of HVTLs, and that market times were also extended. DK-tab-1432-at-195-96. Dr. Chalmers' own case studies in New Hampshire showed that one out of six of the properties demonstrated a negative sales price attributable to HTVLs, which the subcommittee found "is not an infrequent occurrence." DK-tab-1432-at-196.

A number of other witnesses also presented evidence to support the subcommittee's findings that HVTLs can impact real estate property values. For example, Peter Powell, a real estate broker, testified about "real-life" examples from Colebrook to Franconia showing that the project had and would continue to negatively impact the value of real estate. DK-tab-1432-at-185-86; DWBA-Ex.10-at-7-12. Other parties including Jeanne Menard, a real estate broker, introduced evidence about a home in Deerfield that was unable to sell and was taken off the market in 2011 because of the project, and was secretly purchased by an agent for Eversource to "mask who the real owner would ultimately be." DK-tab-1432-at-191; DK-Tr.6/1/17-Day11-afternoon-at-71-72; DK-Tr.5/31/17-Day10-afternoon-at-95; DFLD-ABTR-Ex.126; JTMUNI-Ex.193-at-143-146. The applicant then failed to notify Dr. Chalmers that it was involved in the property's

purchase, and allowed Dr. Chalmers to issue a supplemental report analyzing the sale and incorrectly suggesting that the property was sold at market value in an arms-length transaction. DK-Tr.8/1/17-Day25-afternoon-at-51-58; JTMUNI-Ex.259; APP-Ex.104-at-16-and-Att.7.1. It defies logic that Eversource would purchase this home if there were no property value impacts from the proposed project.

Dr. Chalmers' opinion that there would be no measurable impact on property value impacts due to the proposed expansion of utility infrastructure not only defied common sense, but was also contradicted by decisions from the Board of Tax and Land Appeals ("BTLA"). SAN-Ex.40-3929,3945,3949,3953,3969. In one decision, the BTLA applied a 50% reduction to the total value of a property in the town of Wentworth due in part to its location adjacent to the Hydro-Quebec Phase II line that was expanded with new HVTL lines in 1990. DK-8/1/17-Tr.Day25-afternoon-at-124,127-132; JTMUNI-Ex.258,260. The BTLA determined that the property value would be significantly diminished by the addition of new HVTLs, even when the utility corridor was already visible at the time of the purchase. JT.MUNI-Ex.260-at-1-2.

The applicant also faults the subcommittee for seemingly requiring the applicant to prove no "effect" to property values. Applicant's Brief at 47-48. This argument is not supported by the record. It is clear from the subcommittee's decision that it found the applicant failed to provide sufficient credible evidence for the subcommittee to determine the extent of the impacts on property values.

3. Land Use

The applicant argues that the subcommittee unfairly criticized expert testimony it offered on land use because it "had every reason to believe" that this testimony would suffice. Applicant's Brief at 45. Although the applicant argues that the SEC should be bound by past precedent, the legislative mandate in RSA 162-H:10, III states that the subcommittee "shall consider, as appropriate, prior committee findings and rulings on the same or similar subject matter, *but shall not be bound thereby*." RSA 162-H:10, III (emphasis added). The plain language of the statute gives each subcommittee the authority to review each application individually, regardless of how a prior subcommittee may have made findings and rulings on the same or similar subject matter. Moreover, the law has never constrained the discretion of a commission by "rigid adherence to *stare decisis*." *Vautier v. State*, 112 N.H. 193, 195-96 (1972) (holding that Public Utility Commission's denial of application for certificate to transportation company to operate route was not arbitrary although it was inconsistent with past commission policy). That a specialized agency "may emphasize different factors from case to case is attributable to the infinite variety of fact situations, rather than arbitrariness." *Id.*

Although the subcommittee noted that "construction within an existing right-of-way is one principle of sound energy facility siting," it also recognized that it must consider all facts and circumstances when making a decision. DK-tab-1478-at-51. The subcommittee had good reason to deviate from prior decisions, and its specific concerns about this project involved the increased tower heights and reconfiguration of existing facilities. DK-tab-1432-at-277-278. The subcommittee found that "[t]here

are places along the route where the Project would have a substantially different effect on the neighborhood than does the existing transmission facilities." DK-tab-1432-at-277-279. The current application is different in scope and scale from every other application to have come before the SEC, including the MRVP. DK-tab-1373-at-7. The subcommittee did not interpret the law differently but applied the law to a different set of facts.

The subcommittee properly rejected Mr. Varney's opinions. He failed to analyze the substantial increase in the height of tower structures and failed to consider the impact of vegetative clearing for construction of the project. DK-tab-1432-at 237. The subcommittee also noted that Mr. Varney did not account for differences among the host communities along the proposed route, and made no effort to differentiate where the impacts of the project were small or large. As discussed at pages 32-34 herein, Mr. Varney attempted to rely on the Hydro-Quebec Phase II corridor that was expanded in 1990, but the evidence in the record showed that the expansion of that corridor did impact residential and commercial development along the right-of-way. DK-Tr.11/16/17-Day60-morning-at-39-108. Ample evidence in the record supports a finding that the expansion of a corridor can impact surrounding land uses.

The subcommittee's discussion of a "tipping point" and references to non-conforming uses under zoning law did not create new standards. Applicant's Brief at 51. The subcommittee's reference to a "tipping point" simply referred to the proposition that, at some point, the scope and scale of a project renders the use of an existing corridor inconsistent with prevailing land uses and is insufficient to support a finding of no undue interference. With respect to the references to non-confirming use under zoning law, the

subcommittee stated that it was not creating a new legal standard or test being applied to the project, but rather it was applying that analytical tool that was "informative in the context of this case." DK-tab-1432-at -278-279.

The subcommittee ultimately explained that the applicant failed to satisfy its burden because the existing corridor was insufficient to adequately buffer the large industrial infrastructure proposed by the project. Unlike smaller or less intensive projects built in different regions of the state, the magnitude and scale of this particular project had a significant likelihood of creating potential detrimental impacts to surrounding communities and properties, even when located in an existing corridor. That is not a new standard, but was instead based on a review of 70 days of hearings and thousands of pages of written testimony and exhibits. The applicant took a risk relying on the argument that locating the project in an existing corridor is always consistent with land uses. It was wrong:

> Mr. Varney suggests that as long as the corridor is used for transmission lines, there can never be a "tipping point" where the effect of transmission infrastructure on the land use becomes too intense. We disagree. Over-development of an existing transmission corridor can impact land uses in the area of the corridor and unduly interfere with the orderly development of the region.

DK-tab-1432-at- 278.[9] Mr. Varney's "blind adherence" to the fact that the project would be located in an existing corridor was determined to be

[9] The applicant also alleges that only the superior court can determine whether an easement has been overburdened. Applicant's Brief at 51. That is a red herring. The subcommittee did not make a finding that the project

unpersuasive for a project of this size and scope. His mantra that the project would be constructed in an existing right-of-way "did not nullify the legitimate concerns" of the subcommittee. DK-tab-1478-at-39-40,51.

4. Views of Municipalities and Regional Planning Commissions

A certificate may not be granted unless the SEC gives "due consideration" to the views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility. RSA 162-H:16, IV(b); Site 301.15. The statute and administrative rules could not be clearer that the subcommittee was *required by law* to consider the views of the host municipalities in determining whether a proposed energy facility would unduly interfere with the orderly development of a region.

The applicant's assertion that the subcommittee imposed a "new burden" relative to municipal views results from a strained reading of the decision. Applicant's Brief at 52-53. As explained by the subcommittee, it was obligated to consider the opinions of the municipalities. The weight it gave those opinions was appropriate:

> The Subcommittee is not bound by the views of municipal and regional planning bodies. The statutory site evaluation process pre-empts local decision-making in the siting of jurisdictional energy facilities. The pre-emptive authority of the Site Evaluation Committee does not diminish the importance of

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would be inconsistent with the original corridor easement language, but rather, that it was unable to make a finding that there would be no undue interference on orderly development due to the potential adverse impacts to land use because of the size and scope of the project.

> considering the views of municipal and regional planning agencies and municipal governing bodies. Rather, the Subcommittee must listen to and consider the views expressed by municipalities.

DK-tab-1432-at-275-276. The subcommittee's consideration of municipal views and potential impacts to land use was diligent and purposeful, spanning a combined total of 60 pages in its written decision and order on rehearing. DK-tab-1432-at-231-283; DK-tab-1478-at-46-57.

The applicant nonetheless argues that the subcommittee imposed an "amorphous" new burden to account for and consider views of municipalities and their master plans. Applicant's Brief at 52. The criticisms of the subcommittee's written decisions are taken out of context. A fair reading of the written decisions does not lead to the conclusion that the applicant was under any *obligation* to anticipate and/or account for municipal views, just that they should not have been ignored. For example, the subcommittee explained that the applicant "failed to adequately anticipate and account for the almost uniform view" that the municipal governing bodies believed that the project would unduly interfere with the orderly development of the region. DK-tab-1432-at-7. That statement does not amount to a "new burden," but rather, explains that the municipal concerns should not have been so easily dismissed and that Mr. Varney's testimony purportedly rebutting those concerns was fatally deficient.

In contrast, there were a large number of municipal witnesses who presented consistent, credible testimony regarding the project's impacts on land use. The subcommittee did not simply "defer" to the views of municipalities, but rather, it listened and recognized the well-supported and

reasonable concerns raised by the municipal witness testimony. The subcommittee found that those witnesses "presented evidence and cogent arguments" that the proposed project would unduly interfere with the orderly development of the region. DK-tab-1432-at-276. The subcommittee also found that the applicant's argument that the project was consistent with local, regional, and statewide long-range plans "was directly contradicted by the testimony of municipal officials." DK-tab-1432-at-276.

These municipal witnesses had a strong understanding of the short and long term impacts of the project. Many of these municipal witnesses explained in great detail and with specificity the manner in which the project would impact the character of their respective communities due to the proposed new industrial towers in the utility corridor. DK-tab-1385-at-32-33,35-57. They also explained with specificity the manner in which the project would be inconsistent with the goals and objectives of their master plans and zoning ordinances. This testimony stood in stark contrast to the position taken by Mr. Varney, whose testimony was deemed by the subcommittee to be both lacking in credibility and unreliable. The subcommittee acted within its authority in finding that the applicant did not meet its burden of proof.

It is also undisputed that the applicant was required to provide information about master plans and zoning ordinances so that those documents could be evaluated when addressing impacts to orderly development. Site 301.09(a) (requiring submittal of master plans and zoning ordinances). The applicant's argument that master plans are merely "aspirational guides" misses the point. Applicant's Brief at 53. A core

aspect of land use regulation in New Hampshire is to enhance the public health, safety and welfare, and meet more effectively the demands of evolving and growing communities. RSA 672:1, II, III. Master plans address key aspects such as the community's economic goals and protection of resources, and are created to aid in the development of "ordinances that result in preserving and enhancing the unique quality of life and culture of New Hampshire." *Id.; Taylor v. Town of Plaistow*, 152 N.H. 142, 145 (2005) (zoning ordinance goals may address preservation or enhancement of the visual environment to promote the general welfare). Moreover, the fact that some local ordinances may be preempted does not minimize the significance of municipal views. Applicant's Brief at 53. It was entirely appropriate and reasonable for the subcommittee to give weight to municipal concerns that included, among other things, the project's conflict with master plans and ordinances. *Londonderry Neighborhood Coalition*, 145 N.H. at 206.

The applicant tries to shift the blame for its failures to the municipalities by claiming the municipalities were "unwilling" to work with them. In support, the applicant relies on comments of subcommittee members during deliberations that the municipalities were "stiff-arming" and playing a "game of chicken." Applicant's Brief at 53. The statements cited by the applicant are taken out of context and relate solely to whether municipalities were willing to enter into stipulations relative to the construction disruptions such as the hours of construction. DK-Tr.1/30/18-Day1-afternoon-at-42-43,102-103. The stipulations that were the subject of the subcommittee's comments did not address the fundamental concerns that municipalities had about the design and proposed route of the project,

and for that reason, several municipalities believed it was inappropriate to enter into a stipulation that did not address those concerns. DK-Tr.12/11/17-Day65-morning-at-107-10; DK-Tr.12/18/2017-Day68-morning-at-77-83,115-117,138-40; DK-Tr.12/19/2017-Day69-afternoon-at-42-46,55-56,58-59,102-104,121-23. The stipulations, drafted by the applicant, appeared intended to benefit the applicant. DK-tab-1385-at-70-73. Although some municipalities were willing to discuss the terms of the stipulations to provide better protections, they were ultimately unsuccessful in reaching an agreement.[10] DK-Tr.12/18/17-Day69-morning-at-153-54.

Finally, the suggestion that "no project would ever be built" in the event municipal views are considered is baseless. Applicant's Brief at 52. This argument fails to recognize that host municipalities have supported and/or simply taken no position on virtually all other major energy projects that have been approved. DK-tab-1385-at-67-69. The applicant may be disappointed that its project was not approved, but the denial of the certificate was its own fault. That a large number of municipalities "vehemently" opposed this project reflects that this proposal was not well designed from the beginning. The applicant wanted to install "large industrial" overhead utility lines that would cut across the state and it disregarded the concerns raised by municipalities about how this would impact the character of their communities. This plan deserved to fail.

[10] Only five agreements were executed by municipalities. Those agreements contained only minor changes to the applicant's template and did not modify the vague language and/or make substantive design changes. APP-Exs.146,206-to-209.

CONCLUSION

The undersigned municipalities respectfully request that this Court uphold the decision of the subcommittee.

ORAL ARGUMENT

Danielle Pacik requests to present oral argument on behalf of the undersigned municipalities.

CERTIFICATION OF WORD COUNT

This hereby certifies that this brief contains 13,712 words exclusive of the cover page, table of contents, tables of authorities, text of relevant statutes and administrative rules, addendum, certificate of service and certification of word count.

Respectfully submitted,

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By its attorney,

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CERTIFICATION OF SERVICE

I hereby certify that on March 20, 2019, I served the foregoing Brief and the Addendum by email to the parties on the electronic service list, and by first class mail to without email addresses.

By: /s/ Danielle Pacik
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ADDENDUM

TITLE XII
PUBLIC SAFETY AND WELFARE

CHAPTER 162-H
ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATION

Section 162-H:1

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.

Source. 1991, 295:1. 1998, 264:1. 2009, 65:1, eff. Aug. 8, 2009. 2014, 217:1, eff. July 1, 2014.

Section 162-H:2

162-H:2 Definitions. –

I. "Acceptance" means a determination by the committee that it finds that the application is complete and ready for consideration.

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

I-b. "Affected municipality" means any municipality or unincorporated place in which any part of an energy facility is proposed to be located and any municipality or unincorporated place from which any part of the proposed energy facility will be visible or audible.

II. [Repealed.]

II-a. "Certificate" or "certificate of site and facility" means the document issued by the committee, containing such terms and conditions as the committee deems appropriate, that authorizes the applicant to proceed with the proposed site and facility.

III. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site of the proposed facility, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

IV. [Repealed.]
V. "Committee" means the site evaluation committee established by this chapter.
VI. "Energy" means power, including mechanical power, useful heat, or electricity derived from any resource, including, but not limited to, oil, coal, and gas.
VII. "Energy facility" means:
(a) Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network.
(b) Electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts or more.
(c) An electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility under subparagraph (b), over a route not already occupied by a transmission line or lines.
(d) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length, over a route not already occupied by a transmission line.
(e) A new electric transmission line of design rating in excess of 200 kilovolts.
(f) A renewable energy facility.
(g) Any other facility and associated equipment that the committee determines requires a certificate, consistent with the findings and purposes of 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.
VII-a. "Energy facility proceeding time and expenses" means time spent in hearings, meetings, preparation, and travel related to any application or other proceeding before the committee concerning an energy facility, either existing or proposed, and related reasonable out-of-pocket expenses.
VIII. "Filing" means the date on which the application is first submitted to the committee.
IX. "Person" means any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization.
X. [Repealed.]
X-a. [Repealed.]
XI. "Petitioner" means a person filing a petition meeting any of the following conditions:
(a) A petition endorsed by 100 or more registered voters in the host community or host communities.
(b) A petition endorsed by 100 or more registered voters from abutting communities.
(c) A petition endorsed by the governing body of a host community or 2 or more governing bodies of abutting communities.
(d) A petition filed by the potential applicant.
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 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.

Source. 1991, 295:1. 1997, 298:21-24. 1998, 264:2. 2007, 25:1; 364:3. 2008, 348:8. 2009, 65:2-4, 24, I-IV, eff. Aug. 8, 2009. 2014, 217:2-5, eff. July 1, 2014. 2015, 219:4, eff. July 8, 2015. 2017, 115:1, eff. Aug. 14, 2017.

Section 162-H:3

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 business and economic affairs or designee;

(d) The commissioner of the department of transportation;

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

(f) Two members of the public, appointed by the governor, with the consent of the council, in accordance with RSA 162-H:4-b, III.

II. All members, including those who sit for a member recused under paragraph VI, shall refrain from ex parte communications regarding any matter pending before the committee. This prohibition shall extend to those who sit on any subcommittee formed under RSA 162-H:4-a.

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

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

V. 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.

VI. 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 procedure outlined in RSA 162-H:4-b, VI shall be followed.

VII. All committee members shall on an annual basis complete an intensive training program on the provisions of RSA 162-H and the administrative rules adopted thereunder with respect to reviewing and evaluating applications for a certificate of site and facility. All new committee members, and any designee to a subcommittee pursuant to RSA 162-H:4-a, II or III, shall complete the training program prior to serving on, respectively, any committee or subcommittee proceeding. The training shall be conducted by the department of justice.

Source. 1991, 295:1. 1995, 310:182. 1996, 228:41. 1997, 298:25. 2002, 247:2. 2003, 319:9. 2004, 257:44. 2007, 364:4. 2009, 65:5, eff. Aug. 8, 2009. 2014, 217:6, eff. July 1, 2014. 2015, 219:2, eff. July 8, 2015. 2017, 156:61, eff. July 1, 2017. 2018, 216:1, eff. Aug. 7, 2018.

Section 162-H:3-a

162-H:3-a Administrator and Other Committee Support. – 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.

Source. 2014, 217:7, eff. July 1, 2014. 2015, 219:3, eff. July 8, 2015.

Section 162-H:4

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

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 as it deems appropriate, but 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 the administrator or such state agency or official 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 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.
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.

Source. 1991, 295:1. 1997, 298:26. 2007, 364:5. 2008, 348:7. 2009, 65:6-8, eff. Aug. 8, 2009. 2014, 217:8-10, eff. July 1, 2014.

Section 162-H:4-a

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, approve any support staff positions, 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. Two 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 agency 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.

Source. 2014, 217:11, eff. July 1, 2014. 2015, 219:9, eff. July 8, 2015. 2018, 216:2, eff. Aug. 7, 2018.

Section 162-H:4-b

162-H:4-b Public Members. –
I. The governor, with the consent of the council, shall appoint 5 public members to serve on the committee or subcommittees as prescribed in this section. Such public members 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; community and regional planning or economic development; municipal or county government; or the governing of unincorporated places.
II. The public members shall serve 4-year terms and until their successors are appointed and qualified. Initial terms shall be staggered so that no more than 2/5 of the members' terms shall expire in the same year. 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 succeeded.
III. At the time of appointment under paragraph I, 2 of the public members shall be designated as full committee members, as provided in RSA 162-H:3, I(f), at least one of whom shall be a member in good standing of the New Hampshire Bar Association. The terms of full members shall expire 2 years apart.
IV. All of the public members shall constitute a pool from which the chairperson of the committee shall draw for purposes of paragraphs V and VI. The chairperson may publish an impartial methodology that shall be used to determine when the chairperson may remove a public member from the pool for a particular draw based on criteria aimed at distributing the workload among public members. The development of such methodology shall not be subject to RSA 541-A.
V. When forming a subcommittee, the chairperson shall select from the pool, by a random draw, the one or 2 public members required to be on the subcommittee, as prescribed in RSA 162-H:4-a.
VI. If at any time a public member must recuse himself or herself from a matter before the committee or a subcommittee or is not otherwise available for good reason, the chairperson shall replace such member with another public member by means of a random draw from the pool of public members.
VII. 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.
VIII. Any public member may be removed from office 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.

Source. 2018, 216:3, eff. Aug. 7, 2018.

Section 162-H:5

162-H:5 Prohibitions and Restrictions. –
I. No person shall commence to construct any energy facility within the state unless it has obtained a certificate pursuant to this chapter. Such facilities shall be constructed, operated and maintained in accordance with the terms of the certificate. Such certificates are required for sizeable changes or additions to existing facilities. Such a certificate shall not be transferred or assigned without approval of the committee.
II. Facilities certified pursuant to RSA 162-F or RSA 162-H prior to January 1, 1992, shall be subject to the provisions of those chapters; however, sizable changes or additions to such facilities shall be certified pursuant to this chapter.
III. The applications shall be governed by the applicable laws, rules and regulations of the agencies and shall be subject to the provisions of RSA 162-F or RSA 162-H in effect on the date of filing. Notwithstanding the foregoing, an applicant may request the site evaluation committee to assume

jurisdiction and in the event that the site evaluation committee agrees to assert jurisdiction, the facility shall be subject to the provisions of this chapter.
IV. [Repealed.]

Source. 1991, 295:1. 1998, 264:3. 2009, 65:9, 24, V, eff. Aug. 8, 2009.

Section 162-H:6

162-H:6 Time Frames. – [Repealed 2009, 65:24, VI, eff. Aug. 8, 2009.]

Section 162-H:6-a

162-H:6-a Time Frames for Review of Renewable Energy Facilities. – [Repealed 2014, 217:28, II, eff. July 1, 2014.]

Section 162-H:7

162-H:7 Application for Certificate. –
I. [Repealed.]
II. All applications for a certificate for an energy facility shall be filed with the chairperson of the site evaluation committee.
III. Upon filing of an application, the committee shall expeditiously conduct a preliminary review to ascertain if the application contains sufficient information to carry out the purposes of this chapter. If the application does not contain such sufficient information, the committee shall, in writing, expeditiously notify the applicant of that fact and specify what information the applicant must supply.
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 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 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 permitting or other regulatory authority if the applicant is reasonably notified that it has not supplied sufficient information for any of the state agencies having 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 other 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 affected municipality, as defined in RSA 162-H:2, I-b. The application shall include a list of the affected municipalities.
(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.
VI. The committee shall decide whether or not to accept the application within 60 days of filing. If the committee rejects an application because it determines it to be administratively incomplete, the applicant may choose to file a new and more complete application or cure the defects in the rejected application within 10 days of receipt of notification of rejection.
VI-a. Public information sessions shall be held in accordance with RSA 162-H:10.
VI-b. All state agencies having permitting or other regulatory authority shall report their progress to the committee within 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 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 permitting and other regulatory authority, no later than 240 days after the application has been accepted.
VI-d. Within 365 days of the acceptance of an application, the committee shall issue or deny a certificate for an energy facility.
VI-e. [Repealed.]
VII. Notwithstanding any other provision of law, the application shall be in lieu of separate applications that may be required by any other state agencies.
VIII. This chapter shall not preclude an agency from imposing its usual statutory fees.
IX. The applicant shall immediately inform the committee of any substantive modification to its application.

Source. 1991, 295:1. 2009, 65:11-13, 24, VII, eff. Aug. 8, 2009. 2014, 217:12-14, 28, III, eff. July 1, 2014. 2017, 115:2, eff. Aug. 14, 2017.

Section 162-H:7-a

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.

Source. 2014, 217:15, eff. July 1, 2014.

Section 162-H:8

162-H:8 Disclosure of Ownership. –
Any application for a certificate shall be signed and sworn to by the person or executive officer of the association or corporation making such application and shall contain the following information:
I. Full name and address of the person, association, or corporation.
II. If an association, the names and residences of the members of the association.
III. If a corporation, the name of the state under which it is incorporated with its principal place of business and the names and addresses of its directors, officers and stockholders.
IV. The location or locations where an applicant is to conduct its business.
V. A statement of assets and liabilities of the applicant and other relevant financial information of such applicant.

Source. 1991, 295:1, eff. Jan. 1, 1992.

Section 162-H:8-a

162-H:8-a Application and Filing Fees. –
I. Except as provided in paragraph IV, a person filing with the committee an application for a certificate for an energy facility, a petition for jurisdiction, a request for exemption, or any other petition or request for the committee to take action, shall pay to the committee at the time of filing a fee determined in accordance with the fee schedule described in paragraph II. If an application for a certificate for an energy facility is deemed incomplete pursuant to RSA 162-H:7, VI, and a new

application is submitted thereunder, the unearned portion of the initial application fee shall be refunded to the applicant or credited to the filing of the new application. The committee may in its discretion provide for a credit or refund in other circumstances that are unforeseen by the applicant.
II. The fees under paragraph I shall be determined in accordance with a fee schedule posted by the committee on its website, which shall include the following amounts, subject to subsequent modification under paragraph III:
(a) Application fee for electric generation facilities: $50,000 base charge, plus:
(1) $1,000 per megawatt for the first 40 megawatts, and $1,500 per megawatt for each megawatt in excess of 40 megawatts, for any wind energy system.
(2) $100 per megawatt, for any natural gas or biomass fueled facility.
(3) $150 per megawatt, for any coal or oil fueled facility.
(4) $200 per megawatt, for any nuclear generation facility.
(b) Application fee for transmission facilities: $50,000 base charge, plus:
(1) $3,000 per mile, for any electric transmission facility.
(2) $1,500 per mile, for any natural gas pipeline.
(c) Application fee for other energy facilities: $50,000 fee.
(d) Filing fees for administrative proceedings:
(1) Petition for committee jurisdiction: $10,500.
(2) Petition for declaratory ruling: $10,500, or $3,000 if heard by a 3-member subcommittee.
(3) Certificate transfer of ownership: $10,500, or $3,000 if heard by a 3-member subcommittee.
(4) Request for exemption: $10,500, or $3,000 if heard by a 3-member subcommittee.
(5) Request to modify a certificate: $10,500, or $3,000 if heard by a 3-member subcommittee.
III. The committee shall review and evaluate the application fees and filing fees in the fee schedule in paragraph II at least once each year. The committee may increase or decrease any amount in the fee schedule by up to 20 percent with prior approval of the fiscal committee of the general court, provided that any such increase or decrease shall occur not more frequently than once during any 12-month period. Modifications to the fee schedule shall be posted on the committee website, with a link prominently displayed on the home page.
IV. Notwithstanding paragraph I, a petition for committee jurisdiction filed by a petitioner as defined in RSA 162-H:2, XI(a), (b), or (c) for a certificate for an energy facility shall not be subject to a filing fee. If the committee determines that it has jurisdiction over a proposed energy facility subject to any such petition, then the owner of the proposed energy facility shall be required to pay to the committee the petition for jurisdiction fee, in addition to the application fee determined in accordance with paragraph II for the type and size of the proposed energy facility.

Source. 2015, 219:8, eff. July 8, 2015.

Section 162-H:9

162-H:9 Counsel for the Public. –
I. Upon notification that an application for a certificate has been filed with the committee in accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a counsel for the public. The counsel shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action and shall serve until the decision to issue or deny a certificate is final.
II. This section shall not be construed to prevent any person from being heard or represented by counsel; provided, however, the committee may compel consolidation of representation for such persons as have, in the committee's reasonable judgment, substantially identical interests.

Source. 1991, 295:1, eff. Jan. 1, 1992.

Section 162-H:10

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. The applicant shall also send a copy of the public notice, not less than 14 days before the session, by first class mail to the governing body of each affected municipality. At such session, the applicant shall present information regarding the project and provide an opportunity for comments and questions from the public to be addressed by the applicant. 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 45 days after acceptance of an application for a certificate, pursuant to RSA 162-H:7, the applicant shall hold at least one public information session as described in paragraph I 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 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. The applicant shall also send a copy of the public notice, not less than 14 days before the session, by first class mail to the governing body of each affected municipality. 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 any part of the proposed facility is to be located, or on the committee's own motion, the committee may order the applicant to provide such additional public information sessions as described in paragraph I 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 the applicant shall publish a public notice not less than 14 days before such hearing 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. Not fewer than 10 days before such session, the applicant shall provide a copy of the public notice to the presiding officer of the committee. The applicant shall arrange for a transcript of such session to be prepared. The committee shall also send a copy of the public notice, not less than 14 days before the hearing, by first class mail to the governing body of each affected municipality. The public hearings shall be joint hearings, with representatives of the agencies that have 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. 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. Subsequent public hearings shall be in the nature of adjudicative proceedings under RSA 541-A and shall 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 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 provide an opportunity at one or more public hearings for comments from the governing body of each affected municipality and residents of each affected municipality. 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 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 November 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 strategic initiatives 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. Except for the cases where the adjudicatory hearing has commenced, applications pending on the date rules adopted under this paragraph take effect shall be subject to such rules. Prior to the adoption of rules under this paragraph, applications shall be continuously processed pursuant to the rules in effect upon the date of filing. If the rules require the submission of additional information by an applicant, such applicant shall be afforded a reasonable opportunity to provide that information while the processing of the application continues.

Source. 1991, 295:1. 1997, 298:27. 2007, 364:7. 2009, 65:14. 2013, 134:2, eff. June 26, 2013. 2014, 217:16, eff. July 1, 2014. 2015, 219:11, eff. July 8, 2015; 268:3, eff. July 20, 2015. 2017, 115:3, 4, eff. Aug. 14, 2017; 156:64, eff. July 1, 2017. 2018, 216:4, eff. Aug. 7, 2018.

Section 162-H:10-a

162-H:10-a Wind Energy Systems. –
I. To meet the objectives of this chapter, and with due regard for the renewable energy goals of RSA 362-F, including promoting the use of renewable resources, reducing greenhouse gas and other air pollutant emissions, and addressing dependence on imported fuels, the general court finds that appropriately sited and conditioned wind energy systems subject to committee approval have the

potential to assist the state in accomplishing these goals. Accordingly, the general court finds that it is in the public interest for the site evaluation committee to establish criteria or standards governing the siting of wind energy systems in order to ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process. When establishing any criteria, standard, or rule for a wind energy system or when specifying the type of information that a wind energy applicant shall provide to the committee for its decision-making, the committee shall rely upon the best available evidence.
II. For the adoption of rules, pursuant to RSA 541-A, relative to the siting of wind energy systems, the committee shall address the following:
(1) Visual impacts as evaluated through a visual impact assessment prepared in accordance with professional standards by an expert in the field.
(2) Cumulative impacts to natural, scenic, recreational, and cultural resources from multiple towers or projects, or both.
(3) Health and safety impacts, including but not limited to, shadow flicker caused by the interruption of sunlight passing through turbine blades and ice thrown from blades.
(4) Project-related sound impact assessment prepared in accordance with professional standards by an expert in the field.
(5) Impacts to the environment, air and water quality, plants, animals and natural communities.
(6) Site fire protection plan requirements.
(7) Site decommissioning, including sufficient and secure funding, removal of structures, and site restoration.
(8) Best practical measures to avoid, minimize, or mitigate adverse effects.

Source. 2014, 310:5, eff. Aug. 1, 2014.

Section 162-H:10-b

162-H:10-b Siting of High Pressure Gas Pipelines; Rulemaking; Intervention. –
I. To meet the objectives of this chapter, and with due regard to meeting the energy needs of the residents and businesses of New Hampshire, the general court finds that appropriately sited high pressure gas pipelines subject to committee approval have the potential to assist the state in accomplishing these goals. Accordingly, the general court finds that it is in the public interest for the site evaluation committee to establish criteria or standards governing the siting of high pressure gas pipelines in order to ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process. When establishing any criteria, standard, or rule for a high pressure gas pipeline or when specifying the type of information that a high pressure gas pipeline applicant shall provide to the committee for its decision-making, the committee shall rely upon the best available evidence.
II. For the adoption of rules, pursuant to RSA 541-A, relative to the siting of high pressure gas pipelines, the committee shall address the following:
(a) Impacts to natural, scenic, recreational, visual, and cultural resources.
(b) Health and safety impacts, including but not limited to, proximity to high pressure gas pipelines that could be mitigated by appropriate setbacks from any high pressure gas pipeline.
(c) Project-related sound and vibration impact assessment prepared in accordance with professional standards by an expert in the field.
(d) Impacts to the environment, air and water quality, plants, animals, and natural communities.
(e) Site fire protection plan requirements.
(f) Best practical measures to ensure quality construction that minimizes safety issues.
(g) Best practical measures to avoid, minimize, or mitigate adverse effects.
(h) Criteria to maintain property owners' ability to use and enjoy their property.

III. As soon as practicable, but no later than one year from the effective date of this section, the committee shall adopt rules, pursuant to RSA 541-A, consistent with paragraphs I and II of this section.
IV. The committee shall consider intervention in Federal Energy Regulatory Commission proceedings involving the siting of high pressure gas pipelines in order to protect the interest of the state of New Hampshire.

Source. 2015, 264:1, eff. July 20, 2015.

Section 162-H:11

162-H:11 Judicial Review. – Decisions made pursuant to this chapter shall be reviewable in accordance with RSA 541.

Source. 1991, 295:1, eff. Jan. 1, 1992.

Section 162-H:12

162-H:12 Enforcement. –
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.
II. The committee may suspend a person's certificate if the committee determines that the person has made a material misrepresentation in the application or, in the supplemental or additional statements of fact or studies required of the applicant, or if the committee determines that the person has violated the provisions of this chapter or any rule adopted under this chapter. 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 an opportunity for a prompt hearing.
III. The committee may revoke any certificate that is suspended after the person holding the suspended certificate has been given at least 90 days' written notice of the committee's consideration of revocation and of its reasons therefor and has been provided an opportunity for a full hearing.
IV. Notwithstanding any other provision of this chapter, each of the other state agencies having permitting or other regulatory authority shall retain all of its powers and duties of enforcement.
V. The full amount of costs and expenses incurred by the committee in connection with any enforcement action against a person holding a certificate, including any action under this section and any action under RSA 162-H:19, in which the person is determined to have violated any provision of this chapter, any rule adopted by the committee, or any of the terms and conditions of the issued certificate, shall be assessed to the person and shall be paid by the person to the committee. Any amounts paid by a person to the committee pursuant to this paragraph shall be deposited in the site evaluation committee fund established in RSA 162-H:21.

Source. 1991, 295:1. 2009, 65:15, eff. Aug. 8, 2009. 2014, 217:17, 18, eff. July 1, 2014. 2015, 219:6, eff. July 8, 2015.

Section 162-H:13

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.

Source. 1991, 295:1, eff. Jan. 1, 1992. 2014, 217:19, eff. July 1, 2014.

Section 162-H:14

162-H:14 Temporary Suspension of Deliberations. –
I. If the site evaluation committee, at any time 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.]

Source. 1991, 295:1. 2009, 65:16, 24, VIII, eff. Aug. 8, 2009. 2014, 217:19, eff. July 1, 2014.

Section 162-H:15

162-H:15 Informational Meetings. – [Repealed 2014, 217:28, IV, eff. July 1, 2014.]

Section 162-H:16

162-H:16 Findings and Certificate Issuance. –
I. The committee shall incorporate in any certificate such terms and conditions as may be specified to the committee by any of the state agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate under this chapter if any of the state agencies denies authorization for the proposed activity over which it has 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.
II. Any certificate issued by the site evaluation committee shall be based on the record. The decision to issue a certificate in its final form or to deny an application once it has been accepted shall be made by a majority of the full membership. A certificate shall be conclusive on all questions of siting, land use, air and water quality.
III. The committee may consult with interested regional agencies and agencies of border states in the consideration of certificates.
IV. 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.]
(e) Issuance of a certificate will serve the public interest.
V. [Repealed.]
VI. A certificate of site and facility may contain such reasonable terms and conditions, including but not limited to the authority to require bonding, as the committee deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such certificates, when issued, shall be final and subject only to judicial review.
VII. The committee may condition the certificate upon the results of required federal and state agency studies whose study period exceeds the application period.

Source. 1991, 295:1. 2009, 65:18-21, 24, IX, eff. Aug. 8, 2009. 2014, 217:20-22, eff. July 1, 2014. 2015, 264:2, eff. July 20, 2015.

Section 162-H:17

162-H:17 Bulk Power Facility Plans. – [Repealed 2009, 65:24, X, eff. Aug. 8, 2009.]

Section 162-H:18

162-H:18 Review; Hearing. – [Repealed 2009, 65:24, XI, eff. Aug. 8, 2009.]

Section 162-H:19

162-H:19 Penalties. –
I. The superior court, in term time or in vacation, may enjoin any act in violation of this chapter.
II. Any construction or operation of energy facilities in violation of this chapter, or in material violation of the terms and conditions of a certificate issued under this chapter, may result in an assessment by the superior court of civil damages not to exceed $10,000 for each day in violation.
III. Whoever commits any willful violation of any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1991, 295:1. 2009, 65:22, eff. Aug. 8, 2009.

Section 162-H:20

162-H:20 Severability. – If any provision of this chapter, or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end, the provisions of this chapter are severable.

Source. 1991, 295:1, eff. Jan. 1, 1992.

Section 162-H:21

162-H:21 Fund Established; Funding Plan. –
I. There is hereby established in the office of the state treasurer a nonlapsing, special fund to be known as the site evaluation committee fund. All application fees and other filing fees received by the committee under 162-H:8-a shall be deposited in the fund. All moneys in the fund shall be continually appropriated to the site evaluation committee and shall only be used, except as provided

in paragraph III, to pay for compensation and reimbursements made under RSA 162-H:22 for energy facility proceeding time and expenses.
II. All other operating costs of the committee, including, but not limited to, administrator and other committee support costs under RSA 162-H:3-a and public member compensation and reimbursements that are not paid from the site evaluation committee fund pursuant to paragraph I, except those costs paid by applicants under RSA 162-H:10, shall be funded through appropriations from the general fund.
III. In the fiscal biennium ending June 30, 2019, if the funds available to the committee to pay the operating costs specified in paragraph I or II are insufficient to permit the committee to pay all such operating costs, then upon request of the committee and approval of the fiscal committee of the general court, the shortfall shall be funded through a transfer from the renewable energy fund established in RSA 362-F:10 to the site evaluation committee fund in an amount not to exceed $480,000. Any amount transferred but not expended for such shortfall during the 2018-2019 biennium shall lapse back to the renewable energy fund at the end of the biennium.

Source. 2014, 217:23, eff. July 1, 2014, July 11, 2014. 2015, 219:7, eff. July 8, 2015.

Section 162-H:22

162-H:22 Compensation and Reimbursement. –
I. The public members of the committee shall be compensated for all time spent on committee business, including compensation and reimbursement for energy facility proceeding time and expenses. Compensation shall be provided on a pro rata basis, based upon the daily salary rate of an unclassified position at the initial step in grade FF under RSA 94:1-a, I(a).
II. State agencies represented on the committee shall be reimbursed for energy facility proceeding time and expenses incurred by their respective members or designees, except that time spent for the first 3 full days of their participation with respect to any application or other proceeding concerning an energy facility shall not be subject to reimbursement. The rate of reimbursement to each respective agency shall be based on a pro rata share of the employee's salary, benefits, and related costs.
III. The department of justice shall be reimbursed in the same manner as described in paragraph II for energy facility proceeding time and expenses that are incurred by the counsel for the public.
IV. All persons or agencies seeking compensation or reimbursement under this section shall keep detailed time and expense records which shall be submitted to the chairperson or administrator and used to determine the amount of compensation or reimbursement. The chairperson or administrator shall develop a recordkeeping system and accounting and payment procedures.
V. Funding for all compensation and reimbursement under this section shall be as provided in RSA 162-H:21.

Source. 2015, 219:5, eff. July 8, 2015.

CHAPTER Site 100 ORGANIZATIONAL RULES

PART Site 101 PURPOSE AND APPLICABILITY

Site 101.01 Purpose. The purpose of the rules of the site evaluation committee is to:

(a) Describe the requirements and procedures of the site evaluation committee in reviewing and acting upon applications to construct energy facilities, requests for modification of facilities, determinations of jurisdiction and exemption, and similar or related business before the committee or any designated subcommittee; and

(b) Describe the organization of the site evaluation committee and any designated subcommittee.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 101.02 Applicability. The rules of the site evaluation committee shall apply to:

(a) Any person who constructs or operates, or proposes to construct or operate an energy facility in New Hampshire;

(b) Any person who participates in public information sessions scheduled by the applicant or adjudicative or informational public hearings conducted by the committee, or a designated subcommittee, concerning an energy facility; and

(c) Any person or organization appearing as a party, an intervenor, or a public commenter before the committee or any designated subcommittee.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

PART Site 102 DEFINITIONS

Site 102.01 "Abutting property" means any property that is contiguous to or directly across a road, railroad, or stream from property on, under or above which an energy facility is located or proposed to be located.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.02 "Acceptance" means "acceptance" as defined in RSA 162-H:2, I, namely, "a determination by the committee that it finds that an application is complete and ready for consideration."

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15* (from Site 102.01)

Site 102.03 "Adaptive management" means a system of management practices based on specified desired outcomes, monitoring to determine if management actions are meeting the desired outcomes, and, if not, provisions for management changes designed to ensure that the desired outcomes are met or are re-evaluated.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.04 "Adjudicative hearing" means a public hearing held by the committee in an adjudicative proceeding.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15* (from Site 102.02)

Site 102.05 "Adjudicative proceeding" means "adjudicative proceeding" as defined in RSA 541-A:1, I, namely, "the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36."

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.06 "Administrator" means "administrator" as defined in RSA 162-H:2, I-a, namely, "the administrator of the committee," as established by RSA 162-H.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.07 “Affected Communities” means the proposed energy facility host municipalities and unincorporated places, municipalities and unincorporated places abutting the host municipalities and unincorporated places, and other municipalities and unincorporated places that are expected to be affected by the proposed facility, as indicated in studies included with the application submitted with respect to the proposed facility.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.08 “Applicant” means any person seeking to construct and operate any energy facility within this state.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15* (from Site 102.03)

Site 102.09 “Application” means the written document filed with the committee seeking the issuance of a Certificate of Site and Facility.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15* (from Site 102.04)

Site 102.10 “Area of potential visual impact” means a geographic area from which a proposed facility would be visible, and would result in potential visual impacts, subject to the areal limitations specified in Site 301.05(b)(4).

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.11 “Astronomical maximum" means the theoretical maximum number of hours that shadow flicker will be produced at a location assuming the sun is shining all day from sunrise to sunset, the rotor-plane of the turbine is always perpendicular to the sun, and the turbine is always operating.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.12 “Best practical measures” means available, effective, and economically feasible on-site or off-site methods or technologies used during siting, design, construction, and operation of an energy facility that effectively avoid, minimize, or mitigate relevant impacts.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.121 “Blowdown event” means the automatic or manual venting of natural gas from a compressor or a section of pipeline taken off-line for maintenance or shutdown due to an emergency.

Source. *#11155, eff 8-16-16*

Site 102.13 “Certificate” or “certificate of site and facility” means “certificate” or “certificate of site and facility” as defined in RSA 162-H:2, II-a, namely “the document issued by the committee, containing such terms and conditions as the committee deems appropriate, that authorizes the applicant to proceed with the proposed site and facility.” “Certificate” includes the document issued by a subcommittee, containing such conditions as the subcommittee deems appropriate, that authorizes the applicant to proceed with the proposed renewable energy facility.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15* (from Site 102.06)

Site 102.14 “Combined observation” means a viewer sees multiple energy facilities from a stationary point within a typical cone of vision.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.15 “Commission” means the New Hampshire public utilities commission.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15* (from Site 102.07)

Site 102.16 "Committee" means the site evaluation committee established under RSA 162-H.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15* (from Site 102.08)

Site 102.161 "Compressor station" means a facility that mechanically re-pressurizes natural gas to keep the natural gas flowing continuously in a pipeline at a desired flow rate.

Source. *#11155, eff 8-16-16*

Site 102.17 "Critical wildlife habitat" means, for a federally listed threatened or endangered species:

(a) The designated and mapped specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, 16 U.S.C. §1533, on which are found those physical or biological features:

(1) Essential to the conservation of the species; and

(2) Which can require special management considerations or protection; and

(b) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Endangered Species Act, 16 U.S.C. § 1533, upon a determination by the Secretary of the United States Department of the Interior that such areas are essential for the conservation of the species.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.18 "Cumulative impacts" means the totality of effects resulting from a proposed wind energy facility, all existing wind energy facilities, all wind energy facilities for which a certificate of site and facility has been granted, and all proposed wind energy facilities for which an application has been accepted.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.19 "Energy facility" means "energy facility" as defined in RSA 162-H:2,VII, namely

"(a) any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network.

(b) electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts or more.

(c) an electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility under subparagraph (b), over a route not already occupied by a transmission line or lines.

(d) an electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length, over a route not already occupied by a transmission line.

(e) a new electric transmission line of design rating in excess of 200 kilovolts.

(f) a renewable energy facility.

(g) any other facility and associated equipment that the committee determines requires a certificate, consistent with the findings and purposes of 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."

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15* (from Site 102.09)

Site 102.20 "Energy transmission pipeline" means a pipeline used to transport natural gas, oil, or other source of energy.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.21 "Exemplary natural community" means "exemplary natural community" as defined in RSA 217-A:3, VII, namely, "a viable occurrence of a rare natural community type or a high quality example of a more common natural community type as designated by the natural heritage bureau based on community size, ecological condition, and landscape context."

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.22 "Fragmentation" means the loss of habitat that results from the division of relatively large, continuous habitats into smaller, more isolated remnants.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 102.221 "High pressure gas pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies, at a pressure greater than required to operate a distribution pipeline.

Source. *#11155, eff 8-16-16*

Site 102.23 "Historic sites" means "historic property," as defined in RSA 227-C:1, VI, namely "any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of this state, its communities, or the nation." The term includes "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior," pursuant to 36 C.F.R. §800.16(l)(1).

Source. *#10993, eff 12-16-15*

Site 102.24 "Investment grade credit rating" means a current rating for senior unsubordinated debt of AAA, AA, A, or BBB, as issued by Standard and Poor's Corporation, or Aaa, Aa, A, or Baa, as issued by Moody's Investors Service, Inc.

Source. *#10993, eff 12-16-15*

Site 102.25 "Key observation point" means a viewpoint that receives regular public use and from which the proposed facility would be prominently visible.

Source. *#10993, eff 12-16-15*

Site 102.26 "Landscape" means the characteristic, visible features of an area including landforms, water forms, vegetation, historic and cultural features and all other objects and aspects of natural and human origin.

Source. *#10993, eff 12-16-15*

Site 102.27 "Migration corridors" means routes travelled by fish or wildlife when travelling between seasonal habitats that are necessary to maintain sustainable fish and wildlife populations.

Source. *#10993, eff 12-16-15*

Site 102.28 "Motion" means a request made to the committee or the presiding officer after the commencement of a contested proceeding for an order or ruling directing some act to be done in favor of the party

making the motion, including a statement of justification or reasons for the request.

Source. *#10993, eff 12-16-15* (from Site 102.10)

Site 102.29 "Natural community" means "natural community" as defined in RSA 217-A:3, XI, namely, "a recurring assemblage of plants and animals found in a particular physical environment."

Source. *#10993, eff 12-16-15*

Site 102.30 "Natural heritage bureau" means the natural heritage bureau administered within the division of forests and lands of the department of resources and economic development.

Source. *#10993, eff 12-16-15*

Site 102.31 "Party" means "party" as defined by RSA 541-A:1, XII, namely, "each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party." The term "party" includes all intervenors in a proceeding, subject to any limitations established pursuant to RSA 541-A:32, III.

Source. *#10993, eff 12-16-15* (from Site 102.11)

Site 102.32 "Person" means "person" as defined by RSA 162-H:2, IX, namely, "any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization."

Source. *#10993, eff 12-16-15* (from Site 102.12)

Site 102.33 "Petition" means:

(a) A request to the committee to rule on the applicability of this chapter to a particular proposed energy facility;

(b) A petition for intervention made pursuant to RSA 541-A:32; or

(c) Any other initial filing that requests the committee to take action with respect to a matter within its jurisdiction or to determine whether it has jurisdiction over a matter.

Source. *#10993, eff 12-16-15* (from Site 102.13)

Site 102.34 "Petitioner" means

(a) For a petition as defined in Site 102.33(a), "petitioner" as defined in RSA 162-H:2, XI, namely, "a person filing a petition meeting any of the following conditions:

(a) A petition endorsed by 100 or more registered voters in the host community or host communities;

(b) A petition endorsed by 100 or more registered voters from abutting communities;

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

(d) A petition filed by the potential applicant;"

(b) For a petition as defined in Site 102.33(b), a person who files a petition for intervention pursuant to RSA 541-A:32; or

(c) For a petition as defined in Site 102.33(c), a person who files the petition with the committee.

Source. *#10993, eff 12-16-15* (from Site 102.14)

Site 102.35 "Photosimulations" means computer-enhanced images generated using professionally accepted software that illustrate the visible effects anticipated from a proposed facility.

Source. *#10993, eff 12-16-15*

Site 102.36 “Presiding officer” means “presiding officer” as defined in RSA 541-A:1, XIV, namely, “that individual to whom the agency has delegated the authority to preside over a proceeding, if any; otherwise, it shall mean the head of the agency.”

Source. *#10993, eff 12-16-15* (from Site 102.15)

Site 102.37 “Proof by a preponderance of the evidence” means that what is sought to be proved is determined to be more probable than not.

Source. *#10993, eff 12-16-15* (from Site 102.16)

Site 102.38 “Public information hearing” means a hearing scheduled pursuant to RSA 162-H:10, I-c where the applicant presents information to the committee and other agencies that have permitting or other regulatory authority over the subject matter and to the public about the proposed facility.

Source. *#10993, eff 12-16-15* (from Site 102.17)

Site 102.39 “Public information session” means a public meeting held before or after the filing of an application at which the applicant presents information to the public regarding the proposed facility, as provided for in RSA 162-H:10, I and I-a.

Source. *#10993, eff 12-16-15*

Site 102.40 “Rare natural community” means a natural community ranked by the natural heritage bureau as S1 (critically imperiled), S2 (imperiled), or S3 (very rare and local).

Source. *#10993, eff 12-16-15*

Site 102.41 “Rare plant” means any species included on the most recent version of the “Rare Plant List for New Hampshire” maintained by the natural heritage bureau.

Source. *#10993, eff 12-16-15*

Site 102.42 “Renewable energy facility” means “renewable energy facility” as defined in RSA 162-H:2, XII, namely, “electric generating station equipment and associated facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 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.”

Source. *#10993, eff 12-16-15* (from Site 102.19)

Site 102.43 “Rural area” means any geographic area in the State of New Hampshire that is not included within an urbanized area or an urban cluster.

Source. *#10993, eff 12-16-15*

Site 102.44 “Scenic quality” means a reasonable person’s perception of the intrinsic beauty of landforms, water features, or vegetation in the landscape, as well as any visible human additions or alterations to the landscape.

Source. *#10993, eff 12-16-15*

Site 102.45 “Scenic resources” means resources to which the public has a legal right of access that are:

(a) Designated pursuant to applicable statutory authority by national, state, or municipal authorities for their scenic quality;

(b) Conservation lands or easement areas that possess a scenic quality;

(c) Lakes, ponds, rivers, parks, scenic drives and rides, and other tourism destinations that possess a scenic quality;

(d) Recreational trails, parks, or areas established, protected or maintained in whole or in part with public funds;

(e) Historic sites that possess a scenic quality; or

(f) Town and village centers that possess a scenic quality.

Source. *#10993, eff 12-16-15*

Site 102.46 "Sequential observation" means a viewer is capable of seeing multiple energy facilities from different viewpoints as the viewer travels along a particular route such as a trail, river, scenic byway, or on a lake.

Source. *#10993, eff 12-16-15*

Site 102.47 "Service list" means a list maintained by the committee containing the names and addresses of all parties and intervenors in a proceeding and all other interested persons or groups who request to be included on the service list.

Source. *#10993, eff 12-16-15* (from Site 102.20)

Site 102.48 "Shadow flicker" means the alternating changes in light intensity that can occur when the rotating blades of a wind turbine are back-lit by the sun and cast moving shadows on the ground or on structures.

Source. *#10993, eff 12-16-15*

Site 102.49 "Significant habitat resource" means habitat used by a wildlife species for critical life cycle functions.

Source. *#10993, eff 12-16-15*

Site 102.50 "Significant wildlife species" means:

(a) Any species listed as threatened or endangered, or which is a candidate for such listing, by the United States fish and wildlife service; or

(b) Any species listed as threatened, endangered, or of special concern by the New Hampshire department of fish and game.

Source. *#10993, eff 12-16-15*

Site 102.51 "Subcommittee" means any subcommittee established under RSA 162-H:4-a for the purpose of reviewing an application for an energy facility or to exercise any other authority or perform any other duty of the committee, subject to the limitations set forth in RSA 162-H:4-a, I.

Source. *#10993, eff 12-16-15* (from Site 102.21)

Site 102.52 "Successive observation" means a viewer sees multiple energy facilities from a particular viewpoint, but not within the same viewing arc, by changing the viewer's cone of vision.

Source. *#10993, eff 12-16-15*

Site 102.53 "Urban cluster" means an "urban cluster" as designated by the U.S. Census Bureau.

Source. *#10993, eff 12-16-15*

Site 102.54 "Urbanized area" means an "urbanized area" as designated by the U.S. Census Bureau.

Source. *#10993, eff 12-16-15*

Site 102.55 "Visibility analysis" means a spatial analysis conducted using computer software to determine the potential visibility of a proposed facility.

Source. *#10993, eff 12-16-15*

Site 102.56 "Visual impact assessment" means the process for determining the degree of change in scenic quality resulting from construction of a proposed facility.

Source. *#10993, eff 12-16-15*

Site 102.57 "Wildlife" means "wildlife" as defined in RSA 207:1, XXXV, namely, "all species of mammals, birds, fish, mollusks, crustaceans, amphibians, invertebrates, reptiles or their progeny or eggs which, whether raised in captivity or not, are normally found in a wild state."

Source. *#10993, eff 12-16-15*

PART Site 103 COMMITTEE DESCRIPTION

Site 103.01 Committee Membership and Responsibilities.

(a) The committee consists of the following 9 persons, except as otherwise provided in (b) below:

(1) The commissioners of the commission;

(2) The commissioner of the department of environmental services;

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

(4) The commissioner of the department of transportation;

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

(6) Two members of the public appointed pursuant to RSA 162-H:3, I (f), except in any matter for which an alternate public member is appointed pursuant to RSA 162-H:3, XI.

(b) If at any time a member who is a state employee must recuse himself or herself on a matter, or is not otherwise available for good reason, such member shall designate a senior administrative employee or a staff attorney from his or her agency to sit on the committee.

(c) The committee shall be responsible for the following:

(1) Evaluation and issuance of any certificate for an energy facility under RSA 162-H and these rules;

(2) Determination of the terms and conditions of any certificate issued under RSA 162-H and these rules;

(3) Adjudication and determination of any petition filed under RSA 162-H and these rules;

(4) Monitoring of the construction and operation of any energy facility issued a certificate under RSA 162-H and these rules to ensure compliance with such certificate;

(5) Enforcement of the terms and conditions of any certificate issued under RSA 162-H and these rules; and

(6) Assistance to the public in understanding the requirements of RSA 162-H and these rules.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 103.02 Committee Chairperson and Vice-Chairperson and Authority.

(a) The chairperson of the commission shall be chairperson of the committee.

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

(c) The chairperson shall serve as the chief executive of the committee and shall have the authority to do the following:

(1) Delegate to other members the duties of presiding officer;

(2) Perform administrative actions for the committee;

(3) Establish the budgetary requirements of the committee, with the consent of the committee;

(4) Hire or engage the administrator and other personnel to provide services to the committee;

(5) In the absence of an administrator, and with approval of the committee, engage independent contractors or additional personnel to provide technical, legal, or administrative support to fulfill the functions of the committee; and

(6) Form subcommittees pursuant to RSA 162-H:4-a and Site 103.03.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 103.03 Subcommittee Formation and Authority.

(a) Pursuant to RSA 162-H:4-a, I, the chairperson may establish a subcommittee to consider and make a decision on an application, including the issuance of a certificate, or to exercise any other authority or perform any other duty of the committee under this chapter, except that no subcommittee shall:

(1) Approve the budgetary requirements of the committee;

(2) Approve any support staff positions paid for through the site evaluation committee fund;

(3) Propose the committee funding plan under RSA 162-H:21; or

(4) Adopt initial or final rulemaking proposals.

(b) For purposes of executing its regulatory functions under RSA 162-H and these rules, a 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 the subcommittee upon its formation.

(c) When considering the issuance of a certificate or a petition of jurisdiction, a subcommittee shall have no fewer than 7 members, provided that:

(1) 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;

(2) Pursuant to RSA 162-H:4-a, II, 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; and

(3) The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible.

(d) Pursuant to RSA 162-H:4-a, III, in any matter not covered under (c) above, the chairperson may establish a subcommittee of 3 members, consisting of 2 state agency members and one public member, provided that:

(1) Pursuant to RSA 162-H:4-a, III, 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; and

(2) The chairperson shall designate one member or designee to be the presiding officer who shall be an attorney whenever possible.

(e) Any party whose interests might be affected may object to a matter being assigned to a 3-person subcommittee pursuant to (d) above not less than 14 days before the first hearing before such subcommittee.

(f) If an objection as described in (e) above is received by the committee, the chairperson shall remove the matter from the 3-person subcommittee and either assign it to a subcommittee formed under (c) above or have the full committee decide the matter.

Source. *#9182, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 103.04 Committee Administrator and Staff.

(a) Administrative services for the Committee shall be provided by the administrator.

(b) The administrator shall monitor the construction or operation of any energy facility issued a certificate under RSA 162-H and these rules, if and to the extent such monitoring duties are delegated to the administrator pursuant to RSA 162-H:4, III.

(c) The administrator shall specify the use of any technique, methodology, practice, or procedure approved within a certificate, if and to the extent such duty is delegated to the administrator pursuant to RSA 162-H:4, III-a.

(d) The administrator shall specify minor changes in route alignment to the extent that such changes are authorized by a 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, if and to the extent such authority is delegated to the administrator pursuant to RSA 162-H:4, III-a.

(e) The administrator, with committee approval, shall engage additional technical, legal, or administrative support to fulfill the functions of the committee as are deemed necessary, provided that any such person to be hired by the administrator shall be approved by the chairperson.

(f) The chairperson or the administrator shall appoint counsel to conduct all prehearing conferences, if such appointment would promote the orderly conduct of the proceeding.

Source. *#9182, eff 6-17-08, ss by #10993, eff 12-16-15*

Site 103.05 Counsel for the Public. Pursuant to RSA 162-H:9, the attorney general shall appoint an assistant attorney general as counsel for the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.

Source. *#9182, eff 6-17-08, ss by #10993, eff 12-16-15* (formerly Site 103.06)

PART Site 104 PUBLIC REQUESTS FOR INFORMATION

Site 104.01 Requests for Committee Public Records.

(a) Requests for access to the public files and records of the committee shall be directed to the administrator, or to the chairperson of the committee if no administrator has been appointed, as follows:

Administrator [Chairperson]
Site Evaluation Committee
c/o New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
Tel. (603) 271-2431
Fax (603) 271-3878
TDD Access Relay N.H. 1-800-735-2964

(b) Any member of the public may request photocopies of minutes and records of the committee in any proceeding or in any other matter before the committee pursuant to (a) above upon a determination by the presiding officer, in the case of a proceeding, or the chairperson, with respect to all other committee matters, that such requested documents are not exempt from disclosure pursuant to RSA 91-A:5.

(c) The committee shall provide the requested documents to the person requesting such documents upon payment of the cost of copying such documents pursuant to (b) above and (d) and (e) below.

(d) Copies shall be free for requests of 10 pages or less.

(e) A charge of $0.10 per page shall be assessed for every copy over the first 10 pages.

(f) The committee shall post public information on its website at www.nhsec.nh.gov.

Source. *#9182, eff 6-17-08, ss by #10993, eff 12-16-15*

CHAPTER Site 200 PRACTICE AND PROCEDURE RULES

PART Site 201 PUBLIC INFORMATION SESSIONS AND HEARINGS

Site 201.01 Public Information Sessions Prior to Application.

(a) Not less than 30 days prior to filing an application for a certificate, the applicant shall hold not less than one public information session in each county in which the proposed facility is to be located, at which session the applicant shall present information regarding the project and provide an opportunity for comments and questions from the public to be addressed by the applicant.

(b) The applicant shall publish a public notice not less than 14 days before each such session in one or more newspapers having a regular circulation in the county in which the session is to be held. This notice shall describe the nature and location of the proposed facility. The applicant shall mail a copy of this notice to each of the affected communities by first class mail and to each owner of abutting property by certified mail.

(c) Not less than 10 days before each such session, the applicant shall provide to the chairperson of the committee a copy of the public notice published pursuant to (b) above.

(d) The applicant shall arrange for a transcript of such session to be prepared and shall include the transcript in its application for a certificate.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 201.02 Public Information Sessions After Application.

(a) Within 45 days after acceptance of an application for a certificate pursuant to Site 301.10, the applicant shall hold not less than one public information session in each county in which the proposed facility is to be located, at which session the applicant shall present information regarding the proposed energy facility described in the application and provide an opportunity for comments and questions from the public to be addressed by the applicant.

(b) The applicant shall publish a public notice not less than 14 days before each such session in one or more newspapers having a regular circulation in the county in which the session is to be held, describing the nature and location of the proposed facility. The applicant shall mail a copy of this notice to each of the affected communities by first class mail.

(c) Not less than 10 days before each such session, the applicant shall provide to the presiding officer of the committee a copy of the public notice published pursuant to (b) above.

(d) The administrator, or a designee of the presiding officer of the committee, shall act as presiding officer of the public information session, and shall explain to the attendees at such session the process to be used by the committee to review the application for the proposed facility.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 201.03 Public Hearings in Host Counties.

(a) Within 90 days after acceptance of an application for a certificate pursuant to Site 301.10, the committee shall hold not less than one public hearing in each county in which the proposed facility is to be located.

(b) Each public hearing held under (a) above shall be a joint hearing with representatives of any agencies that have permitting or other regulatory authority over the subject matter, and shall be in lieu of and deemed to satisfy all initial requirements for public hearings under the statutes requiring permits relative to environmental impact applicable to the proposed facility.

(c) Notwithstanding (b) above, if any agency that has permitting or other regulatory authority over the subject matter does not otherwise have authority to conduct hearings, such agency may not join in the public hearing, provided that the ability or inability of any such state agency to join in the public hearing shall not affect the composition of the committee or the ability of any member of the committee to act in accordance with RSA 162-H and these rules.

(d) The committee shall publish a public notice not less than 14 days before each such public hearing 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 facility. The committee shall mail a copy of this notice to each of the affected communities by first class mail.

(e) At each such public hearing, members of the public having an interest in the subject matter shall be provided with an opportunity to state their positions.

(f) The committee shall require members of the public desiring to make oral statements at any such public hearing to so indicate by providing their names, town or city of residence, and parties represented on a roster made available for this purpose prior to the commencement of the hearing. Individuals who do not wish to speak in public may submit a statement to be read by a person of their choice.

(g) The committee shall arrange for a transcript of each such public hearing to be prepared and shall post the transcript on its website.

(h) The committee shall post on its website all written documents submitted in connection with any such public hearing, including those submitted by members of the public.

Source. *#10993, eff 12-16-15*

Site 201.04 Additional Information Sessions. Pursuant to RSA 162-H:10, I-b, upon request of the governing body of a municipality or unincorporated place in which the proposed energy facility is to be located, or on the committee's own motion, the committee may order the applicant to provide such additional public information sessions as are reasonable to inform the public regarding the proposed energy facility. At each such additional public information session, the applicant shall present information regarding the project and provide an opportunity for comments and questions from the public to be addressed by the applicant.

Source. *#10993, eff 12-16-15*

PART Site 202 ADJUDICATIVE PROCEEDINGS

Site 202.01 Adjudicative Hearing. Except for petitions to intervene, which shall be governed by Site 202.11, the committee shall conduct an adjudicative proceeding regarding an application or petition, or when determining whether to suspend or revoke a certificate, in accordance with the administrative procedure act, RSA 541-A, and these rules.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.02 Presiding Officer and Hearing Officer.

(a) The chairperson of the committee shall preside over adjudicative hearings conducted before the full committee or shall designate the vice-chairperson or another member as presiding officer for such proceedings. In the case of any adjudicative proceeding to be conducted before a subcommittee, the chairperson shall designate one member or designee to be the presiding officer, who shall be an attorney whenever possible.

(b) In the absence of the designated presiding officer, the members of the committee or subcommittee, as applicable, who are present shall select by majority vote a member of such committee or subcommittee to serve as presiding officer.

(c) In adjudicative proceedings, the presiding officer shall:

(1) Facilitate informal resolution of contested issues;

(2) Conduct any hearing in a fair, impartial and efficient manner;

(3) Decide any disputed petitions for intervention;

(4) Admit relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;

(5) Provide opportunities for the parties and committee members to question any witness;

(6) Receive public statements; and

(7) Cause a complete record of any hearing to be made.

(d) In any matter before the committee or any subcommittee, the presiding officer, or a hearing officer designated by the presiding officer, shall hear and decide procedural matters that are before the committee, including the following:

(1) Procedural schedules for proceedings;

(2) Discovery schedules for proceedings;

(3) Discovery motions in proceedings;

(4) Consolidation of parties having substantially similar interests;

(5) Decisions on undisputed petitions for intervention; and

(6) Identification of significant disputed issues for hearing and decision by the committee.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.03 Withdrawal of Committee or Subcommittee Member.

(a) Upon his or her own initiative, or upon the motion of any party, a member of the committee or any subcommittee shall, for good cause, withdraw from a proceeding to consider an application or petition.

(b) Good cause shall exist if a committee or subcommittee member has:

(1) A direct interest in the outcome of the proceeding, including, but not limited to, a financial or family relationship within the third degree of relationships, with any party or representative;

(2) Made statements or engaged in behavior which a reasonable person would believe indicates that he or she has prejudged the facts of the case; or

(3) Personally believes he or she cannot fairly judge the facts of the case.

(c) Mere knowledge of the issues, the parties, counsel, consultants, representatives or any witness shall not constitute good cause for withdrawal.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.04 Appearances and Representation. A party or the party's representative shall file an appearance that includes the following information:

(a) A brief identification of the matter;

(b) A statement as to whether or not the representative is an attorney and, if so, whether the attorney is licensed to practice in New Hampshire; and

(c) The party or representative's daytime address, telephone number, e-mail address, and other basic contact information.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.05 Participation of Committee and Agency Staff.

(a) 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.

(b) The presiding officer shall request the attendance of a participating state agency's designated liaison at a session of the committee or any subcommittee, if that person could materially assist the committee or subcommittee in its examination or consideration of a matter.

(c) Within 30 days of receipt of notification of a committee proceeding, a state agency not having permitting or other regulatory authority but seeking to participate in the proceeding shall advise the presiding officer of the committee in writing of such intent to participate.

(d) The presiding officer shall permit the participation of a state agency in a committee proceeding pursuant to a request submitted under (c) above if the presiding officer finds that the agency has demonstrated a material interest in the proceeding and its participation conforms with the procedural rules of the committee.

(e) All communications between the committee and state agencies regarding a pending committee proceeding shall be included in the official record of the proceeding and shall be publicly available.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.06 Format of Documents.

(a) All correspondence, pleadings, motions, petitions or other documents filed under these rules shall:

(1) Include the title and docket number of the proceeding, if known;

(2) Be typewritten or clearly printed on paper 8 ½ by 11 inches in size;

(3) Be signed by the party or proponent of the document, or if the party appears by representative, by the representative; and

(4) Include a statement certifying that the document has been served on all parties to the proceeding.

(b) The signature on a document filed with the committee or subcommittee, as applicable, shall constitute certification that:

(1) The signer has read the document;

(2) The signer is authorized to file the document;

(3) To the best of the signer's knowledge, information and belief, there are good and sufficient grounds to support the document; and

(4) The document has not been filed for purposes of delay.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.07 Service of Documents.

(a) All petitions, motions, exhibits, memoranda, comments, correspondence or other documents filed by any party to a proceeding governed by these rules shall be served by that party upon all other parties on the service list.

(b) All notices, orders, decisions or other documents issued by the committee or subcommittee, as applicable, pursuant to these rules shall be served by the presiding officer upon all parties on the service list.

(c) Service of all documents relating to a proceeding shall be made by electronic mail, unless a party or person listed on the service list has indicated an inability to receive service by electronic mail, in which case service shall be made by first class mail, postage prepaid, in the United States mail.

(d) If a party serving any document does not have the ability to serve such document by electronic mail, service shall be made by first class mail, postage prepaid, in the United States mail.

(e) Notwithstanding paragraphs (a) through (c), when a party appears by a representative, service shall be upon the representative by electronic mail, unless the representative has indicated an inability to receive service by electronic mail, in which case service shall be made by first class mail, postage prepaid, in the United States mail at the address stated in the appearance filed by the representative.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.08 Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.09 Notice of Hearing. A notice of an adjudicative hearing issued by the committee or subcommittee, as applicable, shall contain the information required by RSA 541-A:31, III and a description of the nature and location of the proposed energy facility.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.10 Prehearing Conference.

(a) Prehearing conferences shall be conducted in accordance with RSA 541-A:31.

(b) The committee or subcommittee shall designate counsel or the administrator to serve as the presiding officer for a prehearing conference when it is necessary to assure the orderly process of the proceeding.

(c) Following the prehearing conference, the presiding officer shall issue in writing to the parties and intervenors a procedural schedule for the proceeding, including a schedule for the conduct of discovery.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.11 Intervention.

(a) Persons seeking to intervene in a proceeding shall file petitions with the committee or subcommittee, as applicable, with copies served on all parties identified in the committee or subcommittee notice of hearing or prehearing conference.

(b) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall grant a petition to intervene if:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the order of notice of the hearing or prehearing conference, not less than 3 days before the hearing or prehearing conference;

(2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law, including a state agency pursuant to RSA 162-H:7-a, VI; and

(3) The presiding officer or hearing officer, as applicable, determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

(c) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall grant one or more late-filed petitions to intervene pursuant to RSA 541-A:32, II, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

(d) The presiding officer, or any hearing officer designated by the presiding officer if the petition is undisputed, shall impose conditions upon an intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time, including the following conditions, if such conditions promote the efficient and orderly process of the proceeding:

(1) Limitation of such intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limitation of such intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring 2 or more such intervenors to combine their presentations of evidence and argument, cross-examination and other participation in the proceedings.

(e) Limitations imposed in accordance with paragraph (d) shall not be so extensive as to prevent such an intervenor from protecting the interest that formed the basis of the intervention.

(f) Any party aggrieved by a decision on a petition to intervene may within 10 days request that the decision be reviewed by the committee or subcommittee, as applicable.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.12 Discovery.

(a) The applicant or petitioner, the public counsel, and any person granted intervenor status shall have the right to conduct discovery in an adjudicative proceeding pursuant to this rule and in accordance with an applicable procedural order.

(b) Any person entitled to conduct discovery pursuant to (a) above shall have the right to serve upon any party data requests, which may consist of a written interrogatory or request for production of documents.

(c) Data requests shall identify with specificity the information or materials sought.

(d) A person or group of persons who or which are voluntarily or by order participating in the proceeding together may serve more than one set of data requests on a party, but the total number of data requests served by each person or group, as the case may be, shall not exceed 50, unless otherwise permitted by ruling of the presiding officer or any hearing officer designated by the presiding officer, upon request of the person and a finding that the proposed number of data requests is necessary to address the complexity of relevant issues and would not adversely affect the conduct of the proceeding.

(e) In determining what constitutes a data request for the purpose of applying the number limitation set forth in (d) above, each question shall be counted separately, whether or not it is subsidiary or incidental to or dependent upon or included in another question, and however the questions may be grouped, combined, or arranged.

(f) A copy of each data request, each objection to data requests, and each response to data requests shall be served upon every person designated for discovery filings on the committee's official service list for the proceeding.

(g) Responses to data requests and objections to data requests shall not be filed with the committee or subcommittee.

(h) A response to a data request shall be made within 10 days of the date of receipt or in accordance with a procedural schedule established by the presiding officer or any hearing officer designated by the presiding officer in order to permit the timely and efficient conduct of the proceeding.

(i) Objections to data requests shall:

(1) Be served in writing on the propounder of the requests within 10 days following receipt of the request unless a different time period is specified in an applicable procedural order; and

(2) Clearly state the grounds on which the objections are based.

(j) Failure to object to a data request or requests for documents within 10 days of its receipt without good cause shall be deemed a waiver of the right to object.

(k) Motions to compel responses to data requests shall:

(1) Be made pursuant to Site 202.14;

(2) Be made within 10 days of receiving the applicable response or objection, or the deadline for providing the response, whichever is sooner;

(3) Specify the basis of the motion; and

(4) Certify that the movant has made a good-faith effort to resolve the dispute informally.

(l) The presiding officer or any hearing officer designated by the presiding officer shall authorize other forms of discovery, including technical sessions, requests for admission of material facts, depositions, and any other discovery method permissible in civil judicial proceedings before a state court, when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding.

(m) When a party has provided a response to a data request, and prior to the issuance of a final order in the proceeding, the party shall have a duty to reasonably and promptly amend or supplement the response if the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time the party served the response.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.13 Site Inspections.

(a) The committee or subcommittee, as applicable, and public counsel shall conduct a site visit of any property which is the subject of a proceeding if requested by a party, or on its own motion, if the committee or subcommittee determines that the site visit will assist the committee or subcommittee in reaching a determination in the proceeding.

(b) The presiding officer shall determine who may attend any site visit conducted pursuant to (a) above and shall specify the conditions and restrictions applicable to the site visit.

(c) The applicant shall provide full access to the site of its proposed energy facility for any site visit conducted pursuant to (a) above at reasonable times and subject to reasonable conditions.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.14 Motions and Objections.

(a) Motions shall be in writing and filed with the committee unless made in response to a matter asserted for the first time at a hearing.

(b) Oral motions and any contemporaneous objection to such motions shall be recorded in full in the record of the hearing.

(c) The presiding officer or any hearing officer designated by the presiding officer shall direct the moving party to submit the motion in writing, with supporting information, by the deadline established by the presiding officer or hearing officer if the presiding officer or hearing officer finds that the motion requires additional information in order to be fully and fairly considered. The presiding officer or hearing officer designated by the presiding officer shall establish a deadline that promotes the efficient and orderly process of the proceeding.

(d) The moving party shall make a good faith effort to obtain concurrence with the relief sought from other parties, if the relief sought involves a postponement or extension of time.

(e) The caption of a motion shall state whether it is assented-to or contested, and shall identify within the body of the motion those parties that:

(1) Concur in the motion;

(2) Take no position on the motion;

(3) Object to the motion; and

(4) Could not be reached despite a good faith effort to do so, if the motion requests a postponement or extension of time.

(f) Objections to written motions shall be filed within 10 days after the date of the motion, unless a different time period is prescribed by the presiding officer or any hearing officer designated by the presiding officer.

(g) Failure by an opposing party to object to a motion shall not in and of itself constitute grounds for granting the motion.

(h) The presiding officer or any hearing officer designated by the presiding officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.15 Waiver of Rules.

(a) The committee or subcommittee, as applicable, shall waive any of the provisions of these rules, except where precluded by statute, on its own motion or upon request by an interested party, if the committee or subcommittee finds that:

(1) The waiver serves the public interest; and

(2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

(b) In determining the public interest, the committee or subcommittee shall waive a rule if:

(1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or

(2) The purpose of the rule would be satisfied by an alternative method proposed.

(c) Any interested party seeking a waiver shall make a request in writing, except as provided in (d) below.

(d) The committee or subcommittee, as applicable, shall accept for consideration any waiver request made orally during a hearing or prehearing conference.

(e) A request for a waiver shall specify the basis for the waiver and the proposed alternative, if any.

(f) Other parties shall be provided the opportunity to comment on any waiver request before the committee.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.16 Postponements.

(a) A party requesting postponement of a hearing shall file a written request with the committee or subcommittee, as applicable, not less than 7 days prior to the date of the hearing.

(b) The party requesting postponement shall make a good faith attempt to seek the concurrence of the other parties with the request.

(c) The committee or subcommittee, as applicable, shall grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the proceeding.

(d) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record.

(e) If the later date, time and place are not known at the time of the hearing that is being postponed, the committee shall issue a written order stating the date, time and place of the postponed hearing as soon as practicable.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.17 Continuances.

(a) The applicant or any other party may make an oral or written motion at hearing that the hearing be continued to a later date or time, stating good cause for such requested continuance.

(b) A motion for continuance shall be granted if the presiding officer or any hearing officer designated by the presiding officer determines that the proposed continuance will promote the orderly and efficient conduct of the proceeding and assist in resolving the case fairly.

(c) If the later date, time and place are known when the hearing is continued, the information shall be stated on the record.

(d) If the later date, time and place are not known when the hearing is continued, the presiding officer or the designated hearing officer, as applicable, shall issue a written scheduling order stating the date, time and place of the continued hearing.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.18 Record of the Hearing. A record shall be kept of hearings and transcripts shall be made available in accordance with RSA 541-A:31.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.19 Burden and Standard of Proof.

(a) The party asserting a proposition shall bear the burden of proving the proposition by a preponderance of the evidence.

(b) An applicant for a certificate of site and facility shall bear the burden of proving facts sufficient for the committee or subcommittee, as applicable, to make the findings required by RSA 162-H:16.

(c) In a hearing held to determine whether a certificate, license, permit or other approval that has already been issued should be suspended, revoked or not renewed, the committee or subcommittee, as applicable, shall make its decision based on a preponderance of the evidence in the record.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.20 Order of Proceeding. Unless otherwise determined by the presiding officer upon a finding that a different order would facilitate the conduct of the proceeding fairly and expeditiously, evidence shall be offered in the following order at any proceeding before the committee or subcommittee, as applicable:

(a) The applicant or other party bearing the overall burden of proof;

(b) Intervenors; and

(c) Counsel for the public.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.21 Testimony. All testimony shall be under oath or affirmation, and shall be subject to cross-examination by parties or their representatives and to questioning by members of the committee or subcommittee,

as applicable.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.22 Prefiled Testimony.

(a) An applicant's prefiled testimony and exhibits shall be filed with its application.

(b) Prefiled testimony and exhibits from other parties or rebuttal testimony from the applicant or any other party shall be filed as determined by a procedural order issued by the presiding officer.

(c) One copy of prefiled testimony and exhibits shall also be forwarded by the applicant to each party and to each person listed on the service list, through electronic mail distribution unless otherwise specified in a procedural order issued by the presiding officer.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.23 Filings and Applications.

(a) All applications, petitions and filings shall be made to the following address:

Site Evaluation Committee
c/o N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

(b) Each person filing a document shall, in addition to any required paper filing, electronically file the document, to the extent practicable, in an electronic file format compatible with the computer system of the commission.

(c) The committee shall maintain a list on its website of the types of electronic file formats compatible with the computer system of the commission.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.24 Evidence.

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A:33.

(b) All documents, materials and objects offered as exhibits shall be admitted into evidence, unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.

(c) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.

(d) Transcripts of testimony and documents or other materials admitted into evidence shall be public records, unless the presiding officer determines that all or part of a transcript or document is exempt from disclosure under RSA 91-A:5, as interpreted by case law.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.25 Public Statements.

(a) Members of the public who do not have intervenor status in a proceeding but have an interest in the subject matter shall be provided with an opportunity at a hearing or prehearing conference to state their positions.

(b) The committee shall require members of the public desiring to make oral statements at a hearing or prehearing conference to so indicate by providing their names, contact information, and parties represented on a roster made available for this purpose prior to the commencement of the hearing or prehearing conference. Individuals who do not wish to speak in public may submit a statement to be read by a person of their choice.

(c) Statements by members of the public shall be unsworn and shall not be subject to cross-examination.

(d) Any written information or reports submitted by members of the public pursuant to RSA 162-H:10, III shall be presented prior to the close of the record of the proceeding.

(e) Members of the public providing written information or reports pursuant to RSA 162-H:10, III shall provide copies of the written materials to the applicant.

(f) Records shall be maintained of all submittals of information and reports by members of the public and of all other actions, proceedings, and correspondence of or before the committee.

(g) The committee shall post on its website all written documents submitted in connection with an adjudicative proceeding, including those submitted by members of the public, except as provided in 202.24(d).

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.26 Closing the Record.

(a) At the conclusion of a hearing, the record shall be closed and no other evidence, testimony, exhibits, or arguments shall be allowed into the record, except as allowed by (b) below.

(b) Prior to the conclusion of the hearing, a party may request that the record be left open to accommodate the filing of evidence, exhibits or arguments not available at the hearing.

(c) If the other parties in the proceeding do not object, or if the presiding officer determines that such evidence, exhibits or arguments are necessary for a full consideration of the issues raised in the proceeding, the presiding officer shall specify a date no later than 30 days after the conclusion of the hearing for the record to remain open to receive the evidence, exhibits or arguments.

(d) If any other party in the proceeding requests time to respond to the evidence, exhibits or arguments submitted, the presiding officer shall specify a date no later than 30 days following the submission for the filing of a response.

(e) If any other party in the proceeding requests the opportunity to cross-examine on the additional evidence, exhibits or arguments submitted, the presiding officer shall specify a date no later than 30 days following the submission for a hearing at which cross-examination on the additional evidence, exhibits or arguments submitted shall be allowed.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.27 Reopening the Record.

(a) A party may request by written motion that the record in any proceeding be re-opened to receive relevant, material and non-duplicative testimony, evidence or argument.

(b) If the presiding officer determines that additional testimony, evidence or argument is necessary for a full consideration of the issues presented in the proceeding, the record shall be reopened to accept the offered testimony, evidence or argument.

(c) The presiding officer shall specify a date no later than 30 days from the date of receiving the additional testimony, evidence or argument by which other parties shall respond to or rebut the newly submitted testimony, evidence or argument.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.28 Issuance or Denial of Certificate.

(a) The committee or subcommittee, as applicable, shall make a finding regarding the criteria stated in RSA 162-H:16, IV, and Site 301.13 through 301.17, and issue an order pursuant to RSA 541-A:35 issuing or denying a certificate.

(b) The committee shall keep a written decision or order and all filings related to an application on file in its public records for not less than 5 years following the date of the final decision or order or the date of the

decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to a uniform procedures manual adopted under RSA 5:40.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.29 Rehearing.

(a) The rules in this section are intended to supplement RSA 541, which requires or allows a person to request rehearing of an order or decision of the committee prior to appealing the order or decision.

(b) The rules in this section shall apply whenever any person has a right under applicable law to request a rehearing of an order or decision prior to filing an appeal of the order or decision with the court having appellate jurisdiction.

(c) A motion for rehearing shall be filed within 30 days of the date of a committee decision or order.

(d) A motion for rehearing shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the committee's order or decision to be unlawful, unjust or unreasonable;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

(e) The committee shall grant or deny a motion for rehearing, or suspend the order or decision pending further consideration, within 10 days of the filing of the motion for rehearing.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 202.30 Ex Parte Communications Prohibited.

(a) Committee members shall not communicate directly or indirectly with any person or party about the merits of an application or petition, unless all parties are given notice of the communication and are afforded an opportunity to participate.

(b) Communications between or among committee members, or between committee members and their attorneys, the administrator or committee staff, or between or among the presiding officer and one or more personal assistants or support staff personnel are not prohibited under this section.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

PART Site 203 DECLARATORY RULINGS

Site 203.01 Declaratory Rulings.

(a) Any person may submit a petition for declaratory ruling from the committee on matters within its jurisdiction by filing an original written petition and 10 copies with the committee.

(b) A petition for declaratory ruling shall set forth the following information:

(1) The exact ruling being requested; and

(2) The statutory and factual basis for the requested ruling, including any supporting affidavits or memoranda of law.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 203.02 Action on Requests.

(a) The person filing a petition to request a declaratory ruling shall provide such further information or participate in such evidentiary or other proceedings as the committee shall direct after reviewing the petition and any objections or other replies received with respect to the petition.

(b) Upon review and consideration, the committee shall issue a written ruling either granting or denying the petition, including an explanation of the factual and legal basis for granting or denying the petition, within 90 days of receipt of the petition.

(c) The committee may dismiss a petition for declaratory ruling that:

(1) Fails to set forth factual allegations that are definite and concrete;

(2) Involves a hypothetical situation or otherwise seeks advice as to how the committee would decide a future case;

(3) Does not implicate the legal rights or responsibilities of the petitioner; or

(4) Is not within the committee's jurisdiction.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

PART Site 204 RULEMAKING

Site 204.01 How Adopted.

(a) A rule of the committee or any amendment or repeal thereof shall be adopted by the committee after notice and opportunity for hearing in accordance with this part.

(b) Rules may be proposed by any person or by the committee.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 204.02 Manner for Adoption.

(a) The committee shall commence a rulemaking proceeding by drafting a proposed rule or by accepting as a proposed rule the draft of a rule proposed by any person.

(b) With respect to any proposed rule, the committee shall conduct rulemaking and adoption proceedings pursuant to RSA 541-A.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 204.03 Requests to Committee for Rulemaking. A request from an interested person proposing the adoption, amendment or repeal of a rule shall be submitted, received and resolved in the following manner:

(a) Requests shall be submitted to the committee by letter addressed to the chairperson;

(b) Requests shall contain the following:

(1) The date of the request;

(2) The name, address and telephone number of the person making the request; and

(3) The name and address of any other person or organization represented by the person making the request;

(c) The person making the request shall sign the request;

(d) The request shall be typed or printed in a legible fashion;

(e) The person making the request shall cite the rule and its provisions and specify any changes desired if repeal or amendment is sought, and, if possible, shall provide the text of the proposed rule if promulgation is sought;

(f) The person making the request shall include a detailed and complete statement of the reasons offered in support of the requested action;

(g) If the committee determines that any rulemaking request is deficient in any respect, the committee shall, within 15 days of receipt of said request, notify the person making the request in writing of the specific deficiencies and allow such person to amend the request;

(h) Within 30 days of receipt of a request or amended request for rulemaking, the committee shall take one of the following actions:

(1) Initiate the requested rulemaking procedures, in accordance with this part; or

(2) Deny the request, in writing, stating the reasons for denial;

(i) The committee shall grant the rulemaking request if the request is consistent with statute and case law and will assist the committee with its statutory duties.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 204.04 Request for Notice of Intended Rulemaking Action. Pursuant to the provisions of RSA 541-A:6, III, the committee shall maintain a current listing of all persons having made a request for advance notice of rulemaking proceedings.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

Site 204.05 Public Hearing.

(a) If the committee initiates rulemaking proceedings under RSA 541-A, or if rulemaking is initiated pursuant to a request for rulemaking, the committee shall hold not less than one public hearing pursuant to RSA 541-A:11.

(b) Notice shall be given not less than 20 days prior to the public hearing pursuant to RSA 541-A:6, I.

(c) The committee shall limit the time allowed at hearing for each person's comments when necessary to allow all persons who wish to make oral comments a reasonable opportunity to do so.

(d) The committee shall require persons desiring to make oral comments to so indicate by providing their names, contact information, and parties represented on a roster made available for this purpose prior to the commencement of the public hearing.

(e) The committee shall permit persons to submit written comments in any rulemaking proceeding for a period of time ending not less than 5 days following the close of the public hearing.

Source. *#9183-A, eff 6-17-08; ss by #10993, eff 12-16-15*

PART Site 205 EXPLANATION OF PROPOSED RULE

Site 205.01 Explanation of Proposed Rule.

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

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

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

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

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15

CHAPTER Site 300 CERTIFICATES OF SITE AND FACILITY

PART Site 301 REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATES

Site 301.01 Filing.

(a) Each applicant for a certificate for an energy facility shall file with the committee one original and 15 paper copies of its application and an electronic version of its application in PDF format, unless otherwise directed by the chairperson or the administrator, after consultation by the chairperson or administrator with state agencies that are required to be provided a copy of the application under this chapter, in order to permit the timely and efficient review and adjudication of the application.

(b) The committee or the administrator shall:

(1) Acknowledge receipt of an application filed under Site 301.01(a) in writing directed to the applicant;

(2) Forward a copy of the application and acknowledgment to each member of the committee;

(3) Forward a copy of the application to each state agency required to receive a copy under Site 301.10(a) and (b); and

(4) Post a copy of each application on the committee's website.

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15

Site 301.02 Format of Application.

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

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

(c) All information furnished shall appear in the same order as the requirements to provide that information appear in Site 301.03 through 301.09.

(d) If any numbered item is not applicable or the information is not available, an appropriate comment shall be made so that no numbered item shall remain unanswered.

(e) To the extent practicable, copies of applications shall be double-sided.

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15

Site 301.03 Contents of Application.

(a) Each application for a certificate of site and facility for an energy facility shall be signed and sworn to by the person, or by an authorized executive officer of the corporation, company, association, or other organization making such application.

(b) Each application shall include the information contained in this paragraph, and in (c) through (h) below, as follows:

(1) The name of the applicant;

(2) The applicant's mailing address, telephone and fax numbers, and e-mail address;

(3) The name and address of the applicant's parent company, association, or corporation, if the applicant is a subsidiary;

(4) If the applicant is a corporation:

a. The state of incorporation;

b. The corporation's principal place of business; and

c. The names and addresses of the corporation's directors, officers, and stockholders;

(5) If the applicant is a limited liability company:

a. The state of the company's organization;

b. The company's principal place of business; and

c. The names and addresses of the company's members, managers, and officers;

(6) If the applicant is an association, the names and addresses of the residences of the members of the association; and

(7) Whether the applicant is or will be the owner or lessee of the proposed facility or has or will have some other legal or business relationship to the proposed facility, including a description of that relationship.

(c) Each application shall contain the following information with respect to the site of the proposed energy facility and alternative locations the applicant considers available for the proposed facility:

(1) The location and address of the site of the proposed facility;

(2) Site acreage, shown on an attached property map and located by scale on a U.S. Geological Survey or GIS map;

(3) The location, shown on a map, of property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property;

(4) Identification of wetlands and surface waters of the state within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;

(5) Identification of natural, historic, cultural, and other resources at or within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;

(6) Evidence that the applicant has a current right, an option, or other legal basis to acquire the right, to construct, operate, and maintain the facility on, over, or under the site, in the form of:

a. Ownership, ground lease, easement, or other contractual right or interest;

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

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

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

(d) Each application shall include information about other required applications and permits as follows:

(1) Identification of all other federal and state government agencies having permitting or other regulatory authority, under federal or state law, to regulate any aspect of the construction or operation of the proposed energy facility;

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

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

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

(e) If the application is for an energy facility, including an energy transmission pipeline, that is not an electric generating facility or an electric transmission line, the application shall include:

(1) The type of facility being proposed;

(2) A description of the process to extract, produce, manufacture, transport or refine the source of energy;

(3) The facility's size and configuration;

(4) The ability to increase the capacity of the facility in the future;

(5) Raw materials used or transported, as follows:

a. An inventory, including amounts and specifications;

b. A plan for procurement, describing sources and availability; and

c. A description of the means of transportation;

(6) Production information, as follows:

a. An inventory of products and waste streams, including blowdown emissions from a high pressure gas pipeline;

b. The quantities and specifications of hazardous materials; and

c. Waste management plans;

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

(8) For a high pressure gas pipeline, the following information:

a. Construction information, including a description of the pipe to be used, depth of pipeline placement, type of fuel to be used to power any associated compressor station, and a description of any compressor station emergency shutdown system;

b. Proposed construction schedule, including start date and scheduled completion date;

c. Operation and maintenance information, including a description of measures to be taken to notify adjacent landowners and minimize sound during blowdown events;

d. Copy of any proposed plan application or other documentation required to be submitted to the Federal Energy Regulatory Commission in connection with construction and operation of the proposed facility; and

e. Copy of any environmental report, assessment or impact statement prepared by or on behalf of the Federal Energy Regulatory Commission when it becomes available.

(f) If the application is for an electric generating facility, the application shall include the following information:

(1) Make, model, and manufacturer of each turbine and generator unit;

(2) Capacity in megawatts, as designed and as intended for operation;

(3) Type of turbine and generator unit, including:

a. Fuel utilized;

b. Method of cooling condenser discharge; and

c. Unit efficiency;

(4) Any associated new substations, generator interconnection lines, and electric transmission lines, whether identified by the applicant or through a system impact study conducted by or on behalf of the interconnecting utility or ISO New England, Inc.;

(5) Copy of system impact study report for interconnection of the facility as prepared by or on behalf of ISO New England, Inc. or the interconnecting utility, if available at the time of application;

(6) Construction schedule, including start date and scheduled completion date; and

(7) Description of anticipated mode and frequency of operation of the facility.

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

(1) Location shown on U.S. Geological Survey Map;

(2) A map showing the entire electric transmission or distribution line project, including the height and location of each pole or tower, the distance between each pole or tower, and the location of each substation, switchyard, converter station, and other ancillary facilities associated with the project;

(3) Corridor width for:

a. New route; or

b. Widening along existing route;

(4) Length of line;

(5) Distance along new route;

(6) Distance along existing route;

(7) Voltage design rating;

(8) Any associated new electric generating unit or units;

(9) Type of construction described in detail;

(10) Construction schedule, including start date and scheduled completion date;

(11) Copy of any proposed plan application or other system study request documentation required to be submitted to ISO New England, Inc. in connection with construction and operation of the proposed facility; and

(12) Copy of system impact study report for the proposed electric transmission facility as prepared by or on behalf of ISO New England, Inc. or the interconnecting utility, if available at the time of application.

(h) Each application for a certificate for an energy facility shall include the following:

(1) A detailed description of the type and size of each major part of the proposed facility;

(2) Identification of the applicant's preferred choice and other alternatives it considers available for the site and configuration of each major part of the proposed facility and the reasons for the preferred choice;

(3) Documentation that the applicant has held at least one public information session in each county where the proposed facility is to be located at least 30 days prior to filing its application, pursuant to RSA 162-H:10, I and Site 201.01;

(4) Documentation that written notification of the proposed facility, including copies of the application, has been given to the governing body of each municipality in which the facility is proposed to be located, and that written notification of the application filing, including information regarding means to obtain an electronic or paper version of the application, has been sent by first class mail to the governing body of each of the other affected communities;

(5) The information described in Sections 301.04 through 301.09;

(6) For a proposed wind energy facility, information regarding the cumulative impacts of the proposed facility on natural, wildlife, habitat, scenic, recreational, historic, and cultural resources, including, with respect to aesthetics, the potential impacts of combined observation, successive observation, and sequential observation of wind energy facilities by the viewer;

(7) Information describing how the proposed facility will be consistent with the public interest, including the specific criteria set forth in Site 301.16(a)-(j); and

(8) Pre-filed testimony and exhibits supporting the application.

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15; amd by #11156, eff 8-16-16

Site 301.04 Financial, Technical and Managerial Capability. Each application shall include a detailed description of the applicant's financial, technical, and managerial capability to construct and operate the proposed energy facility, as follows:

(a) Financial information shall include:

(1) A description of the applicant's experience financing other energy facilities;

(2) A description of the corporate structure of the applicant, including a chart showing the direct and indirect ownership of the applicant;

(3) A description of the applicant's financing plan for the proposed facility, including the amounts and sources of funds required for the construction and operation of the proposed facility;

(4) An explanation of how the applicant's financing plan compares with financing plans employed by the applicant or its affiliates, or, if no such plans have been employed by the applicant or its affiliates, then by unaffiliated project developers if and to the extent such information is publicly available, for energy facilities that are similar in size and type to the proposed facility, including any increased risks or costs associated with the applicant's financing plan; and

(5) Current and pro forma statements of assets and liabilities of the applicant;

(b) Technical information shall include:

(1) A description of the applicant's qualifications and experience in constructing and operating energy facilities, including projects similar to the proposed facility; and

(2) A description of the experience and qualifications of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time of application;

(c) Managerial information shall include:

(1) A description of the applicant's management structure for the construction and operation of the proposed facility, including an organizational chart for the applicant;

(2) A description of the qualifications of the applicant and its executive personnel to manage the construction and operation of the proposed facility; and

(3) To the extent the applicant plans to rely on contractors or consultants for the construction and operation of the proposed facility, a description of the experience and qualifications of the contractors and consultants, if known at the time of application.

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15

Site 301.05 Effects on Aesthetics.

(a) Each application shall include a visual impact assessment of the proposed energy facility, prepared in a manner consistent with generally accepted professional standards by a professional trained or having experience in visual impact assessment procedures, regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed facility on aesthetics.

(b) The visual impact assessment shall contain the following components:

(1) A description and map depicting the locations of the proposed facility and all associated buildings, structures, roads, and other ancillary components, and all areas to be cleared and graded, that would be visible from any scenic resources, based on both bare ground conditions using topographic screening only and with consideration of screening by vegetation or other factors;

(2) A description of how the applicant identified and evaluated the scenic quality of the landscape and potential visual impacts;

(3) A narrative and graphic description, including maps and photographs, of the physiographic, historical and cultural features of the landscape surrounding the proposed facility to provide the context for evaluating any visual impacts;

(4) A computer-based visibility analysis to determine the area of potential visual impact, which, for proposed:

a. Wind energy systems shall extend to a minimum of a 10-mile radius from each wind turbine in the proposed facility;

b. Electric transmission lines longer than 1 mile shall extend to a ½ mile radius if located within any urbanized area;

c. Electric transmission lines longer than 1 mile shall extend to a 2 mile radius if located within any urban cluster;

d. Electric transmission lines longer than 1 mile if located within any rural area shall extend to:

1. A radius of 3 miles if the line would be located within an existing transmission corridor and neither the width of the corridor nor the height of any towers, poles, or other supporting structures would be increased; or

2. A radius of 10 miles if the line would be located in a new transmission corridor or in an existing transmission corridor if either or both the width of the corridor or the height of the towers, poles, or other supporting structures would be increased;

(5) An identification of all scenic resources within the area of potential visual impact and a description of those scenic resources from which the proposed facility would be visible;

(6) A characterization of the potential visual impacts of the proposed facility, and of any visible plume that would emanate from the proposed facility, on identified scenic resources as high, medium, or low, based on consideration of the following factors:

a. The expectations of the typical viewer;

b. The effect on future use and enjoyment of the scenic resource;

c. The extent of the proposed facility, including all structures and disturbed areas, visible from the scenic resource;

d. The distance of the proposed facility from the scenic resource;

e. The horizontal breadth or visual arc of the visible elements of the proposed facility;

f. The scale, elevation, and nature of the proposed facility relative to surrounding topography and existing structures;

g. The duration and direction of the typical view of elements of the proposed facility; and

h. The presence of intervening topography between the scenic resource and elements of the proposed facility;

(7) Photosimulations from representative key observation points, from other scenic resources for which the potential visual impacts are characterized as "high" pursuant to (6) above, and, to the extent feasible, from a sample of private property observation points within the area of potential visual impact, to illustrate the potential change in the landscape that would result from construction of the proposed facility and associated infrastructure, including land clearing and grading and road construction, and from any visible plume that would emanate from the proposed facility;

(8) Photosimulations shall meet the following additional requirements:

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

b. Photosimulations shall be printed at high resolution at 15.3 inches by10.2 inches, or 390 millimeters by 260 millimeters;

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

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

1. Global Position System (GPS) location points with an accuracy of at least 3 meters for each simulation viewpoint to ensure repeatability;

2. Camera make and model and lens focal length;

3. All camera settings at the time the photograph is taken; and

4. Date, time and weather conditions at the time the photograph is taken; and

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

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

2. Turbines shall reasonably represent the shape of the intended turbines for a project including the correct hub height and rotor diameter;

3. Turbine blades shall be set at random angles with some turbines showing a blade in the 12 o'clock position; and

4. The lighting model used to render wind turbine elements shall correspond to the lighting visible in the base photograph;

(9) If the proposed facility is required by Federal Aviation Administration regulations to install aircraft warning lighting or if the proposed facility would include other nighttime lighting, a description and characterization of the potential visual impacts of this lighting, including the number of lights visible and their distance from key observation points; and

(10) A description of the measures planned to avoid, minimize, or mitigate potential adverse effects of the proposed facility, and of any visible plume that would emanate from the proposed facility, and the alternative measures considered but rejected by the applicant.

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15

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

(a) Demonstration that project review of the proposed facility has been initiated for purposes of compliance with Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108, or RSA 227-C:9, as applicable;

(b) Identification of all historic sites and areas of potential archaeological sensitivity located within the area of potential effects, as defined in 36 C.F.R. §800.16(d), available as noted in Appendix B;

(c) Finding or determination by the division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, that no historic properties would be affected, that there would be no adverse effects, or that there would be adverse effects to historic properties, if such a finding or determination has been made prior to the time of application;

(d) Description of the measures planned to avoid, minimize, or mitigate potential adverse effects on historic sites and archaeological resources, and the alternative measures considered but rejected by the applicant; and

(e) Description of the status of the applicant's consultations with the division of historical resources of the department of cultural resources, and, if applicable, with the lead federal agency, and, to the extent known to the applicant, any consulting parties, as defined in 36 C.F.R. §800.2(c), available as noted in Appendix B.

Source. #10994, eff 12-16-15

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

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

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

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

(1) Description of how the applicant identified significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility, including communications with and documentation received from the New Hampshire department of fish and game, the New Hampshire natural heritage bureau, the

United States Fish and Wildlife Service, and any other federal or state agencies having permitting or other regulatory authority over fish, wildlife, and other natural resources;

(2) Identification of significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities potentially affected by construction and operation of the proposed facility;

(3) Identification of critical wildlife habitat and significant habitat resources potentially affected by construction and operation of the proposed facility;

(4) Assessment of potential impacts of construction and operation of the proposed facility on significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and on critical wildlife habitat and significant habitat resources, including fragmentation or other alteration of terrestrial or aquatic significant habitat resources;

(5) Description of the measures planned to avoid, minimize, or mitigate potential adverse impacts of construction and operation of the proposed facility on wildlife species, rare plants, rare natural communities, and other exemplary natural communities, and on critical wildlife habitat and significant habitat resources, and the alternative measures considered but rejected by the applicant; and

(6) Description of the status of the applicant's discussions with the New Hampshire department of fish and game, the New Hampshire natural heritage bureau, the United States Fish and Wildlife Service, and any other federal or state agencies having permitting or other regulatory authority over fish, wildlife, and other natural resources.

Source. #10994, eff 12-16-15

Site 301.08 Effects on Public Health and Safety. Each application shall include the following information regarding the effects of, and plans for avoiding, minimizing, or mitigating potential adverse effects of, the proposed energy facility on public health and safety:

(a) For proposed wind energy systems:

(1) A sound impact assessment prepared in accordance with professional standards by an expert in the field, which assessment shall include the reports of a preconstruction sound background study and a sound modeling study, as specified in Site 301.18;

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

(3) Description of planned setbacks that indicate the distance between each wind turbine and the nearest landowner's existing building and property line, and between each wind turbine and the nearest public road and overhead or underground energy infrastructure or energy transmission pipeline within 2 miles of such wind turbine, and explain why the indicated distances are adequate to protect the public from risks associated with the operation of the proposed wind energy facility;

(4) An assessment of the risks of ice throw, blade shear, and tower collapse on public safety, including a description of the measures taken or planned to avoid or minimize the occurrence of such events, if necessary, and the alternative measures considered but rejected by the applicant;

(5) Description of the lightning protection system planned for the proposed facility;

(6) Description of any determination made by the Federal Aviation Administration regarding whether any hazard to aviation is expected from any of the wind turbines included in the proposed facility, and describe the Federal Aviation Administration's lighting, turbine color, and other requirements for the wind turbines;

(7) A decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in wind generation projects and cost estimates, which plan shall provide for removal of all structures and restoration of the facility site;

(8) The decommissioning plan required under (7) above shall include each of the following:

a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;

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

c. All turbines, including the blades, nacelles and towers, shall be disassembled and transported off-site;

d. All transformers shall be transported off-site;

e. The overhead power collection conductors and the power poles shall be removed from the site;

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

g. Areas where subsurface components are removed shall be filled, graded to match adjacent contours, reseeded, stabilized with an appropriate seed and allowed to re-vegetate naturally;

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

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

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

(c) For high pressure gas pipelines:

(1) A comprehensive health impact assessment prepared by an independent health and safety expert in accordance with nationally recognized standards, and specifically designed to identify and evaluate potential short-term and long-term human health impacts by identifying potential pathways for facility-related contaminants to harm human health, quantifying the cumulative risks posed by any contaminants, and recommending necessary avoidance, minimization, or mitigation;

(2) A sound and vibration impact assessment prepared by an independent expert in the field, in accordance with ANSI/ASA S12.9-2013 Part 3 for short-term monitoring and with ANSI S12.9-1992 2013 Part 2 for long-term monitoring, including the reports of a preconstruction sound and vibration background study and a sound and vibration modeling study;

(3) A description of planned setbacks that indicate the distance between:

a. The proposed high pressure gas pipeline and existing buildings on, and the boundaries of, abutting properties;

b. Any associated compressor station and schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms within a one mile radius; and

c. The proposed high pressure gas pipeline and any overhead or underground electric transmission line within 1/2 mile;

(4) An explanation of why the setbacks described by the applicant in response to (3), above, are adequate to protect the public from risks associated with the operation of the high pressure gas pipeline; and

(5) A description of all permanently installed exterior lighting at compressor stations and how it complies with Site 301.14(f)(5)c.

(d) For all energy facilities:

(1) Except as otherwise provided in (a)(1) above, an assessment of operational sound associated with the proposed facility, if the facility would involve use of equipment that might reasonably be expected to increase sound by 10 decibel A-weighted (dBA) or more over background levels, measured at the L-90 sound level, at the property boundary of the proposed facility site or, in the case of an electric transmission line or an energy transmission pipeline, at the edge of the right-of-way or the edge of the property boundary if the proposed facility, or portion thereof, will be located on land owned, leased or otherwise controlled by the applicant or an affiliate of the applicant;

(2) A facility decommissioning plan prepared by an independent, qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:

a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;

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

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

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

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

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

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

Source. #10994, eff 12-16-15; amd by #11156, eff 8-16-16

Site 301.09 Effects on Orderly Development of Region. Each application shall include information regarding the effects of the proposed energy facility on the orderly development of the region, including the views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility, if such views have been expressed in writing, and master plans of the affected communities and zoning ordinances of the proposed facility host municipalities and unincorporated places, and the applicant's estimate of the effects of the construction and operation of the facility on:

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

(1) A description of the prevailing land uses in the affected communities; and

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

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

(1) The economic effect of the facility on the affected communities;

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

(3) The effect of the proposed facility on State tax revenues and the tax revenues of the host and regional communities;

(4) The effect of the proposed facility on real estate values in the affected communities;

(5) The effect of the proposed facility on tourism and recreation; and

(6) The effect of the proposed facility on community services and infrastructure;

(c) Employment in the region, including an assessment of:

(1) The number and types of full-time equivalent local jobs expected to be created, preserved, or otherwise affected by the construction of the proposed facility, including direct construction employment and indirect employment induced by facility-related wages and expenditures; and

(2) The number and types of full-time equivalent jobs expected to be created, preserved, or otherwise affected by the operation of the proposed facility, including direct employment by the applicant and indirect employment induced by facility-related wages and expenditures.

Source. #10994, eff 12-16-15

Site 301.10 Completeness Review and Acceptance of Applications for Energy Facilities.

(a) Upon the filing of an application for an energy facility, the committee shall forward to each of the other state agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, a copy of the application for the agency's review as described in RSA 162-H:7, IV.

(b) The committee also shall forward a copy of the application to the department of fish and game, the department of health and human services, the division of historical resources of the department of cultural resources, the natural heritage bureau, the governor's office of energy and planning, and the division of fire safety of the department of safety, unless any such agency or office has been forwarded a copy of the application under (a) above.

(c) Upon receiving an application, the committee shall conduct a preliminary review to ascertain if the application contains sufficient information for the committee to review the application under RSA 162-H and these rules.

(d) Each state agency having permitting or other regulatory authority shall have 45 days from the time the committee forwards the application to notify the committee in writing whether the application contains sufficient information for its purposes.

(e) Within 60 days after the filing of the application, the committee shall determine whether the application is administratively complete and has been accepted for review.

(f) If the committee determines that an application is administratively incomplete, it shall notify the applicant in writing, specifying each of the areas in which the application has been deemed incomplete.

(g) If the applicant is notified that its application is administratively incomplete, the applicant may file a new and more complete application or complete the filed application by curing the specified defects within 10 days of the applicant's receipt of notification of incompleteness.

(h) If, within the 10-day time frame, the applicant files a new and more complete application or completes the filed application, in either case curing the defects specified in the notification of incompleteness, the committee shall, no later than 14 days after receipt of the new or completed application, accept the new or completed application.

(i) If the new application is not complete or the specified defects in the filed application remain uncured, the committee shall notify the applicant in writing of its rejection of the application and instruct the applicant to file a new application.

Source. #10994, eff 12-16-15

Site 301.11 Exemption Determination.

(a) Within 60 days of acceptance of an application or the filing of a petition for exemption, the committee shall exempt the applicant from the approval and certificate provisions of RSA 162-H and these rules, if the committee finds that:

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

(2) Consideration of the proposed energy facility by only selected agencies represented on the committee is required and the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;

(3) Response to the application or request for exemption from the general public, provided through written submissions or in the adjudicative proceeding provided for in (b) below, indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and

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

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

Source. #10994, eff 12-16-15

Site 301.12 Timeframe for Application Review.

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

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

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

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

Source. #10994, eff 12-16-15

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

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

(1) The applicant's experience in securing funding to construct and operate energy facilities similar to the proposed facility;

(2) The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;

(3) The applicant's statements of current and pro forma assets and liabilities; and

(4) Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.

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

(1) The applicant's experience in designing, constructing, and operating energy facilities similar to the proposed facility; and

(2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time.

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

(1) The applicant's experience in managing the construction and operation of energy facilities similar to the proposed facility; and

(2) The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide managerial support for the construction and operation of the proposed facility, if known at the time.

Source. #10994, eff 12-16-15

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects.

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

(1) The existing character of the area of potential visual impact;

(2) The significance of affected scenic resources and their distance from the proposed facility;

(3) The extent, nature, and duration of public uses of affected scenic resources;

(4) The scope and scale of the change in the landscape visible from affected scenic resources;

(5) The evaluation of the overall daytime and nighttime visual impacts of the facility as described in the visual impact assessment submitted by the applicant and other relevant evidence submitted pursuant to Site 202.24;

(6) The extent to which the proposed facility would be a dominant and prominent feature within a natural or cultural landscape of high scenic quality or as viewed from scenic resources of high value or sensitivity; and

(7) The effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on aesthetics, and the extent to which such measures represent best practical measures.

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

(1) All of the historic sites and archaeological resources potentially affected by the proposed facility and any anticipated potential adverse effects on such sites and resources;

(2) The number and significance of any adversely affected historic sites and archeological resources, taking into consideration the size, scale, and nature of the proposed facility;

(3) The extent, nature, and duration of the potential adverse effects on historic sites and archeological resources;

(4) Findings and determinations by the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, of the proposed facility's effects on historic sites as determined under Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108, or RSA 227-C:9; and

(5) The effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on historic sites and archaeological resources, and the extent to which such measures represent best practical measures.

(c) In determining whether a proposed energy facility will have an unreasonable adverse effect on air quality, the committee shall consider the determinations of the New Hampshire department of environmental services with respect to applications or permits identified in Site 301.03(d) and other relevant evidence submitted pursuant to Site 202.24.

(d) In determining whether a proposed energy facility will have an unreasonable adverse effect on water quality, the committee shall consider the determinations of the New Hampshire department of environmental services, the United States Army Corps of Engineers, and other state or federal agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, with respect to applications and permits identified in Site 301.03(d), and other relevant evidence submitted pursuant to Site 202.24.

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

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

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

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

(4) The analyses and recommendations, if any, of the department of fish and game, the natural heritage bureau, the United States Fish and Wildlife Service, and other agencies authorized to identify and manage significant wildlife species, rare plants, rare natural communities, and other exemplary natural communities;

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

(6) The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate potential adverse effects on terrestrial or aquatic significant habitat resources, and the extent to which such measures represent best practical measures; and

(7) Whether conditions should be included in the certificate for post-construction monitoring and reporting and for adaptive management to address potential adverse effects that cannot reliably be predicted at the time of application.

(f) In determining whether a proposed energy facility will have an unreasonable adverse effect on public health and safety, the committee shall:

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

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

a. With respect to sound standards, the A-weighted equivalent sound levels produced by the applicant's energy facility during operations shall not exceed the greater of 45 dBA or 5 dBA above background levels, measured at the L-90 sound level, between the hours of 8:00 a.m. and 8:00 p.m. each day, and the greater of 40 dBA or 5 dBA above background levels, measured at the L-90 sound level, at all other times during each day, as measured using microphone placement at least 7.5 meters from any surface where reflections may influence measured sound pressure levels, on property that is used in whole or in part for permanent or temporary residential purposes, at a location between the nearest building on the property used for such purposes and the closest wind turbine; and

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

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

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

(5) For high pressure gas pipelines, apply the following standards:

a. With respect to sound standards for interstate pipelines, the noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, shall not exceed a day-night sound level (Ldn) of 55 dBA at any pre-existing noise-sensitive area, such as schools, hospitals, or residences, as provided in 18 CFR §380.12(k), available as noted in Appendix B;

b. With respect to sound standards for intrastate pipelines, the noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, shall not exceed the standards set forth in (2)a., above, regarding wind energy systems;

c. With respect to vibration, compressor stations or modifications of existing compressor stations shall not result in a perceptible increase in vibration at any pre-existing noise-sensitive area, such as schools, hospitals, or residences, as provided in 18 CFR §380.12(k), available as noted in Appendix B, or a level of 2.0 peak particle velocity, whichever is less;

d. With respect to exterior lighting at compressor stations, no light shall be projected above the horizontal plane or projected beyond the property lines;

e. With respect to pipeline construction and safety, the requirements in Puc 506 and Puc 508 for a class 4 location in a high consequence area, as those terms are defined in 49 CFR §192.5(b)(4) and 49 CFR §192.903, available as noted in Appendix B, respectively; and

(6) For high pressure gas pipelines, consider:

a. The results of the comprehensive health impact assessment;

b. The proximity of electric transmission lines to the high pressure gas pipeline;

c. The proximity of any compressor station to schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, elderly care facilities, and farms;

d. The effectiveness of measures undertaken or planned to avoid, minimize, or mitigate such potential adverse effects; and

e. The extent to which the measures in d. represent best practical measures.

Source. #10994, eff 12-16-15; amd by #11156, eff 8-16-16

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

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

(b) The provisions of, and financial assurances for, the proposed decommissioning plan for the proposed facility; and

(c) The views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility.

Source. #10994, eff 12-16-15

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

(a) The welfare of the population;

(b) Private property;

(c) The location and growth of industry;

(d) The overall economic growth of the state;

(e) The environment of the state;

(f) Historic sites;

(g) Aesthetics;

(h) Air and water quality;

(i) The use of natural resources; and

(j) Public health and safety.

Source. #10994, eff 12-16-15

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

(a) A requirement that the certificate holder promptly notify the committee of any proposed or actual change in the ownership or ownership structure of the holder or its affiliated entities and request approval of the committee of such change;

(b) A requirement that the certificate holder promptly notify the committee of any proposed or actual material change in the location, configuration, design, specifications, construction, operation, or equipment components of the energy facility subject to the certificate and request approval of the committee of such change;

(c) A requirement that the certificate holder continue consultations with the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the federal lead agency, and comply with any agreement or memorandum of understanding entered into with the New Hampshire division of historical resources of the department of cultural resources and, if applicable, the federal lead agency;

(d) Delegation to the administrator or another state agency or official of the authority to monitor the construction or operation of the energy facility subject to the certificate and to ensure that related terms and conditions of the certificate are met;

(e) Delegation to the administrator or another state agency or official of the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within the certificate and with respect to any permit, license, or approval issued by a state agency having permitting or other regulatory authority;

(f) Delegation to the administrator or another state agency or official of the authority to specify minor changes in route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate;

(g) A requirement that the energy facility be sited subject to setbacks or operate with designated safety zones in order to avoid, mitigate, or minimize potential adverse effects on public health and safety;

(h) Other conditions necessary to ensure construction and operation of the energy facility subject to the certificate in conformance with the specifications of the application; and

(i) Any other conditions necessary to serve the objectives of RSA 162-H or to support findings made pursuant to RSA 162-H:16.

Source. #10994, eff 12-16-15

Site 301.18 Sound Study Methodology.

(a) The methodology for conducting a preconstruction sound background study for a wind energy system shall include:

(1) Adherence to the standard of ANSI/ASA S12.9-2013 Part 3, available as noted in Appendix B, a standard that requires short-term attended measurements;

(2) Long-term unattended monitoring shall be conducted in accordance with the standard of ANSI S12.9-1992 2013 Part 2, available as noted in Appendix B, provided that audio recordings are taken in order to clearly identify and remove transient noises from the data, with frequencies above 1250 hertz 1/3 octave band to be filtered out of the data;

(3) Measurements shall be conducted at the nearest properties from the proposed wind turbines that are representative of all residential properties within 2 miles of any turbine; and

(4) Sound measurements shall be omitted when the wind velocity is greater than 4 meters per second at the microphone position, when there is rain, or with temperatures below instrumentation minima; following the protocol of ANSI S12.9-2013 Part 3, available as noted in Appendix B:

a. Microphones shall be placed 1 to 2 meters above ground level, and at least 7.5 meters from any reflective surface;

b. A windscreen of the type recommended by the monitoring instrument's manufacturer must be used for all data collection;

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

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

(b) Pre-construction sound reports shall include a map or diagram clearly showing the following:

(1) Layout of the project area, including topography, project boundary lines, and property lines;

(2) Locations of the sound measurement points;

(3) Distance between any sound measurement point and the nearest wind turbine;

(4) Location of significant local non-turbine sound and vibration sources;

(5) Distance between all sound measurement points and significant local sound sources;

(6) Location of all sensitive receptors including schools, day-care centers, health care facilities, residences, residential neighborhoods, places of worship, and elderly care facilities;

(7) Indication of temperature, weather conditions, sources of ambient sound, and prevailing wind direction and speed for the monitoring period; and

(8) Final report shall provide A-weighted and C-weighted sound levels for L-10, Leq, and L-90.

(c) The predictive sound modeling study shall:

(1) Be conducted in accordance with the standards and specifications of ISO 9613-2 1996-12-15, available as noted in Appendix B;

(2) Include an adjustment to the Leq sound level produced by the model applied in order to adjust for turbine manufacturer uncertainty, such adjustment to be determined in accordance with the most recent release of the IEC 61400 Part 11 standard (Edition 3.0 2012-11), available as noted in Appendix B;

(3) Include predictions to be made at all properties within 2 miles from the project wind turbines for the wind speed and operating mode that would result in the worst case wind turbine sound emissions during the hours before 8:00 a.m. and after 8:00 p.m. each day; and

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

(d) The predictive sound modeling study report shall:

(1) Include the results of the modeling described in (c)(3) above as well as a map with sound contour lines showing dBA sound emitted from the proposed wind energy system at 5 dBA intervals;

(2) Include locations out to 2 miles from any wind turbine included in the proposed facility; and

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

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

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

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

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

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

b. Proper microphone screens shall be required;

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

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

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

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

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

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

a. Additional surveys shall be conducted at the request of the committee or the administrator; and

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

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

(1) Layout of the project area, including topography, project boundary lines, and property lines;

(2) Locations of the sound measurement points; and

(3) Distance between any sound measurement point and the nearest wind turbine.

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

(1) LAeq, LA-10, and LA-90; and

(2) LCeq, LC-10, and LC-90.

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

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

Source. #10994, eff 12-16-15

PART Site 302 ENFORCEMENT OF TERMS AND CONDITIONS

Site 302.01 Determination of Certificate Violation.

(a) Whenever the committee or the administrator as designee determines, on its own or in response to a complaint, that any term or condition of an issued certificate is being violated, it shall give written notice to the person holding the certificate of the specific violation and order the person to immediately terminate the violation.

(b) The administrator or another designated representative of the committee shall have the authority to inspect and monitor the construction and operation of the energy facility subject to the certificate.

(c) If the person holding the certificate has failed or neglected to terminate a specified violation within 15 days after receipt of the notice and order issued pursuant to (a) above, the committee shall commence a proceeding to suspend the person's certificate.

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

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

(f) If the committee determines following the adjudicative proceeding that a certificate violation has occurred and is continuing, the committee shall issue an order that suspends the holder's certificate until such time as the violation has been corrected if the committee determines, after due consideration of any mitigating circumstances and a determination of whether suspension is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles, that the following criteria have been met:

(1) The violation will not be terminated within 30 days from the date of the committee's decision; and

(2) The violation will have an unreasonable adverse effect pursuant to Site 301.14 on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety.

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15; amd by #11156, eff 8-16-16

Site 302.02 Determination of Misrepresentation or Non-Compliance.

(a) If the committee determines that a person has made a material misrepresentation in the application or in any supplemental or additional statements of fact or studies required of the applicant, or if the committee determines that the person has violated the provisions of RSA 162-H or the rules of the committee, the committee shall commence an adjudicative proceeding to suspend the certificate held by such person.

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

(c) Except in the case of an emergency, the committee shall provide 14 days prior written notice of the hearing referred to in (b) above to the holder of the certificate.

(d) If the committee determines following the adjudicative proceeding that a material misrepresentation or violation of RSA 162-H or its rules has occurred, the committee shall issue an order that suspends the holder's certificate until such time as the holder has corrected and mitigated the consequences of such misrepresentation or violation if the committee determines, after due consideration of any mitigating circumstances and a determination of whether suspension is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles, that the following criteria have been met:

(1) The violation will not be terminated within 30 days from the date of the committee's decision; and

(2) The violation will have an unreasonable adverse effect pursuant to Site 301.14 on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety.

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

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15; amd by #11156, eff 8-16-16

Site 302.03 Revocation of Certificate.

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

(b) If the committee has suspended a certificate pursuant to Site 302.01 or Site 302.02 and the holder has failed to correct and mitigate the consequences of the violation or misrepresentation that was the basis for the suspension within the period of time specified in the suspension order, the committee shall initiate an adjudicative proceeding to revoke the suspended certificate and shall conduct an adjudicative hearing prior to determining whether to revoke the certificate.

(c) The committee shall provide 90 days prior written notice to the holder of the certificate that the committee intends to revoke the certificate and stating the reasons for the intended revocation.

(d) Following the adjudicative proceeding, the committee shall revoke the holder's certificate if the committee determines, after due consideration of any mitigating circumstances and a determination of whether revocation is in the best interests of the public, or would result in an inability to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles, that one or more of the following criteria have been met:

(1) The certificate holder obtained the certificate through fraud, deceit, or falsification;

(2) The certificate holder knowingly violated the rules of the committee, the conditions of the holder's certificate, or the rules or permits of any agency that participated in the holder's certificate proceeding;

(3) The certificate holder failed to comply with an order of the committee or an order imposed as a result of a judicial action taken to enforce any statute or rule implemented by the committee, unless the certificate holder is complying in accordance with a compliance schedule and is current with all items; or

(4) The certificate holder is a chronic non-complier.

(e) If the holder's certificate is revoked by order of the committee, then the holder shall permanently cease construction or operation of the energy facility subject to the certificate as of the time specified in the order and shall commence and complete decommissioning of the facility within the time period specified in the order.

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15 (from Site 302.02); amd by #11156, eff 8-16-16

Site 302.04 Emergencies.

(a) For the purposes of this part, "emergency" means an event which jeopardizes public health and safety.

(b) With respect to emergencies, the committee shall provide 5 days prior written notice of an adjudicative hearing to the holder of a certificate.

Source. #9183-B, eff 6-17-08; ss by #10994, eff 12-16-15 (from Site 302.03)

Site 302.05 Waiver of Rules.

(a) The committee or subcommittee, as applicable, shall waive any of the provisions of this chapter, except where precluded by statute, on its own motion or upon request by an interested party, if the committee or

subcommittee finds that:

(1) The waiver serves the public interest; and

(2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

(b) In determining the public interest, the committee or subcommittee shall waive a rule if:

(1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or

(2) The purpose of the rule would be satisfied by an alternative method proposed.

(c) Any interested party seeking a waiver shall make a request in writing, except as provided in (d) below.

(d) The committee or subcommittee, as applicable, shall accept for consideration any waiver request made orally during a hearing or prehearing conference.

(e) A request for a waiver shall specify the basis for the waiver and the proposed alternative, if any.

Source. #10994, eff 12-16-15 (from Site 302.04)

APPENDIX A

Rule	**Statute**
Site 101.01-101.02	RSA 162-H:3, 4, and 10,VI and VII; RSA 541-A:16, I (a)
Site 102.01-102.57	RSA 162-H:2 and 10,VI and VII
Site 102.121, 102.161, 102.221	RSA 162-H:7,IV and V; RSA 162-H:10,VI; RSA 162-H:10-b, II
Site 103.01	RSA 162-H:3, 4, and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.02	RSA 162-H:3 and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.03	RSA 162-H:4-a and 10,VI and VII; RSA 541-A:16, I (a)
Site 103.04	RSA 162-H:3-a, 4, and 10,VI and VII; RSA 541-A:16,I(a)
Site 103.05	RSA 162-H:9 and 10,VI and VII; RSA 541-A:16, I (a)
Site 104.01	RSA 162-H:10,VI and VII, 13; RSA 541-A:16, I (a)
Site 201.01	RSA 162-H:10,I, VI and VII
Site 201.02	RSA 162-H:10,I-a, VI and VII
Site 201.03	RSA 162-H:10,I-c, VI and VII
Site 201.04	RSA 162-H:10,I-b, VI and VII
Site 202.01	RSA 162-H:10,VI and VII; RSA 541-A:30-a
Site 202.02	RSA 162-H:4, 4-a, 10,VI and VII; RSA 541-A:30-a
Site 202.03	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (k)
Site 202.04	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.05	RSA 162-H:7-a, 10,VI and VII; and RSA 541-A:30-a,III
Site 202.06-202.07	RSA 162-H:10,VI and VII; and RSA 541-A:30-a,III
Site 202.08	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (f)
Site 202.09	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III and 31, III
Site 202.10	RSA 162-H:10,VI and VII; RSA 541-A:31,V(c)
Site 202.11	RSA 162-H:4,V, 10,VI and VII; RSA 541-A:32
Site 202.12-202.14	RSA 162-H:10,VI and VII; RSA 541-A:30-a
Site 202.15	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (j)
Site 202.16	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III
Site 202.17	RSA 162-H:10,VI and VII; RSA 541-A:30-a,III (h)