



## MEMORANDUM

TO: NH OEP  
FROM: Ed Cherian, Iberdrola Renewables, LLC  
DATE: 1 May 2014  
SUBJ: SB 99 SEC Rule-Making Process: Orderly Development of the Region

We offer the following information on the discussion of criteria regarding “orderly development of the region”.

The goal of the effort should be to identify existing SEC and regulatory precedents and standards so as to better codify them for the SEC, rather than attempting to create new standards.

### **Discussion of Standards**

RSA 162-H requires the SEC to evaluate whether a proposal is consistent with the “orderly development of the region”. This has been evaluated and adjudicated in a number of dockets before the SEC. The criteria are regional, not specific criteria for individual residences or businesses. The term “orderly development” is not expressly defined within RSA 162-H. RSA 162-H:6 IV(b) requires the SEC, in order to issue a certificate, to find that a proposed 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 committees and municipal governing bodies.”

The evaluations conducted by the SEC have evolved over time, but have consistently focused primarily on economic effects and contributions of a proposed project. In some dockets the Committee has also expressly evaluated land use in the region, use of existing infrastructure, and decommissioning. [In two more recent dockets the SEC, in response to claims made by project opponents, evaluated claims in regards to effects on property values and tourism].

Below are excerpts from some SEC decisions that provide some background on the Committee’s decision-making criteria.

See for example the SEC's decision on Groton Wind (at page 37 of Decision)<sup>1</sup>.

The term "orderly development" is not defined within RSA 162-H. In the past, the Committee has considered matters that have a direct impact on the economic development of the region. See, Decision Granting Certificate of Site and Facility with Conditions, Application of Laidlaw Berlin BioPower, LLC, Docket No. 2009-02, at 58-59 (Nov. 8, 2010). The Subcommittee must consider whether the Project will unduly interfere with the "orderly development of the region", as opposed to isolated impacts on a limited number of residences or businesses in the region. RSA 162-H:16, IV (b); see also, Impact Food Sales v. Evans, 160 N.H. 386, 397 (2010) (defining the rules of statutory construction and stating that in the absence of a statutory definition, the term should be interpreted in accordance with the plain meaning of the words used with the focus on the statute as a whole and with presumption that the legislature did not use superfluous or redundant words). In considering whether the Project will unduly interfere with the orderly development of the region, the Subcommittee must first determine whether such interference impacts the entire region, as opposed to a limited number of residences. Thereafter, the Subcommittee must consider whether the degree of such interference is so excessive that it warrants mitigation or denial of the Certificate.

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<sup>1</sup> <http://www.nhsec.nh.gov/2010-01/documents/110506decision.pdf>

See also SEC Decision on Lempster Wind, at page 24<sup>2</sup>:

The preponderance of the evidence in the case indicates that the proposed facility will not unduly interfere with the orderly development of the region. In fact, aspects of the project can assist in the orderly development of the region. For instance, the project will deliver power directly to the existing distribution grid at existing voltage in the region without the need to obtain new rights-of-way. This increases the amount of electricity available to the distribution grid and, with the addition of the 3-phase line, will allow options for future users of 3-phase power in the area.

Also in the Lempster decision the SEC expressly rejected claims that applicants must attempt to analyze any and all potential proposed other projects. See page 26:

The Committee notes that the argument that it must consider the probable location of other wind power generation facilities that may be proposed in the future before determining whether the proposed facility should be sited is impractical and unworkable. Such an approach, in effect, could prohibit the Committee from considering any wind projects until all possible wind project applications were filed with the Committee.

In the SEC Decision on the Laidlaw Berlin Biomass Plant, at pp. 56-57<sup>3</sup>, the Committee provided additional details on the criteria, highlighting again a primary focus on economic development.

The term “orderly development” is not defined within RSA 162-H. In the absence of a statutory definition, the term should be interpreted in accordance with the plain language of the

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<sup>2</sup> [http://www.nhsec.nh.gov/2006-01/documents/062807\\_decision.pdf](http://www.nhsec.nh.gov/2006-01/documents/062807_decision.pdf)

<sup>3</sup> <http://www.nhsec.nh.gov/2009-02/documents/101108order.pdf>

statute. The statute requires consideration of whether the project will interfere with the development of the region in an orderly manner. The term “orderly development” is best thought of as the organized and methodical creation or production for commercial, residential or other purposes. In the absence of a more specific definition, the Committee must look to the statute as a whole and to the general purposes of the law. See, North Country Environmental Services v. Town of Bethlehem, 150 NH 606, 616 (2004). RSA 162-H: 2 sets forth the purpose of the overall statute. Within the purpose description, the statute states that the siting of energy facilities will have a significant impact on the “location and growth of industry, the overall economic growth of the state” and that the construction of energy facilities be “treated as a significant aspect of land use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.”

In the Granite Reliable decision, the SEC reached a finding that the project would not “interfere” in the orderly development of the region<sup>4</sup>, and applied criteria accordingly: that the project would not unduly interfere with other economic development, recreational use, and provided for decommissioning.

To formally adopt or codify detailed criteria regarding “orderly development of the region” requires a reliance on past SEC decision-making, which has become the body of regulatory requirements. The following draft criteria are drawn from past SEC evaluations and interpretations of “orderly development”.

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<sup>4</sup> <http://www.nhsec.nh.gov/2008-04/documents/090715decision.pdf>. At page 38.

## Orderly Development -- Draft Criteria

- **Demonstrated regional economic benefits**
  - Will the proposal provide measurable economic benefits to the region?
  - Will the proposal contribute to diversification of economy?
  - Is the proposal consistent with regional industries? (e.g. agriculture, tourism, ski areas, forestry, commercial, industrial, residential, conservation)
  
- **Consistency with regional economic development plans**
  - Is the proposal inconsistent with regional economic development policies, plans, and documents? For example, objectives of county or regional economic development councils.
  - Does the proposal advance regional economic goals?
  - Does the proposal unduly interfere with regional economic goals?
  
- **Consistency with state energy, environmental, and economic development plans, goals, and policies**
  - Is the proposal inconsistent with key state policies, plans, and goals related to energy? (for example the New Hampshire RPS statute<sup>5</sup>, energy diversification goals, economic development goals)
  - Is the proposal inconsistent with key state policies, plans, and goals related to environmental protection? (for example NH Climate Action Plan, DES policies, wetlands protection statutes, air quality statutes)
  - Does the proposal unduly interfere with state energy, environmental, and economic development plans, goals, and policies?
  
- **Consistency with regional energy policies**
  - Is the proposal inconsistent with ISO-NE and other regional energy planning?
  - Does the proposal improve or otherwise not hinder the regional electrical power grid?
  - Is the proposal complimentary to the objectives of the Regional greenhouse Gas Initiative (RGGI)?
  - Does the proposal unduly interfere with regional energy policies?

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<sup>5</sup> RSA 362-F:1



- **Consistency with regional land uses**
  - Is the project inconsistent with and/or compatible with other existing land uses in the region (for example agriculture, forestry, conservation, commercial, industrial, residential, tourism)?
  - Does the proposal unduly interfere with regional land uses?
  
- **Use of existing infrastructure where feasible**
  - Does the proposal make use of existing infrastructure where feasible? (for example, use of existing electrical distribution and/or transmission lines; pipelines; rights-of-way; roads; ports; rail lines, etc.)
  - Does the proposal unduly interfere with existing infrastructure?
  
- **Local consultations**
  - Does the proposal evidence consultations and/or agreements with local governing bodies to address issues of local concern, such as use of local roads, emergency response