

## NEW HAMPSHIRE ENERGY FACILITIES SITING PROCESS

The New Hampshire Site Evaluation Committee (SEC) was established by the legislature to review and approve the siting, construction and operation of energy facilities, and to monitor and enforce compliance of approved facilities with the terms and conditions of their approval certificates.<sup>1</sup>

In 2013 the legislature passed Senate Bill 99, which required the Office of Energy and Planning to undertake a study of the SEC,<sup>2</sup> and for the SEC to adopt rules on siting criteria, as discussed in Section IV below. Following the completion of the OEP study and public process in 2014, the legislature passed Senate Bill 245, which made changes to the SEC's composition and its review process.<sup>3</sup> This document is reflective of the composition and operation of the SEC following those legislative changes.

Information on the SEC, including all current dockets and information on past case (back to 1985) can be found at <http://www.nhsec.nh.gov/projects/index.htm>.

### I. STRUCTURE AND AUTHORITY

**A. SEC Membership** includes 9 members:

- The three PUC commissioners (chairperson of PUC will be chairperson of the SEC)
- DES commissioner (who will be Vice Chairperson of the SEC)
- DRED commissioner
- DOT commissioner
- Department of Cultural Resources commissioner, or Director of Division of Historical Resources
- Two members of the public appointed by the Governor and confirmed by the Executive Council; one an attorney in good standing with the NH Bar Association, both with expertise and experience in area(s) relevant to siting, planning, business or finance.

Agency members may designate appropriate staff within their agencies to perform their duties on subcommittees of the SEC. A designee assumes the full authority of the designating member on a subcommittee. For energy facility applications, the chairperson may designate a subcommittee of no fewer than seven members, including both public members, to consider the application.<sup>4</sup> This subcommittee has full authority to make decisions and issue a certificate for a proposed energy facility.<sup>5</sup> In addition to the nine members of the SEC, an administrator position exists to be filled as an unclassified state employee hired by the chairperson.

### B. Powers and Duties

The SEC has the following powers and duties:<sup>6</sup>

1. Evaluate and issue certificates for an energy facility;
2. Determine the terms and conditions of any certificate issued;
3. Monitor the construction and operation of any facility granted a certificate to ensure compliance with such certificate;
4. Enforce the terms and conditions of certificates; and
5. Assist the public in understanding the requirements of the SEC

<sup>1</sup> RSA 162-H <http://www.gencourt.state.nh.us/rsa/html/XII/162-H/162-H-mrg.htm>.

<sup>2</sup> All SB99 study materials and reports are available at <http://www.nh.gov/oep/energy/programs/sb99.htm>.

<sup>3</sup> <http://www.gencourt.state.nh.us/legislation/2014/SB0245.pdf>.

<sup>4</sup> NH RSA Chapter 162-H:4,V.

<sup>5</sup> Once a subcommittee is appointed by the chairperson, subcommittee members may designate a senior administrative employee or staff attorney from their respective agencies to sit in their places on the subcommittee. See RSA 162-H: 4-a, II.

<sup>6</sup> RSA 162-H:4.

**C. Funding:** The SEC has a newly established fund to pay for its operating costs, with temporary funding available from the Renewable Energy Fund. SEC costs include the administrator position and other staffing to manage caseload and public education needs, as well as compensation for the public members. The SEC must develop a long term funding plan and submit it to the Governor and the Legislature by December 1, 2014.<sup>7</sup>

**D. Jurisdiction:** The SEC has jurisdiction over all electric generating stations greater than 30 MW, as well as certain renewable energy facilities between 5 and 30 MW; new electric transmission lines greater than 200 kilovolts (kV); certain transmission lines of 100 kV or more; natural gas and other energy transmission pipelines that are not considered part of a local distribution network, and certain energy refineries, storage and loading facilities. Renewable energy facilities subject to the SEC's jurisdiction include those projects between 5 and 30 MW which the SEC has decided it should oversee, either on its own motion or at the request of two or more petitioners.<sup>8</sup> The SEC may also review other projects under certain circumstances if it finds that a proposed project requires a certificate, consistent with the findings and purposes set forth in the purpose clause of the statute. Those findings and purposes include:

- Maintaining a balance among potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire, including impacts and benefits on the economy, environment, natural resources, historic sites, private property, and public health and safety;
- Providing full and timely consideration of environmental consequences;
- Avoiding undue delay in the construction of new energy facilities;
- Ensuring 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
- Ensuring that the construction and operation of energy facilities are treated as a significant aspect of land use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.

## II. PROCESS

**A. Filing Requirements:** Each application must include information necessary to meet the requirements of each state and federal agency having permitting or other regulatory authority over the proposed facility. Upon the receipt of an application the committee must circulate a copy to each state agency having permitting or other regulatory authority over the proposed facility. Each applicant must include a description in reasonable detail of each of the following items:<sup>9</sup>

- Type and size of major components of the facility;
- Preferred choices, as well as other available alternatives, for the site and configuration of each major component of the proposed facility, and the applicant's reasons for selecting the preferred choice;
- Impacts of each major part of facility on the environment for each site proposed;
- Proposals for studying and resolving any environmental problems;
- Financial, technical and managerial capability for construction and operation of the proposed facility;
- Documentation that written notification regarding the proposed facility has been given to all governing bodies of communities in which the proposed facility is located;
- Elements of and financial assurances for a facility decommissioning plan;

---

<sup>7</sup> RSA 162-H:21.

<sup>8</sup> RSA 162-H:2, XII.

<sup>9</sup> <http://www.gencourt.state.nh.us/legislation/2014/SB0245.pdf>.

**B. Deadlines:** A certificate decision is required within 365 days of acceptance of an application. An exemption decision is required within 60 days of acceptance of an application or filing of a request for exemption. State agencies having permitting or other regulatory authority over a facility must submit a progress report and draft permit conditions to the committee within 150 days of application acceptance, with a final decision by each agency's review due within 240 days of application acceptance.

**C. Process for Decision Making:** In addition to the SEC members, any state agency having permitting or regulatory authority over a proposed facility may participate in committee proceedings by reviewing proposals and permit requests, recommending conditions to the committee, identifying conditions of concern, specifying additional data requirements, and designating witnesses to appear before the committee during hearing.<sup>10</sup> All proceedings and deliberations of the SEC members are open to the public. They comply with and are conducted according to the rules and procedures governing adjudicative hearings. Decisions are made by majority vote of the full SEC, or the full subcommittee where permitted and established, and must be supported by the record in the proceedings. All deliberations and decisions are made in public by a quorum of the committee or subcommittee. Decisions are subject to judicial review by the state Supreme Court.

**D. Public Engagement:** A series of public hearings are required to take place throughout the review of a proposed energy facility.

- At least 30 days prior to application filing, applicants must hold at least one public information session in each county where the proposed facility is to be located. At these sessions applicants present information and receive public comments on the proposed facility. Transcripts of each session must be filed with an application.
- Within 45 days after the SEC's acceptance of an application, applicants must hold another public information session, with the SEC administrator or other designee presiding, in each county where the proposed facility is to be located. Information on the location and plans for the proposed facility, as well as public education regarding the SEC application review process, are to be presented at these sessions.
- Within 90 days after acceptance of an application, a public hearing will be jointly held by the SEC and other state agencies in each county where the proposed facility is to be located.
- Subsequent hearings are conducted as adjudicative proceedings and may be held in Concord, or in the county or one of the counties in which the proposed facility is to be located, as determined by the committee or subcommittee, as applicable.
- The SEC must consider and weigh all evidence presented at public hearings and all written information and reports submitted to it by members of the public before, during, and subsequent to public hearings until the record of the proceeding is closed.<sup>11</sup>

**E. Role of Municipalities:** The SEC must give "due consideration" to the views of municipal and regional planning boards and commissions and municipal governing bodies with respect to the potential effect of the proposed facility on the orderly development of the region.<sup>12</sup> Municipalities in which the proposed facility is to be located may request that the committee or subcommittee order the applicant to provide additional information sessions to inform the public of a proposed project.<sup>13</sup>

---

<sup>10</sup> <http://www.gencourt.state.nh.us/legislation/2014/SB0245.pdf>.

<sup>11</sup> RSA 162-H:10.

<sup>12</sup> RSA 162-H:16, IV (b).

<sup>13</sup> RSA 162-H:10, I-b.

**F. Monitoring and Enforcement:** A certificate of site and facility will provide for reasonable monitoring procedures by the SEC. The SEC may delegate authority to the SEC administrator or other state agency or official to monitor the construction or operation of any energy facility granted a certificate.<sup>14</sup>

### III. FINDINGS AND CRITERIA

**A. Findings necessary for approval of a certificate:** The SEC must find based on the record that:

- 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;
- 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 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; and
- Issuance of a certificate will serve the public interest.

**B. Orderly Development:** The SEC must consider whether the proposed facility would unduly interfere with orderly development of the region. The relationship between energy facility development and economic development is also recognized in the purpose section of RSA 162-H. Applicants submit and the SEC reviews information regarding the projected economic impacts of the proposed facility. Under SEC rules, application filing requirements include "information regarding the effects of the facility on the orderly development of the region, including the applicant's estimate of the impacts of the construction and operation of the facility on:

- (1) Local land use;
- (2) Local economy; and
- (3) Local employment."<sup>15</sup>

### IV. RULES

**A. Organizational and Procedural Rules:** The SEC's Chapter 100 and Chapter 200 rules describe the requirements and procedures of the SEC in reviewing and acting upon applications to construct energy facilities.<sup>16,17</sup> The SEC's Chapter 300 rules detail the requirements relating to the filing and review of applications.<sup>18</sup>

**B. Siting Rules:** Senate Bill 99 of 2013 required the SEC to adopt rules "relative to criteria for the siting of energy facilities."<sup>19</sup> Additional requirements regarding the siting of wind energy facilities were added in HB 1602 of 2014. Rules must be adopted by July 1, 2015, and the SEC will begin the formal rulemaking process in late 2014.<sup>20</sup>

---

<sup>14</sup> 162-H:4, III.

<sup>15</sup> See Site 301.03(j).

<sup>16</sup> <http://www.nhsec.nh.gov/rules/documents/chapter100.pdf>

<sup>17</sup> <http://www.nhsec.nh.gov/rules/documents/chapter200.pdf>, Pages 1-16.

<sup>18</sup> <http://www.nhsec.nh.gov/rules/documents/chapter200.pdf>, Pages 17-23.

<sup>19</sup> <http://www.gencourt.state.nh.us/legislation/2013/SB0099.pdf>.

<sup>20</sup> <http://www.nhsec.nh.gov/projects/2021.htm>. See also OEP pre-rulemaking process materials at <http://www.nh.gov/oep/energy/programs/sb99pre-rulemaking.htm>.