

SB99 Pre-Rulemaking Stakeholder Input Process
Public Meeting Notes
April 21, 2014, 9-12:20

OEP Director Meredith Hatfield opened the meeting and gave an introduction to the schedule for the day and introduced the agency representatives present:

PUC: Commissioner Amy Ignatius, David Shulock, Dave Wiesner
DES: Mike Fitzgerald, Barbara Hoffman
OEP: Brandy Chambers

Director Hatfield reviewed the language of SB99 and the original statute, RSA 162-H:16, IV. It was noted that SB245, as it came out of House ST&E last week, proposed two major changes:

- Moving SEC rulemaking deadline to July 1, 2015 (from January 1, 2015)
- Changing the scope of the rulemaking to include all of RSA 162-H:16, IV and procedural issues resulting from the changes to the SEC

Director Hatfield gave a presentation on the pre-rulemaking procedure. This included discussion on:

- The NH Administrative Rules Drafting and Procedure Manual, Chapter 4, Rule Numbering and Drafting.
- DES rulemaking examples including instances where DES had proposed a rule, and OLS had required them to revise it (<http://www.nh.gov/oep/energy/programs/documents/sb99-rulemaking-examples.pdf>)
- JLCAR rulemaking flowchart (<http://www.nh.gov/oep/energy/programs/documents/sb99nh-rulemaking-chart.pdf>)
- The definition of “orderly development” and how it relates to the current SEC rules (100,200, and 300) requiring applications to detail impacts on local land use, local economy, and local employment

Commissioner Ignatius then discussed that in NH administrative rules are intended to be a very specific implementation of broader policy goals set by the Legislature. In NH, rules are often designed to be almost like a permitting checklist, to be very clear to the public and to the regulated community. The SB99 process will need to create those types of real standards and hard criteria, not language that leaves decisions completely up to the SEC on a case-by-case basis.

This led to a general discussion on the process including:

- The distinction between requirements for what documents need to be filed with an application vs. how the committee makes a decision based on the filing
- The role of town master plans and regulations intended to “preserve the rural character of the area”
 - Director Hatfield: The SEC is going to need to figure out how it will give due consideration to these types of documents.
- The relationship between local town zoning ordinances and the SEC, and if it can be put into the rules that the SEC can’t overrule town ordinances

- Mike Fitzgerald: As a state agency, the only authority the SEC has is what is given to it by the Legislature, and what may be coming in SB245 and SB281. If the SEC were to try to make policy changes via the rules, they would not be approved by JLCAR.
- Director Hatfield: The steps that would need to be taken to advance some of the issues being raised would have to be taken to the Legislature.
- Commissioner Ignatius: In terms of what we *can* do, if you had a rule that said “SEC shall deny any project that the community has voted against” this would be prohibited because the SEC doesn’t have this authority under RSA 162-H. But if you have something that says “When evaluating a project, the SEC shall consider the community’s master plan and accommodate as closely as possible,” that may work if it is written properly.
- The definition of “need”
 - Mike Fitzgerald: The Legislature debated that issue in the context of SB245, but decided not to include it in the bill, choosing the term ‘public interest’ instead, which has better legal precedent.
 - Hatfield: It’s important to remember that we are not the SEC, and we don’t want to pre-determine what the SEC will or will not consider, but their authority *is* limited by statute.

Lisa Frantzis from Navigant Consulting (Navigant) then began leading the conversation on aesthetics. There was a brief discussion on the existing SEC standards, as well as discussion of the strawman language as proposed by five environmental groups. It was noted that nothing is “set in stone” at this point, and the documents are intended to be revised as part of the process. Dave Publicover from the Appalachian Mountain Club (AMC) then gave a presentation about the environmental groups’ proposal for aesthetic evaluation:

- For this type of visual impact analysis (VIA), there is some good precedent. Peter Silbermann appears to take a similar approach that is entirely compatible. The established steps are:
 - Define 10 miles as your standard viewshed study area. This is the standard for 400’ turbines, but there should be some flexibility for larger systems.
 - Perform a GIS analysis, and figure out what areas will be visible in terms of bare ground and vegetation, including all the viewpoints. Include a special definition for scenic viewpoints, summits, scenic overlooks, etc.
 - For each viewpoint you need to do a characteristic impact:
 1. What is the nature of the viewpoint? How important is it? # of viewers?
 2. How good is the view? 360 degree spectacular? Or are you seeing a limited view? What else do you see?
 3. What is the nature of the impact? How much of the facility do you see? How far away is it?
- This narrows down the viewpoints of highest concern. We think it is unreasonable to expect a developer to do a visual simulation of every viewpoint. There has to be some method of narrowing down the number of visual simulations needed. We would note that there are limitations to pictures, and it may be more effective to see the movement than a still shot.
- The more difficult part is the “grounds for a finding”, or how the subjective decision should be made. I’ve looked at Vermont Act 250 and Maine Siting Law, but I haven’t found good examples on how to be more specific regarding aesthetics.

There was then a discussion relative to private residences noting that:

- Dave Publicover and the environmental groups had not covered this, although they specifically noted that it was important and should be addressed.
- The definition of publically accessible, considering private land owners who voluntarily allow access to their land for public access (hiking, snowmobiling, etc).
- The Newfound Lake group’s criteria (submitted by Mr. Silbermann) were developed without seeing the environmental groups’ documents, but there is a lot of overlap and agreement, including some of Jean Vissering’s work.
- Hesitation to come up with a pre-defined list of locations, and the importance of recognizing what have been identified as important viewpoints by local or regional authorities.
- Requirements for the SEC to do physical site visits instead of just using photographs.
- The definition of “Great Ponds”, and how height on flat ground should be considered separately from height on a ridgeline.
 - Dave Publicover – with respect to “great ponds,” all of them will be in the initial screen, but most of them will fall out of the screening based on whether or not they have a significant view. We think it is appropriate as a first filter.
- Potential obstruction and lighting/cloud requirements for simulations.
 - Dave Publicover – our criteria state a clear day, with the sun in a position for maximum illumination.
- A suggestion was made that perhaps developers could be required to install trial balloons for some period to help with visualization.
- Appointing independent engineers and experts to do the analysis – including the issue of who selects and pays for the expert in order to maintain impartiality.
- Does public interest and access mean NH, New England, or more general?
- Decreases in property value, and the associated decreases in tax base, and shifting of local tax burdens
- Height limits for electric transmission towers, and the difficulty in implementing this due to local topography (small hills/valleys).
- Suggestion that we need to go back to the statute and remember that it says “The construction of needed facilities should not be met with undue delay.” More definition is required about what is ‘needed’, but we don’t want to unnecessarily delay projects.

It was then decided to put together working groups to address four specific areas of concern:

- Aesthetics (spear-headed by Dave Publicover)
- Orderly Development (spear-headed by Peter Silbermann)
 - **NOTE: After the meeting, it was decided that this group will instead be co-lead by Tom Getz and Steve Shulman**
- Wildlife, rare plants, and natural communities (spear-headed by Carol Foss)
- Setbacks & Noise (spear-headed by Lisa Linowes)

A general discussion on next steps was then held, including how the working groups would provide contact information for the OEP website, host smaller meetings, and report back during the conference calls on April 30 and May 28 at 2pm. A brief discussion was also held in regard to how the results of this process will be provided to the SEC for the final rulemaking, including the issues the SEC will face in terms of public access to information.

The meeting ended at 12:20pm.