

Multi-State Energy Facility Siting Review

This review of the siting process in seven states, New Hampshire, Connecticut, Maine, Massachusetts, Rhode Island, Vermont and New York, was compiled as part of the research in response to New Hampshire Senate Bill 99, requiring an independent “study of the site evaluation committee’s organization, structure, and process.”¹ The report serves as a resource for interested citizens; project developers; state, regional and local officials; environmental advocates; and members of the business, industry and labor community. The report covers three topics: 1) Structure and Authority of each state’s siting agency or body; 2) Process for engaging the public and affected communities, and the process for making decisions; and 3) Criteria used for decisionmaking.

1) Structure and Authority

This section provides an overview of the siting process in each of the states reviewed and also summarizes key structural aspects of the body that reviews siting applications.

a) General Overview

This section provides an overview of the siting process in each of the states reviewed.

i) New Hampshire

The New Hampshire Site Evaluation Committee (SEC) has jurisdiction over proposed energy facilities exceeding 30 megawatts (MW) in capacity, as well as other types of projects related to the storage, delivery or production of energy.² Certain parties may also request that the SEC take jurisdiction of other projects under certain circumstances. As a result, the SEC may review generation plants, for example, that are smaller than 30 MW.

The SEC statute requires that eight state agencies sit on the SEC. The Legislature created the SEC, recognizing that the state requires an adequate and reliable supply of electricity and the effect that the siting and construction of energy facilities has on the public welfare, economic growth, the environment and the use of natural resources. In doing so the legislature found that the public interest requires:

- 1) a balance between the environment and the need for new energy facilities;
- 2) elimination of delay in the construction of new facilities;
- 3) full and timely consideration of environmental consequences;
- 4) transparency and complete disclosure of plans;
- 5) sound land use planning where all environmental, economic and technical issues are resolved on an integrated basis.

¹ State of New Hampshire. Senate Bill 99. June 5, 2013.

<http://www.gencourt.state.nh.us/legislation/2013/SB0099.html>

² NH Revised Statutes, Chapter 162:H-2 *Definitions*

Each agency that has permitting authority over a particular issue (e.g., Department of Environmental Services for wetlands) conducts its usual review process and submits permit conditions to the SEC for consideration for inclusion in the SEC-issued Certificate of Site and Facility should the SEC approve the project.³

If the SEC votes to approve a facility, it grants a Certificate of Site and Facility, often with conditions. A party proposing a project must demonstrate that it has adequate financial, technical and managerial capability, that the project will not unduly interfere with the orderly development of the region, and that the project will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment and public health and safety.

ii) Connecticut

No facility under the jurisdiction of the Connecticut Siting Council may be constructed or modified without obtaining from the Council a Certificate of Environmental Compatibility and Public Need or petitioning the Council for a Declaratory Ruling that a Certificate of Environmental Compatibility and Public Need is not necessary. The Siting Council's jurisdiction includes substations and transmission lines 69kV or above.⁴

The state legislature has imposed a moratorium on the construction of new wind turbines since 2011.⁵

iii) Maine

Maine has a coordinated process for early identification of regulatory requirements and critical path issues for energy facilities. Particulars of permitting vary with each facility, but nearly all require air emission, wastewater, storm water, wetland, and Site Location of Development ("Site Law") permits. The Site Law is unique to Maine, and includes the development's impacts on numerous resources, including surface water, groundwater, local archeology, and wildlife. The Maine Department of Environmental Protection (DEP) coordinates review and permitting in "organized" areas of the state (that is, those areas having a local government that is incorporated) and all grid-scale wind projects, while the Maine Land Use Planning Commission (LUPC, formerly the LURC) coordinates review and permitting in "unorganized" areas (that is, those areas having no local, incorporated municipal government) and wind projects that are not considered grid scale or are not within an expedited permitting area. Both DEP and LUPC coordinate with other state agencies for input on specific portions of applications, such as impact on wildlife.⁶

³ With the exception of certain air emissions permits that must be issued within timeframes specified under the Federal Clean Air Act, all permits or approvals that would otherwise be issued by an individual state agency are issued solely as part of a Certificate of Site and Facility.

⁴ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 83–84.

⁵ Brad Kane, "CT Banned Wind Turbines Since 2011."

⁶ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 55; Tom Stanton, *Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States*, A–37 – A–38.

The Maine Public Utilities Commission issues a Certificate of Public Convenience and Necessity for new electric transmission lines of voltage 69 kV and above.⁷ The Inter-agency Review Panel has responsibility to solicit, review and accept all infrastructure (transmission and pipeline) projects within state-designated infrastructure corridors.

iv) Massachusetts

Proposed power plants exceeding 100 MW of generating capacity and new transmission lines greater than 69kV and longer than 1 mile, if in a new transmission corridor, and transmission lines that are greater than 115 kV and longer than 10 miles if located in existing transmission corridor, require the approval of the Massachusetts Energy Facilities Siting Board. Applications for generation facilities should address the effects of the proposed facility upon the environment and provide evidence that the plant will not exceed certain ratios of air pollutant emissions to MW generated. The scope of review for transmission lines encompasses the need for, cost of and alternatives to the transmission line, and a comparison of potential routes, as well as environmental issues.⁸

The petition process in the state of Massachusetts follows an administrative law structure. After an application is filed, public hearings are held. These hearings are followed by an intervention period, a discovery period, and evidentiary hearings. The Siting Board acts as a fact finder, and approves, approves with conditions, or rejects a proposed project based on the evidence developed during the proceedings.⁹

Developers must file an environmental notification form with the Massachusetts Executive Office of Energy and Environmental Affairs. For larger facilities, more detailed Draft and Final Environmental Reports must be filed. An air permit must be obtained from the Massachusetts Department of Environmental Protection; other federal, state, and local permits may also be required.¹⁰

v) New York

The Power NY Act of 2011 established a process for the siting of electric generating facilities and repowering projects. As part of the process, a multi-agency Siting Board is charged with streamlining the permitting process for power plants of 25 megawatts (MW) or greater. The Power NY Act also encourages investments in clean power plants and affords communities more opportunities to participate in the siting process. The Siting Board, organized within the New York State Department of Public Service, was established primarily to review applications and to issue or deny certificates authorizing the construction and operation of major electric generating facilities. The permanent members of the Siting Board also have additional

⁷ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 55.

⁸ *Ibid.*, 59–60; “FAQ’s.”

⁹ *Ibid.*

¹⁰ *Ibid.*

responsibilities to promulgate regulations and they have jurisdiction with respect to the amendment, suspension or revocation of a certificate.¹¹

The New York State Public Service Law requires that transmission projects are granted a Certificate of Environmental Compatibility and Public Need by the Public Service Commission. The PSC certifies transmission lines greater than 125 kV and longer than 1 mile; and also lines between 100 and 124 kV and longer than 10 miles.¹²

vi) Rhode Island

Siting decisions are made by the Rhode Island Public Utilities Commission Energy Facility Siting Board (EFSB). The EFSB has jurisdiction over alterations to major energy facilities that will result in a significant impact on the environment, or the public health, safety, and welfare. The EFSB serves as the licensing and permitting authority for all licenses, permits, assents, or variances which would be required for siting, construction, or alteration of a major energy facility in the state. The EFSB's jurisdiction includes applications for electric transmission lines greater than or equal to 345 kV, particularly if they are associated with a generating station or another facility that is subject to EFSB jurisdiction.¹³

Applications to the EFSB are reviewed and docketed within a month of being received. A preliminary hearing is then scheduled and held to determine the issues involved and the agencies that are to act at the behest of the Rhode Island Siting Board to provide advisory opinions on the proposed projects. A three- to six- month period ensues for the agencies to conduct those studies. Following the receipt of the studies, the EFSB schedules a hearing in the affected community followed by final hearings.¹⁴

vii) Vermont

A developer planning to construct an electric power generating facility must file a petition with the Vermont Public Service Board. The process before the Vermont Public Service Board is a contested case process. It involves technical hearings at which interested parties are permitted to intervene. The process generally involves pre-filed written testimony, formal written discovery, depositions, technical hearings, and written briefs. At the conclusion of the contested case process, the Vermont Public Service Board issues an order. The Vermont Department of Public Service is a statutory party and represents the rate payers and the public interest.¹⁵

Similarly, a company intending to construct an electric transmission line in Vermont petitions the Public Service Board (PSB) for a Certificate of Public Good. The Vermont Public Service

¹¹ "New York State Board on Electric Generation Siting and the Environment"; "Siting Board - Frequently Asked Questions," 2013.

¹² Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 93.

¹³ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 3; Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 111.

¹⁴ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 111.

¹⁵ *Ibid.*, 127.

Department is a statutory party to the resultant proceeding along with other concerned state agencies. Certificates are required for all electric lines greater than 46 kV. Lines less than 46 kV may require a certificate if they are used for electric transmission.¹⁶

b) Membership

The siting body in each state has the following membership structure:

	Number of Members / Agencies	Characteristics of Membership, Including Represented Agencies
NH¹⁷	15 members representing 8 state agencies	<ul style="list-style-type: none"> • Dept. of Environmental Services (DES), Commissioner • DES, Director of Water Division • DES, Director of Air Division • Public Utility Commission (PUC), 3 Commissioners and a staff engineer designated by the PUC Commissioners. • Department of Resources and Economic Development (DRED), Commissioner • DRED, Director of Parks and Recreation • DRED, Director of Division of Forests and Lands • Dept. of Health and Human Services, Commissioner • Fish and Game Dept., Executive Director • Office of Energy and Planning, Director • Dept. of Transportation, Commissioner • Department of Cultural Resources, Commissioner¹⁸
CT¹⁹	9 members for energy issues	5 appointed by the Governor, 1 appointed by the Speaker of House, 1 appointed by the President Pro-tempore of the Senate, the chairperson of the Dept. of Public Utility Control, and the commissioner of the Dept. of Environmental Protection
ME	<i>Review and permitting performed by state agencies. No independent siting body.</i>	
MA²⁰	9 members (6 public officials from 5 agencies & 3 public	The 6 public officials are (or are designated by): Sec. of Energy and Environmental Affairs; Sec. of Housing and Economic Development; Commissioner of the Department of Environmental Protection; Commissioner of the Division of Energy Resources; two Commissioners from the Dept. of Public Utilities. 3 public members

¹⁶ Ibid.

¹⁷ "Committee Membership."

¹⁸ Once an energy facility application has been accepted, the chairperson may designate a subcommittee of no fewer than 7 members that shall consider such application. The subcommittee shall include the chairperson or the vice-chairperson of the committee, and at least 3 members selected from among the department of environmental services, the department of resources and economic development, and the fish and game department. (NH Statutes Chapter 162-H:4)

¹⁹ "Connecticut Siting Council Membership."

²⁰ "FAQ's."

	members)	are appointed by the Governor.
NY²¹	7 members (5 public officials from 5 agencies & 2 ad hoc public members)	The 5 public officials are: Chair of the Dept. of Public Service, Commissioner of the Dept. of Environmental Conservation, Commissioner of the Dept. of Health, Chair of the NYS Energy Research and Development Authority, Commissioner of Economic Development (Empire State Development). 2 ad hoc public members must be residents of locality of proposed development.
RI²²	3 members from 3 agencies	Chair of the Public Utilities Commission, Director of Dept. of Environmental Management, Associate Director of Statewide Planning
VT²³	3 members	All 3 members nominated by the Vermont Judicial Nominating Board, appointed by the Governor of Vermont, and confirmed by the Vermont Senate.

c) Staffing

The siting body in each state has the following staffing:

State	Staffing
NH²⁴	A Legal Counsel, Administrative Assistant, and Stenographer are appointed for the duration of the proceedings. No other staff members assist the SEC directly. Various agency staff must review the filings and studies, issue the appropriate permits and participate in the hearings as part of their other responsibilities.
CT²⁵	1 siting analyst assigned per project with oversight by a Supervising Siting Analyst.
ME²⁶	3 technical analysts, 2 attorneys at Maine PUC
MA²⁷	11 members of Dept. of Public Utilities Siting Division serve as staff to the Siting Board
NY²⁸	Dept. of Public Service provides a presiding examiner and legal, technological, scientific, engineering and other services as needed. Dept. of Environmental Conservation provides an associate examiner. The Secretary and the General Counsel for the Public Service Commission serve as Secretary and the General Counsel for the Siting Board.
RI²⁹	No full-time dedicated staff on distinct payroll. Public Utilities Commission provides:

²¹ "Siting Board Members."

²² Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 7.

²³ "Vermont Public Service Board," April 19, 2013.

²⁴ Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 89.

²⁵ Ibid.

²⁶ "An Introduction to Maine's Energy Siting Long-Term Contracting Considerations."

²⁷ "An Introduction to Massachusetts Generation Facility Siting Considerations," 3.

²⁸ "Siting Board - Frequently Asked Questions," 2013.

	Coordinator, Legal Counsel, and Policy Analyst during EFSB Dockets.
VT ³⁰	Public Service Board has 24 dedicated staff although the Board handles many responsibilities apart from siting.

d) Funding

State	General appropriations for Siting Activities	Standard application fees	Applicant covers some incurred costs	Municipal intervenor fund
NH	No – part of agencies’ budgets	No	Yes	No
CT	No	Yes	Yes	Yes
ME	No – part of DEP’s budget	No	Yes	No
MA	No	Yes		No
NY	No	Yes	No	Yes
RI	No – part of PUC’s budget	Authorized but not implemented	Yes	No
VT	No – part of PSB’s budget	No	No	No

Detail on how each state funds its siting authority or agency follows:

i) New Hampshire

The SEC does not have its own budget. Applicants bear the cost of undertaking special studies and hiring necessary experts and counsel. Applicants must also pay for all other incidental costs of the proceedings, such as rental fees for rooms for public hearings conducted by the Committee. (i). While the applicant is responsible for paying the invoices rendered by the Legal Counsel to the Committee, the Administrative Assistant and the stenographer for all filed matters, all other staff time must be covered by participating agencies’ budgets.

ii) Connecticut

The Siting Council does not receive operating revenues from the state’s General Fund. Instead, its funding is generated from two discrete sources: fees and costs attributable to applications received and annual assessments charged to electric utilities, hazardous waste generators, and telecommunications providers in Connecticut.³¹ For transmission and generating facilities, applicants must submit a municipal participation fee of \$25,000 for distribution by the State

²⁹ Nicholas S. Ucci, “An Introduction to the Rhode Island Energy Facility Siting Board,” December 19, 2012, 7–8.

³⁰ “Vermont Public Service Board,” 2013.

³¹ “About Us.”

Treasurer to participating municipalities to defray expenses, including, but not limited to, costs of participation (experts, etc.).³²

iii) Maine

The applicant, via a ‘Special Fee’ in project billing, pays for actual agency costs.³³

iv) Massachusetts

Non-utility applicants pay a \$75,000 fee for the construction of one electrical facility, \$100,000 for a combined application in which another non-generating facility will also be constructed, and \$125,000 for the construction of two non-generating facilities. Permits for separately filed non-generating facilities cost \$75,000 each but fees can be lowered to no less than \$25,000 for smaller facilities upon petition. Note: Utilities do not pay fees as they already are assessed annually by the Dept. of Public Utilities.³⁴

v) New York

New York requires applicants to pay a fee to cover intervenor funding on a per-MW basis: \$350/MW for the ‘scoping phase’ of the pre-application process, with a cap of \$200,000, and \$1000/MW for the application phase, with a cap of \$400,000.³⁵

vi) Rhode Island

Siting Act allows for the Board to purchase materials and employ legal counsel, stenographers, engineers, expert witnesses, etc. While the Siting Board is also authorized to establish fees for investigations, applications, and hearings, in practice, the Board does not maintain a fee list, but can ask applicant to assume consulting costs incurred by the Board.³⁶

vii) Vermont

No intervenor funding, but bill-back authority. The Public Service Board, which oversees the siting process, is funded primarily through gross revenue tax on utility bills.

e) Size and Type of Covered Facilities

State	Generation Facilities	Transmission/pipelines	Renewable Energy
NH	>30 MW	Transmission: >100kV and 10 miles outside of existing ROW; >200 kV all other Pipelines: >10 miles	>30 MW required; between 5-30 MW on SEC’s own motion

³² “An Introduction to Connecticut Energy Siting Considerations,” November 14, 2012, 11.

³³ Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 31.

³⁴ Massachusetts General Laws, *Fees for Applications to Construct Electricity Facilities*.

³⁵ Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 31; James Austin and Andrew Davis, “An Introduction to New York State Electric Generation Siting,” 7.

³⁶ Nicholas S. Ucci, “An Introduction to the Rhode Island Energy Facility Siting Board,” December 19, 2012, 18.

CT	All generating facilities using fuel	Transmission: 69 kV or greater Pipelines: >200 psi	> 1 MW
ME	> 20 acres in size; all hydro facilities	Transmission \geq 69 kV ³⁷ Pipelines: all pipelines within state-designated infrastructure corridors	\geq 3 acres in size and > 100 kW
MA	> 100 MW	Transmission: >115 kV and 10 miles within existing transmission corridor; > 69 kV and 1 miles outside of existing transmission corridor Pipelines: > 1 mile and 100 psi	>100 MW
NY	>25 MW	Transmission related to interconnection of a generating facility; Pipelines to bring fuel to generating facility	>25 MW
RI	All “major” energy facilities	All “major” energy facilities	All “major” energy facilities
VT	>150 kW non-farm/>250kW farm	Transmission: >46 kV Pipelines: any feeder main or any pipeline facility constructed to deliver natural gas in Vermont directly from a natural gas pipeline facility	All above net metering

i) New Hampshire

The SEC has jurisdiction over power plants greater than 30 MW; transmission lines greater than 100 kV proposed outside of an existing right-of-way (ROW) and new lines greater than 200 kV; pipelines greater than 10 miles; and refineries, storage and loading facilities. The definition of renewable energy facilities includes projects between 5 and 30 MW which the SEC may oversee on its own motion or by certain petitions.³⁸

ii) Connecticut

The following types of facilities fall under the jurisdiction of the Connecticut Siting Council:³⁹

- Electric Transmission Lines: any electric transmission line with a design capacity of 69 kV or more
- Fuel Transmission Lines: any fuel transmission line except a gas transmission line having a design capability of less than 200 pounds per square inch gauge pressure or a design capacity of less than 20% of its specified minimum yield

³⁷ State of Maine, *Maine Revised Statute*, sec. 3132.

³⁸ New Hampshire Revised Statutes, *Energy Facility Evaluation, Siting, Construction And Operation*, sec. 162–H:2, XII.

³⁹ “An Introduction to Connecticut Energy Siting Considerations,” November 14, 2012, 2–3.

- Electric Substations and Switchyards: designed to change or regulate the voltage of electricity at 69 kV or more that may have a substantial adverse environmental effect as determined by the Council
- Generating Facilities: any electric generating facility using any fuel, but not including an emergency generating device or a facility (1) owned and operated by a private power producer; (2) which is a qualifying small power production facility or qualifying cogeneration facility under PURPA or a facility determined by the Council to be primarily for a producer's own use; AND (3) in the case of a facility using renewable energy sources, a generating capacity of 1 MW or less, and in the case of a facility utilizing cogeneration technology, a generating capacity of 25 MW or less

iii) Maine

The Maine Site Location of Development Law requires review of developments that may have a substantial effect upon the environment. These types of development have been identified by the Legislature, and include developments such as projects occupying more than 20 acres, metallic mineral and advanced exploration projects, large structures and subdivisions, and oil terminal facilities.⁴⁰

Transmission and pipeline projects of greater than 5 miles within a state-designated energy infrastructure corridor are reviewed by the Interagency Review Panel of the Public Utility Commission. A 2013 update of the law extended the Commission's jurisdiction to include the review of lower-voltage projects that are capable of operating at less than 69 kilovolts and projected to cost in excess of \$20,000,000.⁴¹

The Maine Wind Energy Act requires review of wind energy developments at greater than or equal to 3 acres in size, with developments that produce less than 100 kW exempt.⁴² The Maine Waterway Development and Conservation Act is triggered for any level of hydropower generation.⁴³

iv) Massachusetts

Proposed power plants exceeding 100 MW of generating capacity and new transmission lines greater than 69kV and longer than 1 mile, if in a new transmission corridor, and transmission lines that are greater than 115 kV and longer than 10 miles if located in existing transmission corridor, require the approval of the Massachusetts Energy Facilities Siting Board.⁴⁴

⁴⁰ Maine Department of Environmental Protection, "Site Location of Development (Site Law)," 2013.

⁴¹ Pierce Atwood LLP, *2013 Summary of New Maine Laws & Carried Over Legislation*, 28.

⁴² "An Introduction to Maine's Energy Siting Long-Term Contracting Considerations," 2.

⁴³ *Ibid.*

⁴⁴ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 59.

v) New York

Facilities that will generate 25 MW of energy or greater are included in the siting process as well as interconnected electric transmission lines and fuel gas transmission lines.⁴⁵

The New York State Public Service Law requires that transmission projects are granted a Certificate of Environmental Compatibility and Public Need by the Public Service Commission. The PSC certifies transmission lines greater than 125 kV and longer than 1 mile; and also lines between 100 and 124 kV and longer than 10 miles.⁴⁶

vi) Rhode Island

The EFSB has jurisdiction over alterations to major energy facilities that will result in a significant impact on the environment, or the public health, safety, and welfare.⁴⁷

Major energy facility(ies) are defined as:⁴⁸

- facilities for the extraction, production, conversion, and processing of coal;
- facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more;
- transmission lines of sixty-nine (69) Kv or over;
- facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural and liquefied petroleum gases;
- facilities for the processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts;
- facilities for the refining of oil, gas, or other petroleum products;
- facilities of ten (10) megawatts or greater capacity for the generation of electricity by water power;
- facilities associated with the transfer of oil, gas, and coal via pipeline; and
- any energy facility project of the Rhode Island economic development corporation.

vii) Vermont

The Public Service Board reviews all electric generation above net metering and group net metering (150KW nonfarm, 250KW Farm).⁴⁹

A company intending to construct an electric transmission line in Vermont petitions the Public Service Board (PSB) for a Certificate of Public Good. Certificates are required for all electric lines greater than 46 kV.⁵⁰

⁴⁵ "New York State Board on Electric Generation Siting and the Environment"; "Siting Board - Frequently Asked Questions," 2013.

⁴⁶ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 93.

⁴⁷ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 3; Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 111.

⁴⁸ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 4–5.

⁴⁹ Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 86.

f) Can smaller facilities opt-in?

State	Opt-in	Comments
NH	Yes	By motion of the SEC, the applicant, or petition by 2 community-based interests
CT	No	
ME	No	
MA	No	
NY	Yes	By applicant
RI	No	
VT	NA	All facilities subject to review

Each state has the following guidelines around allowing smaller facilities to opt into the state’s siting review process:

i) New Hampshire

The SEC may review on its own motion facilities outside the jurisdictional size and scope, as long as the request is consistent with the findings and purposes in RSA 162-H:1. This “opt-in” provides broad authority to the SEC. The request for review may also come from the applicant or two of the following types of petitioners:

- (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 the host community or 2 or more governing bodies of abutting communities;
- (d) A petition filed by the potential applicant.⁵¹

If accepted, SEC review preempts local jurisdiction.

ii) Connecticut

No opt-ins.⁵²

iii) Maine

No opt-ins.⁵³

iv) Massachusetts

No opt-ins.⁵⁴

⁵⁰ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 127.

⁵¹ New Hampshire Revised Statutes, *Energy Facility Evaluation, Siting, Construction And Operation*, sec. 162–H:2, XI.

⁵² Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 32.

⁵³ *Ibid.*

⁵⁴ *Ibid.*, 86.

v) New York

If the facility is excluded because of exemptions (d), (e), (f) or (g) (see below exemption provision), the person intending to construct the major electric generating facility may elect to become subject to the provisions of the Article 10 process.⁵⁵

vi) Rhode Island

No-opt-ins.⁵⁶

vii) Vermont

Smaller facilities are necessarily included in the state's siting review process (and therefore do not need to opt-in) as the Public Service Board reviews all electric generation above the level of net metering and group net metering.⁵⁷

g) Conditions for Exemptions

Each state has the following guidelines exempting facilities from state siting review processes:

i) New Hampshire

The SEC may exempt a facility from its jurisdiction after a public hearing in the county where the facility is proposed, if it finds that:

- 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.

ii) Connecticut

The following types of energy facilities are exempt from review by the Connecticut Siting Council:⁵⁸

- Gas transmission lines having a design capability of less than 200 pounds per square inch gauge pressure or a design capacity of less than 20% of their specified minimum yield strength.
- An emergency generating device or a facility that is:

⁵⁵ "Siting Board - Frequently Asked Questions," 2013.

⁵⁶ Telephone interview with Mr. Nicholas Ucci, Coordinator, RI EFSB, on November 14, 2013. Mr. Ucci noted that, to his knowledge, opt-in by a non-major electricity facility has not been tested, but that the EFSB likely does not have jurisdiction over non-major facilities.

⁵⁷ Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 86.

⁵⁸ "An Introduction to Connecticut Energy Siting Considerations," November 14, 2012, 2–3.

- 1) Owned and operated by a private power producer;
- 2) Which is a qualifying small power production facility or qualifying cogeneration facility under PURPA or a facility determined by the Council to be primarily for a producer's own use; AND
- 3) In the case of a facility using renewable energy sources, a generating capacity of 1 MW or less, and in the case of a facility utilizing cogeneration technology, a generating capacity of 25 MW or less.

In addition, the Energy Independence Act of 2005 (CGS §16-50k) created additional exemptions with the following language:⁵⁹

Notwithstanding the provisions of the Public Utility Environmental Standards Act, the Council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling:

- (a) Construction of a facility at a site where an electric generating facility operated prior to July 1, 2004;
- (b) Construction or location of any fuel cell, unless the Council finds a substantial adverse environmental effect OR of any customer-side distributed resources facility or grid-side distributed resources facility with a capacity of not more than 65 MW, as long as such facility meets air and water quality standards of the Dept. of Environmental Protection; and
- (c) Siting of any temporary generation solicited by the Public Utility Regulatory Authority.

iii) Maine

The Maine Department of Environmental Protection's website notes that "Certain exemptions apply [to the State's Site Location of Development Law]. The Site Law applies in organized areas for purposes of all types of development, and in unorganized areas for purposes of oil terminal facilities, and metallic mineral mining and advanced exploration."⁶⁰

iv) Massachusetts

The following types of facilities are excluded pursuant to EFSB regulations:⁶¹

- Reconductoring or rebuilding of an existing transmission line at the same voltage;
- Modification or replacement of equipment at or within a generating plant site that does not increase the gross capacity at such site by more than 10 percent;
- Changes or alterations to a transmission line which do not significantly affect its general physical characteristics, including conversion to a higher voltage;
- Temporary generating or substation facilities;
- Emergency facilities;
- Certain gas manufacturing or storage facilities, as follows --

⁵⁹ Ibid., 4.

⁶⁰ Maine Department of Environmental Protection, "Site Location of Development (Site Law)," 2013. "Organized areas" of the state are those having a local government that is incorporated, while "unorganized areas" are those having no local, incorporated municipal government.

⁶¹ *Code of Massachusetts Regulations*, sec. 1.01, 7.04(9), 7.07(8).

- a unit with a total gas storage capacity of less than 25,000 gallons and also with a manufacturing capability of less than 2,000 MMBtu per day;
 - a unit whose primary purpose is research, development, or demonstration of technology and whose sale of gas, if any, is incidental to that primary purpose; or
 - a landfill or sewage treatment plant.
- Construction of a pipeline which for at least the first two years will be used at a pressure less than 100 psi gauge.

v) New York

The following types of facilities are exempt from review by the Siting Board:⁶²

- a) electric generating facilities with a generating capacity of less than 25 megawatts;
- b) electric generating facilities for which the federal government has exclusive siting jurisdiction;
- c) electric generating facilities for which the federal government has concurrent siting jurisdiction and has exercised such jurisdiction to the exclusion of state regulation;
- d) normal repairs, replacements, modifications and improvements of a major electric generating facility, whenever built, which do not constitute a violation of any Article 10 certificate and which do not result in an increase in capacity of the facility of more than 25 megawatts;
- e) electric generating facilities of 200 megawatts or less constructed on lands dedicated to industrial uses where the electricity generated is used solely for industrial purposes on the premises;
- f) electric generating facilities for which an application was made on or before July 12, 2012 for a license, permit, certificate, consent or approval from any federal, state or local commission, agency, board or regulatory body; and,
- g) electric generating facilities under construction on July 12, 2012.

vi) Rhode Island

Two exceptions to the authority of the Energy Facility Siting Board:⁶³

- Where the state Dept. of Environmental Management exercises permitting functions under the delegated authority of federal law (i.e. Clean Water Act),
- Where there is specific permitting authority delegated to the Dept. of Environmental Management and the state's Coastal Resources Management Council (CRMC).

vii) Vermont

Vermont allows the Public Service Board to waive, for a limited time, the requirement to obtain a certificate of public good prior to site preparation or construction if the following conditions are met:⁶⁴

⁶² "Siting Board - Frequently Asked Questions," 2013.

⁶³ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 13.

⁶⁴ Vermont Public Service Board, *Citizens' Guide to the Vermont Public Service Board's Section 248 Process*, February 14, 2012, 11.

- (A) good cause exists because an emergency situation has occurred;
- (B) the waiver is necessary to provide adequate and efficient service or to preserve the property of the public service company devoted to public use; and
- (C) taking into account any terms, conditions, and safeguards that the board may require, the waiver will promote the general good of the state.⁶⁵
- (D) Upon the filing of a petition under Section 248(k), the statute requires that the Board hold an expedited preliminary hearing. The statute provides the Board with flexibility in determining the appropriate notice of the hearing to affected municipalities, regional planning commissions, and state agencies.⁶⁶

This provision applies only to emergency situations and is not intended to circumvent the usual review process pursuant to Section 248 [the statute requiring review by the Public Service Board]. Generally, a project that receives approval under this provision must receive a certificate of public good, filed for through the regular Section 248 or Section 248(j) process. If a certificate of public good is not granted in this later process, the project must be removed and the site returned to its prior condition.⁶⁷

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

2) Process

This section provides detailed information about specific aspects of the siting process in each of the states reviewed.

a) Role of the Counsel for the Public:

This section provides an overview of how the public is represented within the siting process in each of the states reviewed.

i) New Hampshire

The Counsel for the Public represents the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel is accorded all the rights, privileges, and responsibilities of an attorney representing a party in formal action.⁶⁸

ii) Connecticut

Connecticut does not appear to have a role of this sort.

iii) Maine

Maine does not appear to have a role of this sort.

iv) Massachusetts

There does not appear to be a comparable role to New Hampshire's Counsel. However, affected parties, including the Attorney General and municipalities, can request to become intervenors to have a greater say in the role in the decision. Throughout the review process, the board provides no financial, technical, or legal support for intervenors or the public, though general guidance is provided to all parties. Unless provided with an exemption, intervenors must be represented by an attorney.⁶⁹

v) New York

The "Public Information Coordinator" is an office created within the Department of Public Service that assists and advises interested parties and members of the public in participating in the siting and certification of major electric generating facilities. The duties of the public information coordinator include the following in relation to matters before the board:

1. Implementing measures that assure full and adequate public participation
2. Responding to inquiries from the public for information on how to participate
3. Assisting the public in requesting records
4. Ensuring all interested persons are provided with a reasonable opportunity to participate at public meetings
5. Ensuring that all necessary or required documents are available for public access on the department's website

⁶⁸ New Hampshire Revised Statutes, *Energy Facility Evaluation, Siting, Construction And Operation*, 162–H:9.

⁶⁹ Energy Facilities Siting Board, "FAQ's."

6. Any other duties as may be prescribed by the Siting Board, after consultation with the Department.⁷⁰

vi) Rhode Island

Rhode Island does not appear to have a role of this sort

vii) Vermont

The Public Service Department (PSD) represents the public interest in utility cases before the Public Service Board. and is responsible for long-range utility planning for the State. As the public's advocate, the Public Service Department is a separate agency from the Vermont Public Service Board.⁷¹

b) Filing Requirements

This section provides an overview of the requirements for filing an application in each of the states reviewed.

i) New Hampshire

Each application shall:

- 1) Describe in reasonable detail the type and size of each major part of the proposed facility.
- 2) Identify both the preferred choice and any other choices for the site of each major part of the proposed facility.
- 3) Describe in reasonable detail the impact of each major part of the proposed facility on the environment for each site proposed.
- 4) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems.
- 5) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility.
- 6) Document that written notification of the proposed project, including appropriate copies of the application, has been given to the appropriate governing body of each community in which the facility is proposed to be located.
- 7) Provide such additional information as the committee may require to carry out the purposes of this chapter.⁷²

More specific filing requirements are outlined in Chapter Site 301.02, adopted in 2008.

ii) Connecticut

Project applicants must undergo pre-application municipal consultation, application to municipal agencies, and pay a fee of approximately \$25,000. The application requires an executive summary with technical specifications (such as service life, water use, noise

⁷⁰ NYS Board on Electric Generation Siting and the Environment, "Siting Board Public Information Coordinator."

⁷¹ State of Vermont Public Service Department, "About Us."

⁷² New Hampshire Site Evaluation Committee, *Chapter Site 300: Certificates of Site and Facility, Adopted Procedural Rules*, 17–22.

abatement, etc), alternative technologies, itemized estimated costs, how the facility would conform to a long-range energy plan, justification of no threat to public or environmental well-being, site information with maps, notice to community organizations, public notice, notice to abutting landowners, proof of service, an Environmental Justice Public Participation Plan, as well as comprehensive information about the project and its environmental impact.⁷³

iii) **Maine**

Maine's filing requirements for generating facilities include a development description (with narrative of objectives and development history, information on existing facilities, topographic map, construction plan and drawings), evidence of title, right or interest, information regarding the financial capacity and technical ability of the applicant, information on projected noise, visual quality and scenic character, effect on wildlife and fisheries, relation to historic sites and unusual natural areas, information on buffers, soils, storm water management, groundwater, water supply, wastewater disposal, blasting, air emissions, odors, water vapor, and blockage of sunlight, evidence of notice given to owners of abutting property, description of shadow flicker, documentation regarding public safety, tangible benefits, and a decommissioning plan.⁷⁴

For transmission facilities, applicants must provide a description of the need for the proposed transmission line, an analysis of non-transmission alternatives must be conducted by an independent 3rd party, and the projected cost of the proposed transmission line must be compared to the projected cost of feasible non-transmission alternatives.⁷⁵

iv) **Massachusetts**

A petition to construct a generating facility requires:⁷⁶

- 1) A description of the proposed facility, site and surrounding areas, including any ancillary structures and related facilities
- 2) A description of the environmental impacts and the costs associated with the mitigation, control, or reduction of the environmental impacts of the proposed generating facility;
- 3) A description of the project development and site selection process used to choose the design and location of the proposed facility;
- 4) Either evidence of compliance with agency's technology performance standards, or a comparison of the proposed technology and other fossil fuel technologies with respect to environmental impacts, costs and reliability.

Petitions for construction of transmission lines and gas pipelines generally must include an analysis of the need for the facility, costs associated with facilities, and information regarding both route selection and an alternative.⁷⁷

⁷³ Connecticut Siting Council, "Connecticut Siting Council Application Guide for a RENEWABLE ENERGY FACILITY."

⁷⁴ State of Maine Department of Environmental Protection, "SITE LOCATION OF DEVELOPMENT 38 M.R.S.A. §§ 481-490 PERMIT APPLICATION."

⁷⁵ Pierce Atwood LLP, *2013 Summary of New Maine Laws & Carried Over Legislation*, 27–28.

⁷⁶ Commonwealth of Massachusetts, *Massachusetts General Laws, Chapter 164, sec. 69J*¼.

⁷⁷ *Ibid.*, sec. 69J.

v) New York

Before an application is filed, the applicant must go through a pre-filing process in which the applicant needs to file a preliminary scoping statement to encourage early participation from state agencies, municipalities, environmental organizations, and other interested groups. The preliminary scoping statement contains the company's proposal and identifies information needed for the preparation of a complete application, such as the studies the company plans to conduct in support of its application.

The Article 10 application must describe the proposed facility, demonstrate compliance with various health, safety and environmental regulations, including new rules and regulations governing projected emissions of air pollutants to the surrounding community, and provide a comprehensive review of the demographic, economic and physical description of the community within which the facility is located, as compared and contrasted with the county in which the facility is proposed and with adjacent communities within such county. Applications also must contain an analysis of the potential impact the proposed facility will have on the wholesale generation markets, specific environmental impacts associated with wind-powered facilities, a plan for the security of the proposed facility to be reviewed in consultation with the New York state division of homeland security, and proof of the adequacy of the facility's on-site back-up fuel storage and supply, when applicable.⁷⁸

vi) Rhode Island

Project applicants must address: site plans, project cost, number of facility employees, financing, required support facilities, research on EMF impacts, life-cycle management, and a study of alternatives, including estimated costs.⁷⁹

vii) Vermont

Project applicants in their petition must specify whether they are requesting review under 30 V.S.A. § 248 (full review) or § 248j (for projects of limited size and scope).⁸⁰ They are required to describe the project, provide a certificate of service, and give information supporting the petition in the form of pre-filed testimony. The pre-filed testimony should address the criteria listed in 248b (please see the Criteria for Vermont in Section 3.a of this document), as well as provide the generation type, effective capacity, location of the proposed project, the dimensions and configuration of the generating equipment and related structures, the duration of construction activities and effort to minimize disturbance to adjoining landowners, evidence of legal control of the site, and how the project will be assessed. Accompanying exhibits should include topographic maps, a site plan, building elevation drawings, and erosion control plans.⁸¹

⁷⁸ "New NYS Article 10 Powerplant Siting Statute."

⁷⁹ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 9.

⁸⁰ State of Vermont Public Service Board, "Application for a Certificate of Public Good for Net Metered Power Systems That Are Non-Photovoltaic Systems Up to 150 kW (AC) in Capacity; or Photovoltaic Systems Greater Than 10 kW (AC) and up to 150 kW (AC) in Capacity."

⁸¹ Ed McNamara, "Guide to Filing a Petition Under Section 248."

c) Deadlines for Decisions

State	Deadlines
NH	8 months for renewable energy projects; 9 months for all other energy facilities. A progress report is required within 5 months that includes draft conditions and additional information needed. The SEC may suspend the time frame if it finds doing so is in the public interest.
CT	6 months. Extensions to deadlines allowed.
ME	185 days for wind and pipelines
MA	12 months
NY	12 months
RI	12 months
VT	None

This section provides an overview of the timeline of the siting evaluation process.

i) New Hampshire

Within 60 days a determination is made as to whether the application is complete. A certificate decision is required within 9 months of a completed application, and an exemption decision is required within 60 days. Renewable energy projects have an expedited deadline for decision within 240 days (8 months).

A progress report is required within 5 months including draft conditions and additional information needed; the SEC may suspend that time frame if it finds doing so is in the public interest. The review process provides for an expedited 240 day deadline for the SEC’s approval or denial of a certificate for renewable energy facilities.⁸²

ii) Connecticut

The deadline for a decision is 6 months after filing of an application, which may be extended to one year with the applicant's consent.⁸³

iii) Maine

The timeframe for applications that fall under Site Law or the Wind Energy Act is the same and vary based on permits required. For wind and pipeline projects, there is a maximum statutory period of 185 days from the date of acceptance of the application to the issuance of the final license. The DEP has 20 days from when the application is received to deem it complete for processing, leading into the official 185-day period, which allows for state agencies and the public to submit comment and for the DEP to exchange information with the applicant.⁸⁴

⁸² “162-H.”

⁸³ Vermont Energy Generation Siting Policy Commission, “Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission,” 88.

⁸⁴ Richard D’Amato, Michael Sanchez, and Aislinn McLaughlin, *Policy Options for Siting Energy Facilities: A Cross-State Analysis of Energy Facility Siting Board Strategies*, 6–7.

iv) Massachusetts

There is a 12-month timeline specified in the statute for Energy Facilities Siting Board cases, but there are no penalties or ‘constructive approval’ for non-compliance.⁸⁵ There is no expedited process, although the filing fee statute indicates the EFSB will endeavor to complete reviews of applications filed by non-utility entities within 7 months of the last public informational hearing, and utility petitions within 12 months of the last public hearing. In the event of rejection or conditioned approval, the applicant may within six months submit an amended petition. A public hearing on the amended petition shall be held on the same terms and conditions applicable to the original petition. However, there are no penalties if this deadline is missed. The Certificate of Environmental Impact review has a 180-day timeframe.⁸⁶

v) New York

A decision must be made 12 months after the completion of the application. This may be extended with the consent of the applicant. The decision deadline is 6 months for add-ons to existing plants.⁸⁷

vi) Rhode Island

The coordinator has 30 days to accept or reject the filing and assign it a docket number. The Board convenes a Preliminary Hearing within 60 days to designate agencies that must file an advisory opinion. Advisory agencies generally have 6 months to submit findings. The Board is required to schedule at least one public hearing in every community impacted by the proposal.⁸⁸ Final hearings commence within 45 days after the advisory deadline, and Final Decision and Order are due within 120 days. Final decisions may be appealed to the State Supreme Court within 10 days of ratification.⁸⁹

Expedited Processes: When for the construction or relocation of power lines less than 1,000 ft., notice to construct must be filed 60 days before commencing construction, and the applicant must state reasons why it is not a major energy facility or alteration. The Board has 45 days to act. When constructing or relocating power lines greater than 1,000 f.t but less than 6,000 ft., a public hearing is required and more detailed analysis, including EMF analysis. The Board has 60 days to determine if the project will result in significant impact on the environment or public health and safety. If considered an alteration, the matter is docketed and proceeds as normal.⁹⁰

⁸⁵ Vermont Energy Generation Siting Policy Commission, “Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission,” 88.

⁸⁶ “An Introduction to Massachusetts Generation Facility Siting Considerations,” 3.

⁸⁷ Vermont Energy Generation Siting Policy Commission, “Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission,” 88.

⁸⁸ Nicholas S. Ucci, “An Introduction to the Rhode Island Energy Facility Siting Board,” December 19, 2012, 10.

⁸⁹ *Ibid.*, 14.

⁹⁰ *Ibid.*, 15–16.

vii) Vermont

There is no specified deadline for decision-making.⁹¹ Once the evidentiary hearings have been completed and the parties have been given the opportunity to submit briefs, the Board will issue a decision. This final Order must be based on the evidentiary record, and will include findings of fact under the Section 248 criteria (including the incorporated Act 250 criteria) as well as conclusions of law.⁹² The process can take months or even as long as a year in complex, controversial cases.⁹³

d) Public engagement requirements and practices (including involvement of local municipalities)

This section outlines the how both the public and local municipalities are involved in the energy siting process in the states listed.

i) New Hampshire

At least one informational public hearing is required in the county where the proposed facility is located, and the board may at its discretion hold additional informational hearings. The SEC must 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.⁹⁴ All other hearings are adjudicative; they must give "due consideration" to the views of municipal and regional planning commissions and municipal governing bodies.⁹⁵ Municipalities affected by a proposed facility must be notified.

ii) Connecticut

Applicants are statutorily required to consult with host municipalities for a period of not less than 60 days before filing an application with the Council, including, but not limited to, providing technical reports and participating in information sessions. Applicants are also statutorily required to provide notice to town boards and commissions, regional planning commissions and other potentially affected public and non-profit entities prior to filing the application with the Council, which includes publication in a newspaper of general circulation.⁹⁶

Public opinion and evidence is captured as part of the deliberative process by:

- 1) Party or intervenor status (evidentiary);
- 2) Public comments given orally at the public hearing;

⁹¹ Vermont Energy Generation Siting Policy Commission, "Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission," 88.

⁹² Vermont Public Service Board, *Citizens' Guide to the Vermont Public Service Board's Section 248 Process*, February 14, 2012.

⁹³ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 127.

⁹⁴ NH Revised Statutes, Chapter 162-H:10

⁹⁵ New Hampshire Site Evaluation Committee, *Chapter Site 300: Certificates of Site and Facility, Adopted Procedural Rules*, 4.

⁹⁶ "An Introduction to Connecticut Energy Siting Considerations," November 14, 2012, 11.

3) Public comments given in writing before, during, or after the public hearing.⁹⁷

iii) **Maine**

Public participation requirements differ between developments that fall under Site Law or the Wind Energy Act. For Site Law projects, applicants must hold a public informational meeting between the pre-application meeting and the pre-submission meeting that describes their project and gives interested parties a chance to comment during the 185-day period. Public hearings during the process, while allowed, are infrequent. For wind energy projects, the internal policy requires two public meetings. The first is held near the start of the application process in order to disperse information to the public and to gather information from neighbors and those who abut the location. The second public meeting is held later in the project review process and attended by the DEP Commissioner in order to gather information about the review process to-date. Both public meetings are facilitated by DEP staff and provide specific opportunities for public comment.⁹⁸

There is no explicit role for municipalities, although some towns have local wind ordinances and all towns can comment on applications.⁹⁹

iv) **Massachusetts**

In Massachusetts there is very active public participation. The board sends notice of filing and public hearing to neighbors, legislators, and officials and publishes information in local newspapers. The board also holds a public hearing in the municipality where the project is proposed. The board allows the public to make comments at these hearings, and also allows for written comments.¹⁰⁰ Project proponents listen to the public and can improve designs over the course of the EFSB review. The general public participates in public hearings that are held at the beginning of the proceeding in the project vicinity; they can offer comments for the record. Special outreach efforts are made for Environmental Justice communities per state policy. Individuals and groups can also participate as 'limited participants' or 'full intervenors.' Cities/towns or RCs typically seek and are granted intervenor status. (Intervenors are not provided with any financial, legal or technical support for their cases but are allowed a greater say in the decision-making process than the general public.) The EFSB provides general guidance to all parties.¹⁰¹

v) **New York**

A Public Involvement Plan (PIP) under Title X is required 150 days before the scoping phase. Public scoping is carried out with applicant-sponsored intervenor funding, and public statement

⁹⁷ Vermont Energy Generation Siting Policy Commission, "Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission," 90.

⁹⁸ Richard D'Amato, Michael Sanchez, and Aislinn McLaughlin, *Policy Options for Siting Energy Facilities: A Cross-State Analysis of Energy Facility Siting Board Strategies*, 7.

⁹⁹ Bergeron, "An Introduction to Maine's Energy Siting Considerations," December 19, 2012, 5.

¹⁰⁰ Vermont Energy Generation Siting Policy Commission, "Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission," 90.

¹⁰¹ Ibid.

hearings are required early. There are funds available for experts and legal representation for development of a record: During the Scoping Phase \$350 per MW is available, up to \$200,000. During the Application phase \$1000 per MW is available, up to \$400,000. Funds are administered by the Hearing Officer.

Municipalities are parties upon filing of notice of interest. A municipality seeking to enforce local laws must participate or is barred from enforcement authority. Municipalities nominate 2 Ad Hoc Siting Board members, and have access to fund for intervenor assistance on a per-MW basis.¹⁰²

vi) Rhode Island

"Designated Agencies" include political subdivisions which, absent the Act, would have statutory authority to grant permits, licenses, variances, etc. These agencies include town councils, building inspectors, and planning boards, and have a level of involvement in the siting process.

All hearings –Preliminary and Final –are open to the public. One Public Hearing must be held in every community impacted by the proposal (i.e. transmission line through 3 towns). The Board generally gives the public an opportunity to comment before or after all hearings, which are transcribed.¹⁰³ Most non-CEII or protected materials are posted on the EFSB website.¹⁰⁴

vii) Vermont

With the exception of net metered projects, and projects of limited size and scope, all PSB siting proceedings involve a public hearing in the county in which the facility is located. In addition, the deadline for intervention requests is typically after the public hearing in order to allow members of the public that meet the PSB's standards for intervention to participate in the proceeding.¹⁰⁵

Although not automatically parties to the case, certain state agencies and affected towns and local and regional planning commissions are required by statute to receive notice, pursuant to 30 V.S.A. § 248(A)(4)(C). In addition, plans for construction of facilities covered by Section 248 must be provided by the petitioner to the relevant municipal and regional planning commissions at least 45 days prior to the date that the petition is filed with the Board. Board Rule 5.400 provides for individual notice to adjoining landowners. Municipalities seek and are nearly always granted intervenor status. The Public Service Board has also prepared a Citizen's

¹⁰² Ibid.

¹⁰³ State of Rhode Island, "Public Utilities Commission and Division of Public Utilities and Carriers."

¹⁰⁴ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 17.

¹⁰⁵ Tom Stanton, *Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States*, A-97.

Guide to provide a general introduction to the process used by the Board to consider requests for approval pursuant to Section 248.¹⁰⁶

e) Use of conditions

This section specifies any conditions for approval given to applicants during the siting process.

i) New Hampshire

Conditions and exceptions are recommended to the SEC by the state agencies. According to RSA 162-H:16,VI-VII:

- 1) A certificate of site and facility may contain such reasonable terms and conditions 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.
- 2) The committee may condition the certificate upon the results of required federal and state agency studies whose study period exceeds the application period.

ii) Connecticut

Information was not found about the use of conditions for approval in Connecticut.

iii) Maine

Information was not found about the use of conditions for approval in Maine.

iv) Massachusetts

After evidentiary hearings, the Board staff prepares an Issues Memorandum identifying contested issues among the parties or potential conditions for the construction or operation of the facility.¹⁰⁷ Conditions stem from the general facility criteria and are laid out on a case-by-case basis depending on the evidentiary record.

v) New York

The Siting Board can grant a certificate in the manner requested by the applicant, it can grant a certificate subject to modifications and or conditions, or it may deny the application. In rendering a decision on an application for a certificate, the Siting Board must issue a written opinion stating its reasons for the action taken.¹⁰⁸

vi) Rhode Island

The Board may issue license conditionally upon applicant's receipt of federal licenses.¹⁰⁹

¹⁰⁶ Vermont Public Service Board, *Citizens' Guide to the Vermont Public Service Board's Section 248 Process*, February 14, 2012.

¹⁰⁷ Energy Facilities Siting Board, "FAQ's."

¹⁰⁸ "Siting Board - Frequently Asked Questions," 2013.

¹⁰⁹ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 19.

vii) Vermont

Once the Public Service Board approves an application, it issues a Certificate of Public Good (“CPG”) authorizing construction of the facilities; the CPG typically includes conditions associated with constructing the project.¹¹⁰

f) Monitoring and Enforcement Process; Penalties

This section provides information on how requirements are enforced, applicants monitored, and penalties enforced once permits are issued.

State	Authority for Monitoring and Enforcement	Comments
NH	Yes	May delegate the authority to conduct necessary M&E; monetary penalty can be assessed for violations
CT	Yes	Require applicant to submit reports during construction; minimal enforcement authority
ME	Yes	Require compliance testing of some impacts. Some aspects allow third party monitors. Period of monitoring ranges from 1 year to the life of the project. All monitoring paid for by applicant.
MA	Yes	Relies on operator or complaints to identify violations; little or no budget to monitoring and enforcement; may levy penalties for violations.
NY	Yes	Retains M&E authority over terms and conditions of certificate
RI	Yes	May hire consultants to visit plant during construction
VT	Yes	Monitoring and decommissioning fund financed by developer.

i) New Hampshire

The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate.¹¹¹ The SEC enforces the terms and conditions of their issued certificates:¹¹²

- 1) Whenever the committee determines that any term or condition of any certificate issued is being violated, it notifies the person holding the certificate of the specific violation and orders 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

¹¹⁰ Vermont Public Service Board, *Citizens' Guide to the Vermont Public Service Board's Section 248 Process*, February 14, 2012, 14.

¹¹¹ “162-H.”

¹¹² “162-H.”

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.

- 2) The superior court, in term time or in vacation, may enjoin any act in violation of this chapter.
- 3) 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.¹¹³

ii) Connecticut

Certificates are issued with the condition that applicants file a Development and Management Plan (“D&M Plan”) with the Council for approval that represents the final site plans consistent with the Council’s decision on a proposed facility. Staff Siting Analysts monitor compliance during and after construction in accordance with the approved D&M Plan. Agency regulations require reports to be submitted at specific stages of construction, as well as a Final Report upon completion and operation. There is very minimal enforcement authority.¹¹⁴

iii) Maine

The licensee is responsible for compliance testing (e.g. noise, bird & bat mortality, mitigation). Many wind licensees have toll free phone numbers for accepting noise complaints. This compliance testing can include the impacts of approved and built facilities if monitoring is included in permit conditions. Third-party inspectors monitor stormwater & erosion control during construction, and post-construction monitoring includes noise and bird/bat mortality. The time period of monitoring varies from one year up to the life of project. All monitoring is paid for by licensee via ‘special fee’ or directly to the licensee’s contractor.¹¹⁵

iv) Massachusetts

The EFSB is authorized to levy a civil penalty when an applicant has violated any order of the Board.¹¹⁶ The maximum fine is \$1,000 per day per violation, with a maximum civil penalty of \$200,000 for any related series of violations. Post-decision site visits and inspections are infrequent; there is no specific budget for enforcement. The project owner/operator is required to notify the EFSB when the project fails to meet conditions specified in the approval decision or if there are any changes “other than minor variations” to the proposal approved by the Siting Board. Complaints from local officials or members of the public are sometimes a means by which non-compliance with EFSB conditions is identified and enforced.¹¹⁷

¹¹³ “162-H.”

¹¹⁴ “An Introduction to Connecticut Energy Siting Considerations,” November 14, 2012, 16.

¹¹⁵ Bergeron, “An Introduction to Maine’s Energy Siting Considerations,” December 19, 2012, 8.

¹¹⁶ 188th General Court of the Commonwealth of Massachusetts, *Title 22, Corporations, Manufacture and Sale of Gas and Electricity*, 22.

¹¹⁷ Vermont Energy Generation Siting Policy Commission, “Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission,” 33 & 92.

v) New York

Following any rehearing and any judicial review of the decision, the Siting Board's jurisdiction over an application shall cease, provided, however, that the permanent board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate. The Department of Public Service or the Public Service Commission shall monitor, enforce and administer compliance with any terms and conditions set forth in the Siting Board's order granting a certificate.¹¹⁸

vi) Rhode Island

The Board may issue a license conditionally upon the applicant's receipt of federal licenses. Although the Board retains final permitting authority, the applicant still has the burden to apply for, receive, and maintain all applicable permits. The Board can hire consultants (up to \$20,000; paid by applicant) to visit the plant during construction. The Board may hold suspension hearings and issue "Show Cause" and "Cease and Desist" orders.¹¹⁹

vii) Vermont

Monitoring is generally strong and funded by the developer. Developers must contribute to a decommissioning fund.¹²⁰

g) Decision-Making Process: Adjusting, Appeal Process, and Voting

This section provides more specific information as to the full decision-making process of the siting authority in each state listed.

i) New Hampshire

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 adjudicatory hearings. (RSA 541-A) The SEC, in consultation with Counsel for the Public, may request any information or studies it considers necessary to develop the record needed to support its findings, and may require the applicant to pay the reasonable costs of conducting such studies. Decisions are made by majority vote of the full SEC, its designees or subcommittee where allowed, and must be supported by the record. Decisions are subject to judicial review by, and may be appealed to, the state Supreme Court.¹²¹

ii) Connecticut

The applicant for a certificate must consult the municipality in which it wishes to build at least 60 days prior to filing the application. Within 60 days of that consultation, the municipality must issue its recommendation to the applicant. The applicant must also consult the municipal zoning and inland wetland agencies. The agencies have 65 days after the time the application is filed to issue an order restricting or regulating the proposed site. Concerned parties have 30

¹¹⁸ "Siting Board - Frequently Asked Questions," 2013.

¹¹⁹ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 19.

¹²⁰ Vermont Energy Generation Siting Policy Commission, "Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission," 92.

¹²¹ NH Revised Statutes, Chapter 162-H:10

days after the order is issued to appeal it to the Council. The Council can affirm, revoke, or modify the zoning or wetlands order. If the Council accepts the application, it must hold a public hearing in which all parties to the proceeding may offer testimony and file evidence. The Council can reject an application if it fails to comply with certain data requirements. The Council must render a decision within 180 days of receipt of the application.¹²² Appeal process: Any party or intervenor may file an administrative appeal within 45 days of Council decision in the Superior Court (UAPA). The Attorney General represents the agency in administrative appeals.¹²³

iii) **Maine**

Before a developer enters into the licensing and permitting process, they will have a “meet and greet” with the DEP to discuss different types of permits and their ideas for the site. Once the developing party is closer to submitting their application, they have a pre-application meeting with the DEP that discusses the specific details of the application, including the size of the facility. A pre-submission meeting takes place closer to the end of the application process in order to provide follow up on issues raised in the pre-application meeting.¹²⁴ Appeals process and authority resides with Maine’s Supreme Judicial Court.¹²⁵

For transmission projects, decisions on siting applications by the Interagency Review Panel regarding an energy infrastructure corridor proposal must be approved by the Governor before the State may enter into a binding contract with respect to the proposal.¹²⁶

iv) **Massachusetts**

The Siting Board staff issues a Tentative Decision approving or rejecting the project. The parties receive the Tentative Decision prior to the scheduled Siting Board meeting for review and comment. After the comment period, the Siting Board meets in public to vote on whether to accept the Tentative Decision. The Final Decision reflects any changes made at the Siting Board meeting.¹²⁷

Within 60 days of the filing of a petition to construct a generating facility, the board shall conduct a public hearing in each locality in which the generating facility would be located. In addition, the board shall, within 180 days of the filing thereof, conduct public evidentiary hearings on every petition to construct a generating facility. Evidentiary hearings for both oil and generating facilities are adjudicatory proceedings under the provisions of chapter 30A.

¹²² The National Association of Regulatory Utility Commissioners, *Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States*, A–16.

¹²³ “An Introduction to Connecticut Energy Siting Considerations,” November 14, 2012, 7–10.

¹²⁴ Richard D’Amato, Michael Sanchez, and Aislinn McLaughlin, *Policy Options for Siting Energy Facilities: A Cross-State Analysis of Energy Facility Siting Board Strategies*, 6.

¹²⁵ Bergeron, “An Introduction to Maine’s Energy Siting Considerations,” December 19, 2012, 4.

¹²⁶ Pierce Atwood LLP, *2013 Summary of New Maine Laws & Carried Over Legislation*, 27.

¹²⁷ Energy Facilities Siting Board, “FAQ’s.”

For either oil or generating facility, if the board determines the standards set forth have not been met, it shall within twelve months of the date of filing reject in whole or in part the petition, setting forth in writing its reasons for such rejections, or approve the petition subject to stated conditions. In the event of rejection or conditioned approval, the applicant may within six months submit an amended petition. A public hearing on the amended petition shall be held on the same terms and conditions applicable to the original petition.

Appeals of EFSB or DPU decisions are made directly to the Supreme Judicial Court.¹²⁸

v) **New York**

If the documents submitted are sufficient to comply with the requirements of the law, regulations and stipulations, the Chairperson of the Siting Board will issue a letter to the applicant advising that the documents submitted constitute a complying application and will also fix the date for the commencement of a public hearing and the Department of Environmental Conservation will initiate its review pursuant to federally delegated or approved environmental permitting authority or air and water permit applications. Within a reasonable time, the presiding examiner will hold a prehearing conference, and then issue an order identifying the issues to be addressed by the parties. Later in the proceeding there may also be a consideration of additional issues that warrant consideration.

The hearings will be conducted by a presiding examiner designated by the Department of Public Service. An associate examiner shall be designated by the Department of Environmental Conservation. The associate examiner will assist the presiding examiner in inquiring into and calling for testimony concerning relevant and material matters. It is expected that both public statement hearings and trial-type evidentiary hearings will be held where persons are permitted to make a limited appearance. The format is designed like a trial and it is recommended that the participants be assisted by legal counsel. The usual practice is for written direct and rebuttal testimony and discovery to be circulated to the parties in advance so that the hearings can focus on the cross examination of witnesses.

The presiding examiner will provide a summary of the proceedings in a recommended decision that will be presented to the Siting Board. The parties will also present legal briefs to the Siting Board with citations to the portions of the record they deem relevant to their positions. The Siting Board can grant a certificate in the manner requested by the applicant, it can grant a certificate subject to modifications and or conditions, or it may deny the application. In rendering a decision on an application for a certificate, the Siting Board must issue a written opinion stating its reasons for the action taken.¹²⁹

¹²⁸ Vermont Energy Generation Siting Policy Commission, "Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission," 33.

¹²⁹ "Siting Board - Frequently Asked Questions," 2013.

Appeals of Siting Board decisions can be filed with the appellate division of the New York State courts.¹³⁰

vi) Rhode Island

The actual process by which the EFSB makes decisions is not specified in the EFSB rules and regulations, but there is a formal series of hearings that include testimony, exhibits, cross-examination, etc. As such, it appears that the process is adjudicatory in nature.¹³¹

Final decisions may be appealed to the State Supreme Court within 10 days of ratification.¹³²

vii) Vermont

The process before the Vermont Public Service Board is a contested case process. It involves technical hearings at which interested parties are permitted to intervene. The Vermont Department of Public Service is a statutory party and represents the rate payers and the public interest.

In general, applicants must start the process by filing a petition and supporting testimony with the Vermont Public Service Board that complies with 30 VSA 248. The Vermont Public Service Board will then schedule a pre-hearing conference to set a hearing schedule. The schedule usually requires pre-filed written testimony by the petitioning applicant and an opportunity for interested parties to do formal written discovery on the applicant, as well as conduct depositions. The intervenors and the statutory parties then have an opportunity to also pre-file written testimony and the applicant has a similar opportunity to conduct formal discovery on the intervenors. Technical hearings follow discovery.

After the hearings, the parties file briefs and reply to briefs, after which the Vermont Public Service Board issues an order. The process can take months or even as long as a year in complex, controversial cases. Parties may appeal the Board's decision to the Vermont Supreme Court.¹³³

Once this has taken place, the Board issues a decision. This final Order must be based on the evidentiary record. Final Board Orders are subject to motions for reconsideration under the Rules of Civil Procedure. Any final decision by the Board may be appealed to the Vermont Supreme Court. Any appeals from a Board Order are governed by the Rules of Appellate Procedure.¹³⁴

¹³⁰ New York State, *New York State Public Service Law, Article 10*, sec. 170.

¹³¹ "Rhode Island Energy Facility Siting Board - Rules of Practice and Procedure," 20–23.

¹³² Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 14.

¹³³ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 127.

¹³⁴ Vermont Public Service Board, *Citizens' Guide to the Vermont Public Service Board's Section 248 Process*, February 14, 2012, 10.

h) Alternative Dispute Resolution (ADR)

i) New Hampshire

Alternative dispute resolution exists only informally; settlements can and have occurred in the past but are not explicitly provided for in the statute.¹³⁵ Decisions may be appealed to the NH Supreme Court.

ii) Connecticut

No ADR. Appeals: Any party or intervenor may file an administrative appeal within 45 days of Council decision in the Superior Court (UAPA). The Attorney General represents the agency in administrative appeals.¹³⁶

iii) Maine

No formal ADR. Informal discussions with interested persons, applicants and DEP project manager can sometimes resolve issues. Formal appeals go to the Board of Environmental Protection or Maine Superior Court.¹³⁷

iv) Massachusetts

No formal ADR although parties are welcome to propose settlements to the EFSB, which is rare. In practice, facility applicants actively engage with host community officials and members of the public to discuss mitigation measures and other agreements that can lead to support or at least lack of active opposition. EFSB approval conditions can formalize agreements and commitments between project proponent and parties. Appeals of EFSB or DPU decisions are made directly to the Supreme Judicial Court.¹³⁸

v) New York

New York uses a formal system of ADR. Their hearing officers are empowered to mediate issues in the pre-application formal scoping period, and settlement procedures can be utilized by agreement of parties, who may request a settlement judge. Intervenor funding is available for this.¹³⁹

vi) Rhode Island

No ADR. Appeals can be filed with the State Supreme Court.¹⁴⁰

vii) Vermont

No formal ADR.¹⁴¹

¹³⁵ Vermont Energy Generation Siting Policy Commission, "Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission," 91.

¹³⁶ Ibid.

¹³⁷ Bergeron, "An Introduction to Maine's Energy Siting Considerations," December 19, 2012, 6.

¹³⁸ Vermont Energy Generation Siting Policy Commission, "Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission," 33.

¹³⁹ Ibid.

¹⁴⁰ Nicholas S. Ucci, "An Introduction to the Rhode Island Energy Facility Siting Board," December 19, 2012, 14.

¹⁴¹ Vermont Energy Generation Siting Policy Commission, “Siting Electric Generation in Vermont - Final Report - Energy Generation Siting Policy Commission,” 91.

3) Criteria for Decisionmaking

This section reviews the criteria state Siting Boards require applicants to fulfill and that the boards use when reviewing and deciding upon cases. This section also summarizes some of the specific criteria set forth for transmission and wind projects and goes over eminent domain procedures in the different states.

a) Findings and Criteria

This section provides an overview of the general criteria and findings reviewed by states when making siting decisions.

<p>NH¹⁴²</p>	<p>Three mandated findings:</p> <ol style="list-style-type: none"> 1. An applicant needs to have the financial, technical, and management capability to build and run a facility in continuing compliance with the board’s certificate. 2. The views of municipal and regional planning commissions and governing bodies need to be taken into account to ensure the facility will not ‘unduly’ interfere with regional development. 3. The facility cannot have an unreasonable adverse effect on the area’s: <ol style="list-style-type: none"> a. Aesthetics b. Historic sites c. Air and water quality d. Natural Environment e. Public health and safety
<p>CT¹⁴³</p>	<p>The Siting Council is charged with balancing the public need or public benefit for a facility with the need to protect the environment of the state in accordance with specific statutory and regulatory criteria:</p> <ul style="list-style-type: none"> • Public Need: exists if a facility is necessary for the reliability of the electric power supply of the state • Public Benefit: exists if a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity (electric generating facilities ONLY) • Probable Environmental Impact: examined alone and cumulatively with other existing facilities, including specification of every significant adverse environmental effect, electromagnetic fields, and conflict with state policies
<p>ME</p>	<p>Proposed generation facilities must meet <i>both</i> a primary standard as well as criteria set forth <i>either</i> by the state’s Department of Environmental Protection (DEP) <i>or</i> the Land Use Planning Commission (LUPC), depending on the location of the project.¹⁴⁴</p> <ul style="list-style-type: none"> • Primary standard (all projects): proposed facilities must benefit ratepayers

¹⁴² Section 162-H:16 Findings and Certificate Issuance.

¹⁴³ Bachman, “An Introduction to (State) Energy Siting Considerations - CT,” 9.

¹⁴⁴ DEP coordinates review and permitting in “organized” areas of the state, while LUPC coordinates review and permitting in “unorganized” areas. See Section 1.a.iii of this document for details.

through lower rates, reduced volatility, reduced transmission costs, and increased reliability. Priority given to energy efficiency and new renewable resource facilities.¹⁴⁵

- DEP rules (for projects in organized areas) require facilities to have no unreasonably adverse effects on:¹⁴⁶
 - Air quality and the climate;
 - Drainage ways,
 - Runoff, and ground and surface water quality;
 - Historic sites and natural areas; and
 - Wildlife and fisheries.
 - Proposed projects must also adhere to sound-level limits.
- LUPC criteria (for projects in unorganized areas) state that a project:¹⁴⁷
 - Cannot negatively affect an area’s scenic character and related existing uses related to scenic character,
 - Must provide tangible benefits, and
 - Must include public safety-related setbacks.

For transmission and pipelines within state-designated infrastructure corridors the Interagency Review Committee must find that:¹⁴⁸

- (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;
- (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money, determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and
- (3) Is in the long-term public interest of the State, based on a determination made in accordance with paragraph B. [2009, c. 655, Pt. A, §2 (NEW).]

In addition, the deciding authority shall determine whether an energy infrastructure proposal is in the long-term public interest of the State. In making that determination, the deciding authority shall, at a minimum, consider the extent to which the proposal:

- (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;
- (2) Is reasonably likely to reduce electric rates or other relevant energy prices

¹⁴⁵ Bergeron, “An Introduction to Maine’s Energy Siting Considerations,” December 19, 2012, 4.

¹⁴⁶ Maine Department of Environmental Protection, *Site Location of Development (Site Law)*, 2013.

¹⁴⁷ NRRRI and Stanton, “Ideas for Vermont’s Energy Generation Siting Process.”

¹⁴⁸ Maine Revised Statutes, Title 35-A Public Utilities Heading, Chapter 1, §122.

	<p>or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;</p> <p>(3) Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;</p> <p>(4) Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;</p> <p>(5) Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts;</p> <p>(6) Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;</p> <p>(7) Increases the energy reliability, security and independence of the State; and</p> <p>(8) Reduces the release of greenhouse gases.</p> <p>As per a 2013 update of Maine legislation with regards to siting transmission facilities, preference must be given to low-cost alternatives with fewer greenhouse gas emissions. The Public Utilities Commission must make specific findings as to whether alternatives can address the identified need at a lower cost. Under this law, until December 31, 2015, when the Commission determines that the non-transmission alternatives can address the need at a lower total cost but represent a larger increased cost to ratepayers in the State than the proposed transmission line, the Commission must make reasonable efforts to achieve an agreement among the states within the New England independent system operator region to allocate the cost of non-transmission alternatives among the ratepayers of the region using an allocation method that results in lower increased cost to State ratepayers.¹⁴⁹</p>
MA ¹⁵⁰	<p>The board shall, within one year from the date of filing, approve a petition to construct a generating facility if the board determines that the petition meets the following requirements:</p> <ol style="list-style-type: none"> 1. The description of the proposed generating facility and its environmental impacts are substantially accurate and complete; 2. The description of the site selection process used is accurate; and 3. The plans for the construction of the proposed generating facility are consistent with current health and environmental protection policies of the commonwealth and with such energy policies as are adopted by the commonwealth for the specific purpose of guiding the decisions of the board;

¹⁴⁹ Pierce Atwood LLP, *2013 Summary of New Maine Laws & Carried Over Legislation*, 28.

¹⁵⁰ Commonwealth of Massachusetts, *Massachusetts General Laws*, chapter 164, sec. 69 J 1/4.

	<ol style="list-style-type: none"> 4. Such plans minimize the environmental impacts consistent with the minimization of costs associated with the mitigation, control, and reduction of the environmental impacts of the proposed generating facility; and 5. If the petitioner was required to provide information on other fossil fuel generating technologies, the construction of the proposed generating facility on balance contributes to a reliable, low-cost, diverse, regional energy supply with minimal environmental impacts.
NY ¹⁵¹	<p>The Siting Board is required to make certain statutory findings and determinations, and the required determinations can only be made after considering certain required factors:</p> <p>Statutory Factors:</p> <ol style="list-style-type: none"> 1. The state of available technology. 2. The nature and economics of reasonable alternatives to the proposed facility. 3. Potential environmental impacts. 4. The impact of constructing and operating the facility on the region. 5. The consistency of the facility’s operation with the state’s energy plan. 6. Any possible impacts on community character, including pollutant levels. 7. Any additional relevant social, economic, visual, environmental, or other considerations. <p>Statutory Findings:</p> <ol style="list-style-type: none"> 1. Ecology, air, ground and surface water, and wildlife and habitat. 2. Public health and safety. 3. Cultural, historic, and recreational resources. 4. Transportation, communication, utilities and other infrastructure. 5. The local community in regards to cumulative emissions and other adverse environmental impacts. <p>Statutory Determinations:</p> <ol style="list-style-type: none"> 1. The facility is a beneficial addition to or substitution for the state’s electric generation. 2. The construction and operation of the facility will serve the public interest. 3. The adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable. 4. The applicant will attempt to minimize the impacts of the facility on the local community if the board finds it will cause a significant environmental impact. 5. The facility is designed to operate in compliance with applicable state and local laws and regulations.
RI ¹⁵²	<p>Rhode Island’s Siting Board requires those proposing new facilities to address several criteria in their applications, including:</p>

¹⁵¹ “Siting Board - Frequently Asked Questions,” 2013.

¹⁵² Ucci, “An Introduction to Rhode Island Energy Siting Considerations,” 9.

	<ul style="list-style-type: none"> • Cost of the project, • Proposed number of employees, • Project’s financing and site plans, • Impact of any required support facilities, • Effects of generated electromagnetic fields (EMF), • Any life cycle impacts, and • Cost of alternatives to the project.
VT ¹⁵³	<p>The Vermont Siting Board considers if the project will promote the general good of the state and other criteria, including:</p> <ol style="list-style-type: none"> 1. The orderly development of the region. 2. The present and future need for electrical service. 3. The system’s stability and reliability. 4. The economic benefit to the state. 5. The consistency of the proposed facility with the state’s integrated resource plan. 6. The project’s compliance with the state electrical energy plan. 7. The project effect on and distance from water bodies designated as outstanding resource waters. 8. In the case of an incineration, waste-to-energy facility, the project complies with a solid waste management plan. 9. If the facility can be served economically by existing or planned transmission lines without adversely affecting other utilities or customers. 10. Aesthetical, historic site, air and water purity, natural environment, and public health and safety considerations.

b) Wind: noise

This section provides an overview of regulations controlling noise produced by wind energy projects.

NH	<p>The state does not currently have criteria governing noise levels of wind or other energy facilities but may review noise impacts on a case-by-case basis. Some municipalities may have or be considering adopting noise ordinances, but the SEC has the authority to override local ordinances if it finds reason to in its review of an accepted application.</p>
CT ¹⁵⁴	<p>The construction of new wind turbines projects is currently suspended.</p> <p><i>Draft</i> regulations proposed by the Connecticut Siting Council have the following provisions for the noise impacts of wind projects:</p> <ul style="list-style-type: none"> • Noise levels shall comply with the Department of Energy and Environmental Protection Noise Control Regulations under Sections 22a-69-1 to 22a-69-7,

¹⁵³ State of Vermont Public Service Board, “Guide to Filing a Petition Under Section 248,” 9.

¹⁵⁴ Connecticut Siting Council Revised Draft Wind Regulations.

	<p>inclusive, of the Regulations of Connecticut State Agencies.</p> <ul style="list-style-type: none"> • Submission of a noise evaluation report, which includes: <ul style="list-style-type: none"> ○ A detailed description of the potential noise levels that would be generated by the proposed wind turbines and any alternative wind turbines at the proposed site and any alternative sites ○ Calculations in accordance with the noise control regulations established by the Department of Energy and Environmental Protection, of projected maximum cumulative sound levels generated when the proposed wind turbines and any alternative wind turbines are in operation at the proposed site and any alternative sites measured at the property lines, projected maximum day-time and night-time sound levels generated when the proposed wind turbines and any alternative wind turbines are in operation measured at the nearest receptors, and projected maximum levels of infrasonic sound, ultrasonic sound, impulsive noise and prominent discrete tones generated when the proposed wind turbines and any alternative wind turbines are in operation at the proposed site and any alternative sites measured at the nearest receptors. ○ A study area map for the proposed site and any alternative sites depicting the noise analysis study area radius, site boundaries, sound level monitoring locations and nearest receptor locations. ○ Identification of any potential mitigation measures to minimize sound levels at the nearest receptor locations, including, but not limited to, utilization of best practical noise control measures in accordance with Section 22a-69-1 of the Regulations of Connecticut State Agencies.
ME ¹⁵⁵	There are clear procedural steps and explicit standards for determining wind siting and zoning, but no specific standards relating to noise regulation.
MA	While sound standards are included in the state’s model ordinance for local jurisdictions, there are no specific rules for wind facility noise control, though new WINDTAG regulations may change this. ¹⁵⁶ At present, wind projects must comply with general DEP noise regulations. ¹⁵⁷
NY	<p>No mandatory regulations governing noise from wind projects.</p> <p>The New York State Research and Development Authority (NYSERDA) has developed a model ordinance for local jurisdictions that includes the following criterion: “Individual wind turbine towers shall be located so that the level of noise produced by wind turbine operation shall not exceed 55 dBA.”¹⁵⁸</p>

¹⁵⁵ Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 33.

¹⁵⁶ The National Association of Regulatory Utility Commissioners, *Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States*, A-43.

¹⁵⁷ Department of Environmental Protection, “Massachusetts Noise Regulations 310-CMR-7.10.”

¹⁵⁸ The National Association of Regulatory Utility Commissioners, *Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States*, A-68.

RI	<p>No mandatory regulations governing noise from wind projects.</p> <p>The Rhode Island Department of Administration released an advisory paper in 2012 with guidelines for municipalities regulating wind energy projects based on the project’s size. These include¹⁵⁹:</p> <ul style="list-style-type: none"> • For smaller industrial facilities, acoustic studies may be required, but given the cost of these studies, using existing noise ordinances may be preferable and more cost effective. • For larger industrial facilities, acoustic studies are required. The maximum noise level that can be produced is 5 dBA above the ambient level. This must be calculated for both daytime and nighttime, and if an absolute standard is used, it must vary based on existing land use and noise ordinances.
VT ¹⁶⁰	<p>Applicants must describe the sources and levels of noise associated with the construction and operation of the wind facility and state whether noise levels will comply with applicable guidelines, including those from local governments, the E.P.A., and the W.H.O. If noise levels will exceed these guidelines, applicants need to state if measures will be taken to mitigate noise impacts.</p>

d) Wind: Visual Impacts

This section provides an overview of the regulations governing visual impacts of wind energy projects.

NH ¹⁶¹	<p>SEC addresses visual impacts on case-by-case basis. However, no consistent, formalized visual impacts standards for energy facilities exist. Recommendations for addressing visual impacts of wind facilities were proposed as part of the Wind Siting Guidelines, developed by of an ad hoc stakeholder group; but the recommendations were not adopted.¹⁶²</p>
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¹⁵⁹ Rhode Island Department of Administration, *R.I. Renewable Energy Siting Partnership Final Report*, 17–18.

¹⁶⁰ State of Vermont Public Service Board, “Guide to Filing a Petition Under Section 248,” 11.

¹⁶¹ Wind Energy Facility Siting Guidelines Working Group, *Proposed Wind Power Siting Guidelines*.

¹⁶² The guidelines suggest that while detailed visual simulations should not be required for the initial data compilation, before the construction of the project, the applicant should create a map that extends ten miles in every direction from the facility that includes:

1. The general location of the proposed project.
2. Boundaries that show Foreground, Midground, and Background zones from the project.
3. Areas from which the turbines will be visible based on standard viewshed analysis.
4. The location of sites that will facility will be visible from and could have a negative impact, such as, recreational and wilderness areas, scenic viewpoints, water bodies, towns, and residential areas.
5. A general description of areas from which the turbine string will be most visible and photographs from those areas.

CT ¹⁶³	The construction of new wind turbines projects is currently suspended. <i>Draft regulations proposed by the Connecticut Siting Council do not include provisions for the aesthetic impacts of wind projects.</i>
ME ¹⁶⁴	The state’s Wind Energy Act (WEA) mandates applicants to provide a basic assessment for all scenic resources within eight miles of the proposed turbines and conduct a visual impact survey for scenic resources within eight miles of the site that could be significantly affected by the turbines, as determined by the DEP.
MA ¹⁶⁵	Visual impacts are addressed in the general criteria for all energy facilities. There are no specific regulations governing the visual impacts of wind facilities, though there are local bylaws that address design standards, including height.
NY	The New York State Research and Development Authority (NYSERDA) has developed a model ordinance for local jurisdictions that includes the following criterion: “Brand names or advertising... shall not be visible from any public access” and “colors and surface treatment... shall minimize visual disruption. ... Where wind characteristics permit, wind towers shall be set back from the tops of visually prominent ridgelines.” ¹⁶⁶
RI ¹⁶⁷	The Rhode Island Department of Administration released an advisory paper in 2012 with suggested guidelines for municipalities regulating wind facility aesthetics, which include specifying the color of the turbines, limiting the writing and signage around the site and on the towers, and requiring photo simulations.
VT	As with all energy facilities, wind projects should not have “an undue adverse effect on esthetics, historic sites...” ¹⁶⁸ In practice, the Siting Board utilizes the “Quechee Test” to analyze the aesthetic impacts of proposed projects. The test uses the Environmental Board’s methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the Quechee Lakes legal decision of 1986. ¹⁶⁹

e) Transmission: visual impacts, rights-of-way, and undergrounding

State	Transmission ROW	Requires Transmission Undergrounding as	Transmission Aesthetics Criteria
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¹⁶³ Connecticut Siting Council Revised Draft Wind Regulations.

¹⁶⁴ Maine Department of Environmental Protection, “Site Location of Development (Site Law),” 2013, 49.

¹⁶⁵ The National Association of Regulatory Utility Commissioners, *Wind Energy & Wind Park Siting and Zoning Best Practices and Guidance for States*, A-43.

¹⁶⁶ Ibid., A-68.

¹⁶⁷ Rhode Island Department of Administration, *R.I. Renewable Energy Siting Partnership Final Report*, 18.

¹⁶⁸ State of Vermont Public Service Board, *Order Re Simplified Procedures for Renewable Energy Plants with a Capacity Between 150 kW and 2.2 kW*, 14.

¹⁶⁹ State of Vermont Public Service Board, “Guide to Filing a Petition Under Section 248,” 17.

		Alternative	
NH	100 kV threshold for evaluation of lines within ROW and 200 kV for other new transmission	No	Aesthetic impacts must be considered as part of general criteria
CT		No	No
ME		No	Included in general criteria
MA		No	Included in general criteria
NY	May override local ROWs if seen as burdensome	No	Included in general criteria
RI		No	No
VT	Coordinates with State Dept. of Transportation and municipalities on ROW issues	No	Included in general criteria

i) New Hampshire

Visual Impacts: Visual impacts of transmission lines are not addressed in the current findings and criteria.

Rights of Way/Existing corridors: An applicant must provide information on whether the line is using a new or existing right of way. The statute also includes a lower threshold (100kV) for facilities that are not planned within an existing ROW. The threshold for other new transmission facilities is 200kV.¹⁷⁰

Undergrounding: Undergrounding is not explicitly required as an alternative.

ii) Connecticut

Visual Impacts: Transmission aesthetics are not a part of proposed legislation or a central part of previous regulations.

Rights of Way: No information was found on transmission rights of way.

Undergrounding: No information was found on transmission undergrounding.

iii) Maine

Visual Impacts: Must meet the same general criteria as other facilities including: "Cannot negatively affect an area's scenic character and related existing uses related to scenic character."

¹⁷⁰ NH Revised Statutes, Chapter 164-H:2. *Definitions*.

Rights of Way: No information was found on transmission rights of way.

Undergrounding: No information was found on transmission undergrounding.

iv) Massachusetts

Visual Impacts: The Siting Board considers visual impacts and mitigation of these impacts for both a preferred and alternative route in its reviews of proposed transmission lines (see *National Grid/Western Massachusetts Electric Company*, EFSB 10-1/D.P.U. 10-107/108 (2012) at 52-56; *NSTAR Electric Company*, EFSB 10-2/D.P.U. 10-131/132 (2012) at 68-72). The EFSB also has looked at undergrounding alternatives to address both visual and EMF impacts (see *Western Massachusetts Electric Company*, EFSB 08-2/D.P.U. 105-106 (2010) at 66-73, 84-98).

Rights of Way: The EFSB reviews proposed transmission lines 69 kV or more and 1 mile or greater, if in a new transmission corridor, and transmission lines that are 115 kV or more and 10 miles or longer if located in an existing transmission corridor.¹⁷¹

Undergrounding: No information was found on transmission undergrounding.

v) New York

Visual Impacts: While there are no specific regulations, the construction of transmission lines must follow the same environmental and aesthetic guidelines that govern the construction and management of other electrical projects.¹⁷²

Rights of Way: The New York Siting Board can elect not to apply local laws that apply to transmission rights of way if it determines these laws would be an unreasonable burden to the proposed facility or to the needs and costs of ratepayers.¹⁷³

Undergrounding: No information was found on transmission undergrounding.

vi) Rhode Island

Aesthetics: Aesthetic impacts of transmission are not addressed in the current criteria.

Rights of Way: No information was found on transmission rights of way.

Undergrounding: No information was found on transmission undergrounding.

vii) Vermont

Visual Impacts: While there are no specific regulations, the construction of transmission lines must follow the same environmental and aesthetic guidelines that govern the construction and management of other electrical projects.¹⁷⁴

¹⁷¹ Edison Electric Institute, *State Generation & Transmission Siting Directory*, 2012, 59.

¹⁷² "Siting Board - Frequently Asked Questions," 2013.

¹⁷³ New York State, *New York State Public Service Law, Article 10*.

Rights of Way: The Siting Board requires notification of whether the Vermont Agency of Transportation (VTrans) or the local municipality has reviewed the placement of transmission or distribution poles set within right of ways.¹⁷⁵

Undergrounding: No information was found on transmission undergrounding.

f) Cumulative Impacts

This section highlights the Siting Board's use of cumulative impact in their decision-making criteria.

i) New Hampshire

The SEC does not use a formal method to measure cumulative impact.¹⁷⁶

ii) Connecticut

The Siting Council is required by statute to determine the likely environmental impacts of a facility alone and cumulatively with other existing facilities.¹⁷⁷

iii) Maine

There are no current standards for determining cumulative impact, but cumulative scenic impacts are being considered as a review criterion for future wind projects, and the DEP has begun to develop some guidelines.¹⁷⁸

iv) Massachusetts

The Siting Board considers the cumulative impacts on local and regional health. This may include multiple electric generation plants and other contributors.¹⁷⁹

v) New York

The Siting Board requires cumulative indicators for air quality and visual impact for every project. Applicants must identify other potential cumulative factors at the scoping stage for analysis. The Board considers the cumulative impact of all components of a project.¹⁸⁰

vi) Rhode Island

Applicants must describe the cumulative impacts of proposed facilities on the surrounding physical and social environments.¹⁸¹

¹⁷⁴ Vermont Public Service Board, *Citizens' Guide to the Vermont Public Service Board's Section 248 Process*, February 14, 2012, 14.

¹⁷⁵ State of Vermont Public Service Board, "Guide to Filing a Petition Under Section 248," 16.

¹⁷⁶ Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 33.

¹⁷⁷ Bachman, "An Introduction to (State) Energy Siting Considerations - CT."

¹⁷⁸ Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 33.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Energy Facility Siting Board, *State of Rhode Island and Providence Plantations - EFSB_Rules*, 9.

vii) Vermont

The Siting Board considers cumulative impacts as a decision criterion, but there are no formal methods for doing this.¹⁸²

g) Local and Regional Economic Impact Criteria

i) New Hampshire

Linkage between energy facilities development and economic development is recognized in the purpose of RSA 162-H. 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."¹⁸³

ii) Connecticut

The Connecticut Siting Council does not appear to consider local or regional economic impacts in its siting decisions.

iii) Maine

The Siting Board requires wind energy applicants to provide a plan establishing the environmental and economic improvements or benefits to the citizens of Maine attributable to the construction, operation and maintenance of the proposed wind energy development.¹⁸⁴

iv) Massachusetts

For proposals to construct transmission lines or intrastate gas pipelines, EFSB must find that proposed plans are consistent with resource use and development policies of the Commonwealth.¹⁸⁵

v) New York

Statutory factors that the New York Siting Board considers relating to local and regional economic and community impacts include:¹⁸⁶

- The impact of constructing and operating the facility on the region.
- Any possible impacts on community character, including pollutant levels.
- Any additional relevant social, economic, visual, environmental, or other considerations.

vi) Rhode Island

The Rhode Island Energy Facility Siting Board does not appear to consider local or regional economic impacts in its siting decisions.

¹⁸² Energy Generation Siting Policy Commission, *Siting Electric Generation in Vermont - Analysis and Recommendations*, 33.

¹⁸³ *Section 162-H:16 Findings and Certificate Issuance*.

¹⁸⁴ Maine Department of Environmental Protection, "Site Location of Development (Site Law)," 2013, 47.

¹⁸⁵ Commonwealth of Massachusetts, *Massachusetts General Laws, Chapter 164*, sec. 69J.

¹⁸⁶ "Siting Board - Frequently Asked Questions," 2013.

vii) Vermont

Under this criterion, the Petitioner must demonstrate that the Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.¹⁸⁷

¹⁸⁷ State of Vermont Public Service Board, “Guide to Filing a Petition Under Section 248,” 9.

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