

# **THE NEW HAMPSHIRE SITE EVALUATION COMMITTEE**

**AN INTRODUCTION TO THE  
COMMITTEE AND ITS PROCESS**



# **New Hampshire's Site Evaluation Committee**

## **Purpose of RSA 162-H**

- **Balance the benefits and impacts of site selection on the welfare of the population, private property, location and growth of industry, economic growth, the environment, historic sites, aesthetics, air and water quality, natural resources and public health and safety.**
- **Avoid undue delay in the construction of new facilities.**
- **Full and complete public disclosure.**
- **Ensure that the construction and operation of energy facilities is treated as an aspect of land use planning in which all environmental, economic and technical issues are resolved in an integrated fashion.**



# New Hampshire's Site Evaluation Committee

## Statewide Planning Board for Energy Projects

- **Designed to integrate the various permitting processes as well as environmental, economic and technical issues .**
- **Pre-empts local authority and ordinances.**
- **The “supermarket theory” or “one stop” theory of permitting.**



# **SEC Membership**

- **3 PUC Commissioners**
  - **PUC Chairman Chairs NHSEC**
- **DES Commissioner**
  - **Vice Chairman**
- **DOT Commissioner**
- **DRED Commissioner**
- **Commissioner, Cultural Resources**
  - **Or Director of Division of Historical Resources**
- **2 Public Members**
  - **One must be an attorney**
  - **Expertise**
  - **One alternate Public Member**

# **COUNSEL TO THE PUBLIC**

- **Appointed by the Attorney General**
- **Represents the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy**
- **All rights, responsibilities and privileges of an attorney representing a party in a formal action**

# SEC TIME FRAMES

Event	Timeframe
Pre-Application Public Information Session (in each county)	At least 30 days before filing.
Chair forwards to Agencies with jurisdiction	Expediently
Preliminary review by Committee	Expediently
Committee's determination if application is complete and acceptance if complete.	Within 60 days of filing
Designation of a subcommittee	Upon acceptance of application
One public information session (in each county)	Within 45 days after acceptance of application
One joint public hearing (in each county) with other agencies.	Within 90 days of acceptance of application
Agency preliminary reports with draft conditions	Within 150 days of acceptance of application
Agency final decisions	Within 240 days of acceptance of application
Adjudicative proceedings on the merits	After agency final decisions
Decision granting or denying Certificate	Within 365 days of acceptance of application .

# Interplay of Other State Agencies

- Agencies with “jurisdiction” and agencies with an “interest”
- Subcommittee must incorporate conditions specified by state agencies having jurisdiction under state or federal law or give notice to the agency why not.
- Subcommittee cannot issue a Certificate if any state agency having jurisdiction denies authorization within its jurisdiction.
- Denial must be based on record and explained in reasonable detail.
- Agencies with a material interest may participate as of right or by way of intervention.



# Before an Application is Filed

- **Independent System Operator (ISO)**
- **Environmental and Resource Studies**
- **Early pre-permitting meetings with relevant state and federal agencies, e.g., DES, F&G, USFW, USACE, PUC, DOT etc . . .**
- **Regional Planning Commission**
- **Municipalities**
- **Transmission companies**
- **Power Purchase Agreements**
- **Financing**
- **Eligibility for tax credits etc. . .**





# Requirements of an Application




# **Requirements of an Application (1)**

- 1. An application must contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law and shall include completed application forms for each agency.**
- 2. An Application shall also include the following:**



## **Requirements of an Application (2)**

- (a) Describe in reasonable detail the type and size of each major part of the proposed facility.**
  - (b) Identify both the preferred choice and any other choices for the site of each major part of the proposed facility.**
  - (c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment for each site proposed.**
  - (d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems.**
  - (e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility.**
  - (f) Document that written notification of the proposed project, including appropriate copies of the application, has been given to the appropriate governing body of each community in which the facility is proposed to be located.**
  - (g) Describe in reasonable detail the elements of and financial assurances for a facility decommissioning plan.**
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# **PUBLIC PARTICIPATION (1)**

## **1. Counsel for the Public**

•(603) 271-3658 (Attorney General's Office)

**2. Pre-Filing Public Information Sessions: One in each county at least 30 days before filing.**

**3. Post-Filing Public Information Sessions: One in each county within 45 days of acceptance of the application**

**4. Post-Filing Joint Public Hearing: One in each county within 90 days of acceptance of the application.**



# **PUBLIC PARTICIPATION (2)**

## **5. Additional Informational Meetings**

- **Upon request of the governing body of a community in which the facility is proposed to be located; or,**
- **Upon request of the Committee**

## **6. Written Public Comment**

- **Accepted throughout the pendency of all proceedings  
Committee must consider and weigh information and reports from the public.**



# **PUBLIC PARTICIPATION (3)**

## **7. Intervention in adjudicative proceeding**

- Rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding. NH CODE OF ADMINISTRATIVE RULES, SITE 202.11**
- Interests of justice and the orderly and prompt conduct of the proceedings will not be impaired. NH CODE OF ADMINISTRATIVE RULES, SITE 202.11**



# **SEC Standards - RSA 12-H:16, IV**

**After due consideration of all relevant information regarding the potential siting or routes of a proposed energy facility, including potential significant impacts and benefits, the site evaluation committee shall determine if issuance of a certificate will serve the objectives of this chapter. In order to issue a certificate, the committee shall find that:**



# **SEC Findings Re: Proposed Site and Facility**

## **RSA 162-H:16, IV (a)-(c)**

- **Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.**
- **Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.**
- **Will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.**
- **Issuance of a certificate will serve the public interest.**





# Other Issues (1)

## I. Eminent Domain

- The Site Evaluation Committee has no authority to exercise eminent domain.
- The federal Natural Gas Act does provide that FERC may exercise the federal government's eminent domain authority. 15 U.S.C. 717-f (h)



# Other Issues (2)

## II. Federal Pre-Emption - Natural Gas Act

Congress, in enacting the Natural Gas Act (15 USCS §§ 717 et seq.), did not envisage federal regulation of entire natural gas field to limit of federal constitutional power; rather, Act is designed to supplement state power and to produce harmonious and comprehensive regulation of industry, and neither state nor federal regulatory body is to encroach upon jurisdiction of other. *Northwest Cent. Pipeline Corp. v State Corp. Comm'n* (1989) 489 US 493, 103 L Ed 2d 509, 109 S Ct 1262, 100 OGR 269.

