

Site Evaluation Committee ("SEC")

What You Need to Know



Purpose of Site Evaluation Committee

- In a Nutshell: To approve or disapprove of proposed sites for energy facilities.



Composition of the SEC

- 9 person committee
- Three members from the Public Utilities Commission (“PUC”)
- One member of the Department of Resources and Economic Development (“DRED”)
- One member of the Department of Environmental Services (“DES”)
- One member of the Department of Transportation (“DOT”)
- One member of the Department of Historical Resources (“DHR”)
- Two members of the public, one of whom is a member of the New Hampshire bar.



Jurisdiction of SEC

- Electric generating facilities of 30MW or greater
- Electric transmission lines of 100KV or greater not already in association with an energy generating facility
- Electric transmission lines of 100KV or greater over ten miles in length over routes not occupied
- New electric transmission lines over 200KV
- Natural gas pipelines
- Gas plants
- Storage facilities that store enough energy on site to provide 7 days of continuous operation at a rate equivalent to the operation of a 30MW plant
- Refineries



Jurisdiction Over Smaller Facilities

- By its own discretion or can be petitioned to exercise jurisdiction over smaller facilities at least 5MWs in size
- This includes renewable energy plants, including wind, solar, geothermal, biomass, and more



Who Can Intervene in Front of the SEC?

- Intervention can be mandatory (parties can intervene as a matter of right) or permissive (the SEC has discretion over whether a party may intervene)



Mandatory Intervention

- People that have an interest in land over or under which a project lies or is proposed to pass
 - Property owners (fee simple)
 - Owners of conservation easements
 - Abutting property owners, including those who abut a road a project is proposed to follow
 - Owners of abutting conservation easements



Mandatory Intervention Cont.

- People that have an interest in land over or under which a project lies or is proposed to pass
 - Governmental entities of Towns involving a project
 - Select boards, planning boards, and conservation commissions
 - Governmental entities of abutting Towns



Permissive Intervention

- The following types of intervenors are likely to be granted discretionary intervention:
 - Non abutting property owners within several miles of the project, especially if the project is visible
 - Non-profit organizations, especially if they possess special, helpful knowledge or if their mission would be directly affected by the project
 - Former town officials of Project Towns
 - Business competitors of the Project



Possibly No Intervention

- The following types of intervenors are likely to be denied intervention:
 - Property owners who are more than several miles from the project
 - Interested individuals without property in close proximity to the project with only general concerns about the project



Grouping of Intervenors

- SEC is likely to group similarly situated intervenors
- Group will likely have to designate a group representative
- Status of *pro-se* versus represented-by-counsel may be a factor in grouping



Grouping as a Strategy

- The SEC may be more inclined to allow intervention from would-be intervenors that have organized themselves into groups before filing a petition to intervene



Antrim Wind

- Antrim Conservation Commission was allowed to intervene
- The SEC may have applied a “balancing” test
- The SEC determined the test weighed in favor of intervention because of the Antrim Conservation Commission’s specialized knowledge and because of the proximity of conservation land



Antrim Wind Balancing Test

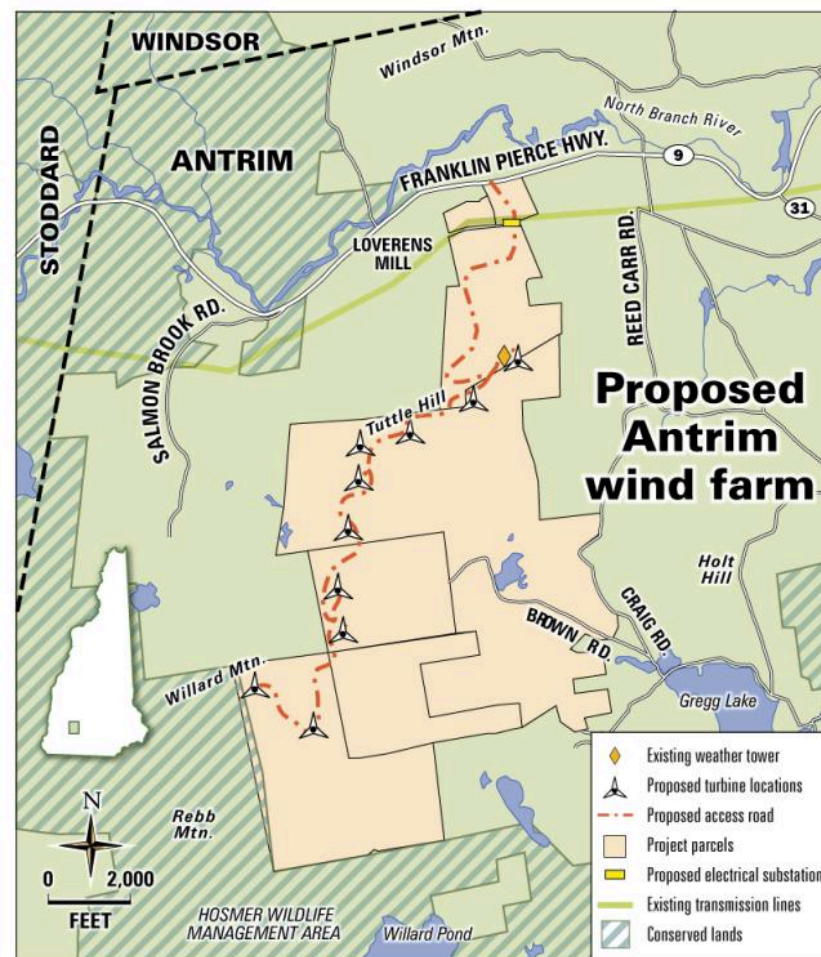
- It is unclear if SEC's "balancing" discussion meant the SEC was considering not allowing the Conservation Commission to intervene, or
- If the SEC included the "balancing" discussion simply as a tool to better explain the advantages of allowing the Conservation Commission to intervene
- Based on precedent the latter appears most likely



Antrim Wind Cont.

- The abutting Town of Stoddard's Conservation Commission was also allowed to intervene
- Stoddard has conservation land that abuts Antrim's conservation land
- Stoddard cited the visibility of the wind facility from Stoddard conservation land as a reason for intervention
- The SEC, however, did not mention visibility as a reason for allowing the Stoddard Conservation Commission's intervention





Source: Antrim Wind Energy, LLC; New Hampshire Site Evaluation Committee; NH Granit Data Mapper
 CHARLOTTE THIBAUT / Monitor staff



What an Intervenor Needs to Prove

- Whether to issue a certificate of site: the SEC analyzes whether the facility meets the criteria outlined in RSA 162-H:16
- It is important that an intervenor, either in support of or in opposition to a project, ties their stance to criteria outlined in the statute.



RSA 162-H:16, IV reads, “[i]n order to issue a certificate, the committee shall find that:

- (a) The applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate;
- (b) The site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies;



RSA 162-H:16, IV cont.

- (c) The site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety;
- (d) Repealed; and
- (e) Issuance of a certificate will serve the public interest.”



Takeaway Point

- When an intervenor simply states their position in favor or opposition to a project, this is almost meaningless!
- Intervenors must tie their position to the criteria listed in RSA 162-H:16, IV or demonstrate a “substantial interest” that will be affected by the SEC’s decision
- This will allow an intervenor to make a meaningful contribution to the SEC’s decision making process

