

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE SITE EVALUATION COMMITTEE**

**DOCKET NO. SEC 2024-01**

**JOINT PETITION TO CHANGE OWNERSHIP OF THE PORTLAND NATURAL GAS  
TRANSMISSION SYSTEM**

**Motion for Clarification that Proceeding is Administrative**

North Haven Infrastructure Partners III (AIV-B) SCSp (“NHIP III”) an affiliate of Morgan Stanley Infrastructure Inc. and BlackRock Global Infrastructure Fund IV, SCSp, an affiliate of BlackRock Financial Management, Inc. (“BGIF IV”, together with NHIP III, the “Buyers”), TC Pipelines, LP, a Delaware limited partnership (“TCP”) and Northern New England Investment Company, Inc., a Vermont corporation (“NNEIC”, together with TCP, the “Sellers” and collectively with the Buyers, the “Petitioners”), by and through their undersigned counsel, seek clarification of the Subcommittee’s Order and Notice of Public Hearing and Procedural Order (“Order”) issued on April 24, 2024. The Petitioners seek clarification confirming that, pursuant to RSA 162-H:8,VI, this proceeding is administrative in nature, i.e., not adjudicative. Accordingly, the Subcommittee proceeding on May 31, 2024, should be a public meeting, not an adjudicative hearing, and, correspondingly, intervention pursuant to RSA 541-A:32 would be inapplicable. In support of this Motion, the Petitioners state as follows:

1. In 2023, the New Hampshire Legislature amended RSA 162-H, revising the process for handling petitions to change ownership or transfer certificates. Exhibit 1, HB 281 amending RSA 162-H:8; *see also* RSA 162-H:8, as amended by 2023 Laws of New Hampshire Chapter 233. Prior proceedings were conducted as adjudications pursuant to RSA 541-A:31 *et seq.* As amended, RSA 162-H:8,VI now requires the Committee to “*administratively* approve

changes of ownership and transfers of certificates within 90 days of a petition.” RSA 162-H:8 (2024) [emphasis added].

2. The legislative history confirms the Legislature’s intent to simplify the review process. For example, the New Hampshire Department of Energy, testifying in support of House Bill 281 (2023), applauded the section of the bill concerning “[a] change in ownership or a transfer of a certificate and administrative change which streamlines that process.” Exhibit 2, Hearing Before the Senate Energy and Natural Resources Committee, May 9, 2023. Representative Michael Vose also testified in support of “the streamlining of the Site Evaluation Committee.” Id. The addition of the phrase “administratively approve” evidences a clear Legislative intent to require that changes in ownership, as in this docket, be handled going-forward as administrative proceedings and no longer as adjudicative proceedings.

3. The Administrative Procedure Act, RSA 541-A, only provides for intervention in adjudicative proceedings, i.e. contested cases. *See* RSA 541-A:30-a, III (requiring that administrative rules governing adjudicative proceedings include rules for intervention); *see generally* RSA 541-A:31 (establishing authority of agencies to conduct adjudicative proceedings). There is good reason for this approach. The role of intervenors in contested cases, with the rights of parties, is expressly adjudicative in nature. Unless conditioned by the presiding officer pursuant to RSA 541-A:32, III, intervenors enjoy all of the same rights and responsibilities as parties to a proceeding. *See* Site 102.31 (defining “Party” to include “all intervenors in a proceeding, subject to any limitations established pursuant to RSA 541-A:32, III.”). For example, RSA 541-A:32, governing intervention, provides for the use of “cross-examination” and “presentations of evidence and argument”. RSA 541-A:32, III; *see also* Site 202.11(d). Clearly, when the Legislature determined that changes of ownership and transfers of

certificates would be determined administratively, it did not intend that the SEC would continue to make such determinations by employing the trappings of an adjudicative proceeding, which trappings could open the door to arguments for rehearing and appeal as an unintended consequence.

4. Moreover, RSA 541-A:32 authorizes the presiding officer to grant intervention only where “the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” RSA 541-A:32, I(c); *see* Site 202.11(b)(3). The statute’s emphasis on the “orderly and prompt *conduct of the proceedings*” is a recognition that adjudicative proceedings, in which intervenors are afforded the full rights and responsibilities of parties, can be time consuming and unwieldy affairs. By contrast, in an administrative proceeding there would be no substantive role for “intervenors” to play that is different than that of the general public, who have the right to comment on matters before the SEC. *See* Site 202.25 (providing members of the public who do not have intervenor status with an opportunity to state their positions).

5. The Order appropriately sets forth the SEC’s charge to “administratively approve changes of ownership and transfers of certificate[s] within 90 days”; yet, it also sets May 17, 2024 as the deadline for petitions to intervene. The Petitioners submit that because intervention is only available in adjudicative cases, and this is an administrative proceeding, intervention does not apply.

WHEREFORE, the Petitioners respectfully request that the Subcommittee:

- A. Issue a superseding notice that does not provide for intervention and clarifies that the May 31, 2024 proceeding will be a public meeting and not an adjudicative hearing; and
- B. Grant such additional relief as the Subcommittee deems just and appropriate.

Respectfully Submitted,

North Haven Infrastructure Partners III (AIV-B) SCSp &  
BlackRock Global Infrastructure Fund IV, SCSp

By Their Attorneys,

McLANE MIDDLETON  
PROFESSIONAL ASSOCIATION

Dated: May 10, 2024

By: /s/ Barry Needleman

Barry Needleman, Bar No. 9446  
Thomas Getz, 923  
Viggo C. Fish, Bar No. 276579  
11 South Main Street, Suite 500  
Concord, NH 03301  
(603) 226-0400  
barry.needleman@mclane.com  
viggo.fish@mclane.com

TC Pipelines, LP & Northern New England Investment  
Company, Inc.

By Their Attorneys,

BERNSTEIN, SHUR, SAWYER & NELSON, P.A.

Dated: May 10, 2024

By: /s/ Mark Dean

Mark Dean, NH Bar No. 609  
Jefferson Mill Building  
670 North Commercial Street  
Suite 108  
Manchester, NH 03101  
(603) 665-8860 (direct)  
[mdean@bernsteinshur.com](mailto:mdean@bernsteinshur.com)

By: /s/ David Littell

David Littell, ME Bar No. 7530  
100 Middle Street  
Portland, ME 04104  
(207) 228-7156 (direct)  
[dlittell@bernsteinshur.com](mailto:dlittell@bernsteinshur.com)

**Certificate of Service**

I hereby certify that the foregoing Motion was electronically filed with the New Hampshire Site Evaluation Committee on May 10, 2024, and one hard copy will be hand-delivered to the New Hampshire Site Evaluation Committee.

/s/ Barry Needleman

Barry Needleman

CHAPTER 233  
HB 281-FN - FINAL VERSION

05/18/2023 1879s  
29Jun2023... 2226CofC  
29Jun2023... 2250EBA

2023 SESSION

23-0172  
10/05

HOUSE BILL **281**

AN ACT relative to least cost integrated resource plans of utilities; municipal hosts for purposes of limited electrical energy producers; the cost of compliance with disclosure of electric renewable portfolio standards; repealing the energy efficiency and sustainable energy board; and procedures for energy facility siting by the site evaluation committee.

SPONSORS: Rep. Plett, Hills. 29; Rep. Notter, Hills. 12; Rep. Harrington, Straf. 18

COMMITTEE: Science, Technology and Energy

AMENDED ANALYSIS

This bill:

- I. Repeals the requirement for electric and natural gas utilities to submit least cost integrated resource plans with the public utilities commission and have the commission evaluate the plans and maintain them on file.
- II. Removes the requirement that a municipal host under the limited electrical energy producers act be located in the same municipality as all group members.
- III. Requires the department of energy to provide an estimated annual cost of compliance with electric renewable portfolio standards in customer's electric bills.
- IV. Repeals the establishment of the energy efficiency and sustainable energy board and transfers some of the board's responsibilities to the department of energy.
- V. Makes various changes to the energy facility site evaluation committee and permitting process.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

05/18/2023 1879s  
29Jun2023... 2226CofC  
29Jun2023... 2250EBA 23-0172  
10/05

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT relative to least cost integrated resource plans of utilities; municipal hosts for purposes of limited electrical energy producers; the cost of compliance with disclosure of electric renewable portfolio standards; repealing the energy efficiency and sustainable energy board; and procedures for energy facility siting by the site evaluation committee.

233:1 Repeal; Public Utilities Commission; Integrated Least Cost Resource Plans. RSA 378:38 through RSA 378:40, relative to plans and compliance procedures for filing least cost integrated resource plans with the public utilities commission, are repealed.

233:2 Limited Electrical Energy Producers Act; Definitions. Amend RSA 362-A:1-a, II-c to read as follows:

II-c. "Municipal host" means a customer generator with a total peak generating capacity of greater than one megawatt and less than 5 megawatts used to offset the electricity requirements of a group consisting exclusively of one or more customers who are political subdivisions, provided that all customers are located within the same utility franchise service territory. ~~[A municipal host shall be located in the same municipality as all group members if the facility began operation after January 1, 2021.]~~ A municipal host may be owned by either a public or private entity. For this definition, "political subdivision" means the state of New Hampshire or any city, town, county, school district, chartered public school, village district, school administrative unit, or any district or entity created for a special purpose administered or funded by any of the above-named governmental units.

233:3 Public Utilities Commission; Disclosure of Cost of Compliance. Amend RSA 378:49, II(c) to read as follows:

(c) Provide such information to electric customers at least annually in conjunction with billing, whether distributed through the mail or online, or other mailed or online communication to customers, as approved by the ~~[commission]~~ **department**, including the ~~[commission's]~~ **department's** estimated cost on a per kilowatt-hour basis **and estimated annual cost for the average residential ratepayer** for compliance with the electric renewable portfolio standard under RSA 362-F for the prior compliance year. The estimated cost for the compliance year shall be calculated once per year and provided in the customer's December bill, whether distributed through the mail or online. Each customer's bill shall identify the cost as an estimate and provide a link to information about the electric renewable portfolio standard, including its benefits, at the ~~[public utilities commission's]~~ **department's** website. **Utilities shall also be required to include an annual estimated cost to be calculated by multiplying the average per kilowatt hour cost of the electric renewable portfolio standard under RSA 362-F for the prior compliance year by the average residential monthly consumption of 625 kilowatt hours.** The costs for a utility to provide this information shall be recovered from electric customers through the distribution rates of the respective electric distribution utility.

233:4 New Paragraphs; Department of Energy; Establishment; Purpose. Amend RSA 12-P:2 by inserting after paragraph IV the following new paragraphs:

V. The department shall develop strategies, concepts, and tools to enhance outreach and education programs to increase knowledge and awareness about energy efficiency and sustainable energy among New Hampshire residents and businesses.

VI. The department shall expand upon the state government's efficiency programs to ensure that the state is providing leadership on energy efficiency and sustainable energy including reduction of its energy use and fuel costs.

233:5 Restructuring Policy Principles. Amend RSA 374-F:3, VI-a(b) to read as follows:

(b) Up to \$400,000 of system benefits charge funds collected annually shall be used to promulgate the benefits of energy efficiency according to guidelines developed as specified in RSA ~~[125-O:5-a, I(e)]~~ **12-P:2, V** as determined by the department of energy.

233:6 Repeal. RSA 125-O:5-a, relative to energy efficiency and sustainable energy board, is repealed.

233:7 Definitions. Amend RSA 162-H:2 to read as follows:

162-H:2 Definitions.

I. "Acceptance" means a determination by the committee that it finds that the application is complete and ready for consideration.

I-a. "Administrator" means the administrator of the committee established by this chapter.

I-b. "Affected municipality" means any municipality or unincorporated place in which any part of an energy facility is proposed to be located and any municipality or unincorporated place from which any part of the proposed energy facility will be visible or audible.

II. ~~[[Repealed.]]~~

~~II-a.]~~ "Certificate" or "certificate of site and facility" means the document issued by the committee, containing such terms and conditions as the committee deems appropriate, that authorizes the applicant to proceed with the proposed site and facility.

III. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site of the proposed facility, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

~~IV. [Repealed.]~~

~~V.]~~ IV. "Committee" means the site evaluation committee established by this chapter.

V. ***"Department" means the department of energy.***

VI. "Energy" means power, including mechanical power, useful heat, or electricity derived from any resource, including, but not limited to, oil, coal, and gas.

VII. "Energy facility" means:

(a) Any industrial structure that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, including ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure. This shall include, but not be limited to industrial structures such as oil refineries, gas plants, equipment and associated facilities designed to use any, or a combination of, natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, plants for coal conversion, onshore and offshore loading and unloading facilities for energy sources and energy transmission pipelines that are not considered part of a local distribution network.

(b) Electric generating station equipment and associated facilities designed for, or capable of, operation at any capacity of 30 megawatts or more.

(c) An electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility under subparagraph (b), over a route not already occupied by a transmission line or lines.

(d) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length, over a route not already occupied by a transmission line.

(e) A new electric transmission line of design rating in excess of 200 kilovolts.

(f) A renewable energy facility.

(g) An electrical storage facility with a peak storage capacity of 30 megawatt-hours or greater.

(h) Any other facility and associated equipment that the committee determines requires a certificate, consistent with the findings and purposes of RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI.

~~VII-a.]~~ VIII. "Energy facility proceeding time and expenses" means time spent in hearings, meetings, preparation, and travel related to any application or other proceeding before the committee concerning an energy facility, either existing or proposed, and related reasonable out-of-pocket expenses.

~~VIII.]~~ IX. "Filing" means the date on which the application is first submitted to the committee.

~~IX-a.]~~ X. "Person" means any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization.

~~X. [Repealed.]~~

~~X-a. [Repealed.]~~

XI. "Petitioner" means a person filing a petition meeting any of the following conditions:

(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 a host community or 2 or more governing bodies of abutting communities.

(d) A petition filed by the potential applicant.

XII. "Renewable energy facility" means electric generating station equipment and associated facilities designed for, or capable of, operation at a nameplate capacity of greater than 30 megawatts and powered by wind energy, geothermal



energy, hydrogen derived from biomass fuels or methane gas, ocean thermal, wave, current, or tidal energy, methane gas, biomass technologies, solar technologies, or hydroelectric energy. "Renewable energy facility" shall also include electric generating station equipment and associated facilities of 30 megawatts or less nameplate capacity, but at least 5 megawatts which the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1, either on its own motion or by petition of the applicant or 2 or more petitioners as defined in RSA 162-H:2, XI, 233:8 Powers and Duties of Committee. Amend RSA 162-H:4, I through III-b to read as follows:

I. The committee shall:

(a) Evaluate and issue any certificate under this chapter for an energy facility.

(b) Determine the terms and conditions of any certificate issued under this chapter.

~~[(c) Monitor the construction and operation of any energy facility granted a certificate under this chapter to ensure compliance with such certificate.~~

~~[(d) Enforce the terms and conditions of any certificate issued under this chapter.]~~

**(c) Adjudicate enforcement matters.**

~~[(e)] (d)~~ Assist the public in understanding the requirements of this chapter.

II. The committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate and in addition to the requirements under RSA 91-A, ensure adequate and timely public notice of no less than 7 calendar days.

~~[[III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate under this chapter to the administrator or such state agency or official as it deems appropriate, but shall ensure that the terms and conditions of the certificate are met. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate holder as are relevant to the terms or conditions of the certificate.]~~

~~[[III-a.] III.~~ The committee may delegate to the administrator or such state agency or official as it deems appropriate the authority to specify the use of any technique, methodology, practice, or procedure approved by the committee within a certificate issued under this chapter, or the authority to specify minor changes in the route alignment to the extent that such changes are authorized by the certificate for those portions of a proposed electric transmission line or energy transmission pipeline for which information was unavailable due to conditions which could not have been reasonably anticipated prior to the issuance of the certificate.

~~[[III-b.] III-a.~~ The committee may not delegate its authority or duties, except as provided under this chapter.

233:9 Application for Certificate. Amend RSA 162-H:7, IV-IX to read as follows:

IV. Each application shall contain sufficient information to satisfy the application requirements of each state agency having jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each agency's completed application forms, **which shall be contemporaneously filed with the state agency having jurisdiction.** ~~[Upon the filing of an application, the committee shall expeditiously forward a copy to the state agencies having permitting or other regulatory authority and to other state agencies identified in administrative rules.]~~

Upon receipt of a copy, each agency shall conduct a preliminary review to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of the state agencies having permitting or other regulatory authority, that agency shall, in writing, notify the committee **and the applicant** of that fact and specify what information the applicant must supply; ~~thereupon the committee shall provide the applicant with a copy of such notification and specification].~~ Notwithstanding any other provision of law, for purposes of the time limitations imposed by this section, any application made under this section shall be deemed not accepted either by the committee or by any of the state agencies having permitting or other regulatory authority if the applicant is reasonably notified that it has not supplied sufficient information for any of the state agencies having permitting or other regulatory authority in accordance with this paragraph.

V. Each application shall also:

(a) Describe in reasonable detail the type and size of each major part of the proposed facility.

- (b) Identify both the applicant's preferred choice and other alternatives it considers available for the site and configuration of each major part of the proposed facility and the reasons for the applicant's preferred choice.
- (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 affected municipality, as defined in RSA 162-H:2, I-b. The application shall include a list of the affected municipalities.
- (g) Describe in reasonable detail the elements of and financial assurances for a facility decommissioning plan.
- (h) Provide such additional information as the committee may require to carry out the purposes of this chapter.

VI. The committee shall decide whether or not to accept the application *as administratively complete* within 60 days of filing. *Notice of acceptance of the application shall be simultaneously provided to the applicant and the applicable state agency.* If the committee rejects an application because it determines it to be administratively incomplete, the applicant may choose to file a new and more complete application or cure the defects in the rejected application within 10 days of receipt of notification of rejection.

VI-a. Public information sessions shall be held in accordance with RSA 162-H:10.

VI-b. All state agencies having permitting or other regulatory authority shall report their progress to the committee within 150 days of the acceptance of the application, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision on the parts of the application that relate to its permitting or other regulatory authority.

VI-c. All state agencies having permitting or other regulatory authority shall make and submit to the committee a final decision on the parts of the application that relate to its permitting and other regulatory authority, no later than 240 days after the application has been accepted.

VI-d. Within 365 days of the acceptance of an application, the committee shall issue or deny a certificate for an energy facility.

~~VI-e. [Repealed.]~~

~~VII. Notwithstanding any other provision of law, the application shall be in lieu of separate applications that may be required by any other state agencies.~~

~~VIII.] VII.~~ This chapter shall not preclude an agency from imposing its usual statutory fees.

~~[IX.] VIII.~~ The applicant shall immediately inform the committee *and applicable state agency* of any substantive modification to its application.

233:10 Disclosure of Ownership. Amend RSA 162-H:8 to read as follows:

162-H:8 Disclosure of Ownership. Any application for a certificate, *or for change in ownership and transfer of certificate*, shall be signed and sworn to by the person or executive officer of the association or corporation making such application and shall contain the following information:

- I. Full name and address of the person, association, or corporation.
- II. If an association, the names and residences of the members of the association.
- III. If a corporation, the name of the state under which it is incorporated with its principal place of business and the names and addresses of its directors, officers and stockholders.
- IV. The location or locations where an applicant is to conduct its business.
- V. A statement of assets and liabilities of the applicant and other relevant financial information of such applicant.

*VI. The committee shall administratively approve changes of ownership and transfers of certificates within 90 days of a petition if it determines the new certificate holder 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.*

233:11 Public Hearing; Studies; Rules. Amend RSA 162-H:10, I-c to read as follows:

I-c. Within 90 days after acceptance of an application for a certificate, pursuant to RSA 162-H:7, the site evaluation committee shall hold at least one public hearing in each county in which the proposed facility is to be located and the applicant shall publish a public notice not less than 14 days before such hearing in one or more newspapers having a

regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facilities. Not fewer than 10 days before such session, the applicant shall provide a copy of the public notice to the presiding officer of the committee. The applicant shall arrange for a transcript of such session to be prepared. ~~[The committee shall also send a copy of the public notice, not less than 14 days before the hearing, by first class mail to the governing body of each affected municipality. The]~~ ***Except for state agencies and programs that are required by state or federal law or regulation to comply with program specific public notice and public hearing requirements, the public hearings [shall] may be joint hearings, with representatives of the agencies that have permitting or other regulatory authority over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. [Notwithstanding any other provision of law,] The hearing [shall] may be a joint hearing with the other state agencies [and shall be in lieu of all hearings otherwise required by any of the other state agencies]; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of the other state agencies to join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter.***

233:12 Enforcement. Amend RSA 162-H:12 to read as follows:

162-H:12 ***Monitoring and Enforcement.***

I. ~~[Whenever the committee, or the administrator as designee, makes a preliminary determination that any term or condition of any certificate issued under this chapter is being violated, it shall, in writing, notify the certificate holder of the specific violation and order 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, or impose a fine not to exceed \$10,000 per day until the violation is corrected. Except for emergencies, prior to any 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.]~~ ***The department shall monitor the construction and operation of any energy facility granted a certificate under this chapter or prior law to ensure compliance with such certificate and enforce the terms and conditions of any such certificate. With the exception of the authority retained by the state agencies in accordance with paragraph V, the department may delegate the authority to monitor the construction or operation of any energy facility granted a certificate under this chapter to such state agency or official as it deems appropriate, but shall ensure that the terms and conditions of the certificate are met. Any authorized representative or delegate of the department shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.***

II. ***Whenever the department administratively determines, on its own or in response to a complaint, that any term or condition of any certificate issued under this chapter or prior law is being violated, it shall, in writing, notify the certificate holder of the specific violation and order 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 department shall notify the committee, which may suspend the person's certificate, or impose a fine not to exceed \$10,000 per day until the violation is corrected. Except for emergencies, prior to any suspension or imposition of a fine, the committee shall give written notice of its consideration of suspension or imposition of a fine and of its reasons therefor and shall provide opportunity for a prompt hearing.***

III. ~~[The]~~ ***Upon petition of the department, the*** committee may suspend a certificate if the committee determines that a person has made a material misrepresentation in the application, or in the supplemental or additional statements of fact, or studies required of the applicant, or if the committee determines that the person has violated the provisions of this chapter, or any rule adopted under this chapter. Except for emergencies, prior to any suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide an opportunity for a prompt hearing.

~~III. The]~~ ***IV. Upon petition of the department, the*** committee may revoke any certificate that is suspended after the person holding the suspended certificate has been given at least 90 days' written notice of the committee's consideration of revocation and of its reasons therefor and has been provided an opportunity for a full hearing.

~~IV. The]~~ ***V. Notwithstanding any other provision of this chapter, each of the other state agencies having permitting, or other regulatory authority shall retain all of its powers and duties of enforcement.***

~~VI.~~ VI. The full amount of costs and expenses incurred by the *department and* committee in connection with any enforcement action against a person holding a certificate, including any action under this section and any action under RSA 162-H:19, in which the person is determined to have violated any provision of this chapter, any rule adopted by the *department or* committee, or any of the terms and conditions of the issued certificate, shall be assessed to the person and shall be paid by the person to the committee. Any amounts paid by a person to the committee pursuant to this paragraph shall be deposited in the site evaluation committee fund established in RSA 162-H:21.

**VII. The department may adopt rules in furtherance of its monitoring and enforcement responsibilities under this chapter.**

233:13 Records. Amend RSA 162-H:13 to read as follows:

162-H:13 Records. Complete verbatim records shall be kept by the committee of all hearings, and records of all other actions, proceedings, and correspondence of the committee, including submittals of information and reports by members of the public, shall be maintained, all of which records shall be open to the public inspection and copying as provided for under RSA 91-A. ~~[Records]~~ **Committee records** regarding pending applications for a certificate shall also be made available on a website.

233:14 Findings and Certificate Issuance. Amend RSA 162-H:16 to read as follows:

162-H:16 Findings and Certificate Issuance.

I. The committee shall incorporate in any certificate such terms and conditions ***in their entirety and without addition, deletion, or change***, as may be specified to the committee by any of the state agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate under this chapter if any of the state agencies denies authorization for the proposed activity over which it has permitting or other regulatory authority. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency.

II. Any certificate issued by the site evaluation committee shall be based on the record. The decision to issue a certificate in its final form or to deny an application once it has been accepted shall be made by a majority of the full membership. A certificate shall be conclusive on all questions of siting, land use, air and water quality.

III. The committee may consult with interested regional agencies and agencies of border states in the consideration of certificates.

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:

(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.

(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.]~~

(e) Issuance of a certificate will serve the public interest.

~~V. [Repealed.]~~ **The committee shall issue an order granting or denying a certificate. Such order shall summarize issues of concern expressed during public information sessions and hearings to ensure that the public's voice has been heard and recorded.**

VI. A certificate of site and facility may contain such reasonable terms and conditions, including, but not limited to the authority to require bonding, 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.

VII. The committee may condition the certificate upon the results of ***applicable federal approvals or appeal processes and*** required federal and state agency studies whose study period exceeds the application period.

233:15 Fund Established; Funding Plan. Amend RSA 162-H:21 to read as follows:

162-H:21 Fund Established; Funding Plan. There is hereby established in the office of the state treasurer a nonlapsing, special fund to be known as the site evaluation committee fund. All application and other filing fees received by the committee under RSA 162-H:8-a shall be deposited in the fund. All moneys in the fund shall by continually appropriated to

the site evaluation committee and shall only be used to pay for operating costs of the committee, including, but not limited to, compensation and reimbursements made under RSA 162-H:22 for energy facility proceeding time and expenses, and administrator and other committee support costs under RSA 162-H:3, VII and RSA 162-H:3-a, except those costs paid by applicants under RSA 162-H:10, ***and all monitoring and enforcement costs of the department, except those costs charged directly to applicants or owners.*** In the event lawful expenditures ***of the committee and department*** in a fiscal year are greater than the total fees and charges held in the site evaluation committee fund, the chair of the site evaluation committee[;] may request, with prior approval of the fiscal committee, that the governor and council authorize additional funding from general funds not otherwise appropriated. ***Notwithstanding any other provision of law, the department may engage additional technical, legal, or administrative support to fulfill the requirements of this chapter, the cost of which shall be charged directly to the applicant or energy facility owner.***

233:16 New Section; Transition. Amend RSA 162-H by inserting after section 23 the following new section:

162-H:24 Transition. On the effective date of this section, the department shall assume responsibility for all monitoring and enforcement activities under this chapter, except for proceedings opened by the committee prior to the effective date of this section, including enforcement complaints, in which case the proceeding shall continue pursuant to any existing procedural order of the committee.

233:17 Role of State Agencies. Amend RSA 162-H:7-a, I(c)-(d) to read as follows:

(c) Identify issues of concern on the proposal or permit request or notify the committee that the application raises no issues of concern; ***and***

(d) When issues of concern are identified by the agency or committee, designate one or more witnesses to appear before the committee at a hearing to provide input and answer questions of parties and committee members[~~and~~].

233:18 Repeal. RSA 162-H:7-a, I(e), relative to role of state agencies, is repealed.

233:19 Effective Date. This act shall take effect 60 days after its passage.

Approved: August 08, 2023

Effective Date: October 07, 2023

**Senate Energy and Natural Resources Committee**  
*Nikolas Liamos 271-7875*

**Amendment #1657s to HB 281**, relative to least cost integrated resource plan of utilities.

**Hearing Date:** May 9, 2023

**Time Opened:** 10:33 a.m.

**Time Closed:** 12:00 p.m.

**Members of the Committee Present:** Senators Avard, Pearl, Birdsell, Watters and Altschiller

**Members of the Committee Absent :** None

**Bill Analysis:** This bill repeals the requirement for electric and natural gas utilities to submit least cost integrated resource plans with the public utilities commission and have the commission evaluate the plans and maintain them on file.

---

**Sponsors:**

Rep. Plett

Rep. Notter

Rep. Harrington

---

**Who supports the bill:** In total, 9 individuals signed in in support of Amendment #1657s. The full sign in sheets are available upon request to the Legislative Aide, Nikolas Liamos (nikolas.liamos@leg.state.nh.us).

**Who opposes the bill:** In total, 92 individuals signed in in opposition of Amendment #1657s. The full sign in sheets are available upon request to the Legislative Aide, Nikolas Liamos (nikolas.liamos@leg.state.nh.us).

**Who is neutral on the bill:** In total, 2 individuals signed in as neutral of Amendment #1657s. The full sign in sheets are available upon request to the Legislative Aide, Nikolas Liamos (nikolas.liamos@leg.state.nh.us).

**Summary of testimony presented in support:**

**Senator Kevin Avard**

**Senate District 12**

- Senator Kevin Avard introduced Amendment #1657s.
- Sen. Avard stated that this amendment seeks to move forward provisions from five different bills, and will streamline our state's regulatory duties, and allow for municipalities to take greater advantage of net metering.

- Sen. Avard added that this amendment will also enhance cost transparency and streamline our state's energy facility siting.
- Sen. Avard stated that these changes are vital to enable public involvement in the siting process, offer project developers a more defined and predictable approval process, and establish a robust regulatory structure for the ongoing monitoring and enforcement of energy facilities.
- Sen. Avard explained the different sections of Amendment #1657s.
  - Section 1- House Bill 281 – repeal of the Least Cost Integrated Resource Plan
    - Under current state statute, New Hampshire electric and natural gas utilities are required to file a Least Cost Integrated Resource Plan, that looks at a forecast of future demands, supply resources, and demand programs at the lowest cost consistent with the reliable supply of electricity to the customers.
    - These plans undergo review and approval by the Public Utilities Commission (PUC).
    - The Electric Restructuring Act in the 1990s made these plans outdated.
  - Section 2 – Senate Bill 68 – Municipal Host Change.
    - The goal is to allow municipal hosts to have a generator of greater than one megawatt but less than five megawatts.
    - However, current statute contains language that prohibits smaller municipalities from being eligible in these projects.
    - This section would remove that language and allow for smaller municipalities to become eligible.
  - Section 3 – 2018 House Bill 251 – Renewable Portfolio Standard (RPS) Transparency.
    - Section three expands the transparency by requiring the utilities to also post the estimated annual cost for the average residential ratepayer on the December bill.
    - This average will be calculated by taking the average per kilowatt hour cost of the RPS and multiplying it by the average residential monthly consumption of 625 kw an hour.
    - This measure is tailored to prevent cost utility billing upgrades and advance the goal of transparency around the consumer cost.
  - Sections 4-6 – Repealing House Bill 622-FN – Repealing the Energy Efficiency and Sustainable Energy Board (EESB Board)
    - In 2022, HB 549 was passed which set in statute the course by which the systems benefit charge, the charge that electric customers pay to fund these programs changed, and how the PUC is to evaluate these energy efficiency programs.
    - These issues overlap with much of the decision and work of the Energy and Efficiency Sustainability Energy Board has conducted over the recent years.
    - Section four through six repeals the EESB board and in its entirety by providing up to \$400,000 in annual funding to the Department of Energy to develop strategies, concepts, tools and other efforts to promote the benefit of energy efficiency.

- This change will remove an outdated board but ensure that the department will continue the work to make sure that New Hampshire residents, businesses, institutions are aware of the meaningful impact that the energy efficiency can bring.
- Sections 7-18 – House Bill 609-FN – The Site Evaluation Committee Reform
  - The amendment will make substantial, incremental improvements to the process and we will be able to take more time to settle the contentious issues which we will have.

### Senator David Watters

#### Senate District 4

- Senator David Watters stated that he is a cosponsor on this Amendment because he would like to see important provisions from other bills that may have been killed, be implemented into another bill so that they might pass and become statute.
- Senator Watters stated that HB 609 got us into a very important direction in terms of new regulations in the sighting of new landfills.
- Senator Watters stated that we are currently in a period of the biggest transfer of energy supplies and distribution since the early 1990s.
- Senator Watters stated that he would like to provide context for this Amendment.
  - The last few years have seen enormous changes on new distributive energy resources on net metering. On solar and wind, on community power, and now we're looking towards offshore wind and hydrogen, which will similarly transform our energy picture.
  - And then of course, grid modernization as well. And we're also in the context of great spikes in energy costs over the last year, plus extraordinary opportunities have come forward with the passing of the Federal Transportation Act dollars and now the IRA, which is going to provide up to \$350,000,000,000 of investment.
  - And then the commitment started out at 30 by 30 gigawatts of offshore wind, but now it's 45 gigawatts by 2030 of offshore wind. And that has huge implications for the energy supply for New Hampshire.
- Senator Watters added that if we do repeal the Least Cost Integrated Resource Plan, we need to be planning how new resources will affect future projects and our state.
- Senator Watters stated that he is supportive of Section 2, which expands net metering eligibility.
  - Senator Watters added that he is also very supportive of the provisions that promote transparency for the customers.

### Representative Michael Vose

#### Rockingham County, District 5

- Representative Michael Vose stated that he is supportive of the regulatory reform, removing unnecessary and costly regulations, and the improvements in transparency.
  - Rep. Vose added that he is also supportive of the streamlining of the Site Evaluation Committee.
- Rep. Vose stated that with the statutory changes in previous years, the EESE Board has been essentially replaced and does not have much authority in 2023.



- Rep. Vose added that Clean Energy New Hampshire has essentially replaced the functions of the EESE Board.
- Senator Watters asked Rep. Vose if he still believed that statutes, RSA 378:38-40 should still be repealed (see the hearing report for HB 281).
  - Rep. Vose confirmed that he still thinks those statutes should be repealed.
- Senator Altschiller asked Rep. Vose to explain the public notice sections.
  - Rep. Vose explained that a public notice for hearings shall be published to the public not less than 14 days before the hearing.

**Mark Sanborn**

**Assistant Commissioner, New Hampshire Department of Environmental Services**

- Mark Sanborn stated that he is in strong support of the provision concerning the Site Evaluation Committee (SEC).
- Mr. Sanborn stated that the staff of the SEC are overworked and lack resources.
- Mr. Sanborn stated that he is very supportive of the SEC being absorbed by the enforcement wing of the Department of Energy.

**Drew Biemer**

**Site Evaluation Committee**

- Drew Biemer attended the hearing to answer questions concerning the Site Evaluation Committee, but the committee had none.

**Michael Licata**

**Eversource**

- Michael Licata stated that there are number of provisions that Eversource does not take a position on.
- Mr. Licata noted that current state statute requires the utilities on an annual basis to disclose the cost of compliance with the RPS.
- Mr. Licata stated that putting the Department of Energy in charge of monitoring and enforcement is a helpful change.
- Senator Altschiller asked Mr. Licata what Eversource's commitment is, if the Least Cost Integrated Resource Plan is repealed.
  - Mr. Licata stated that Eversource welcomes the opportunity to work with legislators and other stakeholders on either a replacement or reform of any kind.

**Chris Elms, Josh Elliott and Tom Frantz**

**Department of Energy**

- The Department of Energy is fully supportive of this amendment.
- The Department of Energy recognized that there were some typos and offered language suggestion to remedies these mistakes.
- The Department of Energy explained the sections of this amendment similar to how Senator Avard did when introducing this amendment.
  - Section 1 – repealing the Least Cost Integrated Resource Plan.
  - Section 2 – provisions of Senate Bill 68.
  - Section 3 – increasing transparency for the RPS.

- Section 4-6 – repealing the EESE Board.
  - Responsibilities of the EESE Board can be picked up by the Department of Energy.
- Section 7 – clean up language for the current landfill siting changes,
- Section 8 – moving the responsibility of monitoring and enforcement from the SEC to the DOE.
- Section 10 - A change in ownership or a transfer of a certificate and administrative change which streamlines that process.
- Section 11 – continues jurisdictional clarifications.
- Section 12 – moves monitoring and enforcement language from the SEC to the DOE.
- Section 13-18 – clean up language for the responsibility shift from SEC to DOE.
- Senator Watters asked how the DOE will notify customers of any changes to their bills or to projects that may impact them.
  - The DOE stated that they will distribute public notice to the town and surrounding towns that will be affected.
- Senator Altschiller asked the DOE to explain these kinds of notice.
  - The DOE replied that they will send notice 14 days prior and will include the notice on websites and in the newspaper.
- Senator Altschiller asked how we could repeal the Least Cost Integrated Resource Plan if other statutes refer to it as a guidepost.
  - The DOE stated that there are other statutes currently in law that will pick up if any of the other statutes are repealed.
- Senator Altschiller asked the DOE to explain why the resource plans are no longer necessary.
  - The DOE stated that with advancements of the PUC they are no longer needed.

### **Summary of testimony presented in opposition:**

#### **John Gage**

- John Gage stated that he is opposed because, he feels that adding more line items to a bill will only confuse customers.
- Mr. Gage stated that he fears a Federal Carbon Tax is impending.
- Senator Watters thanked Mr. Gage for bringing his concerns of an impending Carbon Tax to the committee.

#### **Meredith Hatfield**

##### **The Nature Conservancy**

- Meredith Hatfield stated that her concerns for this amendment are the same as the concerns she expressed for HB 281 (see the hearing report for HB 281).
- Ms. Hatfield urged the committee to remove Section 1, which calls for the repeal of the Least Cost Integrated Resource Plan.
  - Ms. Hatfield that in repealing this, it would reduce transparency and remove the ability for the public to hear from utilities before they spend taxpayer's money.

- Ms. Hatfield stated that she strongly supports Section 2.
  - Ms. Hatfield stated that she believes that this section should be its own standalone bill.
- Ms. Hatfield stated that she agrees that the language contained in Section 3 is confusing.
  - Ms. Hatfield urged the committee to strike the language concerning the EESE Board.
- Ms. Hatfield stated that it makes sense to shift the responsibilities to site new landfills to the Department of Energy.

**Nick Krakoff**

**Conservation Law Foundation**

- Nick Krakoff stated that he believes that Section 2 should be a standalone bill.
  - Mr. Krakoff added that he strongly supports Section 2.
- Mr. Krakoff stated that repealing the resource plan would be a significant cost to ratepayers.
- Mr. Krakoff argued that there is still some relevancy to the EESE Board, which is why it should not be repealed.
- Mr. Krakoff reiterated that point that no utility asked for the resource plan to be repealed.

**Richard Husband**

- Richard Husband stated that it would be a mistake to repeal the resource plan, which he sees as a valuable tool for the PUC.
- Mr. Husband stated that he believes that the legislature should be updating statutes, not repealing them.
  - Mr. Husband stated that he is willing to help examine statutes and see what language should be updated.

**Susan Richman**

- Susan Richman stated that she is against repealing the Least Cost Integrated Resource Plan and the EESE Board.
  - Ms. Richman explained that both of these provide transparency to the public.
- Mr. Richman stated that she does not think that Clean Energy New Hampshire should be responsible to hold discussions on new project proposals in our state.
  - Ms. Richman reiterated that the EESE Board allows for more transparency for customers.

**Neutral Information Presented:**

**Representative Kat McGhee**

**Hillsborough County, District 35**

- Representative Kat McGhee stated that she does not think the Least Cost Integrated Resource Plan should be repealed.
- Rep. McGhee stated that she is in favor of expanding net metering availability.

- Rep. McGhee added that she is skeptical of the section that requires the PUC to provide an estimated annual cost of compliance with electric renewable portfolio standards on customers electric bills.
- Rep. McGhee explained that she does not think the methods of notice will be sufficient enough and that by including too many amounts on one bill, a customer may become confused.
- Senator Altschiller asked if the Least Cost Integrated Resource Plan is repealed, would the representative be willing to work with the Senate to draft new legislation.
  - Rep. McGhee confirmed that she would be willing to, but that she hopes the committee does not repeal a statute without already having a backup plan in place.

**Chris Skoglund**

**Clean Energy New Hampshire**

- Chris Skoglund stated that Clean Energy NH opposes the repeal of the resource plan.
- Mr. Skoglund stated that he would like to enter his testimony from HB 281 into this hearing (see the hearing report for HB 281).
- Mr. Skoglund stated that Clean Energy NH does support the Site Evaluation Committee administrative efficiency measure and the municipal energy net metering provision.
- Mr. Skoglund stated that Clean Energy NH opposes the RPS compliance cost reporting position and the repeal of the EESE Board.
- Mr. Skoglund stated that Clean Energy NH is willing to work on any replacements of legislation necessary if this amendment were to be adopted.

NPL

Date Hearing Report completed: May 15, 2023