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Policy Options for Siting Energy Facilities

A Cross-State Analysis of Energy Facility Siting Board Strategies

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EXECUTIVE SUMMARY

In recent years, the New Hampshire Site Evaluation Committee has seen an increase in the number and complexity of applications for energy facilities seeking to locate in New Hampshire.ⁱ Chaired by the Commissioner of the New Hampshire Department of Environmental Services, the role and responsibilities of the Site Evaluation Committee has become the subject of significant public interest and potential legislative changes. This report aims to contribute to that process by examining strategies adopted by similar states dealing with these issues. We suggest four main areas of change for New Hampshire to consider: increasing public participation in the siting process, reforming the Board's structure and function, establishing a fee structure, and improving the overall efficiency and transparency of the Board.

1. INTRODUCTION

The New Hampshire Site Evaluation Committee (SEC, hereafter referred to as the Committee or the Board) is responsible for the siting, construction, and operation of energy facilities, such as electric power generation facilities, gas pipelines and electric transmission lines in New Hampshire.ⁱⁱ The Board is responsible for weighing the possible environmental impact of the construction against the benefits the facility will bring to New Hampshire by helping address the state's energy needs.ⁱⁱⁱ Although in the past, the Board has seen limited applicants in the past, the Board anticipates a significant increase in the number of applications in the coming years, in response to an evolving and changing energy climate in New Hampshire.^{iv} With this in mind, the Commissioner of the New Hampshire Department of Environmental Services (NHDES), the state agency with jurisdiction over the Board, has commissioned the Policy Research Shop to examine strategies other states with similar business and regulatory environments have used in constructing their own siting boards. After a brief overview of the Environmental Protection Agency's best practices recommendations for energy siting, this report examines strategies used by New York, Rhode Island, Connecticut, Vermont, Oregon, and Maine, then consolidates the diverse array of strategies into a set of options for New Hampshire to consider.

2. EPA BEST PRACTICES RECOMMENDATIONS

In 2012, the EPA released *The Handbook on Siting Renewable Energy Projects While Addressing Environmental Issues*, an updated handbook on best practices for siting renewable energy projects. Based on their findings that nearly fifteen million acres of land in the United States has the potential to develop solar, wind, biomass, or geothermal energy facilities, the Agency created guidelines that states could follow to improve upon their current siting systems.^v

The EPA breaks down the siting process into a six-step process, with increasing attention to environmental issues and facilitating broader public engagement as the process moves



forward. The first step is a pre-screening analysis, which results in the selection of optimal sites for new energy projects. This should be based on maps of energy resources, utility rates, and incentives that could be provided.^{vi} The next step is a feasibility analysis, which is essentially a site-specific assessment. Here the siting council should develop technology and financing recommendations and identify all physical issues that may arise.^{vii} Third, a design and development procedure is recommended for the specific planning of the physical aspects of the project. A protocol for evaluating the project should also be developed here, and final financial arrangements should be established.^{viii} After approval, the next phase is construction and installation of the facility, along with assessment of the degree to which the system fulfills the intent of the design.^{ix} The final two stages are the performance period, which should be closely tracked and updated when the project falls behind standards, and the eventual decommissioning of the project.^x

3. STATE-BY-STATE ANALYSIS

3.1 Rhode Island

The Rhode Island Energy Facility Siting Board is a centralized Siting Board consisting of three members: The Chair of the Public Utilities Commission (PUC), the Director of the Department of Environmental Management, and the Associate Director of Statewide Planning. Only two of these three members are needed for a quorum.^{xi} The Board has no full-time dedicated staff. However, the Principal Policy Analyst of the PUC serves as a Coordinator for the Board, and the PUC's Chief Legal Counsel also serves as Legal Counsel for the Board. These staff members, as well as the Chair of the PUC, are required to recuse themselves from any PUC matters related to applications currently under review. The Siting Board has authority to override local ordinances and state permits except where the state permits are granted under federal authority (such as Clean Water Act related permits) or where there is specific permitting authority delegated to the Department of Environmental Management and the state's Coastal Resources Management Council.^{xii}

To file an application with the Board, applicants must address a number of concerns including site plans, project cost, number of facility employees, financing, required support facilities, environmental impact, life-cycle management, and possible alternatives, including the estimated costs of those alternatives.^{xiii} Once an application is filed, the Coordinator has 30 days to accept and docket or reject it.^{xiv} The Board then must convene a preliminary administrative hearing within 60 days of the docketing to designate state agencies that must file an advisory opinion.^{xv} These agencies, known as "advisory agencies," have six months to submit an opinion on the application.^{xvi} Once this deadline has passed, the Board has a 45-day window in which to begin final hearings in which all interested parties, including advisory agencies and members of the public, can convene and present testimony and evidence in an adversarial proceeding.^{xvii}



The Board's final decision is due within 120 days of the beginning of the final hearings or 60 days after the end of the hearings, whichever is shorter.^{xxviii} The applicant has a 10-day period in which to appeal a final decision to the State Supreme Court, otherwise the decision stands.^{xxix} There is an expedited process for constructions or relocations of power lines less than 1,000 feet. The application must be filed 60 days before commencing construction, and the Board then has 45 days to render a decision.^{xxx} For power lines greater than 1,000 feet but less than 6,000 feet, there is a similar expedited process, but with added requirements including a public hearing and more detailed analysis. The Board has 60 days to determine if the project will have a significant impact on the environment or public health and safety and render a decision.^{xxxi}

Rhode Island's process allows for extensive public participation in the proceedings. All preliminary and final hearings are open to the public, and the Board is required to post a public notice announcing the hearings well in advance. There are generally periods reserved for public comment before and after all hearings. In addition, the Board is required to hold one public hearing in every community impacted by the proposal to solicit input from those communities.^{xxvii}

The Board does not charge any official fees as a part of its process; however, it is authorized to establish fees for investigations, applications, and hearings as the Board members see fit.^{xxviii} The Board can also hire consultants to visit the plant during construction at a cost of up to \$20,000. These costs may be passed on to the applicant in the form of fees.^{xxix}

3.2 Vermont

Since 1996, the Vermont Public Service Board has been tasked with siting approval and permitting for all electricity generation projects. The Vermont Public Service Board (PSB) describes itself as "a quasi-judicial board that supervises the rates, quality of service, and overall financial management of Vermont's public utilities: cable television, electric, gas, telecommunications, water and large wastewater companies."^{xxxv} The Board is comprised of three total members, a chairman and two board members, appointed by the Governor for staggered six-year terms.^{xxxvi} The current makeup of the board contains one part-time Magistrate, one member who serves on various committees but does not work a separate full time position, and the Chairman, a long-time employee of the Vermont Department of Public Service, who also holds a number of other committee leadership positions in the state.^{xxxvii}

The Vermont Public Service Board (PSB) has seen a significant increase in the number of projects in recent years. From 2000-2010, the Board sited a total of 29 projects, while from 2010-2013, the Board has handled over 50 separate cases.^{xxxviii} As a response, in October of 2012 the Governor of Vermont created the Energy Generation Siting Policy Commission, a seven-member commission tasked with researching best practices the state could implement to improve upon their current siting process.^{xxxix} The commission



looked at practices other states had implemented, as well as conducted electric generation site visits and interviews with members of local municipalities.^{xxx} The results of the report were released on April 30th, 2013 and include a detailed plan of action for general improvements to the siting process.^{xxxi} The Energy Generation Siting Policy Commission's report is focused on Vermont, however the similarities in current structure with New Hampshire, as well as many of the findings of the report, could provide a useful guide for changes to New Hampshire's structure.

3.2.1 Vermont Commission Recommendations

The Vermont Commission findings are summarized in five recommendation themes, with specific policy recommendations that straddle across multiple themes. The first recommendation is to increase the emphasis on planning at state, regional, and municipal levels. The Commission encourages written scenario analyses to be provided to the PSB, to create a set of standards to be followed for siting processes, which should increase consistency.^{xxxii} When creating the scenario analyses the Commission supports the creation of Regional Planning Commissions (RPCs) in the various municipalities, to increase cooperation between the State and the local governments. The RPCs will be tasked with developing guidelines, policies, and land use suitability maps, which can be utilized by the PSB in their siting process. The Commission believes that an allocation of \$40,000 per region should be enough to set up the RPC network.

To make the siting process quicker and more efficient, the Commission's second recommendation is the creation of a four-tiered system, where siting applications are classified by size, or nameplate capacity. This process is intended to allow the PSB to spend more time on reviewing large projects, while speeding up the process for relatively smaller ones.^{xxxiii} For Tier One Projects, generating less than 500 kilowatts of electricity, the process would be relatively short, taking only three months and requiring minimal paperwork. A generator with capacity between 500 kilowatts and 2.2 megawatts would qualify as a Tier Two Project, take approximately six months to review, and have slightly more paperwork. Tier Three Projects, with capacity between 2.2 and 15 megawatts would follow the current procedures for all projects in Vermont, taking approximately nine months to complete. All larger projects would fall under Tier Four, take up to 12 months, and require additional paperwork.^{xxxiv} The commission believes that this tiered system will lead to a more efficient process that allows the PSB to focus on review and siting for more controversial projects.

The Commission's third recommendation is to create policies that increase opportunities for public participation. Similar to the first recommendation, the Commission reiterates the importance of establishing RPCs. They propose to do this by automatically including the RPC that covers the area in which a new project is being proposed for all siting cases. In addition, the Commission proposes new disclosure requirements, increasing the disclosure date to 60 days beforehand as opposed to 45 days.^{xxxv}



The Commission's forth recommendation is to implement changes to increase transparency efficiency, and predictability of the siting process, both for the potential applicants and the public at large. The Commission recommends hiring a case manager to focus on enhancing the efficiency and transparency of the application process. This includes creating an online case-management and docketing database, as well as improving the website, making it easier for applicants to understand what is needed to complete the process.^{xxxvi} Some general recommendations included are to include checklists for each tier to establish throughout and after the application process, posting clear timelines for each part of the process, and listing all performance standards that the applicants (as well as current producers) will have to adhere to.^{xxxvii} This, the Commission argues, is an inexpensive and straightforward way to make the process quicker and easier for all parties involved.

The Commission's final recommendation is for the PSB to update and continuously review its environmental, health, and other protection guidelines. This would involve the input and cooperation of various government agencies (Natural Resources, Public Service, Health, Agriculture, Food and Markets), but would help the PSB continue to make the most informed decisions possible when reviewing potential new projects. In addition, a new piece of the process would require the PSB and the applicants to agree upon 3rd party monitoring during and after construction of the project, to ensure that all standards are being met.^{xxxviii}

The Commission also examined potential sources of funding that the State could use for these new initiatives, and highlighted four different mechanisms. The first funding source was a one-time filing fee, pro-rated based on the maximum capacity of the project. A second, recurrent annual fee could also be assessed upon all generators, which could be either a flat rate, or also pro-rated based on electric output. The final two sources rely on bill-back authority, given to the agencies participating in the process, or to the RPCs on a cost share basis, as needed.^{xxxix}

For New Hampshire, the Commission's findings can provide significant opportunities to improve upon the current system. While the report highlights a number of changes that could prove costly, a focus on regional participation, more established standards, and a coherent website could improve New Hampshire's current process. In addition, the list of potential funding sources could help New Hampshire create a more permanent structure for the process as opposed to its current ad-hoc system.

3.3 Maine

According to Eric Kennedy, a licensing section manager for the Bureau of Air Quality, Maine has general development standards for general energy projects as well as specific siting standards for wind energy projects.^{xl} Maine's Department of Environmental Protection (DEP) manages all applications, and they do not have a committee specifically designated to process energy facility siting. Title 38 Section 481 of the Maine Revised



Statutes, known as the Site Location of Development Law, states that some developments are “too important to be left only to the determination of the owners of such developments” and establishes the state’s right to “control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment.”^{xli} Section 484 of the same chapter establishes standards for development, including financial capacity and technical ability.^{xlii} The Site Law “gives the state control over the location of development [...] rather than leaving such decisions to single towns and individual developers.”^{xliii} There are certain triggers that alert the DEP to projects that will fall under the Wind Energy Act or the Site Law. The most basic example is the size threshold. For example, if the site “occupies a land or water area in excess of 20 acres,” it is subject to Site Law regulation.^{xliv}

According to Mark Bergeron, division director for Land Resource Regulation, 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.^{xlv} 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.^{xlvi} 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.^{xlvii}

The Site Law also gives special provisions for wind development as enumerated under the Wind Energy Act. The Act was designed to modify some of the regulatory elements of wind energy development. The legislature found that it was in the public interest to “reduce the potential for controversy regarding siting of grid-scale wind energy development.”^{xlviii} The three major changes listed in this section are:

1. Making wind energy development a permitted use within certain parts of the State’s unorganized and de-organized areas
2. Refining certain procedures of the Department of Environmental Protection and the Maine Land Use Planning Commission; and
3. Because the legislature recognizes that wind turbines are potentially a highly visible feature of the landscape that will have an impact on views, judging the effects of wind energy development on scenic character and existing uses related to scenic character based on whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to the scenic character of that resource.^{xlix}

The timeframe for applications that fall under Site Law or the Wind Energy Act is the same. There is a maximum statutory period of 185 days from the date of acceptance of the application to the issuance of the final license.¹ 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.^{li} The DEP also charges a fee for processing and/or licensing depending on the project. The DEP's licensing fee schedule covers various types of site location applications, and is effective from November 1 to October 31. The fee schedule is subject to revision on the 1st of November every year.^{lii} Some projects are considered "special fee" projects because of their size or complexity. The exact amount is determined by the time the staff put into the application, meetings, revisions, and other activities.^{liii}

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.^{liv} Public hearings during the process, while allowed, are infrequent. For wind energy projects, the internal policy requires two public meetings.^{lv} 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.^{lvi} Both public meetings are facilitated by DEP staff and provide specific opportunities for public comment.

3.4 Connecticut

First established in 1972 as the Power Facility Evaluation Council, the Connecticut Siting Council is responsible for the siting of power facilities, transmission lines, hazardous waste facilities, and telecommunication sites.^{lvii} The committee is tasked with siting "all electric generating or storage facilities using any fuel, including nuclear material, including associated equipment for furnishing electricity."^{lviii}

The council can have as few as nine and as many as 31 full-time members at any given time. The requirements for the Council are that there are nine members who are specialists on energy and communications issues, and nine for ash residue disposal areas. For hazardous and low-level radioactive waste issues, there must be at least nine full-time council members dealing with each project, an additional three ad-hoc members of the municipality in which the project will be placed, and one ad-hoc member in the neighboring municipality.^{lix} A separate member can hold each of these full-time positions, or an individual can hold a position on multiple topic groups. The Governor, the President Pro-tempore of the Senate, the chairperson of the Department of Public Utility Control, and the commissioner of the Department of Environmental Protection, appoints all positions for six-year, staggered terms.^{lx}

Similar to New Hampshire, the procedures by which the Council makes siting decisions is highly litigious. After filing a series of application paperwork, and paying the



application fee, the Council begins a legal proceeding including the applicant, the Council members rendering the decision, any related party (including the relevant municipalities), and any members of the public who might be affected by the project. Similar to a court proceeding, the process includes testimonies, cross-examinations, and filings of exhibits, briefs, and findings.^{lxi} For the application process, all of the relevant paperwork, requirements, and timeline information can be found on the Siting Council's website, along with documentation on recent cases and best practices for certain sited industries.

The Council gets no funding from the Connecticut State General Fund. Rather, funding comes from two discrete sources. The first source is a set of application fees received for all new siting projects that the Council receives. The second set of revenues comes from annual assessments on all utilities, waste generators, and telecommunications providers in the State of Connecticut.^{lxii}

The Connecticut Siting Council has the unique benefit of having a long history for both the setup of its system as well as the practices it follows when reviewing new siting opportunities. Over the years, Connecticut has been able to establish through precedent a series of guidelines and criteria that the Council can go to when making new rulings. New Hampshire's current siting system is similar to that of Connecticut. New Hampshire could benefit from looking at previous rulings that the Connecticut Siting Council has made to establish a more concrete set of guidelines. In addition, the details provided to potential applicants on the Connecticut Council's website could provide New Hampshire with a useful guidepost on how to make their website and services more efficient.

3.5 New York

New York has a centralized siting board, the Board on Electric Generation Siting and the Environment, that falls under the jurisdiction of the New York State Public Service Commission. The Board is made up of five permanent members – the chairs of the Public Service Commission and the New York State Energy Research and Development Authority and the Commissioners of Environmental Conservation, Health, and Economic Development – and two ad hoc members from the community affected by a given proposal. Both the President Pro Tem of the Senate and the Speaker of the Assembly appoint one ad hoc member.^{lxiii} The Board has the authority to override local ordinances and other state-granted permits, although it is bound by any applicable state regulations or state permits granted through the State Pollutant Discharge Elimination System or the Clean Air Act (which are actually state-operated federal permitting programs). Thus, the Board provides a mechanism by which permit applicants can overcome local restrictions that the Board determines are “overly cumbersome.”^{lxiv}

The regulations governing the Board require it to make “explicit findings” regarding the environmental impact of a new facility, and only to grant permits if the facility provides a genuine benefit to the state and demonstrates minimized negative environmental



impacts.^{lxv} This process allows for extensive public participation. Before an application can even be filed, applicants are required to sponsor an environmental justice survey. Individuals or groups from the community can apply for funding to conduct this survey.^{lxvi} Hearing procedures also are open to the public, and the public is given the opportunity to comment on aspects of the application. This process is designed to allow community members who may not otherwise have a voice, such as low-income or minority residents of the affected areas, to participate in the decision-making process.^{lxvii}

As part of the application process, applicants must pay a pre-application fee of \$350 per 1,000 Kilowatts of generating capacity up to \$200,000, which goes toward defraying the expenses of local interested parties that participate in the administrative process, and an application fee of \$1,000 per 1,000 KW of capacity up to \$400,000. Additional fees may be charged for fuel waste storage or disposal or for modifications to the permit after its filing that requires additional scrutiny.^{lxviii} There is a statutory one-year time frame between the time an application is approved as being in compliance with filing requirements and the time a decision is rendered. This time frame can be reduced to six months if the facility creation or modification proposed in the application will reduce pollutant emission rates or total emissions, lower the heat rate, or introduce new coolant water intake structures. This provision is designed to encourage clean energy initiatives among applicants.^{lxix}

The Board's decision process consists of a combination of administrative and adversarial hearings. Although the Board receives the initial application and makes the ultimate decision whether or not to grant the permit, Board members are not present for any part of the hearing process. Instead, hearings are presided over by two Administrative Law Judges (ALJs), one from the Public Service Commission and one from the Department of Environmental Conservation. Initially, the ALJs preside over administrative hearings in which they examine issues raised by various stakeholders (including the Department of Public Service, the Department of Environmental Conservation, other State agencies, and interested parties from the community) and determine whether they are worth adjudicating. If so, they preside over an adversarial proceeding in which lawyers representing both sides of the issue debate with evidence and witness examination. The ALJs render the decision. After the hearings are complete, ALJs devise a recommendation and submit it to the Board, which makes the final decision on the permit. Thus, the Board itself is very insulated from the process. There is almost no communication between the Board and ALJs until the ALJs render their final recommendation.^{lxx} The Board has its own professional and support staff who are chosen from various state agencies for their expertise in the type of project under consideration. These staff members are to be used as resources for the Board rather than advocates, and once an application has been submitted, only these specially selected staff members can speak with the Board about matters related to the application.^{lxxi}

3.6 Oregon



Oregon's Energy Facility Siting Council (EFSC) addresses the siting of energy facilities. The EFSC, established under Oregon Revised Statute 469.450, is comprised of seven members, appointed by the Governor and confirmed by the Senate.^{lxxii} The volunteers are not permitted to work for a company that has business in front of the Council and must recuse themselves if that happens.^{lxxiii} The EFSC generally only looks at large energy facilities, while the smaller ones are left to the local jurisdiction. For example, "electric power plants with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal, solar or wind energy at a single energy facility or within a single energy generation area" fall under the umbrella of the EFSC.^{lxxiv}

One challenge for the Council is meeting location. The EFSC meets about every six weeks, and the Council attempts to locate its meetings near the site of the proposed energy facility.^{lxxv} One of the limiting factors in Oregon is that the population is spread over multiple rural areas.^{lxxvi} A recent change in EFSC proceedings has led the Council to have public hearings in conjunction with their meetings because often times both public hearings and Council meetings occur in the proposal's location.^{lxxvii} This allows members of the public to directly address the Council rather than only address a few members of the Council in a separate public hearing. As stated in the Oregon Revised Statutes, the EFSC is required to establish a fee schedule periodically. The schedule specifies various fees including fees for notices of intent, siting applications, and amending applications.^{lxxviii}

According to Chris Green, an energy facility siting analyst in the Oregon Department of Energy, public participation is ingrained in the energy facility siting process. There are three points of public participation in the siting of energy facilities. The notice of intent (NOI) is the applicant's conceptual plan and considered to be the first comment period.^{lxxix} The NOI allows the applicant to receive feedback to use as a reference when they compile their application, and it allows for comments from local or state agencies as well as local residents. After the NOI, the Department of Energy gives the applicant a project order, which includes all reviewing agency requirements and serves as a blueprint for the application.^{lxxx} After the project order, the applicant will submit an application for a site certificate, which includes "a detailed description of the proposed site, the proposed facility and the anticipated impacts" as well as a section describing "how the proposed facility complies with the Council's standards."^{lxxxi} The Department of Energy then reviews the preliminary application. Applicants are asked to compile all materials submitted since the preliminary application into an Application Supplement. After the Department reviews the application and consults with state and government agencies, the Department issues a draft Proposed Order.^{lxxxii} The draft Proposed Order is an assessment of the application from the EFSC staff that measures components of the application based on certain standards, such as Soil Protection and Land Use, and recommends the finding for the Council. A list of these standards can be found under Chapter 345 Division 22 of the Oregon Administrative Rules.^{lxxxiii}



The second point of public participation is the public hearing on the Proposed Order, informally known as “raise it or waive it.” This is a hearing period where people can raise objections or issues they want to be addressed, and it is the only chance to raise comments that will then preserve the rights for a later protest or appeal.^{lxxxiv} This comment period is open for twenty to thirty days after the draft proposed order is published. On the last day of the comment period, the Council holds an actual hearing, and the close of the comment period comes when the hearing ends. After the public hearing, the Council reviews the draft proposed order, sends its comments to its staff for modification, and the draft becomes the final order.^{lxxxv} One thing that the EFSC does not consider when making comments or modifications is the cost-benefit of the energy facility. They judge the application against the set of standards to determine whether or not it is appropriate to site an energy facility at the specified location.^{lxxxvi}

If an individual or a group feels that a comment on a council standard from the draft proposed hearing has not been addressed to their satisfaction, the proposed order becomes a contested case.^{lxxxvii} This is the third point for public participation where the Council will again review the comment and decide whether or not to modify the previous proposed order. It is possible for a person to appeal directly to the Oregon Supreme Court even after a contested case if they feel their concern was not addressed appropriately in the contested case hearing. However, this is a rare occurrence as most comments are sufficiently addressed in the previous hearings.^{lxxxviii}

4. REFORM OPTIONS FOR NEW HAMPSHIRE

Based on the EPA’s best practices recommendations and our analysis of the energy siting strategies of multiple states, we determined four broad categories of reforms for the NHDES to consider: 1) improving public participation in the siting process, 2) reforming board membership and function, 3) instituting a fee structure, and 4) improving the overall efficiency and transparency of the process.

4.1 Increasing Public Participation

One consistent theme in nearly every state we examined was an emphasis on public involvement in the siting process. Each state contained specific provisions to ensure that community members affected by the construction or renovation of an energy plant would have an adequate voice in the decision-making process. New Hampshire has already adopted a number of these options in their current siting process. These include holding Board hearings open to the public, providing advance notice of all hearings and decisions to allow interested community members adequate time to learn about and plan for these events, and creating Regional Planning Commissions. New Hampshire also requires public hearings for every county affected by the project, and allows all SEC rulings to be appealed to the New Hampshire Supreme Court. These policies have allowed the public in New Hampshire to have a considerable input on the siting process.



In addition to these policies, New Hampshire could consider some specific, innovative reforms spearheaded by other states that are designed to improve public participation. For example, New Hampshire could follow New York's lead in allowing members of the public to apply for funding to conduct a pre-application environmental justice review, which would allow for increased public voice in determining the potential consequences of the facility. This option would require increased revenue to offset the costs of funding the review. New York covers this cost through a pre-application fee. New Hampshire could also extend the time requirements for advance disclosure to give the public more time to prepare for hearings or decisions. Finally, New Hampshire could also extend the scope of its regional hearings to include not only counties directly affected by the new project, but also to neighboring counties or communities as well, similar to the Connecticut model. Should the SEC decide to increase public participation even further than it already does, some of the options listed above could provide useful strategies for doing so.

4.2 Reforming Board Membership and Function

New Hampshire could also consider reforms to board structure and function based on the strategies of other states. For example, Vermont's strategy of staffing its board with part-time or retired workers encourages a Board made up of members who can devote a significant amount of time and energy into Siting Board work rather than full-time workers who must divide their time between the Board and numerous other responsibilities. This may be a particularly important reform to consider as New Hampshire sees an increase in applications to the Board and, thus, will require more time, effort, and devotion from the Board in the near future.

New Hampshire could also consider strategies such as New York's policies, which include isolating the Board from the adjudication process through the use of ALJs to preside over hearings and sequestering expert staff members to serve as disinterested consultants to the Board. Such reforms would improve the objectivity of the Board, and having ALJs rather than Board members preside over hearings would reduce the constraint on Board members' time, which is particularly useful if New Hampshire's Board remains staffed with full-time employees. However, such reforms would also likely require increased funding, which may necessitate the implementation of additional fees. Finally, New Hampshire could consider Connecticut's model of basing Board membership on expertise rather than job position. Although in practice, many of these experts would most likely be the same leaders who serve on the Board under its current structure, such a structure could be a step toward ensuring that such leaders are chosen specifically for their expertise rather than their job title alone.

4.3 Instituting a Fee Structure

Perhaps one of the starkest differences between New Hampshire and other states included in our analysis is the presence of a fee structure accompanying siting applications. It is



common in the states we examined to charge fees to cover a variety of costs, including application processing, environmental review, annual assessments of a facility, hiring on-site consultants to examine facilities and render their own opinions on the relevant issues, and any administrative or adjudication costs incurred by the Board as a result of the process. These fees can come in the form of an established schedule or can be determined on an ad hoc basis as in Rhode Island. Although it is most common to charge a flat fee rate, it is also possible to charge fees based on applicant size, as was recommended in Vermont's Energy Generation Siting Policy Commission report.

As would be expected, any fee that imposes an additional cost on doing business can have the effect of discouraging business activity. However, charging some type of fee is standard across states, and may be necessary to cover New Hampshire's increasing Board costs, particularly if the state implements more costly reforms such as using Administrative Law Judges to preside over hearings, increasing Board staffing, or hiring consultants. Fee schedules vary widely by state, and New Hampshire will have to decide on its own fee structure based on its assessment of the trade-offs between increasing business transaction costs and providing the proper funding for the Board's increasingly important work.

4.4 Improving Overall Efficiency and Transparency

A final set of reforms includes recommendations to improve the overall efficiency and transparency of the Board. Vermont's Energy Generation Siting Policy Commission Report included several such reforms that are equally applicable for New Hampshire, including updating and improving the accessibility and user-friendliness of the Board's website and working with other agencies to establish a set of concrete, written guidelines for the application process.

New Hampshire could also adopt reforms to adapt the application process based on applicant size. For example, the state could charge lower fees or simplify the process for smaller applicants. The Vermont Energy Generation Siting Policy Commission recommended such a process in order to reduce the burden on smaller applicants with a lower environmental impact and encourage small business development. It could also adopt Oregon's strategy of allowing local jurisdictions to have ultimate control over decisions regarding smaller applicants, which could ease the burden on the Board in the face of increasing numbers of applications as well as give local jurisdictions greater autonomy in determining whether or not to allow small projects that primarily impact their own communities.

5. CONCLUSION

While the specific circumstances that influenced the development of each state's siting board is different, the strategies adopted by the rest of New England, along with Oregon



and New York provide useful examples of strategies the NHDES could adopt to improve its current siting program. Table I below provides a summary of policy options based on strategies adopted by other states:

Table I. Summary of Options Based on State Analysis	
Improve Public Participation	<ul style="list-style-type: none"> - Public involvement in environmental review process, funded by pre-application fees (New York) - Require meetings to be held in every affected municipality (Rhode Island) - Extend time requirements for public advance disclosure (Vermont)
Reform Board Membership and Function	<ul style="list-style-type: none"> - Staff board with part-time/retired workers rather than full-time employees (Vermont) - Create more isolation from the process for objectivity, such as by sequestering staff members and making Administrative Law Judges responsible for overseeing hearings (New York) - Membership based on specialty/expertise rather than position (Connecticut)
Fee Structure	<ul style="list-style-type: none"> - Pre-Application fees used to fund environmental review/public disclosure costs (New York) - Fees to hire on-site consultants (Rhode Island) - Application Fees - Annual Assessment Fees - Bill-Back Authority to recuperate incurred costs - Fees can be flat rate or prorated on size (Vermont)
Improve Efficiency and Transparency	<ul style="list-style-type: none"> - Update board website (Vermont) - Work with other agencies to create a set of written guidelines for application process (Vermont) - Reform application process based on applicant size

New Hampshire has already addressed some of these issues with similar strategies, and these examples are intended to provide insight into new directions for the SEC. Particularly, the ideas outlined for staffing the siting board, developing a fee system, and increasing the efficiency of the application process could be useful avenues for New Hampshire to pursue.

While some of these reforms discussed are relatively simple, most have some sort of cost associated with them. As New Hampshire faces an ever-expanding role for its SEC in shaping the environmental and business climate of the state, the NHDES will have to consider these tradeoffs and implement reforms that will bring the greatest benefit to New Hampshire with the lowest possible cost or adverse affect on business development. Should the NHDES decide to look at more states' siting policies, or do more extensive research on particular options highlighted in the report, the Policy Research Shop would be willing to assist with the project.



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