

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

Power Lines, Pipelines and Power Plants: Siting New Hampshire's Energy Future

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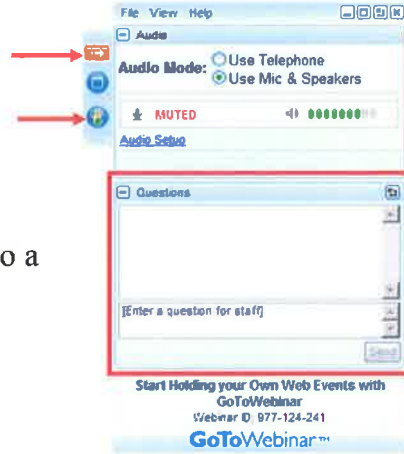
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How to Participate Today

- Open and close your Panel
- Submit text questions
- Q&A addressed at the end of today's session
- Raise your hand in *response* to a question





Agenda

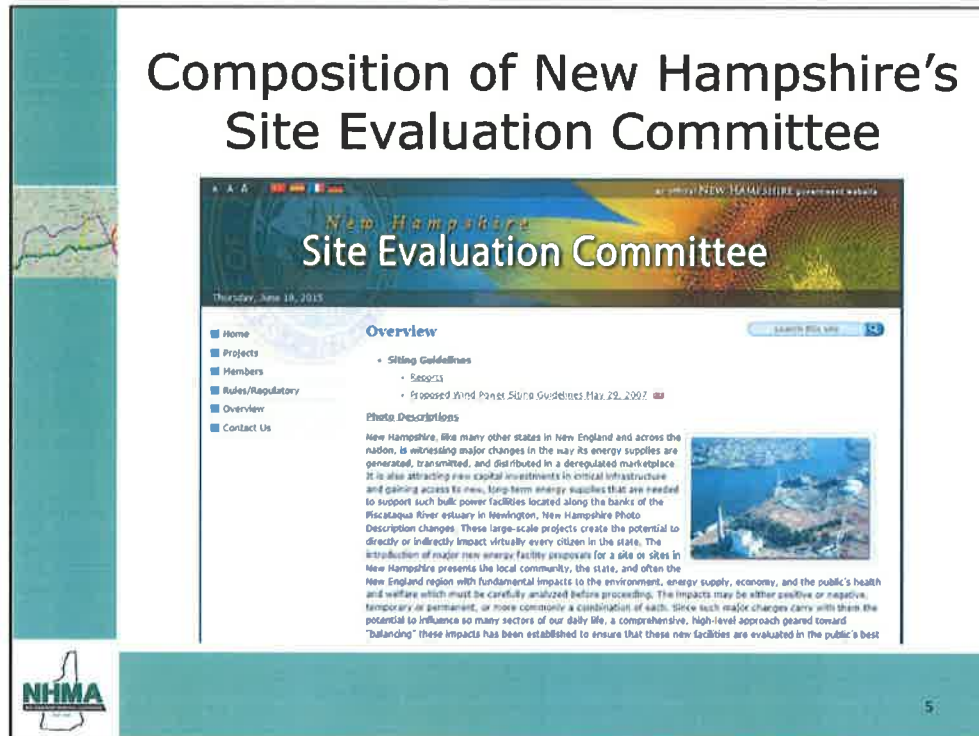
1. Purpose of Site Evaluation Law
2. Composition of NH's Site Evaluation Committee (SEC)
3. Jurisdiction of SEC – What Kind of Facilities/Projects?
4. How Does the SEC Process Relate to the Federal Process?
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Purpose of Site Evaluation Law



- Selection of sites for energy facilities may have significant impacts on and benefits to the welfare of the population, private property, the location and growth of industry, the overall economic growth of the state, the environment of the state, historic sites, aesthetics, air and water quality, the use of natural resources, and public health and safety
- In the public interest to maintain a balance among potential significant impacts and benefits in decisions about the siting, construction, and operation of energy facilities in New Hampshire
- Avoid undue delay in construction of new energy facilities
- All entities planning to construct facilities in the state be required to provide full and complete disclosure to the public of such plans
- Ensure that construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion
- One stop shopping to obtain all state permits

Composition of New Hampshire's Site Evaluation Committee



Nine member committee: 7 state officials (3 PUC, DRED, DES, DOT, DHR) plus two public members (one a member of NH Bar); PUC Chair is chair of SEC; state agency members may delegate to senior administrative employee or staff attorney – attorney to be presiding officer at hearings whenever possible

Administratively attached to PUC – staff for committee

Subcommittees allowed: at least 7 to issue a certificate or address a petition for jurisdiction (2 must be public members) – 5 is quorum to conduct business; for other matters subcommittees of 3 are allowed (at least one must be public member) – 2 is a quorum to conduct business; party may object to use of subcommittee

Full 9 member committee required for rulemaking, approve budgetary requirements, propose funding plan, approve support staff

No ex parte communications – treated like judges

Jurisdiction of Committee What Kind of Facilities/Projects?



Energy facilities: electric generating facilities (30 MW or greater), electric transmission lines (100kv or more over route not already occupied in association with generating facility or greater than 100kv more than 10 miles in length over route not occupied, new line greater than 200kv), natural gas transmission lines, gas plants, storage facilities (store on site enough to provide 7 days of continuous operation at a rate equivalent to the energy requirements of a 30MW plant), refineries

Committee can of its own discretion or when petitioned (by 100 residents of host community or abutting communities, or by governing body of community or 2 or more governing bodies of abutting communities, or by applicant) take jurisdiction over smaller facilities, including renewable (wind, geothermal, biomass, methane, solar, etc.) that are at least 5MW

Committee can exempt facility from review if: adequate protection of objectives of law; consideration is needed from only smaller group of agencies; public response indicates individual permitting will suffice; all environmental effects are otherwise regulated by federal, state or local requirements

How Does the SEC Process Relate to the Federal Process?



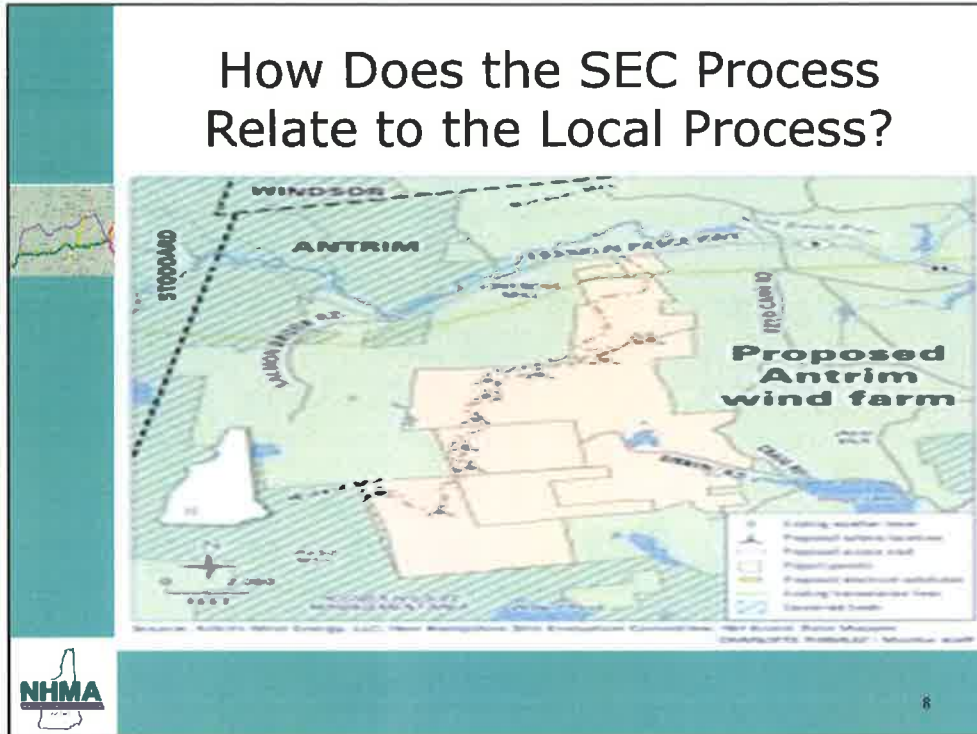
When a project requires state and federal approval, state and federal processes are typically separate but run on parallel tracks – timing of beginning and ending may be somewhat different

State typically and generally has jurisdiction over electric generating facilities and electric transmission lines

FERC does have authority over licensing of hydroelectric generating facilities and some residual authority on interstate electric transmission lines – Energy Policy Act of 2005 directed DOE to create “transmission corridors” in locations that would help to ease strain on interstate electricity transmission grid - also granted FERC secondary authority over transmission siting in corridors

Federal government clearly has jurisdiction over natural gas pipelines – interstate in nature – covered by federal law – though gas transmission companies typically undergo SEC process – FERC encourages gas pipelines to comply with local permitting requirements

How Does the SEC Process Relate to the Local Process?



State process has been interpreted as preempting need for local permits – purpose of SEC law says construction and operation of energy facilities is to be treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion (RSA 162-H:1) – *Public Service Co. of N.H. v. Town of Hampton*, 120 N.H. 68 (1980)

SEC must find that a project will not unduly interfere with the orderly development of the region

SEC must consider the views of municipal and regional planning commissions and municipal governing bodies

Municipal bodies often participate as parties to an SEC proceeding

Local zoning ordinances and site plan regulations are often presented to SEC as evidence in proceeding

How Does a Proceeding Get Started?



At least 30 days before application is filed project proponent must hold public information session in each county in which it is to be located – notice requirements

Application must contain sufficient information for permitting by state and federal agencies having jurisdiction and must have much detail about project and applicant's financial, technical and managerial capability

SEC has 60 days to review for completeness – can reject if application not sufficient

If application found to be complete SEC issues Order of Notice, requires submission of petitions to intervene, schedules prehearing conference (schedule for proceeding established), petitions to intervene ruled upon

Schedule dictated by statutory deadlines – if application is complete clock starts ticking: 150 days after completeness determined state agencies report progress of review to SEC; 240 days after completeness determined state agencies make final report to SEC; 365 days after completeness SEC must decide whether to issue or deny certificate

SEC can extend schedule if it is in the public interest

Who Participates in the SEC Proceeding?



Applicant is a party

NH APA standard for intervention (RSA 541-A:32): the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding and the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention

Abutters, municipalities, other interested parties

AG participates in proceeding to represent the public in seeking to protect quality of the environment and to assure an adequate supply of energy

State agencies not having permitting or other regulatory authority may participate in the proceeding – they must advise the presiding officer in writing and will be allowed provided they demonstrate material interest in proceeding and such participation conforms with normal procedural rules of the SEC

Public comment: SEC must consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings but prior to the closing of the record of the proceeding



Once application is accepted, petitions to intervene decided, the proceeding is conducted as an adjudicative proceeding; prefiled testimony, discovery, motions, hearing with testimony and cross examination, post hearing briefs, public deliberations by SEC, order issued

In addition to pre-application public hearings there is a requirement for public hearings in each county within 45 days after application accepted

Upon request of governing body of municipality in which proposed facility is to be located, or on SEC's own motion, it may order applicant to provide additional information sessions as reasonable to inform public of proposed project

SEC typically accepts public comment throughout proceeding

Adjudicative hearings (testimony by experts, cross examination, etc.) held either in Concord or in county where project proposed to be located

Applicant pays permit fees and expenses of SEC and for consultants hired by AG, subject to approval of SEC

How Does the SEC Make its Findings?



After due consideration of all relevant information regarding potential siting or routes of a proposed facility, including potential significant impacts and benefits, SEC shall determine if issuance of certificate will serve objectives of law

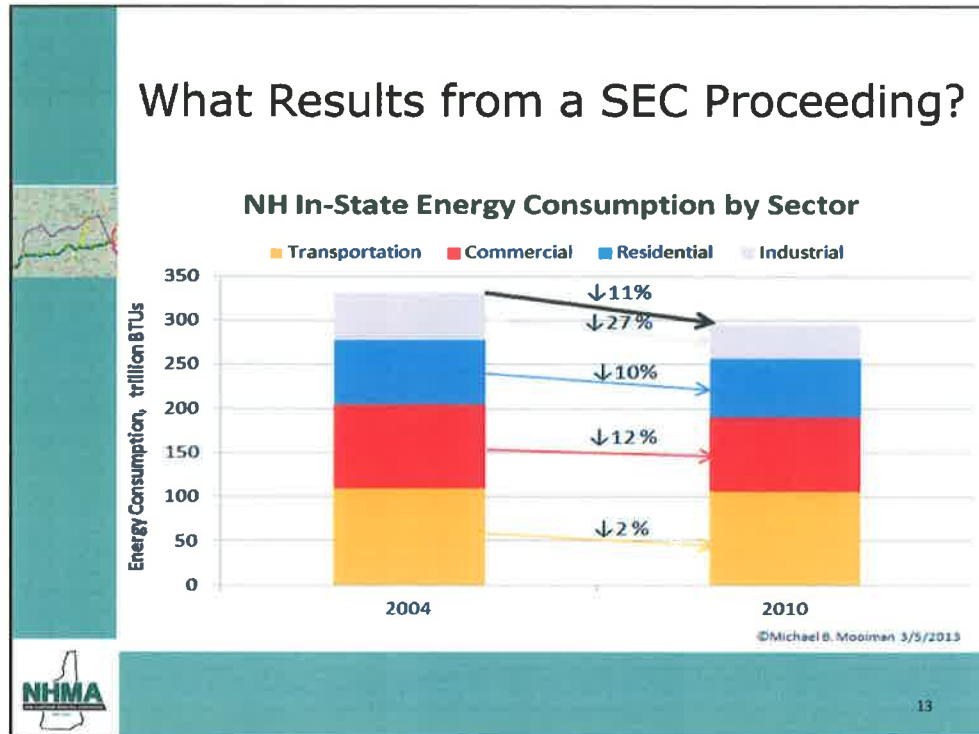
Must find applicant has adequate financial, technical, and managerial capability to assure construction and operation of facility in continuing compliance with terms and conditions of certificate

Must find that site and facility will not unduly interfere with orderly development of region with due consideration given to views of municipal and regional planning commissions and municipal governing bodies

Must find that 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

Must find that issuance of certificate will serve the public interest

What Results from a SEC Proceeding?



Public deliberations by SEC of whether to grant a certificate followed by a written Order

SEC Order issuing a certificate allowing the project to be built, typically subject to a number of conditions or an Order denying the request for a certificate and explaining why

Long and detailed order providing procedural history, positions of the parties, description of evidence and testimony, and findings on each of the items listed in previous slide

SEC has authority to monitor construction and operation of any energy facility granted a certificate to ensure compliance with such certificate \

SEC has authority to enforce terms and conditions of any certificate issued and authority to suspend or revoke certificate

Certificates required for sizeable changes or additions to existing facilities and a certificate can not be transferred or assigned without approval of SEC

The Appeals Process



Once an order issues within 30 days any party to proceeding or any person directly affected thereby may apply for rehearing in respect to any matter in the order, specifying in all grounds for rehearing, and the SEC may grant rehearing if in its opinion good reason for rehearing is stated in the motion or deny it

Within 30 days after the SEC decision on rehearing request an applicant for rehearing may appeal to the Supreme Court

The Court has its own standard for whether a party has standing to bring an appeal: must demonstrate that its rights may be directly affected by the decision, or that it has suffered or will suffer an immediate or direct injury in fact, future harm is insufficient as a matter of law - *Appeal of Stonyfield Farm*, 159 N.H. 227 (2009)

Standard for review by Court: burden of proof is on party seeking to set aside order to show that it is clearly unreasonable or unlawful - all findings of SEC on all questions of fact properly before it deemed to be prima facie lawful and reasonable - the order will not be set aside or vacated except for errors of law, unless the Court is satisfied, by a clear preponderance of the evidence before it, that the order is unjust or unreasonable

Current Rulemaking Process



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Committee has existing, mostly procedural rules

Revisions to SEC law in 2014 required adoption of rules relative to organization, practices, and procedures of SEC and criteria for siting of energy facilities, including specific criteria to be applied in determining if requirements of RSA 162-H:16, IV have been met by applicant for a certificate of site and facility – also criteria specific to wind power facilities - deadline for adoption of rules in that law July 1, 2015

Stakeholder process on rules: <http://www.nhsec.nh.gov/projects/2014-04/index.htm>

Legislature in 2015 extended deadline for adoption of rules to November 1 and included language about applicability of new rules to pending applications (***except for cases where adjudicatory hearing has commenced, applications pending on date rules adopted will be subject to new rules - if new rules require submission of additional information applicant afforded reasonable opportunity to provide information while processing of application continues***).



Legislature in 2015 also required adoption of rules specific to natural gas pipelines: impacts to natural, scenic, recreational, visual, and cultural resources; health and safety impacts, including proximity to high pressure gas pipelines that could be mitigated by appropriate setbacks from any high pressure gas pipeline; project-related sound and vibration impact assessment prepared in accordance with professional standards by an expert; impacts to environment, air and water quality, plants, animals, and natural communities; site fire protection plan requirements; best practical measures to ensure quality construction that minimizes safety issues; best practical measures to avoid, minimize, or mitigate adverse effects; criteria to maintain property owners' ability to use and enjoy their property



Pop
Quiz!

NHMA

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In February of 1977 President Jimmy Carter gave a televised speech to the nation on the subject of energy. During that speech President Carter was famously wearing which of the following?

- A. Bow tie
- B. Sandals
- C. A sweater
- D. Blue Blazer



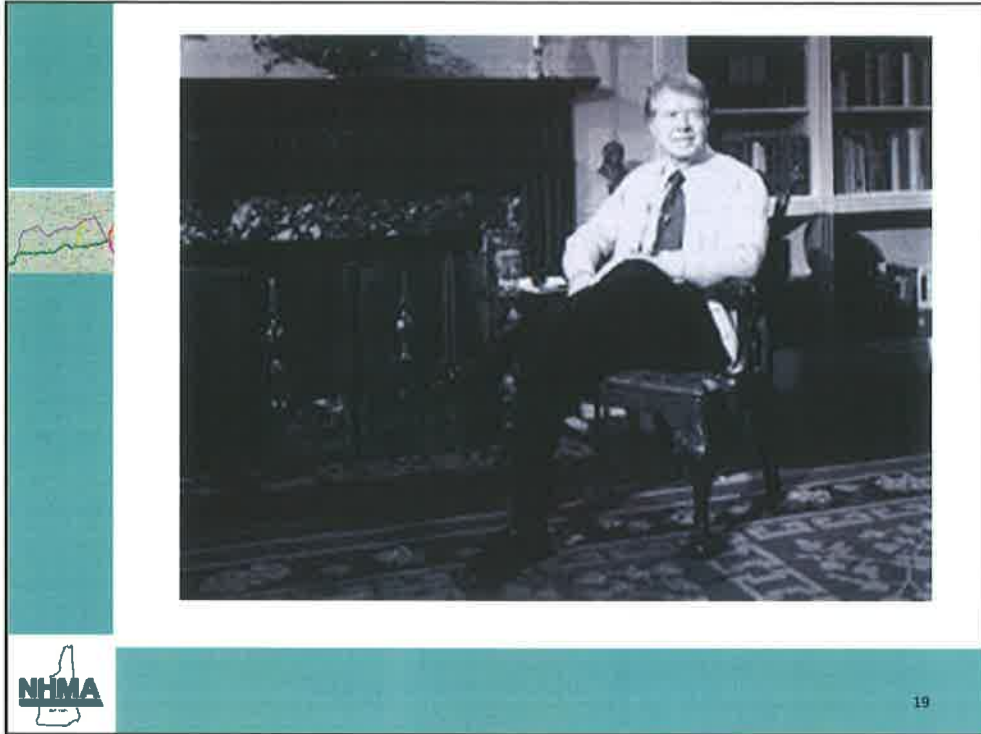
Bonus Question

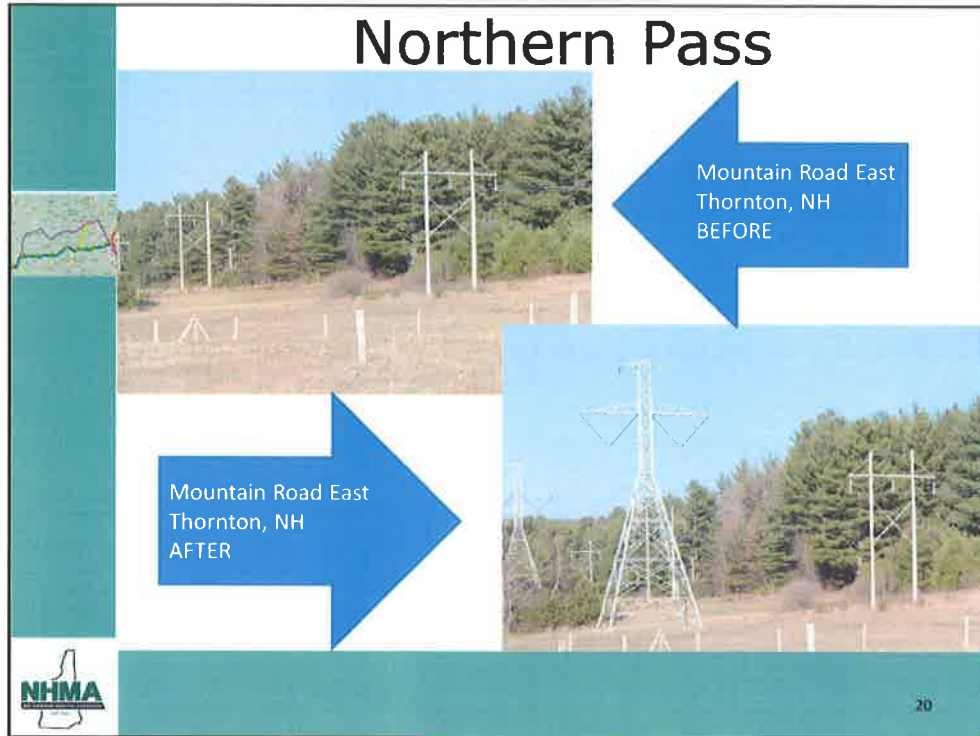


During his speech on energy what was seen in the background?

- A. Pictures of his wife Rosalyn and Daughter Amy
- B. A fireplace with a crackling wood fire
- C. The American Flag
- D. A chart depicting energy usage in the U.S.

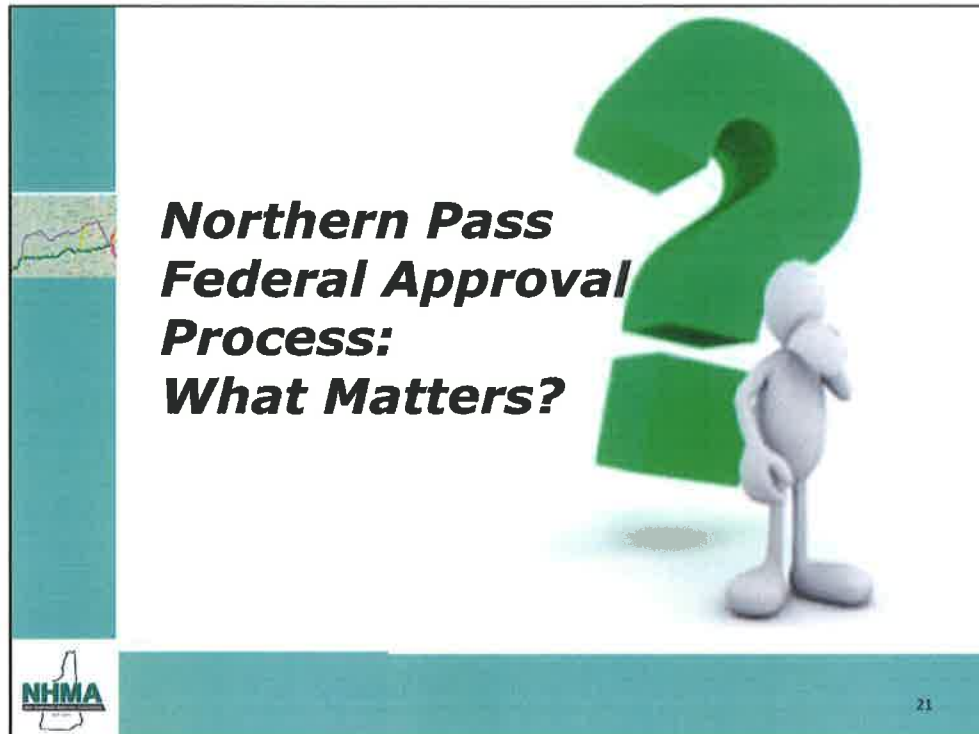






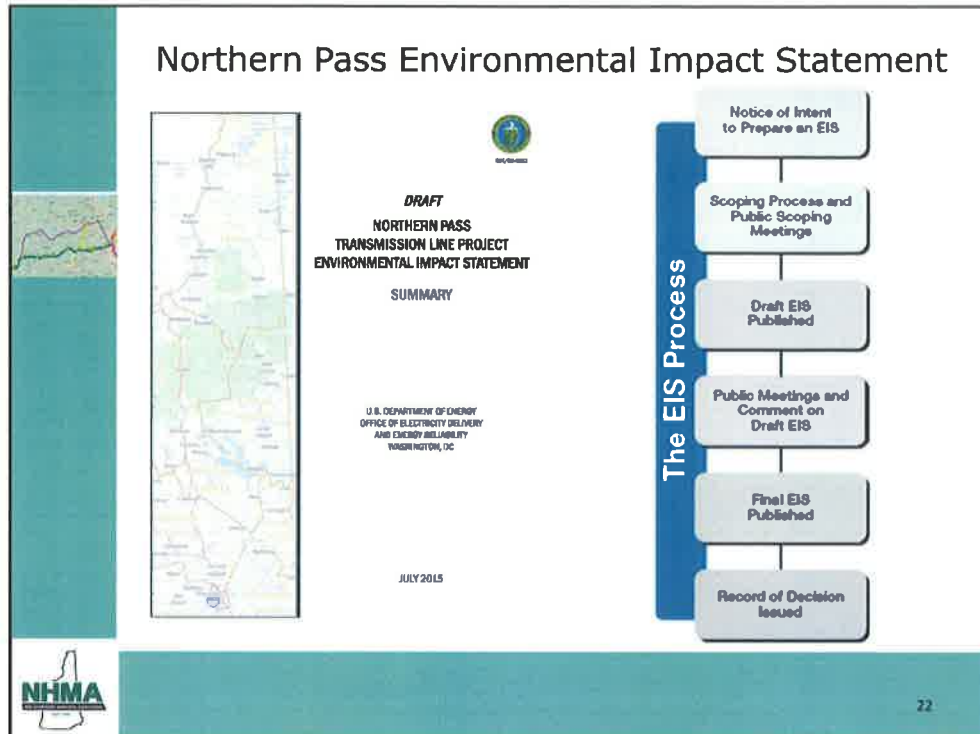
What Permits are Necessary for Northern Pass?

- A Presidential permit issued by US Department of Energy (DOE) under Executive Order (E.O.) 10485, as amended by E.O. 12038 must be issued to Eversource Transmission Ventures, Inc., (Northern Pass) DOE's role is limited to deciding whether to issue a Presidential permit. In order to build its proposed transmission line Northern Pass also will be required to obtain the approval of the New Hampshire Site Evaluation Committee under RSA Chapter 162-H.
- Approval to operate as a public utility and project financing from the NH Public Utilities Commission
- Certificate of site and facility from the NH Energy Facility Site Evaluation Committee
- Other possible approvals from US Forest Service, US Fish and Wildlife Service, Army Corp of Engineers



Presidential Permit: The Department of Energy (DOE) must find Northern Pass is consistent with the public interest. Whether Northern Pass will be found consistent with the public interest DOE must evaluate:

- Potential environmental impacts during the National Environmental Policy Act review
- Effects of Northern Pass on electric system reliability
- Other factors considered relevant to the public interest
- Department of State and Department of Defense must agree with any decision by DOE to issue permit



Draft EIS Comment Process

DOE is currently seeking public input on the Draft EIS and comment on the cultural and historic property review under Section 106 of the National Historic Preservation Act.

Public comments on the on the draft EIS and Section 106 will be accepted for 90 days

Public hearings will be held in the following locations (additional details will be provided by DOE when available):

- October 6, 2015: Concord, NH
- October 7, 2015: Whitefield, NH
- October 8, 2015: Plymouth, NH

Both oral and written comments on the draft EIS will be considered and given equal weight by DOE, regardless of how submitted, provided that they are received within the defined comment period on the draft EIS. The comment period for the draft EIS opened on July 31, 2015. The 90-day comment period will close on October 29, 2015.

Comments can be submitted using a comment form on the DOE dedicated website for Northern Pass: <http://www.northernpasseis.us/comment/>

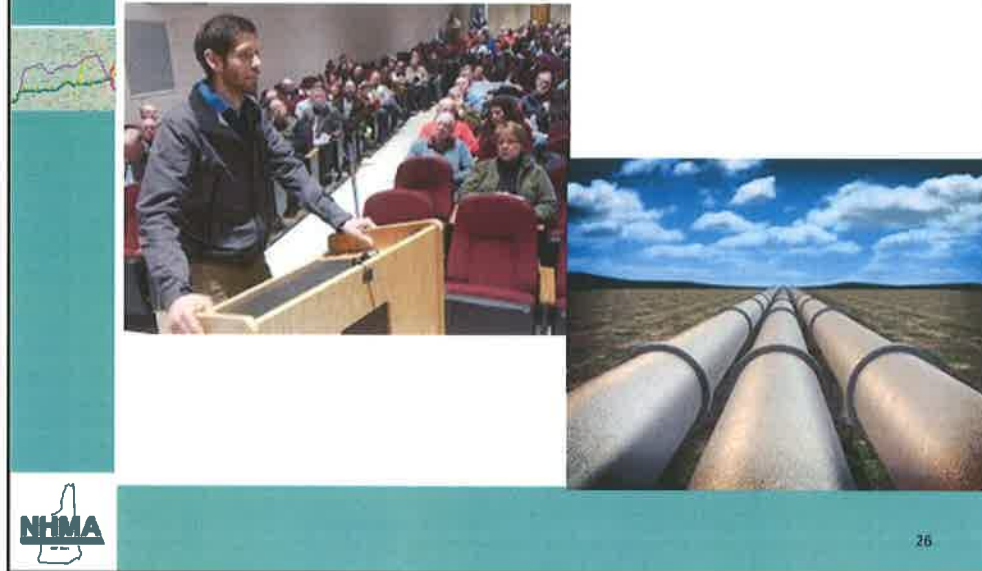
Kinder Morgan Pipeline Proposal



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- Federal Regulatory Commission (FERC) is the federal agency that regulates the interstate transmission of electricity, natural gas, and oil and also reviews proposals to build liquefied natural gas terminals and interstate natural gas pipelines and to license hydropower projects
- Under the Natural Gas Act, 15 U.S.C. §§ 717-717z, before an applicant can construct or extend an interstate facility for the transportation of natural gas, it must obtain a “certificate of public convenience and necessity” from FERC. FERC will first confirm whether the project can proceed without subsidies from the existing pipeline’s customers. In conjunction with the certificating process, FERC must also complete an environmental review of the proposed project, as mandated by the National Environmental Policy Act (NEPA). Under NEPA it is FERC’s obligation that it identify the reasonable alternatives to the proposed pipeline and look hard at the environmental effects of its decision. Minisink Residents for Preservation & Safety v. FERC, 762 F. 3d 97 (D.C. Cir., 2014)

Kinder Morgan Pipeline and Local Regulations



Although the Natural Gas Act arguably preempts almost all state or local regulation, in the past applicants seeking to construct natural gas pipelines in New Hampshire have sought and obtained approval from the state Site Evaluation Committee. While local and state regulations may legally have only an indirect effect on, and must not interfere with FERC's authority or the ability of the pipeline builder to carry out its public convenience and necessity certificate, the state has in the past imposed some conditions on the approval of a proposed interstate natural gas pipeline that address local and state concerns. Nonetheless, it should be noted that federal case law has made it clear that municipal zoning regulations are preempted by the Natural Gas Act. See, *Algonquin Lng v. Loqa*, 79 F.Supp.2d 49 (D.R.I. 2000) (federal court in Rhode Island holds that local zoning ordinance requiring pipeline builder to obtain variance from ZBA was preempted).



Towns and cities sometimes agree to accept conservation easements without fully understanding their role as the holder of an easement. This webinar will explain what a conservation easement is and how the restrictions contained in the easement deed apply to both current and future land owners.

Join Attorney Thomas Donovan, Director of Charitable Trusts at the Office of Attorney General, and Terry Knowles, Assistant Director, as they will familiarize municipal officials with their legal duties and responsibilities in insuring the terms of the easement deed are monitored and enforced.

This webinar is open to members of the New Hampshire Municipal Association and is of particular interest to any municipal official handling conservation easements, including selectman, alderman, town council, town managers and members of conservation commissions.

[Register Here](#)

Registration deadline is noontime, September 15.



*for attending
our webinar
presentation
today!*

Mission Statement

The New Hampshire Municipal Association is a non-profit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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