



Legal Briefs

Does a town have any authority to regulate commercial wind power energy generation facilities by land use control regulations?

The State has substantially preempted regulation of larger facilities.

RSA 162-H regulates Energy Facility Evaluation, Siting, Construction and Operation. The predecessor of RSA 162-H was RSA 162-F. In *Public Service Company of New Hampshire v. Hampton*, 120 N.H. 68 (1980), the New Hampshire Supreme Court held that RSA 162-F preempted municipal power to regulate transmission lines for the Seabrook Nuclear Electric Generating Station. The logic of the decision suggests preemption of all aspects of site selection regulated by the Site Evaluation Committee for “energy facilities” under RSA 162-H. The definition of “energy facility” in RSA 162-H:2 includes the following:

VII. “Energy facility” means:

...

(f) A renewable energy facility.

The definition of “renewable energy facility” under subsection XII provides in part as follows:

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 but less than 120 megawatts and powered by wind 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.

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