

NH Tidal Energy Commission Meeting Minutes

NH Fish & Game Department Region 3 Office, Durham, NH
December 7, 2007, 1:00 PM

Members:

Rep. Thomas Fargo, Co-Chair, City of Dover
Ken Baldwin, Co-Chair, UNH
Ted, Diers, Vice-Chair, NH Coastal Program
Rep. Roland Hofemann, Dover
Cynthia Copeland, NHEP (Strafford Regional Planning Commission)
Brian Giles, NH Estuaries Project
Joel Harrington, The Nature Conservancy
Sean McDermott, National Marine Fisheries Service
Jack Pare, Town of Newington
Jack Ruderman, Office of Energy and Planning
Tracy Shattuck, PDA - Division of Ports and Harbors
Bruce Smith, NH Fish & Game Department
Eric Steltzer, Rockingham Planning Commission
Christopher Waszczuk, NH Department of Transportation
Peter Wellenberger, Great Bay National Estuarine Research Reserve

Other Attendees:

David Funk, Great Bay Stewards
David Kellam, NH Estuaries Project
Christian Williams, NH Coastal Program

Guest Speaker:

Evan Mulholland, NH Department of Justice

Summary:

Co-chair, Rep. Tom Fargo asked members if they had any comments on the commission's Initial Report ("Report"), dated November 2007, which was recently emailed to all commission members. He reminded members that the Report was a requirement of the commission's enabling legislation. There were no comments from commission members. The Report can be found at the commission's web page at http://des.nh.gov/Coastal/ocean_policy.html and on the New Hampshire General Court Statutory and Study Committee search page located at <http://www.gencourt.state.nh.us/statstudcomm>.

Rep. Fargo then asked Dave Kellam to explain the "wiki" page that he created for the commission's Environmental and Wildlife Impact Assessment (EWIA) Subcommittee. Dave explained that a wiki page is a free, editable web page that allows interested parties to participate in chat room-like discussions. The EWIA Subcommittee wiki page, which

can be found at <http://tidal-subcom.wikispaces.com>, is currently set-up to be viewed and edited by any interested party. All edits are tracked and recorded. Dave explained that wiki pages can also be set-up with restrictions on who can view and/or edit the content. Dave offered his assistance in developing wiki pages for any of the other commission subcommittees that may be interested.

Rep. Fargo then introduced Evan Mulholland of the NH Department of Justice, Attorney General's Office, Environmental Protection Bureau to discuss submerged lands issues. Mr. Mulholland focused his discussion on the following three subject areas: 1) Lease or transfer of submerged land; 2) Fees and taxes; 3) Regulation. A summary of the issues discussed and questions raised is provided below:

1. Lease or Transfer of Submerged Land

- State owns the land subject to the public trust, with reasonable restrictions.
- State can transfer ownership if it chooses to, subject to legislative action and can lease rights to install structures on the bed of submerged lands.
- Aquaculture model in NH utilizes a permit system not a lease.
- Ownership in fee versus ownership via public trust.
- Right-of-way for DOT stops at the highest observable tide line (HOTL), what about right-of-way for Public Utilities Commission (PUC)?
- Does PUC have a leasing program?
- Council on Resources and Development (CORD) oversees sales of state land.
- Is leasing of state land subject to same process?
- Is DOT issued leases through CORD?
- FERC gives power to condemn land on hydropower projects.
- Could an applicant get FERC to allow for condemnation of lands above the HOTL?
- Navigable servitude allows for dredging on public lands for navigation.

2. Fees and Taxes

- DES Dam Bureau has a filing fee for new dams and annual fee for maintenance based on hazard class.
- Per RSA 72:8, electric plants and pipe lines taxed as real estate in the town in which the plant/pipe line is located.
- Per RSA 83-F, Utility Property Tax, tax imposed on value of utility property at rate of \$6.60 per \$1,000 of assessed value.
- Can a municipality tax something under water?
- Towns can have tax exemption for renewable energy?
- How would taxes change if state owned the facility?

3. Regulation

- Federal versus state regulations.
- Federal Energy Regulatory Commission (FERC) is federal agency that licenses hydropower projects.
- FERC jurisdiction comes from Federal Power Act, which preempts state laws.
- Appears that all regulations other than those of the Clean Water Act (CWA) are preempted by FERC.
- FERC must, however, consult with state.
- Disputes regarding fisheries, access and other issues often resolved through settlement agreements.
- CWA Section 401 Water Quality Certification and Coastal Zone Management Act Consistency Certification are incorporated into FERC license.
- FERC permits don't preempt water rights.
- City of Portsmouth may have rights to Piscataqua River based on Little Pond case from 1879.

Mr. Mulholland offered to provide further assistance to the commission regarding submerged lands and other legal issues. He hopes to prepare a briefing document for the commission in the next couple of months. Commission members can email questions/comments directly to him at: evan.mulholland@doj.nh.gov. He agreed to look further into the following specific issues:

1. Does the state have to negotiate exclusively with NH Tidal Energy Company because FERC has granted it a preliminary permit for the area under the General Sullivan and Little Bay Bridges, or could the state negotiate with another vendor?
2. Who would be the primary contact for companies proposing a lease?
3. What is FERC's competing application process?
4. What is the nature of the taxes for Seabrook Station?
5. Is there a need for the state to enact legislation to preserve work areas near bridges?

Rep. Fargo then asked for updates from each of the commission's subcommittees. Cynthia Copeland reviewed a draft work plan that she and Kathleen Lewis of PSNH developed for the Public and Business Community Outreach Subcommittee. Chris Williams of the Permitting Requirements Subcommittee stated that the subcommittee had not yet met, but would likely do so in early January. The Environmental and Wildlife Impact Assessment Subcommittee referenced the development of its wiki page. Commission Co-chair, Ken Baldwin, stated that the Technical Feasibility, Cost and Benefits Analysis Subcommittee, which he chairs, had not yet met. He stated that perhaps the most critical issue facing the subcommittee involves determining how much energy can be harnessed from the tides in the Piscataqua River.

Rep. Fargo stated that he'd like the actions of the subcommittees to be as transparent as possible and suggested placing subcommittee notes on the commission's web page and/or on wiki pages.

Interest was expressed in having the two companies that have received preliminary permits from FERC, UEK Corporation and NH Tidal Energy Company, speak at the next commission meeting. Rep. Fargo stated that he'd contact them.

The next commission meeting was scheduled for **Friday, January 18, 2008 at 1:00 PM at the NH Department of Environmental Services (DES) Pease Office in Portsmouth.** Directions to the NHDES Pease Office will be provided on the commission's web page.

Meeting was adjourned at 2:55 PM