

2082

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 15, 2009

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Introduced by M. of A. O'MARA, KOLB, TEDISCO, CROUCH, CALHOUN, FINCH --  
Multi-Sponsored by -- M. of A. BACALLES, BALL, BARCLAY, BOYLE,  
BURLING, BUTLER, DUPREY, ERRIGO, GIGLIO, HAWLEY, HAYES, P. LOPEZ,  
McDONOUGH, McKEVITT, MILLER, MOLINARO, OAKS, QUINN, RAIA, REILICH,  
SALADINO, SCOZZAFAVA, SPANO, TOWNSEND, WALKER -- read once and  
referred to the Committee on Energy

AN ACT to amend the energy law, in relation to state energy planning; to  
amend the public service law, in relation to electric capacity  
procurement and siting major electric generating facilities; to amend  
the environmental conservation law, in relation to making certain  
conforming changes relating to the siting of major electric generating  
facilities; to amend the public authorities law, in relation to making  
provisions of law relating to the siting of major electric generating  
facilities applicable to the power authority of the state of New York  
and the Long Island power authority; to amend the state finance law,  
in relation to establishing the intervenor account

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The energy law is amended by adding a new article 6 to read  
2 as follows:

3                             ARTICLE 6

4                             ENERGY PLANNING

5     SECTION 6-101. STATE ENERGY PLANNING BOARD.

6             6-103. STATE ENERGY PLAN.

7             6-105. CONDUCT OF THE STATE ENERGY PLANNING PROCEEDING.

8     S 6-101. STATE ENERGY PLANNING BOARD. 1. THERE SHALL BE ESTABLISHED A  
9 STATE ENERGY PLANNING BOARD, HEREINAFTER REFERRED TO IN THIS ARTICLE AS  
10 THE "BOARD", WHICH SHALL CONSIST OF THE CHAIR OF THE PUBLIC SERVICE  
11 COMMISSION, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, THE COMMIS-  
12 SIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF TRANSPORTATION AND  
13 THE PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT  
14 AUTHORITY. ANY DECISION OR ACTION BY THE BOARD SHALL BE BY MAJORITY  
15 VOTE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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2. STAFF SERVICES SHALL BE PERFORMED BY PERSONNEL OF THE DEPARTMENT OF PUBLIC SERVICE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, AS DIRECTED BY THE BOARD. ASSISTANCE SHALL ALSO BE MADE AVAILABLE, AS REQUESTED BY THE BOARD, FROM OTHER AGENCIES, DEPARTMENTS AND PUBLIC AUTHORITIES OF THE STATE. THE BOARD MAY PROVIDE FOR ITS OWN REPRESENTATION IN ALL ACTIONS OR PROCEEDINGS IN WHICH IT IS A PARTY.

3. THE BOARD SHALL HAVE THE POWERS:

(A) TO ADOPT A STATE ENERGY PLAN IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE;

(B) TO ADOPT RULES AND REGULATIONS AS NECESSARY OR APPROPRIATE TO IMPLEMENT THIS ARTICLE;

(C) TO ISSUE SUBPOENAS AND SUBPOENAS DUCES TECUM;

(D) TO AUTHORIZE ANY PERSON TO CONDUCT HEARINGS WHICH THE BOARD IS AUTHORIZED TO CONDUCT, TO TAKE TESTIMONY WITH RESPECT TO THE SUBJECT OR MATTER UNDER INVESTIGATION, AND TO REPORT THE TESTIMONY TO THE BOARD. IN THE CONDUCT OF SUCH HEARINGS, ANY PERSON SO AUTHORIZED BY THE BOARD SHALL HAVE ALL THE POWERS OF THE BOARD; AND

(E) TO UNDERTAKE ENERGY RELATED STUDIES AND ISSUE REPORTS AS THE BOARD DEEMS APPROPRIATE.

S 6-103. STATE ENERGY PLAN. 1. THE BOARD SHALL ADOPT A STATE ENERGY PLAN IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

2. THE STATE ENERGY PLAN SHALL INCLUDE:

(A) FORECASTS FOR A PERIOD OF TEN YEARS OF (I) DEMAND FOR ELECTRICITY, NATURAL GAS, COAL AND PETROLEUM PRODUCTS, INCLUDING HEATING AND TRANSPORTATION FUELS, FOR THE SERVICE AREAS OF THE STATE'S MAJOR ELECTRIC AND GAS UTILITIES AND/OR THE STATE AS A WHOLE, AS APPROPRIATE, TAKING INTO ACCOUNT ENERGY CONSERVATION, LOAD MANAGEMENT AND OTHER DEMAND-REDUCING MEASURES REASONABLY EXPECTED TO OCCUR;

(II) ENERGY SUPPLY REQUIREMENTS NEEDED TO SATISFY DEMAND FOR ELECTRICITY, NATURAL GAS, COAL AND PETROLEUM PRODUCTS, INCLUDING HEATING AND TRANSPORTATION FUELS, FOR THE SERVICE AREAS OF THE STATE'S MAJOR ELECTRIC AND GAS UTILITIES AND/OR FOR THE STATE AS A WHOLE, AS APPROPRIATE, INCLUDING WITH RESPECT TO ELECTRICITY, THE AMOUNT OF CAPACITY NEEDED TO PROVIDE ADEQUATE RESERVE MARGINS;

(III) AN ASSESSMENT OF THE ABILITY OF THE EXISTING ENERGY SUPPLY SOURCES AND THE EXISTING TRANSMISSION OR FUEL TRANSPORTATION SYSTEMS, TO SATISFY, TOGETHER WITH THOSE SOURCES OR SYSTEMS REASONABLY CERTAIN TO BE AVAILABLE, SUCH ENERGY SUPPLY REQUIREMENTS;

(IV) ADDITIONAL ELECTRIC CAPACITY NEEDED TO MEET SUCH ENERGY SUPPLY REQUIREMENTS THAT WILL NOT BE MET BY EXISTING SOURCES OF SUPPLY AND THOSE REASONABLY CERTAIN TO BE AVAILABLE; AND

(V) ENERGY PRICES;

(B) IDENTIFICATION AND ANALYSIS OF THE COSTS, RISKS, BENEFITS AND UNCERTAINTIES OF ENERGY SUPPLY SOURCE ALTERNATIVES, INCLUDING DEMAND-REDUCING MEASURES, FOR SATISFYING ENERGY SUPPLY REQUIREMENTS WHICH ARE NOT REASONABLY CERTAIN TO BE MET BY THE ENERGY SUPPLY SOURCES IDENTIFIED IN SUBPARAGRAPH (III) OF PARAGRAPH (A) OF THIS SUBDIVISION, PROVIDED THAT SUCH ANALYSIS SHALL INCLUDE THE FACTORS IDENTIFIED IN PARAGRAPH (D) OF THIS SUBDIVISION;

(C) IDENTIFICATION AND ANALYSIS OF EMERGING TRENDS RELATED TO ENERGY SUPPLY, PRICE AND DEMAND, INCLUDING TRENDS RELATED TO THE TRANSPORTATION SECTOR;

(D) A STATEMENT OF ENERGY POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES APPROPRIATE TO ACHIEVE, AMONG OTHER THINGS,

THE LEAST COST INTEGRATION OF ENERGY SUPPLY SOURCES AND DEMAND-REDUCING MEASURES FOR SATISFYING ENERGY SUPPLY REQUIREMENTS, GIVING DUE REGARD TO SUCH FACTORS AS RATEPAYER IMPACTS, SECURITY AND DIVERSITY OF FUEL SUPPLIES AND GENERATING MODES, PROTECTION OF PUBLIC HEALTH AND SAFETY, ADVERSE AND BENEFICIAL ENVIRONMENTAL IMPACTS, CONSERVATION OF ENERGY AND ENERGY RESOURCES AND THE ABILITY OF THE STATE TO COMPETE ECONOMICALLY;

(E) RECOMMENDATIONS, AS APPROPRIATE AND DESIRABLE, FOR ADMINISTRATIVE AND LEGISLATIVE ACTIONS TO IMPLEMENT SUCH POLICIES, OBJECTIVES AND STRATEGIES;

(F) ANALYSIS OF THE PROBABLE IMPACT OF IMPLEMENTATION OF THE PLAN UPON ECONOMIC DEVELOPMENT, HEALTH, SAFETY AND WELFARE, ENVIRONMENTAL QUALITY, AND ENERGY COSTS FOR CONSUMERS, SPECIFICALLY LOW-INCOME CONSUMERS; AND

(G) SUCH ADDITIONAL INFORMATION AS THE BOARD DEEMS APPROPRIATE.

3. (A) THE STATE ENERGY PLAN SHALL PROVIDE GUIDANCE FOR ENERGY-RELATED DECISIONS TO BE MADE BY THE PUBLIC AND PRIVATE SECTORS WITHIN THE STATE.

(B) ANY ENERGY-RELATED ACTION OR DECISION OF A STATE AGENCY, BOARD, COMMISSION OR AUTHORITY SHALL BE REASONABLY CONSISTENT WITH THE FORECASTS AND THE POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE PLAN, INCLUDING ITS MOST RECENT UPDATE; PROVIDED, HOWEVER, THAT ANY SUCH ACTION OR DECISION WHICH IS NOT REASONABLY CONSISTENT WITH THE PLAN SHALL BE DEEMED IN COMPLIANCE WITH THIS SECTION, PROVIDED THAT SUCH ACTION OR DECISION INCLUDES A FINDING THAT THE RELEVANT PROVISIONS OF THE PLAN ARE NO LONGER REASONABLE OR PROBABLE BASED ON A MATERIAL AND SUBSTANTIAL CHANGE IN FACT OR CIRCUMSTANCE, AND A STATEMENT EXPLAINING THE BASIS FOR THIS FINDING.

(C) NO ACTION OR DECISION OF A STATE AGENCY, BOARD, COMMISSION OR AUTHORITY THAT IS REQUIRED BY THIS SECTION TO BE REASONABLY CONSISTENT WITH THE FORECASTS, POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE PLAN, INCLUDING ITS MOST RECENT UPDATE, SHALL BE DEEMED BY A COURT OF LAW TO BE UNREASONABLY INCONSISTENT WITH SUCH FORECASTS, POLICIES, OBJECTIVES AND STRATEGIES, UNDER THIS OR ANY OTHER PROVISION OF LAW, UNLESS A DETERMINATION TO THIS EFFECT IS MADE BY THE BOARD UPON ITS OWN INITIATIVE OR FOLLOWING THE REFERRAL OF THE ISSUE TO THE BOARD BY A COURT AFTER THE COMMENCEMENT OF A PROCEEDING CHALLENGING SUCH ACTION.

(D) NOTHING IN THIS SECTION SHALL LIMIT THE AUTHORITY OF ANY STATE AGENCY, BOARD, COMMISSION OR AUTHORITY TO DENY AN APPLICATION TO CONSTRUCT, OPERATE OR MODIFY AN ENERGY FACILITY ON ENVIRONMENTAL OR PUBLIC HEALTH AND SAFETY GROUNDS.

(E) A STATE AGENCY, BOARD, COMMISSION OR AUTHORITY MAY TAKE OFFICIAL NOTICE OF THE MOST RECENT FINAL STATE ENERGY PLAN ADOPTED BY THE BOARD PRIOR TO ANY FINAL ENERGY-RELATED DECISION BY SUCH AGENCY, BOARD, COMMISSION OR AUTHORITY.

S 6-105. CONDUCT OF THE STATE ENERGY PLANNING PROCEEDING. 1. BY MAY FIRST, TWO THOUSAND TWELVE, AND EVERY FOUR YEARS FOLLOWING THE ADOPTION OF THE MOST RECENT PLAN, THE STATE ENERGY PLANNING BOARD SHALL ADOPT A STATE ENERGY PLAN, WHICH ADDRESSES EACH ITEM IDENTIFIED IN SUBDIVISION TWO OF SECTION 6-103 OF THIS ARTICLE PROVIDED, HOWEVER, THE BOARD MAY ADOPT SUCH A PLAN MORE FREQUENTLY FOR GOOD CAUSE SHOWN.

2. THE BOARD SHALL CONDUCT A STATE ENERGY PLANNING PROCEEDING, CONSISTENT WITH THE NEED TO DEVELOP THE PLAN IN A TIMELY MANNER, WHICH SHALL PROVIDE FOR THE FOLLOWING AT A MINIMUM:

(A) THE FILING OF INFORMATION BY ENERGY MARKET PARTICIPANTS CONSISTENT WITH RULES AND REGULATIONS PROMULGATED BY THE BOARD AND AS SPECIFIED IN SUBDIVISION THREE OF THIS SECTION;

(B) THE PREPARATION AND ISSUANCE OF A DRAFT PLAN, SUBSEQUENT TO THE FILING OF INFORMATION BY ENERGY MARKET PARTICIPANTS, WHICH SHALL ADDRESS EACH ITEM IDENTIFIED IN SUBDIVISION TWO OF SECTION 6-103 OF THIS ARTICLE;

(C) PUBLIC COMMENT HEARINGS, IN AT LEAST THREE GEOGRAPHIC LOCATIONS IN THE STATE, AND AN OPPORTUNITY TO SUBMIT WRITTEN COMMENTS, SUBSEQUENT TO THE ISSUANCE OF A DRAFT PLAN, TO OBTAIN VIEWS AND COMMENTS OF INTERESTED PERSONS ON ANY ASPECT OF, OR ISSUE ADDRESSED IN, SUCH DRAFT PLAN;

(D) EVIDENTIARY HEARINGS, AT THE REQUEST OF ANY INTERESTED PERSON, SUBSEQUENT TO THE ISSUANCE OF A DRAFT PLAN, ON THE ISSUES IDENTIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 6-103 OF THIS ARTICLE OR ON THE FACTUAL BASIS FOR ANY OTHER ISSUE IDENTIFIED IN SUBDIVISION TWO OF SECTION 6-103 OF THIS ARTICLE; AND

(E) SUBMISSION OF A NOTICE FOR ANY HEARING OR OPPORTUNITY FOR COMMENT PROVIDED FOR PURSUANT TO THIS SUBDIVISION FOR PUBLICATION WITHIN THE STATE REGISTER.

3. INFORMATION FILED BY MAJOR ENERGY SUPPLIERS SHALL INCLUDE THE FOLLOWING:

(A) THE NEW YORK INDEPENDENT SYSTEM OPERATOR, OR ANY SUCCESSOR ORGANIZATION, WITH THE COOPERATION OF THE PARTICIPANTS IN THE ELECTRICITY MARKETS ADMINISTERED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR AND ENTITIES OTHERWISE SUBJECT TO THIS ARTICLE, SHALL, CONSISTENT WITH THE TARIFFS AND AGREEMENTS OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, PREPARE AND SUBMIT A SINGLE COMPREHENSIVE LONG-RANGE PLAN FOR FUTURE OPERATIONS, WHICH SHALL INCLUDE:

(I) A FORECAST OF ELECTRICITY DEMANDS OVER A PERIOD OF TEN YEARS, INCLUDING ANNUAL IN-STATE ELECTRIC ENERGY SALES AND SUMMER AND WINTER PEAK LOADS BY ZONE, AND TOTAL ANNUAL IN-STATE ELECTRIC ENERGY SALES AND COINCIDENT PEAK LOAD ON A STATEWIDE BASIS, SPECIFICALLY IDENTIFYING THE EXTENT TO WHICH ENERGY CONSERVATION, LOAD MANAGEMENT AND OTHER DEMAND-REDUCING MEASURES, AND ELECTRIC ENERGY GENERATED BY COGENERATION, SMALL HYDRO AND ALTERNATE ENERGY PRODUCTION FACILITIES CONSUMED ON SITE, HAVE BEEN INCORPORATED WITHIN SUCH FORECAST;

(II) A FORECAST OF ELECTRICITY DEMANDS OVER A PERIOD OF TEN YEARS, STATEWIDE AND BY ZONE, AS THE NEW YORK INDEPENDENT SYSTEM OPERATOR SHALL PRESCRIBE, SPECIFICALLY IDENTIFYING THE AMOUNT OF RESERVE MARGINS REQUIRED FOR RELIABLE ELECTRIC SERVICE, THE AMOUNTS OF TRANSMISSION AND DISTRIBUTION LOSSES ASSUMED, AND THE AMOUNT OF OUT-OF-STATE SALES COMMITMENTS;

(III) AN ASSESSMENT OF THE ABILITY OF EXISTING ELECTRICITY SUPPLY SOURCES, AND DEMAND-REDUCING MEASURES, INCLUDING THOSE REASONABLY CERTAIN TO BE AVAILABLE, THROUGH IMPLEMENTATION OF STRATEGIES, POLICIES OR OBJECTIVES DEVELOPED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR, OR OTHERWISE, TO SATISFY ELECTRICITY SUPPLY REQUIREMENTS, INCLUDING ELECTRIC GENERATING FACILITIES WHICH CAN BE RETAINED IN SERVICE BEYOND THEIR ORIGINAL DESIGN LIFE THROUGH ROUTINE MAINTENANCE AND REPAIRS;

(IV) AN INVENTORY OF (1) ALL EXISTING ELECTRIC GENERATING AND TRANSMISSION FACILITIES OWNED OR OPERATED BY PARTICIPANTS IN THE ELECTRICITY MARKETS ADMINISTERED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR, AND ENTITIES OTHERWISE SUBJECT TO THIS ARTICLE, (2) ELECTRIC GENERATING AND TRANSMISSION FACILITIES UNDER CONSTRUCTION BY PARTICIPANTS IN THE ELECTRICITY MARKETS ADMINISTERED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR AND ENTITIES OTHERWISE SUBJECT TO THIS ARTICLE, INCLUDING THE DATES FOR COMPLETION AND OPERATION, (3) THE ANTICIPATED RETIREMENT DATES FOR ELECTRIC GENERATING FACILITIES CURRENTLY OWNED OR OPERATED BY PARTICIPANTS IN THE ELECTRICITY MARKETS ADMINISTERED BY THE NEW YORK INDEPENDENT

1 SYSTEM OPERATOR, AND ENTITIES OTHERWISE SUBJECT TO THIS ARTICLE, (4)  
2 LAND OWNED BY PARTICIPANTS IN THE ELECTRICITY MARKETS ADMINISTERED BY  
3 THE NEW YORK INDEPENDENT SYSTEM OPERATOR, AND ENTITIES OTHERWISE SUBJECT  
4 TO THIS ARTICLE, AND HELD FOR FUTURE USE AS SITES FOR MAJOR ELECTRIC  
5 GENERATING FACILITIES, AND (5) ELECTRIC GENERATING FACILITIES OWNED,  
6 OPERATED, OR PLANNED TO BE OWNED OR OPERATED, BY OTHERS, TO THE EXTENT  
7 INFORMATION CONCERNING THE SAME IS KNOWN;

8 (V) RECOMMENDED SUPPLY ADDITIONS AND DEMAND REDUCING MEASURES FOR  
9 SATISFYING THE ELECTRICITY SUPPLY REQUIREMENTS, NOT REASONABLY CERTAIN  
10 TO BE MET BY ELECTRICITY SUPPLY SOURCES IDENTIFIED IN SUBPARAGRAPH (III)  
11 OF THIS PARAGRAPH, INCLUDING THE LIFE EXTENSION OF EXISTING ELECTRIC  
12 GENERATING FACILITIES, AND REASONS THEREFOR;

13 (VI) A STATEMENT OF RESEARCH AND DEVELOPMENT PLANS, INCLUDING OBJEC-  
14 TIVES AND PROGRAMS IN THE AREAS OF ENERGY CONSERVATION, LOAD MANAGEMENT,  
15 ELECTRIC GENERATION AND TRANSMISSION, NEW ENERGY TECHNOLOGIES AND  
16 POLLUTION ABATEMENT AND CONTROL, RECENT RESULTS OF SUCH PROGRAMS UNDER-  
17 TAKEN OR FUNDED TO DATE, AND AN ASSESSMENT OF THE POTENTIAL IMPACTS OF  
18 SUCH RESULTS;

19 (VII) A PROJECTION OF ESTIMATED ELECTRICITY PRICES TO CONSUMERS OVER  
20 THE FORECAST PERIOD;

21 (VIII) A DESCRIPTION OF THE LOAD FORECASTING METHODOLOGY AND THE  
22 ASSUMPTIONS AND DATA USED IN THE PREPARATION OF THE FORECASTS, SPECIF-  
23 ICALLY INCLUDING PROJECTIONS OF DEMOGRAPHIC AND ECONOMIC ACTIVITY AND  
24 SUCH OTHER FACTORS, STATEWIDE AND BY SERVICE AREA, WHICH MAY INFLUENCE  
25 ELECTRICITY DEMAND, AND THE BASES FOR SUCH PROJECTIONS;

26 (IX) PROPOSED POLICIES, OBJECTIVES AND STRATEGIES FOR MEETING THE  
27 STATE'S FUTURE ELECTRICITY NEEDS; AND

28 (X) SUCH ADDITIONAL INFORMATION AS THE BOARD MAY, BY REGULATION,  
29 REQUIRE TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

30 (B) THE MEMBERS OF THE NORTHEAST GAS ASSOCIATION, OR ANY SUCCESSOR  
31 ORGANIZATION, SHALL PREPARE AND SUBMIT A SINGLE COMPREHENSIVE LONG-RANGE  
32 PLAN FOR FUTURE OPERATIONS, WHICH SHALL INCLUDE:

33 (I) A FORECAST OVER A PERIOD OF TEN YEARS, STATEWIDE AND BY UTILITY  
34 SERVICE AREA, OF ESTIMATED ANNUAL IN-STATE GAS SALES, WINTER SEASON  
35 SALES AND PEAK DAY SALES BY APPROPRIATE END-USE CLASSIFICATIONS, SPECIF-  
36 ICALLY IDENTIFYING THE EXTENT TO WHICH ENERGY CONSERVATION MEASURES AND  
37 THE SALE OF GAS OWNED BY PERSONS OTHER THAN THE MEMBERS OF THE NORTHEAST  
38 GAS ASSOCIATION, OR ANY SUCCESSOR ORGANIZATION, DIRECTLY TO END-USERS  
39 HAVE BEEN INCORPORATED WITHIN SUCH FORECAST;

40 (II) A FORECAST OF GAS SUPPLY REQUIREMENTS OVER A PERIOD OF TEN YEARS,  
41 STATEWIDE AND BY UTILITY SERVICE AREA, SPECIFICALLY IDENTIFYING THE  
42 AMOUNTS OF GAS NEEDED TO MEET SEVERE WEATHER CONDITIONS, LOST AND UNAC-  
43 COUNTED FOR GAS, OUT-OF-STATE SALES COMMITMENTS AND INTERNAL USE;

44 (III) AN ASSESSMENT OF THE ABILITY OF EXISTING GAS SUPPLY SOURCES, AND  
45 THOSE REASONABLY CERTAIN TO BE AVAILABLE, TO SATISFY GAS SUPPLY REQUIRE-  
46 MENTS;

47 (IV) AN INVENTORY OF (1) ALL EXISTING SUPPLY SOURCES, STORAGE FACILI-  
48 TIES, AND TRANSMISSION FACILITIES WHICH ARE USED IN PROVIDING SERVICE  
49 WITHIN THE STATE, (2) THE TRANSMISSION AND STORAGE FACILITIES UNDER  
50 CONSTRUCTION WHICH WOULD BE USED IN PROVIDING SERVICE WITHIN THE STATE,  
51 THEIR PROJECTED COSTS AND CAPACITIES, INCLUDING PEAKING CAPACITY, (3)  
52 TRANSMISSION FACILITY ADDITIONS PROPOSED TO BE CONSTRUCTED BY MEMBERS OF  
53 THE NORTHEAST GAS ASSOCIATION, OR ANY SUCCESSOR ORGANIZATION, (4) TRANS-  
54 MISSION FACILITIES OPERATED, OR PLANNED TO BE OPERATED, BY OTHERS, TO  
55 THE EXTENT INFORMATION CONCERNING THE SAME IS KNOWN;

(V) RECOMMENDED SUPPLY ADDITIONS AND DEMAND-REDUCING MEASURES FOR SATISFYING THE GAS SUPPLY REQUIREMENTS, NOT REASONABLY CERTAIN TO BE MET BY GAS SUPPLY SOURCES IDENTIFIED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH AND THE REASONS THEREFOR;

(VI) A PROJECTION OF ESTIMATED GAS PRICES TO CONSUMERS OVER THE FORECAST PERIOD;

(VII) A DESCRIPTION OF THE LOAD FORECASTING METHODOLOGY AND THE ASSUMPTIONS AND DATA USED IN THE PREPARATION OF THE FORECASTS, SPECIFICALLY INCLUDING PROJECTIONS OF DEMOGRAPHIC AND ECONOMIC ACTIVITY AND SUCH OTHER FACTORS, STATEWIDE AND BY SERVICE AREA, WHICH MAY INFLUENCE DEMAND FOR NATURAL GAS, AND THE BASES FOR SUCH PROJECTIONS;

(VIII) A STATEMENT OF RESEARCH AND DEVELOPMENT PLANS, INCLUDING OBJECTIVES AND PROGRAMS IN THE AREAS OF ENERGY CONSERVATION AND NEW ENERGY TECHNOLOGIES, RECENT RESULTS OF SUCH PROGRAMS UNDERTAKEN OR FUNDED TO DATE, AND AN ASSESSMENT OF THE POTENTIAL IMPACTS OF SUCH RESULTS;

(IX) PROPOSED POLICIES, OBJECTIVES AND STRATEGIES FOR MEETING THE STATE'S FUTURE GAS NEEDS; AND

(X) SUCH ADDITIONAL INFORMATION AS THE BOARD MAY, BY REGULATION, REQUIRE TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

(C) SUCH INFORMATION FROM PETROLEUM AND COAL MARKET PARTICIPANTS AS THE BOARD MAY, BY REGULATION, REQUIRE TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

4. ANY INFORMATION FILED BY A MAJOR ENERGY SUPPLIER UNDER THIS SECTION THAT IS CLAIMED TO BE CONFIDENTIAL SHALL BE TREATED IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD PERTAINING TO THE DETERMINATION OF CONFIDENTIAL STATUS AND THE RETENTION OF CONFIDENTIAL RECORDS.

5. COPIES OF THE DRAFT PLAN, AND ALL NON-CONFIDENTIAL INFORMATION AND COMMENTS FILED PURSUANT TO THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC FOR INSPECTION, PROVIDED SUCH INSPECTION IS CONSISTENT WITH ARTICLE SIX OF THE PUBLIC OFFICERS LAW AND ARTICLE TWENTY-SIX OF THE EXECUTIVE LAW.

6. THE BOARD MAY AMEND THE STATE ENERGY PLAN, OR ASPECTS THEREOF, UPON ITS OWN INITIATIVE OR UPON THE WRITTEN APPLICATION OF ANY INTERESTED PERSON. IN CONNECTION WITH ANY SUCH AMENDMENT, THE BOARD MAY REQUIRE THE FILING OF SUCH INFORMATION BY ENERGY MARKET PARTICIPANTS AS MAY BE REQUIRED, CONSISTENT WITH REGULATION. PRIOR TO ADOPTING ANY PROPOSED AMENDMENT TO AN ELEMENT OF THE PLAN IDENTIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 6-103 OF THIS ARTICLE, THE BOARD SHALL HOLD EVIDENTIARY HEARINGS, UPON THE WRITTEN APPLICATION OF AN INTERESTED PARTY. IN ADDITION, UPON THE WRITTEN APPLICATION OF AN INTERESTED PARTY, THE BOARD SHALL CONDUCT EVIDENTIARY HEARINGS ON THE FACTUAL BASIS FOR ANY OTHER ISSUE IDENTIFIED IN SUBDIVISION TWO OF SECTION 6-103 OF THIS ARTICLE. PRIOR TO ADOPTING A PROPOSED AMENDMENT TO ANY ELEMENT OF THE PLAN, THE BOARD SHALL PREPARE AND PUBLISH IN THE STATE REGISTER NOTICE OF ANY DRAFT AMENDMENT AND REASONS THEREFORE AND SHALL SOLICIT PUBLIC COMMENTS THEREON. THE BOARD SHALL ADOPT AN AMENDMENT TO THE STATE ENERGY PLAN, OR ASPECTS THEREOF, UPON A FINDING BY THE BOARD THAT THERE HAS BEEN A MATERIAL AND SUBSTANTIAL CHANGE IN FACT OR CIRCUMSTANCE SINCE THE MOST RECENT PLAN WAS ADOPTED. A DECISION OF THE BOARD THAT NO AMENDMENT IS NECESSARY, TOGETHER WITH THE REASONS SUPPORTING SUCH DETERMINATION, SHALL BE FINAL.

7. ANY PERSON WHO PARTICIPATED IN THE STATE ENERGY PLANNING PROCEEDING OR ANY PERSON WHO SOUGHT AN AMENDMENT OF THE STATE ENERGY PLAN PURSUANT TO SUBDIVISION SIX OF THIS SECTION, MAY OBTAIN, PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, JUDICIAL REVIEW OF THE BOARD'S DECISION ADOPTING A PLAN, OR ANY AMENDMENT THERETO, OR OF

1 THE BOARD'S DECISION NOT TO AMEND SUCH PLAN PURSUANT TO SUBDIVISION SIX  
2 OF THIS SECTION. ANY SUCH SPECIAL PROCEEDING SHALL BE BROUGHT IN THE  
3 APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE  
4 THIRD JUDICIAL DEPARTMENT. SUCH PROCEEDING SHALL BE INITIATED BY THE  
5 FILING OF A PETITION IN SUCH COURT WITHIN THIRTY DAYS AFTER THE ISSUANCE  
6 OF A DECISION BY THE BOARD. THE PROCEEDING SHALL HAVE A LAWFUL PREFER-  
7 ENCE OVER ANY OTHER MATTER, SHALL BE HEARD ON AN EXPEDITED BASIS AND  
8 SHALL BE COMPLETED IN ALL RESPECTS, INCLUDING ANY SUBSEQUENT APPEAL,  
9 WITHIN ONE HUNDRED EIGHTY DAYS OF THE FILING OF THE PETITION. WHERE MORE  
10 THAN ONE SUCH PETITION IS FILED, THE COURT MAY PROVIDE FOR CONSOLIDATION  
11 OF THE PROCEEDINGS. NOTWITHSTANDING THE PROVISIONS OF ARTICLE SEVEN OR  
12 TEN OF THE PUBLIC SERVICE LAW, THE PROCEDURE SET FORTH IN THIS SUBDIVI-  
13 SION SHALL CONSTITUTE THE EXCLUSIVE MEANS FOR SEEKING JUDICIAL REVIEW OF  
14 ANY ELEMENT OF THE PLAN.

15 8. PROCEEDINGS CONDUCTED PURSUANT TO THIS SECTION SHALL NOT BE CONSID-  
16 ERED PART OF AN ADJUDICATORY PROCEEDING AS DEFINED IN SUBDIVISION THREE  
17 OF SECTION ONE HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT, OR  
18 PART OF A RULE MAKING PROCEEDING HELD UNDER SUBDIVISION ONE OF SECTION  
19 TWO HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

20 S 2. The public service law is amended by adding a new section 66-i to  
21 read as follows:

22 S 66-I. ELECTRIC CAPACITY PROCUREMENT. 1. ANY ELECTRIC UTILITY CORPO-  
23 RATION, PRIOR TO ENTERING ELECTRIC CAPACITY PURCHASE CONTRACTS OR PRIOR  
24 TO MAKING SUBSTANTIAL INVESTMENTS TO SATISFY ELECTRIC CAPACITY NEEDS,  
25 INCLUDING INVESTMENTS IN NEW CONSTRUCTION, REPOWERING OR LIFE EXTENSION  
26 OF ELECTRIC GENERATING FACILITIES, AND DEMAND-REDUCING MEASURES, SHOULD  
27 CONSIDER REASONABLY AVAILABLE SOURCES AND SUPPLIERS OF ELECTRIC CAPACITY  
28 AND DEMAND REDUCING MEASURES, AND SHOULD SELECT THE SOURCE OR SOURCES  
29 WHICH BEST SERVE THE PUBLIC INTEREST, TAKING INTO CONSIDERATION SUCH  
30 FACTORS AS RATEPAYER IMPACTS, SYSTEM RELIABILITY, ENVIRONMENTAL IMPACTS,  
31 CONSERVATION OF ENERGY RESOURCES, PRESERVATION OR CREATION OF ECONOMIC  
32 OPPORTUNITIES, FUEL EFFICIENCY, FUEL AVAILABILITY AND DIVERSITY, AND  
33 PUBLIC HEALTH AND WELFARE.

34 2. THE COMMISSION SHALL HAVE AUTHORITY TO REQUIRE EACH ELECTRIC CORPO-  
35 RATION TO CONDUCT COMPETITIVE BIDDING AUCTIONS OR OTHER PROCUREMENT  
36 PROGRAMS FOR THE PURPOSE OF SATISFYING ELECTRIC CAPACITY NEEDS FROM  
37 REASONABLY AVAILABLE SOURCES AND SUPPLIERS OF ELECTRIC CAPACITY.

38 3. THE COMMISSION SHALL HAVE AUTHORITY TO PRESCRIBE GUIDELINES, RULES  
39 AND REGULATIONS REGARDING THE PARTICIPATION OF UTILITY COMPANIES, THEIR  
40 AFFILIATES, SUBSIDIARIES AND ANY OTHER CORPORATION OR PERSON IN COMPET-  
41 ITIVE BIDDING AUCTIONS, OR REGARDING ANY OTHER METHOD OF ACQUIRING ELEC-  
42 TRIC CAPACITY. ANY RULES, REGULATIONS, GUIDELINES AND DETERMINATIONS  
43 ADOPTED OR ISSUED BY THE COMMISSION PERTAINING TO ACQUISITION OF ELEC-  
44 TRIC CAPACITY SHALL BE CONSISTENT WITH THE POLICY STATED IN SUBDIVISION  
45 ONE OF THIS SECTION, AND SUBSEQUENT TO MAY FIRST, TWO THOUSAND TEN,  
46 SHALL ALSO REQUIRE ACQUISITIONS OF ELECTRIC CAPACITY TO BE REASONABLY  
47 CONSISTENT WITH THE FORECASTS, POLICIES AND LONG-RANGE PLANNING OBJEC-  
48 TIVES AND STRATEGIES CONTAINED IN THE MOST RECENT FINAL STATE ENERGY  
49 PLAN ADOPTED PURSUANT TO ARTICLE SIX OF THE ENERGY LAW, PROVIDED, HOWEV-  
50 ER, THAT ANY DETERMINATION MADE BY THE COMMISSION UNDER THIS SECTION  
51 THAT IS NOT REASONABLY CONSISTENT WITH THE PLAN SHALL BE DEEMED IN  
52 COMPLIANCE WITH THIS SECTION, PROVIDED THAT SUCH DETERMINATION BY THE  
53 COMMISSION INCLUDES A FINDING THAT THE ELEMENT OF THE PLAN IS NO LONGER  
54 REASONABLE OR PROBABLE BASED ON A MATERIAL AND SUBSTANTIAL CHANGE IN  
55 FACT OR CIRCUMSTANCE, AND A STATEMENT EXPLAINING THE BASIS FOR THIS  
56 FINDING.

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE COMMISSION TO ORDER THE USE OF A COMPETITIVE BIDDING AUCTION, OR TO PRECLUDE THE COMMISSION FROM ALLOWING OR REQUIRING A CAPACITY ADDITION SET-ASIDE, INCENTIVE RATES OR OTHER FORMS OF RATE TREATMENT, OR A SEPARATE AUCTION OR PROGRAM, TO ENCOURAGE INVESTMENTS IN DEMAND-REDUCING MEASURES, RENEWABLE ENERGY SOURCES, OR OTHER ENERGY SOURCES REASONABLY CONSISTENT WITH THE STATE ENERGY PLAN.

S 3. The public service law is amended by adding a new article 10 to read as follows:

ARTICLE 10  
SITING OF MAJOR ELECTRIC  
GENERATING FACILITIES

SECTION 160. DEFINITIONS.

161. GENERAL PROVISIONS RELATING TO THE BOARD.

162. BOARD CERTIFICATE.

163. PRE-APPLICATION PROCEDURES.

163-A. REPOWERING PROJECTS.

164. APPLICATION FOR A CERTIFICATE.

165. HEARING SCHEDULE.

166. PARTIES TO A CERTIFICATION PROCEEDING.

167. CONDUCT OF HEARING.

168. BOARD DECISIONS.

169. OPINION TO BE ISSUED WITH DECISION.

170. REHEARING AND JUDICIAL REVIEW.

171. JURISDICTION OF COURTS.

172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.

S 160. DEFINITIONS. WHERE USED IN THIS ARTICLE, THE FOLLOWING TERMS, UNLESS THE CONTEXT OTHERWISE REQUIRES, SHALL HAVE THE FOLLOWING MEANINGS:

1. "MUNICIPALITY" MEANS A COUNTY, CITY, TOWN OR VILLAGE LOCATED IN THIS STATE.

2. "MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING FACILITY THAT IS OPERATED AT A TOTAL NET GENERATING OUTPUT TO THE ELECTRIC SYSTEM OF EIGHTY THOUSAND KILOWATTS OR MORE, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAPTER, EXCEPT SUCH TERM SHALL NOT INCLUDE WIND GENERATION FACILITIES LOCATED IN THE COUNTY OF LEWIS, WHICH SHALL BE SUBJECT TO THE REQUIREMENTS OF THE STATE ENVIRONMENTAL QUALITY REVIEW ACT.

3. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, LIMITED LIABILITY COMPANY, PUBLIC BENEFIT CORPORATION, POLITICAL SUBDIVISION, GOVERNMENTAL AGENCY, MUNICIPALITY, PARTNERSHIP, CO-OPERATIVE ASSOCIATION, TRUST OR ESTATE.

4. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST OF SEVEN PERSONS: THE CHAIRMAN OF THE DEPARTMENT, WHO SHALL SERVE AS CHAIRMAN OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; THE COMMISSIONER OF HEALTH; THE CHAIRMAN OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND TWO AD HOC PUBLIC MEMBERS APPOINTED BY THE GOVERNOR. ONE AD HOC PUBLIC MEMBER SHALL BE A RESIDENT OF THE JUDICIAL DISTRICT IN WHICH THE FACILITY AS PROPOSED IS TO BE LOCATED AND ONE AD HOC PUBLIC MEMBER SHALL BE A RESIDENT OF THE COUNTY IN WHICH THE FACILITY AS PROPOSED IS TO BE LOCATED. THE TERM OF THE AD HOC MEMBERS SHALL CONTINUE UNTIL A

1 FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEEDING FOR WHICH THEY  
2 WERE APPOINTED.

3 5. "CERTIFICATE" MEANS A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY  
4 AND PUBLIC NEED AUTHORIZING THE CONSTRUCTION OF A MAJOR ELECTRIC GENER-  
5 ATING FACILITY ISSUED BY THE BOARD PURSUANT TO THIS ARTICLE.

6 6. "APPROVED PROCUREMENT PROCESS" MEANS ANY ELECTRIC CAPACITY PROCURE-  
7 MENT PROCESS APPROVED BY THE COMMISSION AND SUBSEQUENT TO MAY FIRST, TWO  
8 THOUSAND TEN, APPROVED BY THE COMMISSION AS REASONABLY CONSISTENT WITH  
9 THE MOST RECENT STATE ENERGY PLAN ADOPTED PURSUANT TO ARTICLE SIX OF THE  
10 ENERGY LAW.

11 S 161. GENERAL PROVISIONS RELATING TO THE BOARD. UPON RECEIPT OF AN  
12 APPLICATION UNDER THIS ARTICLE, THE CHAIRPERSON SHALL PROMPTLY NOTIFY  
13 THE GOVERNOR. WITHIN THIRTY DAYS OF SUCH NOTIFICATION THE GOVERNOR SHALL  
14 APPOINT THE AD HOC MEMBERS. FOUR OF THE SEVEN PERSONS ON THE BOARD SHALL  
15 CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE BOARD,  
16 AND THE DECISION OF FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE ACTION OF  
17 THE BOARD. THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE THE  
18 POWER TO ADOPT RULES AND REGULATIONS RELATING TO THE PROCEDURES TO BE  
19 USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTICLE,  
20 INCLUDING THE SUSPENSION OR REVOCATION THEREOF, AND SHALL FURTHER HAVE  
21 THE POWER TO SEEK DELEGATION FROM THE FEDERAL GOVERNMENT PURSUANT TO  
22 FEDERAL REGULATORY PROGRAMS APPLICABLE TO THE SITING OF MAJOR ELECTRIC  
23 GENERATING FACILITIES. THE CHAIRPERSON, AFTER CONSULTATION WITH THE  
24 OTHER MEMBERS OF THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE  
25 EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY RULINGS REGARDING THE APPLI-  
26 CABILITY OF, OR ANY OTHER QUESTION UNDER, THIS ARTICLE AND RULES AND  
27 REGULATIONS ADOPTED HEREUNDER. REGULATIONS ADOPTED BY THE BOARD MAY  
28 PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE  
29 SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-  
30 TION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY.

31 IN ADDITION TO THE REQUIREMENTS OF THE PUBLIC OFFICERS LAW, NO PERSON  
32 SHALL BE ELIGIBLE TO BE AN APPOINTEE OF THE GOVERNOR TO THE BOARD WHO  
33 HOLDS ANOTHER STATE OR LOCAL OFFICE. NO MEMBER OF THE BOARD MAY RETAIN  
34 OR HOLD ANY OFFICIAL RELATION TO, OR ANY SECURITIES OF AN ELECTRIC UTIL-  
35 ITY CORPORATION OPERATING IN THE STATE OR PROPOSED FOR OPERATION IN THE  
36 STATE, ANY AFFILIATE THEREOF OR ANY OTHER COMPANY, FIRM, PARTNERSHIP,  
37 CORPORATION, ASSOCIATION OR JOINT-STOCK ASSOCIATION THAT MAY APPEAR  
38 BEFORE THE BOARD, NOR SHALL EITHER OF THE APPOINTEES HAVE BEEN A DIREC-  
39 TOR, OFFICER OR, WITHIN THE PREVIOUS TEN YEARS, AN EMPLOYEE THEREOF.  
40 THE APPOINTEES OF THE GOVERNOR SHALL RECEIVE THE SUM OF TWO HUNDRED  
41 DOLLARS FOR EACH DAY IN WHICH THEY ARE ACTUALLY ENGAGED IN THE PERFORM-  
42 ANCE OF THEIR DUTIES PURSUANT TO THIS ARTICLE PLUS ACTUAL AND NECESSARY  
43 EXPENSES INCURRED BY THEM IN THE PERFORMANCE OF SUCH DUTIES. THE CHAIR-  
44 PERSON SHALL PROVIDE SUCH PERSONNEL, HEARING EXAMINERS, SUBORDINATES,  
45 EMPLOYEES AND SUCH LEGAL, TECHNOLOGICAL, SCIENTIFIC, ENGINEERING AND  
46 OTHER SERVICES AND SUCH MEETING ROOMS, HEARING ROOMS AND OTHER FACILI-  
47 TIES AS MAY BE REQUIRED IN PROCEEDINGS UNDER THIS ARTICLE. THE BOARD MAY  
48 PROVIDE FOR ITS OWN REPRESENTATION AND APPEARANCE IN ALL ACTIONS AND  
49 PROCEEDINGS INVOLVING ANY QUESTION UNDER THIS ARTICLE. THE DEPARTMENT OF  
50 ENVIRONMENTAL CONSERVATION SHALL PROVIDE ASSOCIATE HEARING EXAMINERS.  
51 EACH MEMBER OF THE BOARD OTHER THAN THE APPOINTEES OF THE GOVERNOR MAY  
52 DESIGNATE AN ALTERNATE TO SERVE INSTEAD OF THE MEMBER WITH RESPECT TO  
53 ALL PROCEEDINGS PURSUANT TO THIS ARTICLE. SUCH DESIGNATION SHALL BE IN  
54 WRITING AND FILED WITH THE CHAIRMAN.

55 S 162. BOARD CERTIFICATE. 1. NO PERSON SHALL COMMENCE THE PREPARATION  
56 OF A SITE FOR, OR BEGIN THE CONSTRUCTION OF A MAJOR ELECTRIC GENERATING

1 FACILITY IN THE STATE WITHOUT HAVING FIRST OBTAINED A CERTIFICATE ISSUED  
2 WITH RESPECT TO SUCH FACILITY BY THE BOARD. ANY SUCH FACILITY WITH  
3 RESPECT TO WHICH A CERTIFICATE IS ISSUED SHALL NOT THEREAFTER BE BUILT,  
4 MAINTAINED OR OPERATED EXCEPT IN CONFORMITY WITH SUCH CERTIFICATE AND  
5 ANY TERMS, LIMITATIONS OR CONDITIONS CONTAINED THEREIN, PROVIDED THAT  
6 NOTHING IN THIS ARTICLE SHALL EXEMPT SUCH FACILITY FROM COMPLIANCE WITH  
7 STATE LAW AND REGULATIONS THEREUNDER SUBSEQUENTLY ADOPTED OR WITH MUNIC-  
8 IPAL LAWS AND REGULATIONS THEREUNDER NOT INCONSISTENT WITH THE  
9 PROVISIONS OF SUCH CERTIFICATE. A CERTIFICATE FOR A MAJOR ELECTRIC  
10 GENERATING FACILITY MAY BE ISSUED ONLY PURSUANT TO THIS ARTICLE.

11 2. A CERTIFICATE MAY BE TRANSFERRED, SUBJECT TO THE APPROVAL OF THE  
12 BOARD, TO A PERSON WHO AGREES TO COMPLY WITH THE TERMS, LIMITATIONS AND  
13 CONDITIONS CONTAINED THEREIN.

14 3. A CERTIFICATE ISSUED PURSUANT TO THIS ARTICLE MAY BE AMENDED AS  
15 PROVIDED IN THIS ARTICLE.

16 4. THIS ARTICLE SHALL NOT APPLY:

17 (A) TO A MAJOR ELECTRIC GENERATING FACILITY OVER WHICH ANY AGENCY OR  
18 DEPARTMENT OF THE FEDERAL GOVERNMENT HAS EXCLUSIVE JURISDICTION, OR HAS  
19 JURISDICTION CONCURRENT WITH THAT OF THE STATE AND HAS EXERCISED SUCH  
20 JURISDICTION, TO THE EXCLUSION OF REGULATION OF THE FACILITY BY THE  
21 STATE;

22 (B) TO NORMAL REPAIRS, REPLACEMENTS, MODIFICATIONS AND IMPROVEMENTS OF  
23 A MAJOR ELECTRIC GENERATING FACILITY, WHENEVER BUILT, WHICH DO NOT  
24 CONSTITUTE A VIOLATION OF ANY CERTIFICATE ISSUED UNDER THIS ARTICLE AND  
25 WHICH DO NOT RESULT IN AN INCREASE IN CAPACITY OF THE FACILITY OF MORE  
26 THAN FIFTY THOUSAND KILOWATTS;

27 (C) TO A MAJOR ELECTRIC GENERATING FACILITY (I) CONSTRUCTED ON LANDS  
28 DEDICATED TO INDUSTRIAL USES, (II) THE OUTPUT OF WHICH SHALL BE USED  
29 SOLELY FOR INDUSTRIAL PURPOSES, ON THE PREMISES, AND (III) THE GENERAT-  
30 ING CAPACITY OF WHICH DOES NOT EXCEED TWO HUNDRED THOUSAND KILOWATTS; OR

31 (D) TO A MAJOR ELECTRIC GENERATING FACILITY WHICH GENERATES ELECTRIC-  
32 ITY FROM THE COMBUSTION OF SOLID WASTE OR FROM FUEL DERIVED FROM SOLID  
33 WASTE.

34 5. ANY PERSON INTENDING TO CONSTRUCT A MAJOR ELECTRIC GENERATING  
35 FACILITY EXCLUDED FROM THIS ARTICLE PURSUANT TO PARAGRAPH (B) OR (C) OF  
36 SUBDIVISION FOUR OF THIS SECTION MAY ELECT TO BECOME SUBJECT TO THE  
37 PROVISIONS OF THIS ARTICLE BY DELIVERING NOTICE OF SUCH ELECTION TO THE  
38 CHAIRMAN OF THE BOARD. THIS ARTICLE SHALL THEREAFTER APPLY TO EACH ELEC-  
39 TRIC GENERATING FACILITY IDENTIFIED IN SUCH NOTICE FROM THE DATE OF ITS  
40 RECEIPT BY THE CHAIRMAN OF THE BOARD. FOR THE PURPOSES OF THIS ARTICLE,  
41 EACH SUCH FACILITY SHALL BE TREATED IN THE SAME MANNER AS A MAJOR ELEC-  
42 TRIC GENERATING FACILITY AS DEFINED IN THIS ARTICLE.

43 S 163. PRE-APPLICATION PROCEDURES. 1. ANY PERSON PROPOSING TO SUBMIT  
44 AN APPLICATION FOR A CERTIFICATE SHALL FILE WITH THE CHAIRMAN OF THE  
45 BOARD A PRELIMINARY SCOPING STATEMENT CONTAINING A BRIEF DISCUSSION, ON  
46 THE BASIS OF AVAILABLE INFORMATION, OF THE FOLLOWING ITEMS:

47 (A) DESCRIPTION OF THE PROPOSED FACILITY AND ITS ENVIRONMENTAL  
48 SETTING;

49 (B) POTENTIAL ENVIRONMENTAL IMPACTS FROM THE CONSTRUCTION AND/OR OPER-  
50 ATION OF THE PROPOSED FACILITY;

51 (C) ANY PROPOSED STUDY OR PROGRAM OF STUDIES DESIGNED TO EVALUATE  
52 POTENTIAL ENVIRONMENTAL IMPACTS;

53 (D) ANY MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS;

54 (E) REASONABLE ALTERNATIVES TO THE PROPOSED FACILITY AS MAY BE  
55 REQUIRED BY PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED  
56 SIXTY-FOUR OF THIS ARTICLE;

1 (F) IF THE FACILITY IS PROPOSED TO BE LOCATED IN THE COASTAL AREA, A  
2 PRELIMINARY ANALYSIS OF THE CONSISTENCY OF THE PROPOSED FACILITY WITH  
3 THE APPLICABLE COASTAL POLICIES OF ARTICLE FORTY-TWO OF THE EXECUTIVE  
4 LAW, OR WHEN THE ACTION IS IN AN APPROVED LOCAL WATERFRONT REVITALIZA-  
5 TION PROGRAM AREA, WITH THE LOCAL PROGRAM. IF THE PROPOSED FACILITY  
6 COULD AFFECT ANY LAND OR WATER USE OR NATURAL RESOURCE OF THE COASTAL  
7 AREA AND FEDERAL AUTHORIZATION IS NECESSARY, A PRELIMINARY ANALYSIS OF  
8 THE CONSISTENCY OF THE PROPOSED FACILITY WITH THE ENFORCEABLE POLICIES  
9 OF THE NEW YORK STATE COASTAL MANAGEMENT PROGRAM OR WHEN THE ACTION IS  
10 IN AN APPROVED LOCAL WATERFRONT REVITALIZATION PROGRAM AREA, WITH THE  
11 LOCAL PROGRAM; AND

12 (G) ANY OTHER INFORMATION THAT MAY BE RELEVANT OR THAT THE BOARD MAY  
13 REQUIRE.

14 1-A. EACH PRELIMINARY SCOPING STATEMENT SHALL BE ACCOMPANIED BY A FEE  
15 OF FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE INTERVENOR ACCOUNT,  
16 ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-TT OF THE STATE FINANCE  
17 LAW, AND SHALL BE DISBURSED AT THE BOARD'S DIRECTION TO DEFRAY EXPENSES  
18 INCURRED BY MUNICIPAL AND OTHER LOCAL, INTERESTED PERSONS (EXCEPT A  
19 MUNICIPALITY WHICH IS THE APPLICANT) FOR CONSULTANTS' FEES TO EVALUATE  
20 THE PRELIMINARY SCOPING STATEMENT AND ANALYZE THE METHODOLOGY AND SCOPE  
21 OF ANY STUDY OR PROGRAM OF STUDIES TO BE UNDERTAKEN BY THE APPLICANT IN  
22 SUPPORT OF ITS APPLICATION. SUCH FUNDS SHALL BE MADE AVAILABLE ON AN  
23 EQUITABLE BASIS IN A MANNER WHICH FACILITATES BROAD PUBLIC PARTICIPATION  
24 IN THE PRE-APPLICATION PROCESS. ANY UNUSED FUNDS SHALL BE MADE AVAILABLE  
25 AND DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION SIX OF  
26 SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE IF AN APPLICATION IS  
27 FILED OR, IF THE PRELIMINARY SCOPING STATEMENT IS WITHDRAWN, RETURNED TO  
28 THE APPLICANT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRA-  
29 RY, THE BOARD MAY PROVIDE BY RULES AND REGULATIONS FOR DISBURSEMENTS  
30 FROM THE FUND FOR THE STATED PURPOSES.

31 2. SUCH PERSON SHALL SERVE COPIES OF THE PRELIMINARY SCOPING STATEMENT  
32 ON PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE  
33 HUNDRED SIXTY-FOUR OF THIS ARTICLE AND PROVIDE NOTICE OF SUCH STATEMENT  
34 AS PROVIDED IN PARAGRAPH (B) OF SUCH SUBDIVISION.

35 3. TO FACILITATE THE APPLICATION PROCESS AND ENABLE CITIZENS TO  
36 PARTICIPATE IN DECISIONS THAT AFFECT THEIR HEALTH AND SAFETY AND THE  
37 ENVIRONMENT, THE DEPARTMENT SHALL PROVIDE OPPORTUNITIES FOR CITIZEN  
38 INVOLVEMENT. SUCH OPPORTUNITIES SHALL ENCOURAGE CONSULTATION WITH THE  
39 PUBLIC EARLY IN THE APPLICATION PROCESS, ESPECIALLY BEFORE ANY PARTIES  
40 ENTER A STIPULATION PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. THE  
41 PRIMARY GOALS OF THE CITIZEN PARTICIPATION PROCESS SHALL BE TO FACILI-  
42 TATE COMMUNICATION BETWEEN THE APPLICANT AND INTERESTED OR AFFECTED  
43 PERSONS. THE PROCESS SHALL FOSTER THE ACTIVE INVOLVEMENT OF THE INTER-  
44 ESTED OR AFFECTED PERSONS.

45 4. SUCH PERSON MAY CONSULT AND SEEK AGREEMENT WITH ANY INTERESTED  
46 PERSON, INCLUDING, BUT NOT LIMITED TO, THE STAFF OF THE DEPARTMENT, THE  
47 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE AND  
48 THE DEPARTMENT OF HEALTH, AS APPROPRIATE, AS TO ANY ASPECT OF THE  
49 PRELIMINARY SCOPING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE  
50 OR TO BE MADE TO SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT,  
51 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE,  
52 THE DEPARTMENT OF HEALTH, THE PERSON PROPOSING TO FILE AN APPLICATION,  
53 AND ANY OTHER INTERESTED PERSON MAY ENTER INTO A STIPULATION SETTING  
54 FORTH AN AGREEMENT ON ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT  
55 AND THE STUDIES OR PROGRAM OF STUDIES TO BE CONDUCTED. ANY SUCH PERSON  
56 PROPOSING TO SUBMIT AN APPLICATION FOR A CERTIFICATE SHALL SERVE A COPY

1 OF THE PROPOSED STIPULATION UPON ALL PERSONS ENUMERATED IN PARAGRAPH (A)  
2 OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE,  
3 PROVIDE NOTICE OF SUCH STIPULATION TO THOSE PERSONS IDENTIFIED IN PARA-  
4 GRAPH (B) OF SUCH SUBDIVISION, AND AFFORD THE PUBLIC A REASONABLE OPPOR-  
5 TUNITY TO SUBMIT COMMENTS ON THE STIPULATION BEFORE IT IS EXECUTED BY  
6 THE INTERESTED PARTIES. NOTHING IN THIS SUBDIVISION, HOWEVER, SHALL BAR  
7 ANY PARTY TO A HEARING ON AN APPLICATION, OTHER THAN ANY PARTY TO A  
8 PRE-APPLICATION STIPULATION, FROM TIMELY RAISING OBJECTIONS TO ANY  
9 ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND  
10 SCOPE OF ANY STIPULATED STUDIES OR PROGRAM OF STUDIES IN ANY SUCH AGREE-  
11 MENT. IN ORDER TO ATTEMPT TO RESOLVE ANY QUESTIONS THAT MAY ARISE AS A  
12 RESULT OF SUCH CONSULTATION, THE BOARD MAY DESIGNATE A HEARING EXAMINER  
13 WHO SHALL MEDIATE ANY ISSUE RELATING TO ANY ASPECT OF THE PRELIMINARY  
14 SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY SUCH STUDIES OR  
15 PROGRAMS OF STUDY.

16 S 163-A. REPOWERING PROJECTS. 1. FOR PURPOSES OF THIS SECTION, THE  
17 TERM "REPOWERING PROJECT" MEANS A MAJOR ELECTRIC GENERATING FACILITY  
18 THAT PROPOSES TO ENTIRELY OR PARTIALLY REPLACE AN EXISTING MAJOR ELEC-  
19 TRIC GENERATING FACILITY IN SUBSTANTIALLY THE SAME LOCATION AS THE  
20 EXISTING FACILITY WHERE SUCH PROPOSED FACILITY:

21 (A) RESULTS IN A DECREASE OF NOT LESS THAN SEVENTY-FIVE PERCENT IN THE  
22 RATE OF EMISSIONS OF EACH OF THE FOLLOWING ON A POUNDS PER MEGAWATT-HOUR  
23 BASIS: (I) OXIDES OF NITROGEN, (II) OXIDES OF SULFUR, AND (III) PARTICU-  
24 LATE MATTER. THE PERCENTAGE REDUCTIONS IN THE RATE OF SUCH EMISSIONS  
25 SHALL BE CALCULATED BY COMPARING THE ANNUALIZED POTENTIAL TO EMIT OF THE  
26 EXISTING FACILITY (EXPRESSED IN POUNDS PER MEGAWATT-HOUR) AT THE TIME  
27 THE APPLICATION UNDER THIS ARTICLE IS FILED WITH THE CHAIRMAN AND THE  
28 FUTURE ANNUALIZED POTENTIAL TO EMIT OF THE MODIFIED FACILITY OR OF THE  
29 COMBINATION OF THE EXISTING AND NEW FACILITY (EXPRESSED IN POUNDS PER  
30 MEGAWATT-HOUR AND BASED UPON REASONABLY EXPECTED OPERATING CONDITIONS)  
31 PROPOSED IN THE APPLICATION;

32 (B) EMPLOYS AIR POLLUTION CONTROL TECHNOLOGY CONSISTENT WITH THAT  
33 NECESSARY TO MEET BEST AVAILABLE CONTROL TECHNOLOGY STANDARDS OR  
34 ACHIEVES THE LOWEST ACHIEVABLE EMISSIONS RATE;

35 (C) WHEN A COOLING WATER INTAKE STRUCTURE IS PLANNED, INCORPORATES  
36 COOLING WATER INTAKE STRUCTURE TECHNOLOGY CONSISTENT WITH THE BEST TECH-  
37 NOLOGY AVAILABLE STANDARDS APPLICABLE TO NEW COOLING WATER INTAKE STRUC-  
38 TURES (AS REFLECTED IN THE STATE POLLUTION DISCHARGE ELIMINATION SYSTEM  
39 PERMIT ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION); AND

40 (D) REPLACES EXISTING GENERATING CAPACITY WITH GENERATING CAPACITY  
41 THAT HAS A LOWER HEAT RATE.

42 2. ANY PERSON PROPOSING TO UNDERTAKE A REPOWERING PROJECT MAY ELECT TO  
43 FOLLOW THE PROCEDURES SET FORTH IN THIS SECTION AS AN ALTERNATIVE TO THE  
44 REQUIREMENTS SET FORTH IN SECTIONS ONE HUNDRED SIXTY-THREE AND ONE  
45 HUNDRED SIXTY-FOUR OF THIS ARTICLE. SUCH PERSON SHALL FILE WITH THE  
46 CHAIRPERSON OF THE BOARD AN APPLICATION, IN A FORM TO BE DETERMINED BY  
47 THE BOARD, THAT CONTAINS, AT A MINIMUM, THE FOLLOWING INFORMATION AND  
48 MATERIALS:

49 (A) A DESCRIPTION OF THE SITE, INCLUDING ITS ENVIRONMENTAL SETTING,  
50 AND A DESCRIPTION OF THE REPOWERING PROJECT, INCLUDING, BUT NOT LIMITED  
51 TO, AVAILABLE SITE INFORMATION, MAPS, AND DESCRIPTIONS;

52 (B) ANALYSES THAT HAVE BEEN MADE OF (I) THE ENVIRONMENTAL IMPACTS OF  
53 THE EXISTING ELECTRIC GENERATING FACILITY; (II) CONCEPTUAL ARCHITECTURAL  
54 AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE FACILITY WITH THE  
55 ENVIRONMENT; AND (III) THE EXPECTED ENVIRONMENTAL IMPACTS OF THE REPOW-  
56 ERING PROJECT, INCLUDING, BUT NOT LIMITED TO, THE GENERATION OF SOLID

1 WASTES, AIR EMISSIONS, DISCHARGES INTO NAVIGABLE WATERS AND GROUNDWATER,  
2 IMPACTS UPON WETLANDS, AND VISUAL IMPACTS, THE PROBABLE LEVEL OF NOISE  
3 DURING CONSTRUCTION AND OPERATION OF THE REPOWERING PROJECT, AND ANY  
4 MEASURES FOR CONTROL, ABATEMENT, OR MITIGATION OF SUCH IMPACTS, AND THE  
5 COMPATIBILITY OF THE REPOWERING PROJECT WITH EXISTING FEDERAL, STATE AND  
6 MUNICIPAL ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS;

7 (C) SUCH EVIDENCE AS MAY ENABLE THE COMMISSIONER OF ENVIRONMENTAL  
8 CONSERVATION TO EVALUATE THE REPOWERING PROJECT'S PROPOSED POLLUTION  
9 CONTROL SYSTEMS AND TO REACH A DETERMINATION AS TO WHETHER OR NOT TO  
10 ISSUE, SUBJECT TO APPROPRIATE CONDITIONS AND LIMITATIONS, PERMITS PURSU-  
11 ANT TO FEDERAL RECOGNITION OF STATE AUTHORITY IN ACCORDANCE WITH THE  
12 FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAR AIR ACT AND THE FEDERAL  
13 RESOURCE CONSERVATION AND RECOVERY ACT;

14 (D) A STATEMENT AS TO HOW THE CONSTRUCTION AND OPERATION OF THE REPOW-  
15 ERING PROJECT, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES, COMPLY  
16 WITH ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS, REQUIREMENTS, REGU-  
17 LATIONS, AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A STATEMENT AS TO  
18 WHY ANY VARIANCES OR EXCEPTIONS MAY BE GRANTED;

19 (E) A DESCRIPTION OF THE FUEL INTERCONNECTION AND SUPPLY FOR THE  
20 PROJECT;

21 (F) AN ELECTRIC INTERCONNECTION STUDY, CONSISTING GENERALLY OF A  
22 DESIGN STUDY AND A SYSTEM RELIABILITY IMPACT STUDY;

23 (G) A PLAN FOR SECURITY OF THE REPOWERING PROJECT DURING ITS  
24 CONSTRUCTION AND OPERATION, TO BE REVIEWED BY THE BOARD IN CONSULTATION  
25 WITH THE OFFICE OF PUBLIC SECURITY; AND

26 (H) SUCH OTHER INFORMATION AS THE APPLICANT MAY CONSIDER RELEVANT OR  
27 AS MAY BE REQUIRED BY THE BOARD TO MAKE ITS FINDINGS PURSUANT TO SECTION  
28 ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE. COPIES OF THE APPLICATION,  
29 INCLUDING THE REQUIRED INFORMATION, SHALL BE AVAILABLE FOR PUBLIC  
30 INSPECTION; PROVIDED, HOWEVER, THAT THE SECURITY PLAN REQUIRED TO BE  
31 FILED PURSUANT TO PARAGRAPH (G) OF THIS SUBDIVISION SHALL BE KEPT CONFID-  
32 DENTIAL, SHALL NOT BE AVAILABLE FOR PUBLIC INSPECTION, AND PROVIDED  
33 FURTHER THAT INFORMATION CONCERNING ELECTRIC AND NATURAL GAS INTERCON-  
34 NECTIONS BETWEEN THE FACILITY AND THE ELECTRIC AND NATURAL GAS SYSTEMS  
35 SHALL NOT BE PLACED IN PUBLIC LIBRARIES OR ON THE INTERNET, AND THAT THE  
36 DEPARTMENT SHALL MAKE SUCH INFORMATION AVAILABLE FOR INSPECTION AT ITS  
37 OFFICES AND SHALL MAINTAIN A LOGBOOK OF ALL THOSE WHO HAVE REQUESTED  
38 ACCESS TO SUCH INFORMATION.

39 3. THE APPLICATION SHALL BE ACCOMPANIED BY:

40 (A) PROOF OF SERVICE, IN SUCH MANNER AS THE BOARD SHALL PRESCRIBE, IN  
41 ACCORDANCE WITH SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF  
42 THIS ARTICLE;

43 (B) PROOF THAT THE APPLICANT HAS CONDUCTED PUBLIC OUTREACH WITHIN THE  
44 SIXTY DAYS PRECEDING THE FILING OF THE APPLICATION, FOR PURPOSES OF  
45 FACILITATING COMMUNICATION BETWEEN THE APPLICANT AND INTERESTED AND  
46 AFFECTED PARTIES AND ADVISING SUCH PARTIES ABOUT THE REPOWERING PROJECT;  
47 AND

48 (C) A FEE IN AN AMOUNT EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND  
49 KILOWATTS OF GENERATING CAPACITY IN EXCESS OF THE GENERATING OUTPUT OF  
50 THE EXISTING FACILITY IN THOUSANDS OF KILOWATTS MULTIPLIED BY ONE THOU-  
51 SAND DOLLARS, BUT IN NO EVENT SHALL SUCH FEE EXCEED THREE HUNDRED THOU-  
52 SAND DOLLARS. SUCH FEE SHALL BE DEPOSITED IN THE INTERVENOR ACCOUNT  
53 ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-TT OF THE STATE FINANCE  
54 LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION IN ACCORDANCE WITH PARA-  
55 GRAPH (A) OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS  
56 ARTICLE.

1 4. FOLLOWING THE FILING OF AN APPLICATION PURSUANT TO SUBDIVISION TWO  
2 OF THIS SECTION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY INITI-  
3 ATE A REVIEW PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL  
4 PERMITTING AUTHORITY.

5 5. WITHIN SIXTY DAYS OF RECEIPT OF AN APPLICATION FILED PURSUANT TO  
6 SUBDIVISION TWO OF THIS SECTION, THE CHAIRPERSON OF THE BOARD SHALL  
7 DETERMINE WHETHER OR NOT THE APPLICATION IS FOR A REPOWERING PROJECT, AS  
8 DEFINED IN SUBDIVISION ONE OF THIS SECTION, AND WHETHER OR NOT THE  
9 APPLICATION COMPLIES WITH SUBDIVISION TWO OF THIS SECTION AND ANY REGU-  
10 LATIONS PROMULGATED PURSUANT THERETO, AND SHALL, AFTER CONSULTATION WITH  
11 THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, RENDER A PRELIMINARY  
12 DETERMINATION AS TO WHETHER OR NOT THE REPOWERING PROJECT MAY HAVE A  
13 SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT. IN THE EVENT THAT THE CHAIR-  
14 PERSON OF THE BOARD DETERMINES EITHER THAT THE APPLICATION IS NOT FOR A  
15 REPOWERING PROJECT OR THAT THE REPOWERING PROJECT MAY HAVE A SIGNIFICANT  
16 ADVERSE ENVIRONMENTAL IMPACT, THE APPLICATION SHALL BE DEEMED TO SATISFY  
17 THE REQUIREMENTS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE  
18 OF THIS ARTICLE AND THE APPLICATION SHALL NO LONGER BE SUBJECT TO, OR  
19 ELIGIBLE FOR, THE PROCEDURES SET FORTH IN THIS SECTION. THE CHAIRPERSON  
20 OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED  
21 TO SUPPLEMENT AN APPLICATION. IN THE EVENT OF A DETERMINATION THAT A  
22 REPOWERING PROJECT IS NOT LIKELY TO HAVE A SIGNIFICANT ADVERSE ENVIRON-  
23 MENTAL IMPACT, A PRELIMINARY DETERMINATION OF NON-SIGNIFICANCE SHALL BE  
24 ISSUED. NOTICE OF ISSUANCE SHALL BE GIVEN TO PARTIES TO THE CERTIF-  
25 ICATION PROCEEDING PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED  
26 SIXTY-SIX OF THIS ARTICLE AND SHALL ADDITIONALLY BE PUBLISHED ON THE  
27 WEBSITE OF THE DEPARTMENT.

28 6. SIMULTANEOUSLY WITH THE ISSUANCE OF A PRELIMINARY DETERMINATION OF  
29 SIGNIFICANCE, THE SECRETARY OF THE BOARD SHALL PROVIDE NOTICE OF A  
30 PUBLIC HEARING TO ADDRESS DISBURSEMENT OF THE FEE PROVIDED FOR BY SUBDI-  
31 VISION THREE OF THIS SECTION, WHICH HEARING SHALL BE HELD BY THE PRESID-  
32 ING AND ASSOCIATE EXAMINERS, AND IN NO EVENT LATER THAN TWENTY-ONE DAYS  
33 FOLLOWING ISSUANCE OF THE PRELIMINARY DETERMINATION OF NON-SIGNIFICANCE.

34 7. INTERESTED PARTIES SHALL HAVE NOT MORE THAN SIXTY DAYS FROM THE  
35 DATE THE PRELIMINARY DETERMINATION OF SIGNIFICANCE IS ISSUED TO FILE  
36 WRITTEN COMMENTS WITH REGARD TO SUCH PRELIMINARY DETERMINATION. THE  
37 PUBLIC COMMENT PERIOD SHALL INCLUDE A PUBLIC STATEMENT HEARING AT WHICH  
38 THE PRESIDING EXAMINER AND ASSOCIATE EXAMINER SHALL JOINTLY PRESIDE.  
39 UPON THE CLOSE OF THE PUBLIC COMMENT PERIOD, IN THE EVENT THAT THE  
40 PRESIDING EXAMINER DETERMINES THAT THERE IS AN ISSUE OF FACT WITH  
41 RESPECT TO THE APPLICABILITY OF ANY LOCAL ORDINANCE, LAW, RESOLUTION,  
42 STANDARD, OR OTHER ACTION, OR ANY REGULATION ISSUED THEREUNDER, OR ANY  
43 LOCAL STANDARD OR REQUIREMENT THAT WOULD OTHERWISE BE APPLICABLE TO THE  
44 REPOWERING PROJECT, THE PRESIDING EXAMINER SHALL SCHEDULE AN EVIDENTIARY  
45 HEARING ON SUCH ISSUE OF FACT.

46 8. WITHIN THIRTY DAYS OF THE CLOSE OF THE PUBLIC COMMENT PERIOD, OR  
47 WITHIN TWENTY-ONE DAYS AFTER THE TERMINATION OF A PUBLIC HEARING  
48 RESPECTING THE APPLICABILITY OF LOCAL LAWS HELD IN ACCORDANCE WITH  
49 SUBDIVISION SEVEN OF THIS SECTION, WHICHEVER IS LATER, THE CHAIRPERSON  
50 OF THE BOARD, AFTER CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL  
51 CONSERVATION SHALL RENDER A FINAL DETERMINATION AS TO WHETHER OR NOT THE  
52 REPOWERING PROJECT MAY HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT.  
53 UPON A DETERMINATION THAT THE REPOWERING PROJECT IS NOT LIKELY TO HAVE A  
54 SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT, THE CHAIRPERSON SHALL ISSUE A  
55 FINAL DETERMINATION OF NON-SIGNIFICANCE. IN THE EVENT THAT THE CHAIR-  
56 PERSON, AFTER CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL

1 CONSERVATION, DETERMINES THAT THE REPOWERING PROJECT MAY HAVE A SIGNIF-  
2 ICANT ENVIRONMENTAL IMPACT, THE APPLICATION SHALL BE DEEMED TO SATISFY  
3 THE REQUIREMENTS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE  
4 OF THIS ARTICLE, BUT SHALL NO LONGER BE SUBJECT TO, OR ELIGIBLE FOR, THE  
5 PROCEDURES SET FORTH IN THIS SECTION.

6 9. IN THE EVENT THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
7 ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED PERMITTING  
8 AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT  
9 AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE COMMISSIONER  
10 OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE SUCH PERMITS TO THE CHAIR-  
11 PERSON OF THE BOARD PRIOR TO THE DETERMINATION OF NON-SIGNIFICANCE. THE  
12 CHAIRPERSON OF THE BOARD SHALL SUBMIT THE FINAL DETERMINATION OF  
13 NON-SIGNIFICANCE TO THE BOARD, WHICH SHALL ISSUE A DECISION WITH RESPECT  
14 TO THE APPLICATION WITHIN TWENTY-ONE DAYS AFTER SUCH SUBMISSION IN  
15 ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE.

16 S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIF-  
17 ICATE SHALL FILE WITH THE CHAIRMAN OF THE BOARD AN APPLICATION, IN SUCH  
18 FORM AS THE BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND  
19 MATERIALS:

20 (A) A DESCRIPTION OF THE SITE AND A DESCRIPTION OF THE FACILITY TO BE  
21 BUILT THEREON; INCLUDING AVAILABLE SITE INFORMATION, MAPS AND  
22 DESCRIPTIONS, PRESENT AND PROPOSED DEVELOPMENT, SOURCE AND VOLUME OF  
23 WATER REQUIRED FOR PLANT OPERATION AND COOLING, AND AS APPROPRIATE,  
24 GEOLOGICAL, AESTHETIC, ECOLOGICAL, TSUNAMI, SEISMIC, BIOLOGICAL, WATER  
25 SUPPLY, POPULATION AND LOAD CENTER DATA;

26 (B) A DESCRIPTION AND EVALUATION OF REASONABLE ALTERNATIVE LOCATIONS  
27 TO THE PROPOSED FACILITY, IF ANY, AND WITH RESPECT TO A FACILITY THAT  
28 HAS NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS, A  
29 DESCRIPTION AND EVALUATION OF REASONABLE ENERGY SUPPLY SOURCE ALTERNA-  
30 TIVES AND, WHERE APPROPRIATE, DEMAND-REDUCING MEASURES TO THE PROPOSED  
31 FACILITY; A DESCRIPTION OF THE COMPARATIVE ADVANTAGES AND DISADVANTAGES  
32 OF EACH SUCH LOCATION, ENERGY SUPPLY SOURCE AND DEMAND-REDUCING MEASURE,  
33 AS APPROPRIATE; AND A STATEMENT OF THE REASONS WHY THE PRIMARY PROPOSED  
34 LOCATION AND SOURCE, AS APPROPRIATE, IS BEST SUITED, AMONG THE ALTERNA-  
35 TIVES CONSIDERED, TO PROMOTE PUBLIC HEALTH AND WELFARE, INCLUDING THE  
36 RECREATIONAL AND OTHER CONCURRENT USES WHICH THE SITE MAY SERVE,  
37 PROVIDED THAT THE INFORMATION REQUIRED PURSUANT TO THIS PARAGRAPH SHALL  
38 BE NO MORE EXTENSIVE THAN REQUIRED UNDER ARTICLE EIGHT OF THE ENVIRON-  
39 MENTAL CONSERVATION LAW;

40 (C) STUDIES, IDENTIFYING THE AUTHOR AND DATE THEREOF, WHICH HAVE BEEN  
41 MADE OF THE EXPECTED ENVIRONMENTAL IMPACT AND SAFETY OF THE FACILITY,  
42 BOTH DURING ITS CONSTRUCTION AND ITS OPERATION, WHICH STUDIES ARE SUFFI-  
43 CIENT TO IDENTIFY (I) THE ANTICIPATED GASEOUS, LIQUID AND SOLID WASTES  
44 TO BE PRODUCED AT THE FACILITY INCLUDING THEIR SOURCE, ANTICIPATED  
45 VOLUMES, COMPOSITION AND TEMPERATURE, AND SUCH OTHER ATTRIBUTES AS THE  
46 BOARD MAY SPECIFY AND THE PROBABLE LEVEL OF NOISE DURING CONSTRUCTION  
47 AND OPERATION OF THE FACILITY; (II) THE TREATMENT PROCESSES TO REDUCE  
48 WASTES TO BE RELEASED TO THE ENVIRONMENT, THE MANNER OF DISPOSAL FOR  
49 WASTES RETAINED AND MEASURES FOR NOISE ABATEMENT; (III) THE ANTICIPATED  
50 VOLUMES OF WASTES TO BE RELEASED TO THE ENVIRONMENT UNDER ANY OPERATING  
51 CONDITION OF THE FACILITY, INCLUDING SUCH METEOROLOGICAL, HYDROLOGICAL  
52 AND OTHER INFORMATION NEEDED TO SUPPORT SUCH ESTIMATES; (IV) CONCEPTUAL  
53 ARCHITECTURAL AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE  
54 FACILITY WITH THE ENVIRONMENT; (V) HOW THE CONSTRUCTION AND OPERATION OF  
55 THE FACILITY, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES WOULD  
56 COMPLY WITH ENVIRONMENTAL HEALTH AND SAFETY STANDARDS, REQUIREMENTS,

REGULATIONS AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A STATEMENT WHY ANY VARIANCES OR EXCEPTIONS SHOULD BE GRANTED; (VI) WATER WITHDRAWALS AND DISCHARGES; (VII) A DESCRIPTION OF THE FUEL INTERCONNECTION AND SUPPLY FOR THE PROJECT; AND (VIII) AN ELECTRIC INTERCONNECTION STUDY, CONSISTING GENERALLY OF A DESIGN STUDY AND A SYSTEM RELIABILITY IMPACT STUDY;

(D) EXCEPT WITH RESPECT TO A FACILITY THAT HAS BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS, ESTIMATED COST INFORMATION, INCLUDING PLANT COSTS BY ACCOUNT, ALL EXPENSES BY CATEGORIES INCLUDING FUEL COSTS, PLANT SERVICE LIFE AND CAPACITY FACTOR AND TOTAL GENERATING COST PER KILOWATT-HOUR, INCLUDING BOTH PLANT AND RELATED TRANSMISSION, AND COMPARATIVE COSTS OF ALTERNATIVES CONSIDERED;

(E) A STATEMENT (I) DEMONSTRATING THAT THE FACILITY WILL SATISFY ADDITIONAL ELECTRIC CAPACITY OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE CONSTRUCTION OF THE FACILITY IS REASONABLY CONSISTENT WITH LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES, PROVIDED HOWEVER, THAT SUBSEQUENT TO THE ADOPTION OF A STATE ENERGY PLAN PURSUANT TO ARTICLE SIX OF THE ENERGY LAW, AN APPLICANT SHALL DEMONSTRATE THAT THE CONSTRUCTION OF THE FACILITY IS REASONABLY CONSISTENT WITH THE ENERGY POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE MOST RECENT STATE ENERGY PLAN; OR (II) THAT THE FACILITY WAS SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS;

(F) SUCH EVIDENCE AS WILL ENABLE THE BOARD OR COMMISSIONER OF ENVIRONMENTAL CONSERVATION TO EVALUATE THE FACILITY'S POLLUTION CONTROL SYSTEMS AND TO REACH A DETERMINATION TO ISSUE THEREFOR, SUBJECT TO APPROPRIATE CONDITIONS AND LIMITATIONS, PERMITS PURSUANT TO FEDERAL RECOGNITION OF STATE AUTHORITY IN ACCORDANCE WITH THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT;

(G) ANY OTHER INFORMATION THAT THE BOARD DEEMS RELEVANT OR MAY REQUIRE;

(H) A PLAN FOR SECURITY OF THE PROPOSED FACILITY DURING CONSTRUCTION AND OPERATION OF SUCH FACILITY, TO BE REVIEWED BY THE BOARD, IN CONSULTATION WITH THE NEW YORK STATE OFFICE OF PUBLIC SECURITY; AND

(I) SUCH OTHER INFORMATION AS THE APPLICANT MAY CONSIDER RELEVANT OR AS MAY BE REQUIRED BY THE BOARD. COPIES OF THE APPLICATION, INCLUDING THE REQUIRED INFORMATION, SHALL BE FILED WITH THE BOARD AND SHALL BE AVAILABLE FOR PUBLIC INSPECTION; PROVIDED, HOWEVER, THAT THE SECURITY PLAN REQUIRED TO BE FILED PURSUANT TO PARAGRAPH (H) OF THIS SUBDIVISION SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE AVAILABLE FOR PUBLIC INSPECTION, AND PROVIDED FURTHER THAT INFORMATION CONCERNING ELECTRIC AND NATURAL GAS INTERCONNECTIONS BETWEEN THE FACILITY AND THE ELECTRIC AND NATURAL GAS SYSTEMS SHALL NOT BE PLACED IN PUBLIC LIBRARIES OR ON THE INTERNET, AND THAT THE DEPARTMENT SHALL MAKE SUCH INFORMATION AVAILABLE FOR INSPECTION AT ITS OFFICES AND SHALL MAINTAIN A LOG BOOK OF ALL THOSE WHO HAVE REQUESTED ACCESS TO SUCH INFORMATION.

2. EACH APPLICATION SHALL BE ACCOMPANIED BY PROOF OF SERVICE, IN SUCH MANNER AS THE BOARD SHALL PRESCRIBE, OF:

(A) A COPY OF SUCH APPLICATION ON (I) EACH MUNICIPALITY IN WHICH ANY PORTION OF SUCH FACILITY IS TO BE LOCATED AS PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED. SUCH COPY TO A MUNICIPALITY SHALL BE ADDRESSED TO THE CHIEF EXECUTIVE OFFICER THEREOF AND SHALL SPECIFY THE DATE ON OR ABOUT WHICH THE APPLICATION IS TO BE FILED;

(II) EACH MEMBER OF THE BOARD;

(III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

(IV) THE SECRETARY OF STATE;

1 (V) THE ATTORNEY GENERAL;

2 (VI) THE DEPARTMENT OF TRANSPORTATION;

3 (VII) A LIBRARY SERVING THE DISTRICT OF EACH MEMBER OF THE STATE  
4 LEGISLATURE IN WHOSE DISTRICT ANY PORTION OF THE FACILITY IS TO BE  
5 LOCATED AS PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED;

6 (VIII) IN THE EVENT THAT SUCH FACILITY OR ANY PORTION THEREOF AS  
7 PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED IS LOCATED WITHIN THE  
8 ADIRONDACK PARK, AS DEFINED IN SUBDIVISION ONE OF SECTION 9-0101 OF THE  
9 ENVIRONMENTAL CONSERVATION LAW, THE ADIRONDACK PARK AGENCY; AND

10 (B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICI-  
11 PALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARA-  
12 GRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE  
13 GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON  
14 OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE  
15 PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPA-  
16 PERS AS WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICA-  
17 TION;

18 (II) EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY  
19 PORTION OF THE FACILITY IS TO BE LOCATED AS PROPOSED OR IN ANY ALTERNA-  
20 TIVE LOCATION LISTED; AND

21 (III) PERSONS WHO HAVE FILED A STATEMENT WITH THE BOARD WITHIN THE  
22 PAST TWELVE MONTHS THAT THEY WISH TO RECEIVE ALL SUCH NOTICES CONCERNING  
23 FACILITIES IN THE AREA IN WHICH THE FACILITY IS TO BE LOCATED AS  
24 PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED.

25 3. INADVERTENT FAILURE OF SERVICE ON ANY OF THE MUNICIPALITIES,  
26 PERSONS, AGENCIES, BODIES OR COMMISSIONS NAMED IN SUBDIVISION TWO OF  
27 THIS SECTION SHALL NOT BE JURISDICTIONAL AND MAY BE CURED PURSUANT TO  
28 REGULATIONS OF THE BOARD DESIGNED TO AFFORD SUCH PERSONS ADEQUATE NOTICE  
29 TO ENABLE THEM TO PARTICIPATE EFFECTIVELY IN THE PROCEEDING. IN ADDI-  
30 TION, THE BOARD MAY, AFTER FILING, REQUIRE THE APPLICANT TO SERVE NOTICE  
31 OF THE APPLICATION OR COPIES THEREOF OR BOTH UPON SUCH OTHER PERSONS AND  
32 FILE PROOF THEREOF AS THE BOARD MAY DEEM APPROPRIATE.

33 4. THE BOARD SHALL PRESCRIBE THE FORM AND CONTENT OF AN APPLICATION  
34 FOR AN AMENDMENT OF A CERTIFICATE TO BE ISSUED HEREUNDER. NOTICE OF SUCH  
35 AN APPLICATION SHALL BE GIVEN AS SET FORTH IN SUBDIVISION TWO OF THIS  
36 SECTION.

37 5. IF A REASONABLE ALTERNATIVE LOCATION OR, WITH RESPECT TO A FACILITY  
38 THAT HAS NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS,  
39 A REASONABLE ALTERNATIVE ENERGY SUPPLY SOURCE OR DEMAND REDUCING MEASURE  
40 NOT LISTED IN THE APPLICATION IS PROPOSED IN THE CERTIFICATION PROCEED-  
41 ING, NOTICE OF SUCH PROPOSED ALTERNATIVE SHALL BE GIVEN AS SET FORTH IN  
42 SUBDIVISION TWO OF THIS SECTION.

43 6. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT  
44 EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF GENERATING  
45 CAPACITY OF THE SUBJECT FACILITY, BUT NO MORE THAN THREE HUNDRED THOU-  
46 SAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE PRE-APPLICATION FEE  
47 PROVIDED FOR IN SUBDIVISION ONE-A OF SECTION ONE HUNDRED SIXTY-THREE OF  
48 THIS ARTICLE, TO BE DEPOSITED IN THE INTERVENOR ACCOUNT, ESTABLISHED  
49 PURSUANT TO SECTION NINETY-SEVEN-TT OF THE STATE FINANCE LAW, TO BE  
50 DISBURSED AT THE BOARD'S DIRECTION, TO DEFRAY EXPENSES INCURRED BY  
51 MUNICIPAL AND OTHER LOCAL PARTIES TO THE PROCEEDING (EXCEPT A MUNICI-  
52 PALITY WHICH IS THE APPLICANT) FOR EXPERT WITNESS AND CONSULTANT FEES.  
53 IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE APPLICATION, THE APPLICA-  
54 TION IS AMENDED IN A MANNER THAT WARRANTS SUBSTANTIAL ADDITIONAL SCRUTI-  
55 NY, THE BOARD MAY REQUIRE AN ADDITIONAL INTERVENOR FEE IN AN AMOUNT NOT  
56 TO EXCEED ONE HUNDRED THOUSAND DOLLARS. THE BOARD SHALL PROVIDE FOR

TRANSCRIPTS, THE REPRODUCTION AND SERVICE OF DOCUMENTS, AND THE PUBLICATION OF REQUIRED NOTICES, FOR MUNICIPAL PARTIES. ANY MONEYS REMAINING IN THE INTERVENOR FUND, AFTER THE BOARD HAS ISSUED ITS DECISION ON AN APPLICATION UNDER THIS ARTICLE AND THE TIME FOR APPLYING FOR A REHEARING AND JUDICIAL REVIEW HAS EXPIRED, SHALL BE RETURNED TO THE APPLICANT.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE BOARD SHALL PROVIDE BY RULES AND REGULATIONS FOR THE MANAGEMENT OF THE INTERVENOR FUND AND FOR DISBURSEMENTS FROM THE FUND, WHICH RULES AND REGULATIONS SHALL BE CONSISTENT WITH THE PURPOSE OF THIS SECTION TO MAKE AVAILABLE TO MUNICIPAL PARTIES AT LEAST ONE-HALF OF THE AMOUNT OF THE INTERVENOR FUND AND FOR USES SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION. IN ADDITION, THE BOARD SHALL PROVIDE OTHER LOCAL PARTIES UP TO ONE-HALF OF THE AMOUNT OF THE INTERVENOR FUND, PROVIDED, HOWEVER, THAT THE BOARD SHALL ASSURE THAT THE PURPOSES FOR WHICH MONEYS IN THE INTERVENOR FUND WILL BE EXPENDED WILL CONTRIBUTE TO AN INFORMED DECISION AS TO THE APPROPRIATENESS OF THE SITE AND FACILITY AND ARE MADE AVAILABLE ON AN EQUITABLE BASIS IN A MANNER WHICH FACILITATES BROAD PUBLIC PARTICIPATION.

7. AFTER PUBLIC NOTICE AND AN OPPORTUNITY TO COMMENT, THE BOARD SHALL PROMULGATE SUCH REGULATIONS AS MAY BE NECESSARY TO IMPLEMENT, WITH RESPECT TO MAJOR ELECTRIC GENERATING FACILITIES, PERMIT PROGRAMS ESTABLISHED PURSUANT TO REQUIREMENTS OF THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT. SUCH REGULATIONS SHALL BE CONSISTENT WITH ANY STATE PROGRAM REQUIREMENTS ESTABLISHED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FOR STATE PARTICIPATION IN SUCH POLLUTANT CONTROL PERMIT PROGRAMS AND SHALL INCLUDE PROCEDURES FOR EARLY CONSIDERATION AND SUCH PROMPT DETERMINATION AS IS FEASIBLE OF ISSUES ARISING UNDER SUCH PERMIT PROGRAMS.

S 165. HEARING SCHEDULE. 1. AFTER THE RECEIPT OF AN APPLICATION FILED PURSUANT TO SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE CHAIRMAN OF THE BOARD SHALL, WITHIN SIXTY DAYS OF SUCH RECEIPT, DETERMINE WHETHER THE APPLICATION COMPLIES WITH SUCH SECTION AND UPON FINDING THAT THE APPLICATION SO COMPLIES, FIX A DATE FOR THE COMMENCEMENT OF A PUBLIC HEARING. UPON A DETERMINATION THAT AN APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY INITIATE A REVIEW PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE APPLICANT SHALL SUBMIT TO THE DEPARTMENT OF STATE COPIES OF THE APPLICATION, CONSISTENCY CERTIFICATION AND NECESSARY DATA AND INFORMATION SUFFICIENT TO INITIATE A REVIEW PURSUANT TO THE FEDERAL COASTAL ZONE MANAGEMENT ACT AND ITS REGULATIONS. THE CHAIRMAN OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED TO SUPPLEMENT AN APPLICATION BEFORE OR DURING THE HEARINGS.

2. WITHIN A REASONABLE TIME AFTER THE DATE HAS BEEN FIXED BY THE CHAIRMAN FOR COMMENCEMENT OF A PUBLIC HEARING, THE PRESIDING EXAMINER SHALL HOLD A PREHEARING CONFERENCE TO EXPEDITE THE ORDERLY CONDUCT AND DISPOSITION OF THE HEARING, TO SPECIFY THE ISSUES, TO OBTAIN STIPULATIONS AS TO MATTERS NOT DISPUTED, AND TO DEAL WITH SUCH OTHER MATTERS AS THE PRESIDING EXAMINER MAY DEEM PROPER. THEREAFTER, THE PRESIDING EXAMINER SHALL ISSUE AN ORDER IDENTIFYING THE ISSUES TO BE ADDRESSED BY THE PARTIES PROVIDED, HOWEVER, THAT NO SUCH ORDER SHALL PRECLUDE CONSIDERATION OF ISSUES WHICH WARRANT CONSIDERATION IN ORDER TO DEVELOP AN ADEQUATE RECORD AS DETERMINED BY AN ORDER OF THE BOARD.

3. ALL PARTIES SHALL BE PREPARED TO PROCEED IN AN EXPEDITIOUS MANNER AT THE HEARING SO THAT IT MAY PROCEED REGULARLY UNTIL COMPLETION. THE

1 PLACE OF THE HEARING SHALL BE DESIGNATED BY THE PRESIDING EXAMINER.  
2 HEARINGS SHALL BE HELD OF SUFFICIENT DURATION TO PROVIDE ADEQUATE OPPOR-  
3 TUNITY TO HEAR DIRECT EVIDENCE AND REBUTTAL EVIDENCE FROM RESIDENTS OF  
4 THE AREA AFFECTED BY THE MAJOR ELECTRIC GENERATING FACILITY.

5 4. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION,  
6 PROCEEDINGS ON AN APPLICATION SHALL BE COMPLETED IN ALL RESPECTS IN A  
7 MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL  
8 PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN  
9 TWELVE MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIRMAN THAT AN  
10 APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTI-  
11 CLE; PROVIDED, HOWEVER, FOR FACILITIES OVER TWO HUNDRED THOUSAND KILO-  
12 WATTS WHICH HAVE NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT  
13 PROCESS THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES  
14 BY NO MORE THAN SIX MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC  
15 ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD MUST RENDER A  
16 FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS  
17 SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT  
18 TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL  
19 AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE  
20 THAN SIX MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO  
21 CONSIDER SUCH AMENDMENT.

22 (B) PROCEEDINGS ON AN APPLICATION BY AN OWNER OF AN EXISTING MAJOR  
23 ELECTRIC GENERATING FACILITY TO MODIFY SUCH EXISTING FACILITY OR SITE A  
24 NEW MAJOR ELECTRIC GENERATING FACILITY ADJACENT OR CONTIGUOUS TO SUCH  
25 EXISTING FACILITY, SHALL BE COMPLETED IN ALL RESPECTS IN A MANNER  
26 CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING  
27 AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN SIX MONTHS  
28 FROM THE DATE OF A DETERMINATION BY THE CHAIRMAN THAT SUCH APPLICATION  
29 COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, WHENEVER  
30 SUCH APPLICATION DEMONSTRATES THAT THE OPERATION OF THE MODIFIED FACILI-  
31 TY, OR OF THE EXISTING FACILITY AND NEW FACILITY IN COMBINATION, WOULD  
32 RESULT IN: (I) A DECREASE OF NOT LESS THAN SEVENTY-FIVE PERCENT IN THE  
33 RATE OF EMISSIONS OF EACH OF THE FOLLOWING ON A POUNDS PER MEGAWATT-HOUR  
34 BASIS: (A) OXIDES OF NITROGEN, (B) OXIDES OF SULFUR AND (C) PARTICULATE  
35 MATTER. THE PERCENTAGE REDUCTIONS IN THE RATE OF SUCH EMISSIONS SHALL BE  
36 CALCULATED BY COMPARING THE ANNUALIZED POTENTIAL TO EMIT OF THE EXISTING  
37 FACILITY (EXPRESSED IN POUNDS PER MEGAWATT-HOUR) AT THE TIME THE APPLI-  
38 CATION UNDER THIS ARTICLE IS FILED WITH THE CHAIRMAN AND THE FUTURE  
39 ANNUALIZED POTENTIAL TO EMIT OF THE MODIFIED FACILITY OR OF THE COMBINA-  
40 TION OF THE EXISTING AND NEW FACILITY (EXPRESSED IN POUNDS PER MEGA-  
41 WATT-HOUR AND BASED UPON REASONABLY EXPECTED OPERATING CONDITIONS)  
42 PROPOSED IN THE APPLICATION; AND (II) INSTALLATION OF AIR COOLED CONDEN-  
43 SERS OR INSTALLATION OF EVAPORATIVE COOLING WATER INTAKE SYSTEMS OR SUCH  
44 OTHER TECHNOLOGIES FOR THE MODIFIED FACILITY OR FOR THE EXISTING AND NEW  
45 FACILITY THAT WOULD BE DESIGNED TO WITHDRAW NO MORE THAN FIFTEEN GALLONS  
46 PER MINUTE PER MEGAWATT OF TOTAL PLANT GENERATING CAPACITY FOR COMBINED  
47 CYCLE COMBUSTION TURBINE TECHNOLOGY PLANTS, FROM A SOURCE WATER BODY FOR  
48 COOLING PURPOSES. THE APPLICANT SHALL SUPPLY THE DETAILS OF THE ANALYSIS  
49 IN THE APPLICATION AND SUCH SUPPORTING INFORMATION, AS MAY BE REQUESTED  
50 BY THE BOARD OR, IN THE EXERCISE OF FEDERALLY DELEGATED OR APPROVED  
51 ENVIRONMENTAL PERMITTING AUTHORITY, THE DEPARTMENT OF ENVIRONMENTAL  
52 CONSERVATION, NECESSARY TO SHOW COMPLIANCE WITH THE REQUIREMENTS OF  
53 SUBPARAGRAPH (I) OF THIS PARAGRAPH. FOR FACILITIES OVER TWO HUNDRED  
54 THOUSAND KILOWATTS WHICH HAVE NOT BEEN SELECTED PURSUANT TO AN APPROVED  
55 PROCUREMENT PROCESS THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY  
56 CIRCUMSTANCES BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDER-

1 ATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE  
2 BOARD SHALL RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMEN-  
3 TIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF,  
4 AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A  
5 MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY  
6 BE EXTENDED BY NO MORE THAN THREE MONTHS, UNLESS SUCH DEADLINE IS WAIVED  
7 BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

8 5. ON AN APPLICATION FOR AN AMENDMENT OF A CERTIFICATE PROPOSING A  
9 CHANGE IN THE FACILITY LIKELY TO RESULT IN ANY MATERIAL INCREASE IN ANY  
10 ENVIRONMENTAL IMPACT OF THE FACILITY OR A SUBSTANTIAL CHANGE IN THE  
11 LOCATION OF ALL OR A PORTION OF SUCH FACILITY, A HEARING SHALL BE HELD  
12 IN THE SAME MANNER AS A HEARING ON AN APPLICATION FOR A CERTIFICATE. THE  
13 BOARD SHALL PROMULGATE RULES, REGULATIONS AND STANDARDS UNDER WHICH IT  
14 SHALL DETERMINE WHETHER HEARINGS ARE REQUIRED UNDER THIS SUBDIVISION AND  
15 SHALL MAKE SUCH DETERMINATIONS.

16 S 166. PARTIES TO A CERTIFICATION PROCEEDING. 1. THE PARTIES TO THE  
17 CERTIFICATION PROCEEDINGS SHALL INCLUDE:

18 (A) THE APPLICANT;

19 (B) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, WHICH SHALL IN ANY  
20 SUCH PROCEEDING PRESENT EXPERT TESTIMONY AND INFORMATION CONCERNING THE  
21 POTENTIAL ENVIRONMENTAL IMPACTS OF THE PROPOSED FACILITY, AND, AS APPRO-  
22 PRIATE, ANY ALTERNATE FACILITY OR ENERGY SOURCE ON THE ENVIRONMENT, AND  
23 WHETHER AND HOW SUCH FACILITY WOULD COMPLY WITH APPLICABLE STATE AND  
24 FEDERAL ENVIRONMENTAL PROTECTION LAWS, STANDARDS, RULES AND REGULATIONS;

25 (C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

26 (D) THE DEPARTMENT OF HEALTH;

27 (E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

28 (F) THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;

29 (G) THE DEPARTMENT OF STATE, WHICH SHALL BE AVAILABLE IN ANY SUCH  
30 PROCEEDING TO PRESENT EXPERT TESTIMONY AND INFORMATION CONCERNING THE  
31 COMPATIBILITY OF THE PROPOSED FACILITY WITH FEDERAL AND STATE COASTAL  
32 ZONE MANAGEMENT LAWS, REGULATIONS, AND POLICIES;

33 (H) THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, WHICH  
34 SHALL BE AVAILABLE IN ANY SUCH PROCEEDING TO PRESENT EXPERT TESTIMONY  
35 AND INFORMATION CONCERNING THE IMPACTS OF THE PROPOSED FACILITY ON STATE  
36 PARKLANDS AND ARCHEOLOGICAL, HISTORICAL, CULTURAL, AND RECREATIONAL  
37 RESOURCES UNDER THE SUPERVISION OF THE OFFICE;

38 (I) WHERE THE FACILITY OR ANY PORTION THEREOF OR ANY ALTERNATIVE  
39 PROPOSED TO BE LOCATED WITHIN A CITY WITH A POPULATION OF ONE MILLION OR  
40 MORE, THE APPROPRIATE ENVIRONMENTAL PROTECTION AGENCY OF SUCH CITY;

41 (J) WHERE THE FACILITY OR ANY PORTION THEREOF OR OF ANY ALTERNATE IS  
42 TO BE LOCATED WITHIN THE ADIRONDACK PARK, AS DEFINED IN SUBDIVISION ONE  
43 OF SECTION 9-0101 OF THE ENVIRONMENTAL CONSERVATION LAW, THE ADIRONDACK  
44 PARK AGENCY;

45 (K) A MUNICIPALITY ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER  
46 PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF  
47 THIS ARTICLE, IF IT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BE A  
48 PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED  
49 NOTICE AS THE DATE FOR THE FILING OF THE APPLICATION; ANY MUNICIPALITY  
50 ENTITLED TO BE A PARTY HEREIN AND SEEKING TO ENFORCE ANY LOCAL ORDI-  
51 NANCE, LAW, RESOLUTION OR OTHER ACTION OR REGULATION OTHERWISE APPLICA-  
52 BLE SHALL PRESENT EVIDENCE IN SUPPORT THEREOF OR SHALL BE BARRED FROM  
53 THE ENFORCEMENT THEREOF;

54 (L) ANY INDIVIDUAL RESIDENT IN A MUNICIPALITY ENTITLED TO RECEIVE A  
55 COPY OF THE APPLICATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF  
56 SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE IF HE HAS FILED WITH THE

BOARD A NOTICE OF INTENT TO BE A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLICATION;

(M) ANY NON-PROFIT CORPORATION OR ASSOCIATION, FORMED IN WHOLE OR IN PART TO PROMOTE CONSERVATION OR NATURAL BEAUTY, TO PROTECT THE ENVIRONMENT, PERSONAL HEALTH OR OTHER BIOLOGICAL VALUES, TO PRESERVE HISTORICAL SITES, TO PROMOTE CONSUMER INTERESTS, TO REPRESENT COMMERCIAL AND INDUSTRIAL GROUPS OR TO PROMOTE THE ORDERLY DEVELOPMENT OF ANY AREA IN WHICH THE FACILITY IS TO BE LOCATED, IF IT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BECOME A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLICATION;

(N) ANY OTHER MUNICIPALITY OR RESIDENT OF SUCH MUNICIPALITY LOCATED WITHIN A FIVE MILE RADIUS OF SUCH PROPOSED FACILITY, IF IT OR THE RESIDENT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BECOME A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLICATION;

(O) ANY OTHER MUNICIPALITY OR RESIDENT OF SUCH MUNICIPALITY WHICH THE BOARD IN ITS DISCRETION FINDS TO HAVE AN INTEREST IN THE PROCEEDING BECAUSE OF THE POTENTIAL ENVIRONMENTAL EFFECTS ON SUCH MUNICIPALITY OR PERSON, IF THE MUNICIPALITY OR PERSON HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BECOME A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLICATION, TOGETHER WITH AN EXPLANATION OF THE POTENTIAL ENVIRONMENTAL EFFECTS ON SUCH MUNICIPALITY OR PERSON; AND

(P) SUCH OTHER PERSONS OR ENTITIES AS THE BOARD MAY AT ANY TIME DEEM APPROPRIATE, WHO MAY PARTICIPATE IN ALL SUBSEQUENT STAGES OF THE PROCEEDING.

2. THE DEPARTMENT SHALL DESIGNATE MEMBERS OF ITS STAFF WHO SHALL PARTICIPATE AS A PARTY IN PROCEEDINGS UNDER THIS ARTICLE.

3. ANY PERSON MAY MAKE A LIMITED APPEARANCE IN THE PROCEEDING BY FILING A STATEMENT OF HIS INTENT TO LIMIT HIS APPEARANCE IN WRITING AT ANY TIME PRIOR TO THE COMMENCEMENT OF THE HEARING. ALL PAPERS AND MATTERS FILED BY A PERSON MAKING A LIMITED APPEARANCE SHALL BECOME PART OF THE RECORD. NO PERSON MAKING A LIMITED APPEARANCE SHALL BE A PARTY OR SHALL HAVE THE RIGHT TO PRESENT ORAL TESTIMONY OR CROSS-EXAMINE WITNESSES OR PARTIES.

4. THE BOARD MAY FOR GOOD CAUSE SHOWN, PERMIT A MUNICIPALITY OR OTHER PERSON ENTITLED TO BECOME A PARTY UNDER SUBDIVISION ONE OF THIS SECTION, BUT WHICH HAS FAILED TO FILE THE REQUISITE NOTICE OF INTENT WITHIN THE TIME REQUIRED, TO BECOME A PARTY, AND TO PARTICIPATE IN ALL SUBSEQUENT STAGES OF THE PROCEEDING.

S 167. CONDUCT OF HEARING. 1. (A) THE HEARING SHALL BE CONDUCTED IN AN EXPEDITIOUS MANNER BY A PRESIDING EXAMINER APPOINTED BY THE DEPARTMENT. AN ASSOCIATE HEARING EXAMINER SHALL BE APPOINTED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE PUBLIC HEARING. THE ASSOCIATE EXAMINER SHALL ATTEND ALL HEARINGS AS SCHEDULED BY THE PRESIDING EXAMINER AND HE SHALL ASSIST THE PRESIDING EXAMINER IN INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND MATERIAL MATTERS. THE CONCLUSIONS AND RECOMMENDATIONS OF THE ASSOCIATE EXAMINER SHALL BE INCORPORATED IN THE RECOMMENDED DECISION OF THE PRESIDING EXAMINER, UNLESS THE ASSOCIATE EXAMINER PREFERENCES TO SUBMIT A SEPARATE REPORT OF DISSENTING OR CONCURRING CONCLUSIONS AND RECOMMENDATIONS. IN THE EVENT THAT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE RECORD IN THE

1 PROCEEDING AND THE ASSOCIATE HEARING EXAMINER'S CONCLUSIONS AND RECOM-  
2 MENDATIONS SHALL, IN SO FAR AS IS CONSISTENT WITH FEDERALLY DELEGATED OR  
3 APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE  
4 DECISION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR  
5 NOT TO ISSUE SUCH PERMITS.

6 (B) WHEN THE FACILITY IS PROPOSED TO BE LOCATED IN THE COASTAL AREA  
7 AND FEDERAL AUTHORIZATION IS REQUIRED, A COASTAL RESOURCE SPECIALIST  
8 SHALL BE DESIGNATED BY THE DEPARTMENT OF STATE PRIOR TO THE DATE SET FOR  
9 COMMENCEMENT OF THE PUBLIC HEARING. THE COASTAL RESOURCE SPECIALIST  
10 SHALL ATTEND ALL HEARINGS AS SCHEDULED BY THE PRESIDING AND ASSOCIATE  
11 EXAMINERS AND SHALL ASSIST THE PRESIDING AND ASSOCIATE EXAMINERS IN  
12 INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND MATERI-  
13 AL MATTERS. IN THE EVENT THAT THE SECRETARY OF STATE IS REQUIRED TO  
14 RENDER A CONSISTENCY DETERMINATION PURSUANT TO THE FEDERAL COASTAL ZONE  
15 MANAGEMENT ACT, THE RECORD IN THE PROCEEDINGS SHALL PROVIDE INFORMATION  
16 ON WHICH TO BASE THE DETERMINATION OF THE SECRETARY OF STATE WHETHER OR  
17 NOT TO CONCUR WITH THE APPLICANT'S CERTIFICATION.

18 (C) THE TESTIMONY PRESENTED AT A HEARING MAY BE PRESENTED IN WRITING  
19 OR ORALLY. THE BOARD MAY REQUIRE ANY STATE AGENCY TO PROVIDE EXPERT  
20 TESTIMONY ON SPECIFIC SUBJECTS WHERE ITS PERSONNEL HAVE THE REQUISITE  
21 EXPERTISE AND SUCH TESTIMONY IS CONSIDERED NECESSARY TO THE DEVELOPMENT  
22 OF AN ADEQUATE RECORD. A RECORD SHALL BE MADE OF THE HEARING AND OF ALL  
23 TESTIMONY TAKEN AND THE CROSS-EXAMINATIONS THEREON. THE RULES OF  
24 EVIDENCE APPLICABLE TO PROCEEDINGS BEFORE A COURT SHALL NOT APPLY. THE  
25 PRESIDING EXAMINER MAY PROVIDE FOR THE CONSOLIDATION OF THE REPRESENTATION  
26 OF PARTIES, OTHER THAN GOVERNMENTAL BODIES OR AGENCIES, HAVING  
27 SIMILAR INTERESTS. IN THE CASE OF SUCH A CONSOLIDATION, THE RIGHT TO  
28 COUNSEL OF ITS OWN CHOOSING SHALL BE PRESERVED TO EACH PARTY TO THE  
29 PROCEEDING PROVIDED THAT THE CONSOLIDATED GROUP MAY BE REQUIRED TO BE  
30 HEARD THROUGH SUCH REASONABLE NUMBER OF COUNSEL AS THE PRESIDING EXAMINER  
31 SHALL DETERMINE. APPROPRIATE REGULATIONS SHALL BE ISSUED BY THE BOARD  
32 TO PROVIDE FOR PREHEARING DISCOVERY PROCEDURES BY PARTIES TO A PROCEED-  
33 ING, CONSOLIDATION OF THE REPRESENTATION OF PARTIES, THE EXCLUSION OF  
34 IRRELEVANT, REPETITIVE, REDUNDANT OR IMMATERIAL EVIDENCE, AND THE REVIEW  
35 OF RULINGS BY PRESIDING EXAMINERS.

36 2. A COPY OF THE RECORD SHALL BE MADE AVAILABLE BY THE BOARD AT ALL  
37 REASONABLE TIMES FOR EXAMINATION BY THE PUBLIC.

38 3. THE CHAIRMAN OF THE BOARD MAY ENTER INTO AN AGREEMENT WITH AN AGEN-  
39 CY OR DEPARTMENT OF THE UNITED STATES HAVING CONCURRENT JURISDICTION  
40 OVER ALL OR PART OF THE LOCATION, CONSTRUCTION, OR OPERATION OF A MAJOR  
41 ELECTRIC GENERATING FACILITY SUBJECT TO THIS ARTICLE WITH RESPECT TO  
42 PROVIDING FOR JOINT PROCEDURES AND A JOINT HEARING OF COMMON ISSUES ON A  
43 COMBINED RECORD, PROVIDED THAT SUCH AGREEMENT SHALL NOT DIMINISH THE  
44 RIGHTS ACCORDED TO ANY PARTY UNDER THIS ARTICLE.

45 4. THE PRESIDING EXAMINER SHALL ALLOW TESTIMONY TO BE RECEIVED ON  
46 REASONABLE AND AVAILABLE ALTERNATE LOCATIONS, AND, WITH RESPECT TO A  
47 FACILITY THAT HAS NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT  
48 PROCESS, ALTERNATE ENERGY SUPPLY SOURCES AND, WHERE APPROPRIATE,  
49 DEMAND-REDUCING MEASURES, PROVIDED NOTICE OF THE INTENT TO SUBMIT SUCH  
50 TESTIMONY SHALL BE GIVEN WITHIN SUCH PERIOD AS THE BOARD SHALL PRESCRIBE  
51 BY REGULATION, WHICH PERIOD SHALL BE NOT LESS THAN THIRTY NOR MORE THAN  
52 SIXTY DAYS AFTER THE COMMENCEMENT OF THE HEARING. NEVERTHELESS, IN ITS  
53 DISCRETION, THE BOARD MAY THEREAFTER CAUSE TO BE CONSIDERED OTHER  
54 REASONABLE AND AVAILABLE LOCATIONS, AND, WITH RESPECT TO A FACILITY THAT  
55 HAS NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS,

1 ALTERNATE ENERGY SUPPLY SOURCES AND, WHERE APPROPRIATE, DEMAND-REDUCING  
2 MEASURES.

3 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION,  
4 THE BOARD MAY MAKE A PROMPT DETERMINATION ON THE SUFFICIENCY OF THE  
5 APPLICANT'S CONSIDERATION AND EVALUATION OF REASONABLE ALTERNATIVES TO  
6 ITS PROPOSED TYPE OF MAJOR ELECTRIC GENERATING FACILITY AND ITS PROPOSED  
7 LOCATION FOR THAT FACILITY, AS REQUIRED PURSUANT TO PARAGRAPH (B) OF  
8 SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE,  
9 BEFORE RESOLUTION OF OTHER ISSUES PERTINENT TO A FINAL DETERMINATION ON  
10 THE APPLICATION; PROVIDED, HOWEVER, THAT ALL INTERESTED PARTIES HAVE  
11 REASONABLE OPPORTUNITY TO QUESTION AND PRESENT EVIDENCE IN SUPPORT OF OR  
12 AGAINST THE MERITS OF THE APPLICANT'S CONSIDERATION AND EVALUATION OF  
13 SUCH ALTERNATIVES, AS REQUIRED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION  
14 ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, SO THAT THE BOARD  
15 IS ABLE TO DECIDE, IN THE FIRST INSTANCE, WHETHER THE APPLICANT'S  
16 PROPOSAL IS PREFERABLE TO ALTERNATIVES.

17 S 168. BOARD DECISIONS. 1. THE BOARD SHALL MAKE THE FINAL DECISION ON  
18 AN APPLICATION UNDER THIS ARTICLE FOR A CERTIFICATE OR AMENDMENT THERE-  
19 OF, UPON THE RECORD MADE BEFORE THE PRESIDING EXAMINER, AFTER RECEIVING  
20 BRIEFS AND EXCEPTIONS TO THE RECOMMENDED DECISION OF SUCH EXAMINER AND  
21 TO THE REPORT OF THE ASSOCIATE EXAMINER, AND AFTER HEARING SUCH ORAL  
22 ARGUMENT AS THE BOARD SHALL DETERMINE. EXCEPT FOR GOOD CAUSE SHOWN TO  
23 THE SATISFACTION OF THE BOARD, A DETERMINATION UNDER SUBDIVISION FIVE OF  
24 SECTION ONE HUNDRED SIXTY-SEVEN OF THIS ARTICLE THAT THE APPLICANT'S  
25 PROPOSAL IS PREFERABLE TO ALTERNATIVES SHALL BE FINAL. SUCH A DETERMI-  
26 NATION SHALL BE SUBJECT TO REHEARING AND REVIEW ONLY AFTER THE FINAL  
27 DECISION ON AN APPLICATION IS RENDERED.

28 2. THE BOARD SHALL RENDER A DECISION UPON THE RECORD EITHER TO GRANT  
29 OR DENY THE APPLICATION AS FILED OR TO CERTIFY THE FACILITY UPON SUCH  
30 TERMS, CONDITIONS, LIMITATIONS OR MODIFICATIONS OF THE CONSTRUCTION OR  
31 OPERATION OF THE FACILITY AS THE BOARD MAY DEEM APPROPRIATE. THE BOARD  
32 SHALL ISSUE, WITH ITS DECISION, AN OPINION STATING IN FULL ITS REASONS  
33 FOR ITS DECISION. THE BOARD SHALL ISSUE AN ORDER UPON THE DECISION AND  
34 THE OPINION EMBODYING THE TERMS AND CONDITIONS THEREOF IN FULL. FOLLOW-  
35 ING ANY REHEARING AND ANY JUDICIAL REVIEW OF THE BOARD'S DECISION, THE  
36 BOARD'S JURISDICTION OVER AN APPLICATION SHALL CEASE, PROVIDED, HOWEVER,  
37 THAT THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL RETAIN JURISDIC-  
38 TION WITH RESPECT TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A  
39 CERTIFICATE. THE COMMISSION SHALL MONITOR, ENFORCE AND ADMINISTER  
40 COMPLIANCE WITH ANY TERMS AND CONDITIONS SET FORTH IN THE BOARD'S ORDER.  
41 THE BOARD MAY NOT GRANT A CERTIFICATE FOR THE CONSTRUCTION OR OPERATION  
42 OF A MAJOR ELECTRIC GENERATING FACILITY, EITHER AS PROPOSED OR AS MODI-  
43 FIED BY THE BOARD, UNLESS IT SHALL FIRST FIND AND DETERMINE:

44 (A)(I) THAT THE FACILITY WILL SATISFY ADDITIONAL ELECTRIC CAPACITY  
45 NEEDS OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE CONSTRUCTION OF THE  
46 FACILITY IS CONSISTENT WITH LONG-RANGE ENERGY PLANNING OBJECTIVES AND  
47 STRATEGIES, PROVIDED HOWEVER, THAT SUBSEQUENT TO THE ADOPTION OF A STATE  
48 ENERGY PLAN PURSUANT TO ARTICLE SIX OF THE ENERGY LAW, THE BOARD SHALL  
49 FIND AND DETERMINE THAT THE CONSTRUCTION OF THE FACILITY IS REASONABLY  
50 CONSISTENT WITH THE POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES  
51 AND STRATEGIES CONTAINED IN THE MOST RECENT STATE ENERGY PLAN; OR (II)  
52 THAT THE FACILITY WAS SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROC-  
53 ESS;

54 (B) THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACTS, INCLUDING AN  
55 EVALUATION OF THE PREDICTABLE ADVERSE AND BENEFICIAL IMPACTS ON THE  
56 ENVIRONMENT AND ECOLOGY, PUBLIC HEALTH AND SAFETY, AESTHETICS, SCENIC,

1 HISTORIC AND RECREATIONAL VALUE, FOREST AND PARKS, AIR AND WATER QUALI-  
2 TY, INCLUDING THE CUMULATIVE EFFECT OF AIR EMISSIONS FROM EXISTING  
3 FACILITIES AND THE POTENTIAL FOR SIGNIFICANT DETERIORATION IN LOCAL AIR  
4 QUALITY, WITH PARTICULAR ATTENTION TO FACILITIES LOCATED IN AREAS DESIG-  
5 NATED AS SEVERE NONATTAINMENT, FISH AND OTHER MARINE LIFE AND WILDLIFE;

6 (C) THAT THE FACILITY (I) MINIMIZES ADVERSE ENVIRONMENTAL IMPACTS,  
7 CONSIDERING THE STATE OF AVAILABLE TECHNOLOGY, THE NATURE AND ECONOMICS  
8 OF SUCH REASONABLE ALTERNATIVES AS ARE REQUIRED TO BE EXAMINED PURSUANT  
9 TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF  
10 THIS ARTICLE, THE INTEREST OF THE STATE WITH RESPECT TO AESTHETICS,  
11 PRESERVATION OF HISTORIC SITES, FOREST AND PARKS, FISH AND WILDLIFE,  
12 VIABLE AGRICULTURAL LANDS, AND OTHER PERTINENT CONSIDERATIONS, (II) IS  
13 COMPATIBLE WITH PUBLIC HEALTH AND SAFETY, (III) WILL NOT BE IN CONTRA-  
14 VENTION OF WATER QUALITY STANDARDS OR BE INCONSISTENT WITH APPLICABLE  
15 REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR IN CASE  
16 NO CLASSIFICATION HAS BEEN MADE OF THE RECEIVING WATERS ASSOCIATED WITH  
17 THE FACILITY, WILL NOT DISCHARGE ANY EFFLUENT THAT WILL BE UNDULY INJU-  
18 RIOUS TO THE PROPAGATION AND PROTECTION OF FISH AND WILDLIFE, THE INDUS-  
19 TRIAL DEVELOPMENT OF THE STATE, AND PUBLIC HEALTH AND PUBLIC ENJOYMENT  
20 OF THE RECEIVING WATERS, (IV) WILL NOT EMIT ANY POLLUTANTS TO THE AIR  
21 THAT WILL BE IN CONTRAVENTION OF APPLICABLE AIR EMISSION CONTROL  
22 REQUIREMENTS OR AIR QUALITY STANDARDS, (V) WILL CONTROL THE RUNOFF AND  
23 LEACHATE FROM ANY SOLID WASTE DISPOSAL FACILITY, AND (VI) WILL CONTROL  
24 THE DISPOSAL OF ANY HAZARDOUS WASTE;

25 (D) IF A FACILITY IS PROPOSED TO BE LOCATED IN THE COASTAL AREA, THAT  
26 THE ACTION IS CONSISTENT WITH APPLICABLE POLICIES SET FORTH IN ARTICLE  
27 FORTY-TWO OF THE EXECUTIVE LAW, OR IF THE FACILITY IS PROPOSED TO BE  
28 LOCATED IN A MUNICIPALITY WITH A LOCAL WATERFRONT REVITALIZATION PROGRAM  
29 APPROVED BY THE SECRETARY OF STATE, THAT THE ACTION IS CONSISTENT TO THE  
30 MAXIMUM EXTENT PRACTICABLE WITH THAT LOCAL WATERFRONT REVITALIZATION  
31 PROGRAM;

32 (E) THAT THE FACILITY IS DESIGNED TO OPERATE IN COMPLIANCE WITH APPLI-  
33 CABLE STATE AND LOCAL LAWS AND REGULATIONS ISSUED THEREUNDER CONCERNING,  
34 AMONG OTHER MATTERS, THE ENVIRONMENT, PUBLIC HEALTH AND SAFETY, ALL OF  
35 WHICH SHALL BE BINDING UPON THE APPLICANT, EXCEPT THAT THE BOARD MAY  
36 REFUSE TO APPLY ANY LOCAL ORDINANCE, LAW, RESOLUTION OR OTHER ACTION OR  
37 ANY REGULATION ISSUED THEREUNDER OR ANY LOCAL STANDARD OR REQUIREMENT  
38 WHICH WOULD BE OTHERWISE APPLICABLE IF IT FINDS THAT AS APPLIED TO THE  
39 PROPOSED FACILITY SUCH IS UNREASONABLY RESTRICTIVE IN VIEW OF THE EXIST-  
40 ING TECHNOLOGY OR THE NEEDS OF OR COSTS TO RATEPAYERS WHETHER LOCATED  
41 INSIDE OR OUTSIDE OF SUCH MUNICIPALITY. THE BOARD SHALL PROVIDE THE  
42 MUNICIPALITY AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF SUCH ORDI-  
43 NANCE, LAW, RESOLUTION, REGULATION OR OTHER LOCAL ACTION ISSUED THERE-  
44 UNDER; AND

45 (F) THAT THE CONSTRUCTION AND OPERATION OF THE FACILITY IS IN THE  
46 PUBLIC INTEREST, CONSIDERING THE ENVIRONMENTAL IMPACTS OF THE FACILITY  
47 AND REASONABLE ALTERNATIVES EXAMINED AS REQUIRED PURSUANT TO PARAGRAPH  
48 (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTI-  
49 CLE.

50 3. THE BOARD MAY, EITHER AS A PART OF THE DECISION DESCRIBED IN SUBDI-  
51 VISION TWO OF THIS SECTION OR AS A PART OF ANY DETERMINATION AS MAY BE  
52 APPROPRIATELY MADE IN CONFORMANCE WITH REGULATIONS ADOPTED PURSUANT TO  
53 SUBDIVISION SEVEN OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE,  
54 ISSUE PERMITS PURSUANT TO FEDERAL RECOGNITION OF STATE AUTHORITY IN  
55 ACCORDANCE WITH THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT  
56 AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT. SUCH PERMITS

1 SHALL BE BASED UPON THE EVIDENCE OF RECORD WITH RESPECT TO THE  
2 CONSTRUCTION AND OPERATION OF THE POLLUTION CONTROL SYSTEMS OF THE  
3 FACILITY AND SHALL CONTAIN SUCH CONDITIONS AND LIMITATIONS AS THE BOARD  
4 SHALL DEEM APPROPRIATE. THE ISSUANCE OF SUCH PERMITS AS PART OF A DETER-  
5 MINATION HEREUNDER SHALL NOT PREVENT THE BOARD, IF IT BE SO DISPOSED,  
6 FROM DENYING THE APPLICATION UNDER SUBDIVISION TWO OF THIS SECTION IN  
7 WHICH EVENT THE PERMIT SHALL THENCEFORTH BE DEEMED TO BE OF NO FORCE OR  
8 EFFECT.

9 4. A COPY OF THE BOARD'S DECISION AND OPINION SHALL BE SERVED ON EACH  
10 PARTY PERSONALLY OR BY MAIL.

11 S 169. OPINION TO BE ISSUED WITH DECISION. IN RENDERING A DECISION ON  
12 AN APPLICATION FOR A CERTIFICATE, THE BOARD SHALL ISSUE AN OPINION STAT-  
13 ING ITS REASONS FOR THE ACTION TAKEN. IF THE BOARD HAS FOUND THAT ANY  
14 LOCAL ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER ACTION ISSUED  
15 THEREUNDER OR ANY OTHER LOCAL STANDARD OR REQUIREMENT WHICH WOULD BE  
16 OTHERWISE APPLICABLE IS UNREASONABLY RESTRICTIVE PURSUANT TO PARAGRAPH  
17 (E) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTI-  
18 CLE, IT SHALL STATE IN ITS OPINION THE REASONS THEREFOR.

19 S 170. REHEARING AND JUDICIAL REVIEW. 1. ANY PARTY AGGRIEVED BY THE  
20 BOARD'S DECISION DENYING OR GRANTING A CERTIFICATE MAY APPLY TO THE  
21 BOARD FOR A REHEARING WITHIN THIRTY DAYS AFTER ISSUANCE OF THE AGGRIEV-  
22 ING DECISION. ANY SUCH APPLICATION SHALL BE CONSIDERED AND DECIDED BY  
23 THE BOARD AND ANY REHEARING SHALL BE COMPLETED AND A DECISION RENDERED  
24 THEREON WITHIN NINETY DAYS OF THE EXPIRATION OF THE PERIOD FOR FILING  
25 REHEARING PETITIONS, PROVIDED HOWEVER THAT THE BOARD MAY EXTEND THE  
26 DEADLINE BY NO MORE THAN NINETY DAYS WHERE A REHEARING IS REQUIRED IF  
27 NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE APPLICANT MAY WAIVE SUCH  
28 DEADLINE. THEREAFTER SUCH A PARTY MAY OBTAIN JUDICIAL REVIEW OF SUCH  
29 DECISION AS PROVIDED IN THIS SECTION. A JUDICIAL PROCEEDING SHALL BE  
30 BROUGHT IN THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF  
31 NEW YORK IN THE JUDICIAL DEPARTMENT EMBRACING THE COUNTY WHEREIN THE  
32 FACILITY IS TO BE LOCATED OR, IF THE APPLICATION IS DENIED, THE COUNTY  
33 WHEREIN THE APPLICANT HAS PROPOSED TO LOCATE THE FACILITY. SUCH PROCEED-  
34 ING SHALL BE INITIATED BY THE FILING OF A PETITION IN SUCH COURT WITHIN  
35 THIRTY DAYS AFTER THE ISSUANCE OF A FINAL DECISION BY THE BOARD UPON THE  
36 APPLICATION FOR REHEARING TOGETHER WITH PROOF OF SERVICE OF A DEMAND ON  
37 THE BOARD TO FILE WITH SAID COURT A COPY OF A WRITTEN TRANSCRIPT OF THE  
38 RECORD OF THE PROCEEDING AND A COPY OF THE BOARD'S DECISION AND OPINION.  
39 THE BOARD'S COPY OF SAID TRANSCRIPT, DECISION AND OPINION, SHALL BE  
40 AVAILABLE AT ALL REASONABLE TIMES TO ALL PARTIES FOR EXAMINATION WITHOUT  
41 COST. UPON RECEIPT OF SUCH PETITION AND DEMAND THE BOARD SHALL FORTH-  
42 WITH DELIVER TO THE COURT A COPY OF THE RECORD AND A COPY OF THE BOARD'S  
43 DECISION AND OPINION. THEREUPON, THE COURT SHALL HAVE JURISDICTION OF  
44 THE PROCEEDING AND SHALL HAVE THE POWER TO GRANT SUCH RELIEF AS IT DEEMS  
45 JUST AND PROPER, AND TO MAKE AND ENTER AN ORDER ENFORCING, MODIFYING AND  
46 ENFORCING AS SO MODIFIED, REMANDING FOR FURTHER SPECIFIC EVIDENCE OR  
47 FINDINGS OR SETTING ASIDE IN WHOLE OR IN PART SUCH DECISION. THE APPEAL  
48 SHALL BE HEARD ON THE RECORD, WITHOUT REQUIREMENT OF REPRODUCTION, AND  
49 UPON BRIEFS TO THE COURT. NO OBJECTION THAT HAS NOT BEEN URGED BY THE  
50 PARTY IN HIS APPLICATION FOR REHEARING BEFORE THE BOARD SHALL BE CONSID-  
51 ERED BY THE COURT, UNLESS THE FAILURE OR NEGLECT TO URGE SUCH OBJECTION  
52 SHALL BE EXCUSED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES. THE FINDINGS OF  
53 FACT ON WHICH SUCH DECISION IS BASED SHALL BE CONCLUSIVE IF SUPPORTED BY  
54 SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE AND MATTERS OF  
55 JUDICIAL NOTICE SET FORTH IN THE OPINION. THE JURISDICTION OF THE APPEL-  
56 LATE DIVISION OF THE SUPREME COURT SHALL BE EXCLUSIVE AND ITS JUDGMENT

1 AND ORDER SHALL BE FINAL, SUBJECT TO REVIEW BY THE COURT OF APPEALS IN  
2 THE SAME MANNER AND FORM AND WITH THE SAME EFFECT AS PROVIDED FOR  
3 APPEALS IN A SPECIAL PROCEEDING. ALL SUCH PROCEEDINGS SHALL BE HEARD AND  
4 DETERMINED BY THE APPELLATE DIVISION OF THE SUPREME COURT AND BY THE  
5 COURT OF APPEALS AS EXPEDITIOUSLY AS POSSIBLE AND WITH LAWFUL PRECEDENCE  
6 OVER ALL OTHER MATTERS.

7 2. THE GROUNDS FOR AND SCOPE OF REVIEW OF THE COURT SHALL BE LIMITED  
8 TO WHETHER THE DECISION AND OPINION OF THE BOARD ARE:

9 (A) IN CONFORMITY WITH THE CONSTITUTION OF THE STATE AND THE UNITED  
10 STATES;

11 (B) SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AND MATTERS OF  
12 JUDICIAL NOTICE PROPERLY CONSIDERED AND APPLIED IN THE OPINION;

13 (C) WITHIN THE BOARD'S STATUTORY JURISDICTION OR AUTHORITY;

14 (D) MADE IN ACCORDANCE WITH PROCEDURES SET FORTH IN THIS ARTICLE OR  
15 ESTABLISHED BY RULE OR REGULATION PURSUANT TO THIS ARTICLE; OR

16 (E) ARBITRARY, CAPRICIOUS OR AN ABUSE OF DISCRETION.

17 3. EXCEPT AS PROVIDED IN THIS SECTION, ARTICLE SEVENTY-EIGHT OF THE  
18 CIVIL PRACTICE LAW AND RULES SHALL APPLY TO APPEALS TAKEN PURSUANT TO  
19 THIS ARTICLE.

20 S 171. JURISDICTION OF COURTS. EXCEPT AS EXPRESSLY SET FORTH IN  
21 SECTION ONE HUNDRED SEVENTY OF THIS ARTICLE AND EXCEPT FOR REVIEW BY THE  
22 COURT OF APPEALS OF A DECISION OF THE APPELLATE DIVISION OF THE SUPREME  
23 COURT AS PROVIDED FOR THEREIN, NO COURT OF THIS STATE SHALL HAVE JURIS-  
24 DICTION TO HEAR OR DETERMINE ANY MATTER, CASE OR CONTROVERSY CONCERNING  
25 ANY MATTER WHICH WAS OR COULD HAVE BEEN DETERMINED IN A PROCEEDING UNDER  
26 THIS ARTICLE OR TO STOP OR DELAY THE CONSTRUCTION OR OPERATION OF A  
27 MAJOR ELECTRIC GENERATING FACILITY EXCEPT TO ENFORCE COMPLIANCE WITH  
28 THIS ARTICLE OR THE TERMS AND CONDITIONS ISSUED THEREUNDER.

29 S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTAND-  
30 ING ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY  
31 AGENCY THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY  
32 THE BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER  
33 CONDITION FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERAT-  
34 ING FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE  
35 HEREUNDER HAS BEEN FILED, OTHER THAN THOSE PROVIDED BY OTHERWISE APPLI-  
36 CABLE STATE LAW FOR THE PROTECTION OF EMPLOYEES ENGAGED IN THE  
37 CONSTRUCTION AND OPERATION OF SUCH FACILITY; PROVIDED, HOWEVER, THAT IN  
38 THE CASE OF A MUNICIPALITY OR AN AGENCY THEREOF, SUCH MUNICIPALITY HAS  
39 RECEIVED NOTICE OF THE FILING OF THE APPLICATION THEREFOR; AND PROVIDED  
40 FURTHER HOWEVER, THAT THE DEPARTMENT OF STATE MAY MAKE CONSISTENCY  
41 DETERMINATIONS PURSUANT TO THE FEDERAL COASTAL ZONE MANAGEMENT ACT. IN  
42 ISSUING SUCH DETERMINATIONS, THE SECRETARY OF THE STATE SHALL FOLLOW  
43 PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY ARE  
44 CONSISTENT WITH THE FEDERAL COASTAL ZONE MANAGEMENT ACT AND ITS IMPL-  
45 MENTING REGULATION; AND PROVIDED FURTHER, HOWEVER, THAT THE DEPARTMENT  
46 OF ENVIRONMENTAL CONSERVATION MAY ISSUE PERMITS PURSUANT TO FEDERALLY  
47 DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE  
48 FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY  
49 ACT. IN ISSUING SUCH PERMITS, THE COMMISSIONER OF ENVIRONMENTAL CONSER-  
50 VATION SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT  
51 THAT THEY ARE CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRON-  
52 MENTAL PERMITTING AUTHORITY. THE COMMISSIONER OF ENVIRONMENTAL CONSERVA-  
53 TION AND THE SECRETARY OF STATE SHALL PROVIDE SUCH PERMITS TO THE BOARD  
54 PRIOR TO ITS DETERMINATION WHETHER OR NOT TO ISSUE A CERTIFICATE.

55 2. THE ADIRONDACK PARK AGENCY SHALL NOT HOLD PUBLIC HEARINGS FOR A  
56 MAJOR ELECTRIC GENERATING FACILITY WITH RESPECT TO WHICH AN APPLICATION

1 HEREUNDER IS FILED, PROVIDED THAT SUCH AGENCY HAS RECEIVED NOTICE OF THE  
2 FILING OF SUCH APPLICATION.

3 S 4. The opening paragraph and paragraph (b) of subdivision 5 of  
4 section 8-0111 of the environmental conservation law, as added by chap-  
5 ter 612 of the laws of 1975, are amended to read as follows:

6 The requirements of [subdivision two of section 8-0109 of] this arti-  
7 cle shall not apply to:

8 (b) Actions subject to the provisions requiring a certificate of envi-  
9 ronmental compatibility and public need in articles seven [and eight]  
10 AND TEN AND FORMER ARTICLE EIGHT of the public service law; or

11 S 5. Section 17-0701 of the environmental conservation law is amended  
12 by adding a new subdivision 8 to read as follows:

13 8. IN THE CASE OF A MAJOR ELECTRIC GENERATING FACILITY, AS DEFINED IN  
14 SECTION ONE HUNDRED SIXTY OF THE PUBLIC SERVICE LAW, FOR THE  
15 CONSTRUCTION OR OPERATION OF WHICH A CERTIFICATE IS REQUIRED UNDER ARTI-  
16 CLE TEN OF THE PUBLIC SERVICE LAW, SUCH CERTIFICATE SHALL BE DEEMED A  
17 PERMIT UNDER THIS SECTION IF ISSUED BY THE STATE BOARD ON ELECTRIC  
18 GENERATION SITING AND THE ENVIRONMENT PURSUANT TO FEDERALLY DELEGATED OR  
19 APPROVED ENVIRONMENTAL PERMIT AUTHORITY. NOTHING HEREIN SHALL LIMIT THE  
20 AUTHORITY OF THE DEPARTMENT OF HEALTH AND THIS DEPARTMENT TO MONITOR THE  
21 ENVIRONMENTAL AND HEALTH IMPACTS RESULTING FROM THE OPERATION OF SUCH  
22 MAJOR ELECTRIC GENERATING FACILITY AND TO ENFORCE APPLICABLE PROVISIONS  
23 OF THE PUBLIC HEALTH LAW AND THIS CHAPTER AND THE TERMS AND CONDITIONS  
24 OF THE CERTIFICATE GOVERNING THE ENVIRONMENTAL AND HEALTH IMPACTS  
25 RESULTING FROM SUCH OPERATION.

26 S 6. Section 17-0823 of the environmental conservation law, as added  
27 by chapter 801 of the laws of 1973, is amended to read as follows:  
28 S 17-0823. Power plant siting.

29 In the case of a major steam electric generating facility, as defined  
30 in FORMER section one hundred forty of the public service law, for the  
31 construction or operation of which a certificate is required under  
32 FORMER article eight of [such] THE PUBLIC SERVICE law, OR A MAJOR ELEC-  
33 TRIC GENERATING FACILITY AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THE  
34 PUBLIC SERVICE LAW, FOR THE CONSTRUCTION OR OPERATION OF WHICH A CERTIF-  
35 ICATE IS REQUIRED UNDER ARTICLE TEN OF THE PUBLIC SERVICE LAW, [an  
36 applicant shall apply for and obtain such certificate in lieu of filing  
37 an application and obtaining a permit under this article. Any reference  
38 in this article to a permit shall, in the case of such major steam elec-  
39 tric generating facility, be deemed for all purposes to refer to such  
40 certificate, provided that nothing] SUCH CERTIFICATE SHALL BE DEEMED A  
41 PERMIT UNDER THIS SECTION IF ISSUED BY THE STATE BOARD ON ELECTRIC  
42 GENERATION SITING AND THE ENVIRONMENT PURSUANT TO FEDERALLY DELEGATED OR  
43 APPROVED ENVIRONMENTAL PERMIT AUTHORITY. NOTHING herein shall limit the  
44 authority of the [departments] DEPARTMENT of health and [environmental  
45 conservation] THE DEPARTMENT to monitor the environmental and health  
46 impacts resulting from the operation of such major steam electric gener-  
47 ating facility OR MAJOR ELECTRIC GENERATING FACILITY and to enforce  
48 applicable provisions of the public health LAW and [environmental  
49 conservation laws] THIS CHAPTER and the terms and conditions of the  
50 certificate governing the environmental and health impacts resulting  
51 from such operation. In such case all powers, duties, obligations and  
52 privileges conferred upon the department by this article shall devolve  
53 upon the New York state board on electric generation siting and the  
54 environment. In considering the granting of permits, such board shall  
55 apply the provisions of this article and the Act.

1 S 7. Paragraph j of subdivision 2 of section 19-0305 of the environ-  
2 mental conservation law, as amended by chapter 525 of the laws of 1981,  
3 is amended to read as follows:

4 j. Consider for approval or disapproval applications for permits and  
5 certificates including plans or specifications for air contamination  
6 sources and air cleaning installations or any part thereof submitted [to  
7 him pursuant to] CONSISTENT WITH the rules of the department, and  
8 inspect the installation for compliance with the plans or specifica-  
9 tions; provided that in the case of a major steam electric generating  
10 facility, as defined in [either] FORMER section one hundred forty of the  
11 public service law, for which a certificate is required pursuant to  
12 [either] FORMER article eight of [such] THE PUBLIC SERVICE law, OR A  
13 MAJOR ELECTRIC GENERATING FACILITY AS DEFINED IN SECTION ONE HUNDRED  
14 SIXTY OF THE PUBLIC SERVICE LAW, FOR WHICH A CERTIFICATE IS REQUIRED  
15 PURSUANT TO ARTICLE TEN OF THE PUBLIC SERVICE LAW, such approval func-  
16 tions [shall] MAY be performed by the state board on electric generation  
17 siting and the environment, as defined in [such] THE PUBLIC SERVICE law,  
18 PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING  
19 AUTHORITY, and such inspection functions shall be performed by the  
20 department[; provided further that nothing]. NOTHING herein shall limit  
21 the authority of the [departments] DEPARTMENT of health and [environ-  
22 mental conservation] THE DEPARTMENT to monitor the environmental and  
23 health impacts resulting from the operation of such major steam electric  
24 generating facility and to enforce applicable provisions of the public  
25 health LAW and [the environmental conservation laws] THIS CHAPTER and  
26 the terms and conditions of the certificate governing the environmental  
27 and health impacts resulting from such operation.

28 S 8. Paragraph (e) of subdivision 3 of section 49-0307 of the environ-  
29 mental conservation law, as added by chapter 292 of the laws of 1984, is  
30 amended to read as follows:

31 (e) where land subject to a conservation easement or an interest in  
32 such land is required for a major utility transmission facility which  
33 has received a certificate of environmental compatibility and public  
34 need pursuant to article seven of the public service law or is required  
35 for a major steam electric generating facility which has received a  
36 certificate [or] OF environmental compatibility and public need pursuant  
37 to FORMER article eight of the public service law, OR A MAJOR ELECTRIC  
38 GENERATING FACILITY WHICH HAS RECEIVED A CERTIFICATE OF ENVIRONMENTAL  
39 COMPATIBILITY AND PUBLIC NEED PURSUANT TO ARTICLE TEN OF THE PUBLIC  
40 SERVICE LAW, upon the filing of such certificate in a manner prescribed  
41 for recording a conveyance of real property pursuant to section two  
42 hundred ninety-one of the real property law or any other applicable  
43 provision of law, provided that such certificate contains a finding that  
44 the public interest in the conservation and protection of the natural  
45 resources, open spaces and scenic beauty of the Adirondack or Catskill  
46 parks has been considered.

47 S 9. Section 1014 of the public authorities law, as amended by chapter  
48 446 of the laws of 1972, is amended to read as follows:

49 S 1014. Public service law not applicable to authority; inconsistent  
50 provisions in other acts superseded. The rates, services and practices  
51 relating to the generation, transmission, distribution and sale by the  
52 authority, of power to be generated from the projects authorized by this  
53 title shall not be subject to the provisions of the public service law  
54 nor to regulation by, nor the jurisdiction of the department of public  
55 service. Except to the extent article seven of the public service law  
56 applies to the siting and operation of a major utility transmission

1 facility as defined therein, AND ARTICLE TEN OF THE PUBLIC SERVICE LAW  
2 APPLIES TO SITING OF MAJOR ELECTRIC GENERATING FACILITIES AS DEFINED  
3 THEREIN, and except to the extent section eighteen-a of [such] THE  
4 PUBLIC SERVICE law provides for assessment of the authority for certain  
5 costs relating thereto, the provisions of the public service law and of  
6 the ENVIRONMENTAL conservation law and every other law relating to the  
7 department of public service or the public service commission or to the  
8 [conservation] department OF ENVIRONMENTAL CONSERVATION or to the func-  
9 tions, powers or duties assigned to the division of water power and  
10 control by chapter six hundred nineteen[,] of the laws of nineteen  
11 hundred twenty-six, shall so far as is necessary to make this title  
12 effective in accordance with its terms and purposes be deemed to be  
13 superseded, and wherever any provision of law shall be found in conflict  
14 with the provisions of this title or inconsistent with the purposes  
15 thereof, it shall be deemed to be superseded, modified or repealed as  
16 the case may require.

17 S 9-a. Subdivision 1 of section 1020-s of the public authorities law,  
18 as added by chapter 517 of the laws of 1986, is amended to read as  
19 follows:

20 1. The rates, services and practices relating to the electricity  
21 generated by facilities owned or operated by the authority shall not be  
22 subject to the provisions of the public service law or to regulation by,  
23 or the jurisdiction of, the public service commission, except to the  
24 extent (a) article seven of the public service law applies to the siting  
25 and operation of a major utility transmission facility as defined there-  
26 in, (b) article [eight] TEN of [such] THE PUBLIC SERVICE law applies to  
27 the siting of a generating facility as defined therein, and (c) section  
28 eighteen-a of [such] THE PUBLIC SERVICE law provides for assessment for  
29 certain costs, property or operations.

30 S 10. The state finance law is amended by adding a new section 97-tt  
31 to read as follows:

32 S 97-TT. INTERVENOR ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE  
33 JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION  
34 AND FINANCE AN ACCOUNT TO BE KNOWN AS THE INTERVENOR ACCOUNT.

35 2. SUCH ACCOUNT SHALL CONSIST OF ALL REVENUES RECEIVED FROM SITING  
36 APPLICATION FEES FOR ELECTRIC GENERATING FACILITIES PURSUANT TO SECTION  
37 ONE HUNDRED SIXTY-FOUR OF THE PUBLIC SERVICE LAW.

38 3. MONEYS OF THE ACCOUNT, FOLLOWING APPROPRIATION BY THE LEGISLATURE,  
39 MAY BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE HUNDRED  
40 SIXTY-FOUR OF THE PUBLIC SERVICE LAW. MONEYS SHALL BE PAID OUT OF THE  
41 ACCOUNT ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS  
42 CERTIFIED OR APPROVED BY THE CHAIR OF THE PUBLIC SERVICE COMMISSION.

43 S 11. Separability. If any clause, sentence, paragraph, section or  
44 part of this act shall be adjudged by any court of competent jurisdic-  
45 tion to be invalid, such judgment shall not affect, impair or invalidate  
46 the remainder thereof, but shall be confined in its operation to the  
47 clause, sentence, paragraph, section or part thereof directly involved  
48 in the controversy in which such judgment shall have been rendered.

49 S 12. This act shall take effect on the one hundred eightieth day  
50 after it shall have become a law, provided that nothing in this section  
51 shall be construed to limit any administrative authority, with respect  
52 to matters included in this act, which existed prior to the effective  
53 date of this act.