

8696

2009-2010 Regular Sessions

I N A S S E M B L Y

June 3, 2009

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to the siting of major electric generating facilities; to amend the public authorities law, in relation to making technical corrections thereto; to amend the state finance law, in relation to establishing an intervenor account; to amend the environmental conservation law, in relation to power plant emissions and performance standards; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. The public service law is amended by adding a new article
2 10 to read as follows:

3 ARTICLE 10

4 SITING OF MAJOR ELECTRIC GENERATING FACILITIES

5 SECTION 160. DEFINITIONS.

6 161. GENERAL PROVISIONS RELATING TO THE BOARD.

7 162. BOARD CERTIFICATE.

8 163. PRE-APPLICATION PROCEDURES.

9 164. APPLICATION FOR A CERTIFICATE.

10 165. HEARING SCHEDULE.

11 166. PARTIES TO A CERTIFICATION PROCEEDING.

12 167. CONDUCT OF HEARING.

13 168. BOARD DECISIONS.

14 169. OPINION TO BE ISSUED WITH DECISION.

15 170. REHEARING AND JUDICIAL REVIEW.

16 171. JURISDICTION OF COURTS.

17 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.

18 173. APPLICABILITY TO PUBLIC AUTHORITIES.

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

LBD14152-01-9

1 S 160. DEFINITIONS. WHERE USED IN THIS ARTICLE, THE FOLLOWING TERMS,
2 UNLESS THE CONTEXT OTHERWISE REQUIRES, SHALL HAVE THE FOLLOWING MEAN-
3 INGS:

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

6 2. "MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING
7 FACILITY WITH A NAMEPLATE GENERATING CAPACITY OF THIRTY THOUSAND KILO-
8 WATTS OR MORE, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES AND
9 FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE
10 SEVEN OF THIS CHAPTER. FOR PURPOSES OF THIS ARTICLE, MAJOR ELECTRIC
11 GENERATING FACILITY SHALL INCLUDE ANY COMBINATION OF POWER PLANTS WHICH
12 EXCEEDS THIRTY THOUSAND KILOWATTS OF NAMEPLATE GENERATING CAPACITY,
13 BUILT OR CAUSED TO BE BUILT BY A SINGLE PERSON WITHIN A TWELVE MONTH
14 PERIOD.

15 3. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, PUBLIC BENEFIT CORPO-
16 RATION, POLITICAL SUBDIVISION, GOVERNMENTAL AGENCY, MUNICIPALITY, PART-
17 NERSHIP, CO-OPERATIVE ASSOCIATION, TRUST OR ESTATE.

18 4. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION
19 SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST
20 OF SEVEN PERSONS: THE CHAIR OF THE DEPARTMENT, WHO SHALL SERVE AS CHAIR
21 OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; THE
22 COMMISSIONER OF HEALTH; THE CHAIR OF THE NEW YORK STATE ENERGY RESEARCH
23 AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND
24 TWO AD HOC PUBLIC MEMBERS. ONE AD HOC PUBLIC MEMBER SHALL BE APPOINTED
25 BY THE CHIEF EXECUTIVE OFFICER REPRESENTING THE MUNICIPALITY IN WHICH
26 THE FACILITY IS PROPOSED, OR, IN THE CITY OF NEW YORK, BY THE CHAIR-
27 PERSON OF THE COMMUNITY BOARD OF THE COMMUNITY DISTRICT IN WHICH THE
28 FACILITY IS PROPOSED, AND WHICH MEMBER SHALL BE A RESIDENT OF SUCH MUNI-
29 CIPALITY OR SUCH COMMUNITY DISTRICT IN WHICH THE FACILITY IS PROPOSED.
30 THE SECOND AD HOC PUBLIC MEMBER SHALL BE APPOINTED BY THE CHIEF EXECU-
31 TIVE OFFICER OF THE COUNTY IN WHICH THE FACILITY IS PROPOSED, OR IN THE
32 CITY OF NEW YORK, BY THE BOROUGH PRESIDENT OF THE COUNTY IN WHICH THE
33 FACILITY IS PROPOSED, AND WHICH MEMBER SHALL BE A RESIDENT OF SUCH COUN-
34 TY OR SUCH BOROUGH. THE TERM OF THE AD HOC PUBLIC MEMBERS SHALL CONTIN-
35 UE UNTIL A FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEEDING FOR
36 WHICH THEY WERE APPOINTED.

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

40 6. "NAMEPLATE" MEANS A MANUFACTURER'S DESIGNATION, GENERALLY AS
41 AFFIXED TO THE GENERATOR UNIT, WHICH STATES THE TOTAL OUTPUT OF SUCH
42 GENERATING FACILITY AS ORIGINALLY DESIGNED ACCORDING TO THE MANUFACTUR-
43 ER'S ORIGINAL DESIGN SPECIFICATIONS.

44 7. "PUBLIC INFORMATION COORDINATOR" MEANS AN OFFICE CREATED WITHIN THE
45 DEPARTMENT WHICH SHALL ASSIST AND ADVISE INTERESTED PARTIES AND MEMBERS
46 OF THE PUBLIC IN PARTICIPATING IN THE SITING AND CERTIFICATION OF MAJOR
47 ELECTRIC GENERATING FACILITIES. THE DUTIES OF THE PUBLIC INFORMATION
48 OFFICER SHALL INCLUDE, BUT NOT BE LIMITED TO: (A) IMPLEMENTING MEASURES
49 THAT ASSURE FULL AND ADEQUATE PUBLIC PARTICIPATION IN MATTERS BEFORE THE
50 BOARD; (B) RESPONDING TO INQUIRIES FROM THE PUBLIC FOR INFORMATION ON
51 HOW TO PARTICIPATE IN MATTERS BEFORE THE BOARD; (C) ASSISTING THE PUBLIC
52 IN REQUESTING RECORDS RELATING TO MATTERS BEFORE THE BOARD; (D) ENSURING
53 ALL INTERESTED PERSONS ARE PROVIDED WITH A REASONABLE OPPORTUNITY TO
54 PARTICIPATE AT PUBLIC MEETINGS RELATING TO MATTERS BEFORE THE BOARD; (E)
55 ENSURING THAT ALL NECESSARY OR REQUIRED DOCUMENTS ARE AVAILABLE FOR
56 PUBLIC ACCESS ON THE DEPARTMENT'S WEBSITE WITHIN ANY TIME PERIODS SPECI-

1 FIED WITHIN THIS ARTICLE; AND (F) ANY OTHER DUTIES AS MAY BE PRESCRIBED
2 BY THE BOARD, AFTER CONSULTATION WITH THE DEPARTMENT.

3 S 161. GENERAL PROVISIONS RELATING TO THE BOARD. UPON RECEIPT OF A
4 PRE-APPLICATION PRELIMINARY SCOPING STATEMENT UNDER THIS ARTICLE, THE
5 CHAIR SHALL PROMPTLY NOTIFY THE GOVERNOR; THE CHIEF EXECUTIVE OFFICER
6 REPRESENTING THE MUNICIPALITY IN WHICH THE FACILITY IS PROPOSED, OR, IN
7 THE CITY OF NEW YORK, THE CHAIRPERSON OF THE COMMUNITY BOARD OF THE
8 COMMUNITY DISTRICT IN WHICH THE FACILITY IS PROPOSED; AND THE CHIEF
9 EXECUTIVE OFFICER OF THE COUNTY IN WHICH THE FACILITY IS PROPOSED, OR IN
10 THE CITY OF NEW YORK, THE BOROUGH PRESIDENT OF THE COUNTY IN WHICH THE
11 FACILITY IS PROPOSED. WITHIN THIRTY DAYS OF SUCH NOTIFICATION THE CHIEF
12 EXECUTIVE OFFICERS SHALL APPOINT THE AD HOC PUBLIC MEMBERS. FOUR OF THE
13 SEVEN PERSONS ON THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION
14 OF ANY BUSINESS OF THE BOARD, AND THE DECISION OF FOUR MEMBERS OF THE
15 BOARD SHALL CONSTITUTE ACTION OF THE BOARD. IN THE EVENT THAT ONE OR
16 BOTH OF THE AD HOC PUBLIC MEMBERS HAVE NOT BEEN APPOINTED WITHIN THIRTY
17 DAYS, A MAJORITY OF PERSONS NAMED TO THE BOARD SHALL CONSTITUTE A
18 QUORUM. THE BOARD, EXCLUSIVE OF THE AD HOC PUBLIC MEMBERS, SHALL HAVE
19 THE POWER TO ADOPT RULES AND REGULATIONS RELATING TO THE PROCEDURES TO
20 BE USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTICLE,
21 SUBJECT TO PROCEDURES ESTABLISHED BY THE STATE ADMINISTRATIVE PROCEDURE
22 ACT, INCLUDING THE SUSPENSION OR REVOCATION THEREOF, AND SHALL FURTHER
23 HAVE THE POWER TO SEEK DELEGATION FROM THE FEDERAL GOVERNMENT PURSUANT
24 TO FEDERAL REGULATORY PROGRAMS APPLICABLE TO THE SITING OF MAJOR ELEC-
25 TRIC GENERATING FACILITIES. THE CHAIR, AFTER CONSULTATION WITH THE OTHER
26 MEMBERS OF THE BOARD EXCLUSIVE OF THE AD HOC PUBLIC MEMBERS, SHALL HAVE
27 EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY RULINGS REGARDING THE APPLI-
28 CABILITY OF, OR ANY OTHER QUESTION UNDER, THIS ARTICLE AND RULES AND
29 REGULATIONS ADOPTED HEREUNDER. REGULATIONS ADOPTED BY THE BOARD MAY
30 PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE
31 SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-
32 TION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY.

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

1 S 162. BOARD CERTIFICATE. 1. NO PERSON SHALL COMMENCE THE PREPARATION
2 OF A SITE FOR, OR BEGIN THE CONSTRUCTION OF A MAJOR ELECTRIC GENERATING
3 FACILITY IN THE STATE, OR INCREASE THE CAPACITY OF AN EXISTING ELECTRIC
4 GENERATING FACILITY BY MORE THAN THIRTY THOUSAND KILOWATTS WITHOUT
5 HAVING FIRST OBTAINED A CERTIFICATE ISSUED WITH RESPECT TO SUCH FACILITY
6 BY THE BOARD. ANY SUCH FACILITY WITH RESPECT TO WHICH A CERTIFICATE IS
7 ISSUED SHALL NOT THEREAFTER BE BUILT, MAINTAINED OR OPERATED EXCEPT IN
8 CONFORMITY WITH SUCH CERTIFICATE AND ANY TERMS, LIMITATIONS OR CONDI-
9 TIONS CONTAINED THEREIN, PROVIDED THAT NOTHING HEREIN SHALL EXEMPT SUCH
10 FACILITY FROM COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGU-
11 LATIONS EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE. LOCAL LAWS AND
12 REGULATIONS SHALL APPLY AS OF THE DATE OF THE FILING OF THE PRE-APPLICA-
13 TION PRELIMINARY SCOPING STATEMENT, EXCEPT TO THE EXTENT THAT ANY LOCAL
14 LAWS AND REGULATIONS ARE MODIFIED TO EFFECTUATE LAND USE PLANS OR
15 PROPOSALS INITIATED PRIOR TO THE DATE OF THE FILING OF THE PRE-APPLICA-
16 TION PRELIMINARY SCOPING STATEMENT. A CERTIFICATE FOR A MAJOR ELECTRIC
17 GENERATING FACILITY, OR AN INCREASE IN THE CAPACITY OF AN EXISTING ELEC-
18 TRIC GENERATING FACILITY BY MORE THAN THIRTY THOUSAND KILOWATTS, MAY BE
19 ISSUED ONLY PURSUANT TO THIS ARTICLE.

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

23 3. A CERTIFICATE ISSUED UNDER THIS ARTICLE MAY BE AMENDED PURSUANT TO
24 THIS SECTION.

25 4. THIS ARTICLE SHALL NOT APPLY: (A) TO A MAJOR ELECTRIC GENERATING
26 FACILITY OVER WHICH ANY AGENCY OR DEPARTMENT OF THE FEDERAL GOVERNMENT
27 HAS EXCLUSIVE JURISDICTION, OR HAS JURISDICTION CONCURRENT WITH THAT OF
28 THE STATE AND HAS EXERCISED SUCH JURISDICTION TO THE EXCLUSION OF REGU-
29 LATION OF THE FACILITY BY THE STATE;

30 (B) TO NORMAL REPAIRS, REPLACEMENTS, MODIFICATIONS AND IMPROVEMENTS OF
31 A MAJOR ELECTRIC GENERATING FACILITY, WHENEVER BUILT, WHICH DO NOT
32 CONSTITUTE A VIOLATION OF ANY CERTIFICATE ISSUED UNDER THIS ARTICLE AND
33 WHICH DO NOT RESULT IN AN INCREASE IN CAPACITY OF THE FACILITY OF MORE
34 THAN THIRTY THOUSAND KILOWATTS;

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

39 (D) TO A MAJOR ELECTRIC GENERATING FACILITY IF, ON OR BEFORE THE
40 EFFECTIVE DATE OF THIS ARTICLE, AN APPLICATION HAS BEEN MADE FOR A
41 LICENSE, PERMIT, CERTIFICATE, CONSENT OR APPROVAL FROM ANY FEDERAL,
42 STATE OR LOCAL COMMISSION, AGENCY, BOARD OR REGULATORY BODY, IN WHICH
43 APPLICATION THE LOCATION OF THE MAJOR ELECTRIC GENERATING FACILITY HAS
44 BEEN DESIGNATED BY THE APPLICANT; OR IF THE FACILITY IS UNDER
45 CONSTRUCTION AT SUCH TIME.

46 5. ANY PERSON INTENDING TO CONSTRUCT A MAJOR ELECTRIC GENERATING
47 FACILITY EXCLUDED FROM THIS ARTICLE PURSUANT TO PARAGRAPH (B), (C), OR
48 (D) OF SUBDIVISION FOUR OF THIS SECTION MAY ELECT TO BECOME SUBJECT TO
49 THE PROVISIONS OF THIS ARTICLE BY DELIVERING NOTICE OF SUCH ELECTION TO
50 THE CHAIR OF THE BOARD. THIS ARTICLE SHALL THEREAFTER APPLY TO EACH
51 ELECTRIC GENERATING FACILITY IDENTIFIED IN SUCH NOTICE FROM THE DATE OF
52 ITS RECEIPT BY THE CHAIR OF THE BOARD. FOR THE PURPOSES OF THIS ARTICLE,
53 EACH SUCH FACILITY SHALL BE TREATED IN THE SAME MANNER AS A MAJOR ELEC-
54 TRIC GENERATING FACILITY AS DEFINED IN THIS ARTICLE.

55 S 163. PRE-APPLICATION PROCEDURES. 1. ANY PERSON PROPOSING TO SUBMIT
56 AN APPLICATION FOR A CERTIFICATE SHALL FILE WITH THE CHAIR OF THE BOARD

1 A PRELIMINARY SCOPING STATEMENT CONTAINING A BRIEF DISCUSSION, ON THE
2 BASIS OF AVAILABLE INFORMATION, OF THE FOLLOWING ITEMS:

3 (A) DESCRIPTION OF THE PROPOSED FACILITY AND ITS ENVIRONMENTAL
4 SETTING;

5 (B) POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS FROM THE INCREMENTAL
6 INCREASE IN POLLUTION RESULTING FROM THE CONSTRUCTION AND OPERATION OF
7 THE PROPOSED FACILITY;

8 (C) PROPOSED STUDIES OR PROGRAM OF STUDIES DESIGNED TO EVALUATE POTEN-
9 TIAL ENVIRONMENTAL AND HEALTH IMPACTS;

10 (D) MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS; AND

11 (E) WHERE THE PROPOSED FACILITY INTENDS TO USE PETROLEUM OR OTHER
12 BACK-UP FUEL FOR GENERATING ELECTRICITY, A DISCUSSION AND/OR STUDY OF
13 THE SUFFICIENCY OF THE PROPOSED ON-SITE FUEL STORAGE CAPACITY AND SUPPLY
14 INCLUDING AN ANALYSIS OF THE POTENTIAL IMPACT OF UTILIZING THE BACK-UP
15 FUEL UPON THE FUEL SUPPLY AND DELIVERY INDUSTRIES; AND

16 (F) ANY OTHER INFORMATION THAT MAY BE RELEVANT OR THAT THE BOARD MAY
17 REQUIRE.

18 2. SUCH PERSON SHALL SERVE COPIES OF THE PRELIMINARY SCOPING STATEMENT
19 ON PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE
20 HUNDRED SIXTY-FOUR OF THIS ARTICLE AND PROVIDE NOTICE OF SUCH STATEMENT
21 AS PROVIDED IN PARAGRAPH (B) OF SUCH SUBDIVISION IN PLAIN LANGUAGE, IN
22 ENGLISH AND IN ANY OTHER LANGUAGE SPOKEN AS DETERMINED BY THE BOARD BY A
23 SIGNIFICANT PORTION OF THE POPULATION IN THE COMMUNITY, THAT DESCRIBES
24 THE PROPOSED FACILITY AND ITS LOCATION, THE RANGE OF POTENTIAL ENVIRON-
25 MENTAL AND HEALTH IMPACTS OF EACH POLLUTANT, THE APPLICATION AND REVIEW
26 PROCESS, AND A CONTACT PERSON, WITH PHONE NUMBER AND ADDRESS, FROM WHOM
27 INFORMATION WILL BE AVAILABLE AS THE APPLICATION PROCEEDS.

28 3. TO FACILITATE THE PRE-APPLICATION AND APPLICATION PROCESSES AND
29 ENABLE CITIZENS TO PARTICIPATE IN DECISIONS THAT AFFECT THEIR HEALTH AND
30 SAFETY AND THE ENVIRONMENT, THE DEPARTMENT AND SUCH PERSON SHALL PROVIDE
31 OPPORTUNITIES FOR CITIZEN INVOLVEMENT. SUCH OPPORTUNITIES SHALL ENCOUR-
32 AGE CONSULTATION WITH THE PUBLIC EARLY IN THE PRE-APPLICATION AND APPLI-
33 CATION PROCESSES, ESPECIALLY BEFORE ANY PARTIES ENTER A STIPULATION
34 PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. THE PRIMARY GOALS OF THE
35 CITIZEN PARTICIPATION PROCESS SHALL BE TO FACILITATE COMMUNICATION
36 BETWEEN THE APPLICANT AND INTERESTED OR AFFECTED PERSONS. THE PROCESS
37 SHALL FOSTER THE ACTIVE INVOLVEMENT OF THE INTERESTED OR AFFECTED
38 PERSONS.

39 4. (A) EACH PRE-APPLICATION PRELIMINARY SCOPING STATEMENT SHALL BE
40 ACCOMPANIED BY A FEE IN AN AMOUNT EQUAL TO TWO HUNDRED FIFTY DOLLARS FOR
41 EACH THOUSAND KILOWATTS OF GENERATING CAPACITY OF THE SUBJECT FACILITY,
42 BUT NO MORE THAN ONE HUNDRED THOUSAND DOLLARS, TO BE DEPOSITED IN THE
43 INTERVENOR ACCOUNT ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-TT OF
44 THE STATE FINANCE LAW, TO BE DISBURSED AT THE HEARING EXAMINER'S DIREC-
45 TION TO DEFRAY PRE-APPLICATION EXPENSES INCURRED BY MUNICIPAL AND OTHER
46 INTERESTED PARTIES (EXCEPT FOR A MUNICIPALITY SUBMITTING THE PRE-APPLI-
47 CATION SCOPING STATEMENT) FOR EXPERT WITNESS, CONSULTANT, ADMINISTRATIVE
48 AND LEGAL FEES. IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE PRE-AP-
49 PPLICATION THE PRE-APPLICATION IS SUBSTANTIALLY MODIFIED OR REVISED, THE
50 BOARD MAY REQUIRE AN ADDITIONAL PRE-APPLICATION INTERVENOR FEE IN AN
51 AMOUNT NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS. ANY MONEYS REMAINING
52 IN THE INTERVENOR ACCOUNT UPON THE SUBMISSION OF AN APPLICATION FOR A
53 CERTIFICATE SHALL BE MADE AVAILABLE TO INTERVENORS ACCORDING TO PARA-
54 GRAPH (A) OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS
55 ARTICLE.

1 (B) PRE-APPLICATION DISBURSEMENTS FROM THE INTERVENOR ACCOUNT SHALL BE
2 MADE IN ACCORDANCE WITH RULES AND REGULATIONS ESTABLISHED PURSUANT TO
3 PARAGRAPH (B) OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF
4 THIS ARTICLE WHICH RULES SHALL PROVIDE FOR AN EXPEDITED PRE-APPLICATION
5 DISBURSEMENT SCHEDULE TO ASSURE EARLY AND MEANINGFUL PUBLIC INVOLVEMENT,
6 WITH AT LEAST ONE-HALF OF PRE-APPLICATION INTERVENOR FUNDS BECOMING
7 AVAILABLE THROUGH AN APPLICATION PROCESS WITHIN SIXTY DAYS OF THE FILING
8 OF A PRE-APPLICATION PRELIMINARY SCOPING STATEMENT.

9 5. AFTER MEETING THE REQUIREMENTS OF SUBDIVISIONS ONE THROUGH THREE
10 OF THIS SECTION, AND AFTER PRE-APPLICATION INTERVENOR FUNDS HAVE BEEN
11 ALLOCATED BY THE PRE-HEARING EXAMINER PURSUANT TO PARAGRAPH (A) OF
12 SUBDIVISION FOUR OF THIS SECTION, SUCH PERSON MAY CONSULT AND SEEK
13 AGREEMENT WITH ANY INTERESTED PERSON, INCLUDING, BUT NOT LIMITED TO, THE
14 STAFF OF THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
15 AND THE DEPARTMENT OF HEALTH, AS APPROPRIATE, AS TO ANY ASPECT OF THE
16 PRELIMINARY SCOPING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE
17 OR TO BE MADE TO SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT,
18 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH,
19 THE PERSON PROPOSING TO FILE AN APPLICATION, AND ANY OTHER INTERESTED
20 PERSON MAY ENTER INTO A STIPULATION SETTING FORTH AN AGREEMENT ON ANY
21 ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE STUDIES OR PROGRAM
22 OF STUDIES TO BE CONDUCTED. ANY SUCH PERSON PROPOSING TO SUBMIT AN
23 APPLICATION FOR A CERTIFICATE SHALL SERVE A COPY OF THE PROPOSED STIPU-
24 LATION UPON ALL PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO
25 OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, PROVIDE NOTICE OF
26 SUCH STIPULATION TO THOSE PERSONS IDENTIFIED IN PARAGRAPH (B) OF SUCH
27 SUBDIVISION, AND AFFORD THE PUBLIC A REASONABLE OPPORTUNITY TO SUBMIT
28 COMMENTS ON THE STIPULATION BEFORE IT IS EXECUTED BY THE INTERESTED
29 PARTIES. NOTHING IN THIS SECTION, HOWEVER, SHALL BAR ANY PARTY TO A
30 HEARING ON AN APPLICATION, OTHER THAN ANY PARTY TO A PRE-APPLICATION
31 STIPULATION, FROM TIMELY RAISING OBJECTIONS TO ANY ASPECT OF THE PRELIM-
32 INARY SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY STIPULATED
33 STUDIES OR PROGRAM OF STUDIES IN ANY SUCH AGREEMENT. IN ORDER TO ATTEMPT
34 TO RESOLVE ANY QUESTIONS THAT MAY ARISE AS A RESULT OF SUCH CONSULTA-
35 TION, THE DEPARTMENT SHALL DESIGNATE A HEARING EXAMINER WHO SHALL OVER-
36 SEE THE PRE-APPLICATION PROCESS AND MEDIATE ANY ISSUE RELATING TO ANY
37 ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND
38 SCOPE OF ANY SUCH STUDIES OR PROGRAMS OF STUDY. UPON COMPLETION OF THE
39 NOTICE PROVISIONS PROVIDED IN THIS SECTION, SUCH HEARING EXAMINER SHALL,
40 WITHIN SIXTY DAYS OF THE FILING OF A PRELIMINARY SCOPING STATEMENT,
41 CONVENE A MEETING OF INTERESTED PARTIES IN ORDER TO INITIATE THE STIPU-
42 LATION PROCESS.

43 S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIF-
44 ICATE SHALL FILE WITH THE CHAIR OF THE BOARD AN APPLICATION, IN SUCH
45 FORM AS THE BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND
46 MATERIALS:

47 (A) A DESCRIPTION OF THE SITE AND A DESCRIPTION OF THE FACILITY TO BE
48 BUILT THEREON; INCLUDING AVAILABLE SITE INFORMATION, MAPS AND
49 DESCRIPTIONS, PRESENT AND PROPOSED DEVELOPMENT, SOURCE AND VOLUME OF
50 WATER REQUIRED FOR PLANT OPERATION AND COOLING, ANTICIPATED EMISSIONS TO
51 AIR, INCLUDING BUT NOT LIMITED TO PARTICULATE MATTER OF 2.5 MICRONS OR
52 SMALLER, FEDERAL CRITERIA POLLUTANTS AND TOXINS, INCLUDING MERCURY,
53 ANTICIPATED DISCHARGES TO WATER AND GROUNDWATER, POLLUTION CONTROL
54 EQUIPMENT, AND, AS APPROPRIATE, GEOLOGICAL, AESTHETIC, ECOLOGICAL,
55 TSUNAMI, SEISMIC, BIOLOGICAL, WATER SUPPLY, POPULATION AND LOAD CENTER
56 DATA;

1 (B) STUDIES, IDENTIFYING THE AUTHOR AND DATE THEREOF, WHICH HAVE BEEN
2 MADE OF THE EXPECTED ENVIRONMENTAL AND HEALTH IMPACTS AND SAFETY IMPLI-
3 CATIONS OF THE FACILITY, BOTH DURING ITS CONSTRUCTION AND ITS OPERATION,
4 WHICH STUDIES ARE SUFFICIENT TO IDENTIFY (I) THE ANTICIPATED GASEOUS,
5 LIQUID AND SOLID WASTES TO BE PRODUCED AT THE FACILITY INCLUDING THEIR
6 SOURCE, ANTICIPATED VOLUMES, COMPOSITION AND TEMPERATURE, AND SUCH OTHER
7 ATTRIBUTES AS THE BOARD MAY SPECIFY AND THE PROBABLE LEVEL OF NOISE
8 DURING CONSTRUCTION AND OPERATION OF THE FACILITY; (II) THE TREATMENT
9 PROCESSES TO REDUCE WASTES TO BE RELEASED TO THE ENVIRONMENT, THE MANNER
10 OF DISPOSAL FOR WASTES RETAINED AND MEASURES FOR NOISE ABATEMENT; (III)
11 THE ANTICIPATED VOLUMES OF WASTES TO BE RELEASED TO THE ENVIRONMENT
12 UNDER ANY OPERATING CONDITION OF THE FACILITY, INCLUDING SUCH METEORO-
13 LOGICAL, HYDROLOGICAL AND OTHER INFORMATION NEEDED TO SUPPORT SUCH ESTI-
14 MATES; (IV) CONCEPTUAL ARCHITECTURAL AND ENGINEERING PLANS INDICATING
15 COMPATIBILITY OF THE FACILITY WITH THE ENVIRONMENT; (V) HOW THE
16 CONSTRUCTION AND OPERATION OF THE FACILITY, INCLUDING TRANSPORTATION AND
17 DISPOSAL OF WASTES WOULD COMPLY WITH ENVIRONMENTAL HEALTH AND SAFETY
18 STANDARDS, REQUIREMENTS, REGULATIONS AND RULES UNDER STATE AND MUNICIPAL
19 LAWS, AND A STATEMENT WHY ANY VARIANCES OR EXCEPTIONS SHOULD BE GRANTED;
20 (VI) WATER WITHDRAWALS FROM AND DISCHARGES TO THE WATERSHED; (VII) A
21 DESCRIPTION OF THE FUEL INTERCONNECTION AND SUPPLY FOR THE PROJECT; AND
22 (VIII) AN ELECTRIC INTERCONNECTION STUDY, CONSISTING GENERALLY OF A
23 DESIGN STUDY AND A SYSTEM RELIABILITY IMPACT STUDY;

24 (C) A STATEMENT DEMONSTRATING THAT THE FACILITY WILL SATISFY ADDI-
25 TIONAL ELECTRIC CAPACITY OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE
26 CONSTRUCTION OF THE FACILITY IS REASONABLY CONSISTENT WITH LONG-RANGE
27 ENERGY PLANNING OBJECTIVES AND STRATEGIES;

28 (D) SUCH EVIDENCE AS WILL ENABLE THE BOARD AND THE COMMISSIONER OF
29 ENVIRONMENTAL CONSERVATION TO EVALUATE THE FACILITY'S POLLUTION CONTROL
30 SYSTEMS AND TO REACH A DETERMINATION TO ISSUE THEREFOR, SUBJECT TO
31 APPROPRIATE CONDITIONS AND LIMITATIONS, PERMITS PURSUANT TO FEDERAL
32 RECOGNITION OF STATE AUTHORITY IN ACCORDANCE WITH THE FEDERAL CLEAN
33 WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVA-
34 TION AND RECOVERY ACT;

35 (E) WHERE THE PROPOSED FACILITY INTENDS TO USE PETROLEUM OR OTHER
36 BACK-UP FUEL FOR GENERATING ELECTRICITY, EVIDENCE AND AN EVALUATION ON
37 BOTH (I) THE ADEQUACY OF THE FACILITY'S ON-SITE BACK-UP FUEL STORAGE AND
38 SUPPLY, AND (II) THE POTENTIAL IMPACT THAT INTERRUPTION OF THE FACILI-
39 TY'S PRIMARY FUEL WILL HAVE UPON THE FUEL SUPPLY AND DISTRIBUTION INDUS-
40 TRIES;

41 (F) A PLAN FOR SECURITY OF THE PROPOSED FACILITY DURING CONSTRUCTION
42 AND OPERATION OF SUCH FACILITY AND THE MEASURES TO BE TAKEN TO ENSURE
43 THE SAFETY AND SECURITY OF THE LOCAL COMMUNITY, INCLUDING CONTINGENCY,
44 EMERGENCY RESPONSE AND EVACUATION CONTROL, TO BE REVIEWED BY THE BOARD
45 IN CONSULTATION WITH THE NEW YORK STATE EMERGENCY MANAGEMENT OFFICE; AND

46 (G) SUCH OTHER INFORMATION AS THE APPLICANT MAY CONSIDER RELEVANT OR
47 AS MAY BE REQUIRED BY THE BOARD. COPIES OF THE APPLICATION, INCLUDING
48 THE REQUIRED INFORMATION, SHALL BE FILED WITH THE BOARD AND SHALL BE
49 AVAILABLE FOR PUBLIC INSPECTION.

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

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

1 (II) EACH MEMBER OF THE BOARD;
2 (III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;
3 (IV) THE SECRETARY OF STATE;
4 (V) THE ATTORNEY GENERAL;
5 (VI) THE DEPARTMENT OF TRANSPORTATION;
6 (VII) THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION;
7 (VIII) A LIBRARY SERVING THE DISTRICT OF EACH MEMBER OF THE STATE
8 LEGISLATURE IN WHOSE DISTRICT ANY PORTION OF THE FACILITY IS TO BE
9 LOCATED AS PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED;
10 (IX) IN THE EVENT THAT SUCH FACILITY OR ANY PORTION THEREOF AS
11 PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED IS LOCATED WITHIN THE
12 ADIRONDACK PARK, AS DEFINED IN SUBDIVISION ONE OF SECTION 9-0101 OF THE
13 ENVIRONMENTAL CONSERVATION LAW, THE ADIRONDACK PARK AGENCY; AND
14 (X) THE PUBLIC INFORMATION OFFICER FOR PLACEMENT ON THE WEBSITE OF THE
15 DEPARTMENT; AND
16 (B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICI-
17 PALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARA-
18 GRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE
19 GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON
20 OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE
21 PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPA-
22 PERS, INCLUDING LOCAL COMMUNITY AND GENERAL CIRCULATION NEWSPAPERS, AS
23 WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICATION, IN
24 PLAIN LANGUAGE, IN ENGLISH AND IN ANY OTHER LANGUAGE SPOKEN AS DETER-
25 MINED BY THE BOARD BY A SIGNIFICANT PORTION OF THE POPULATION IN THE
26 COMMUNITY, THAT DESCRIBES THE PROPOSED FACILITY AND ITS LOCATION, THE
27 RANGE OF POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS OF EACH POLLUTANT,
28 THE APPLICATION AND REVIEW PROCESS, AND A CONTACT PERSON, WITH PHONE
29 NUMBER AND ADDRESS, FROM WHOM INFORMATION WILL BE AVAILABLE AS THE
30 APPLICATION PROCEEDS;
31 (II) EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY
32 PORTION OF THE FACILITY IS TO BE LOCATED AS PROPOSED OR IN ANY ALTERNA-
33 TIVE LOCATION LISTED; AND
34 (III) PERSONS WHO HAVE FILED A STATEMENT WITH THE BOARD WITHIN THE
35 PAST TWELVE MONTHS THAT THEY WISH TO RECEIVE ALL SUCH NOTICES CONCERNING
36 FACILITIES IN THE AREA IN WHICH THE FACILITY IS TO BE LOCATED AS
37 PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED.
38 3. INADVERTENT FAILURE OF SERVICE ON ANY OF THE MUNICIPALITIES,
39 PERSONS, AGENCIES, BODIES OR COMMISSIONS NAMED IN SUBDIVISION TWO OF
40 THIS SECTION SHALL NOT BE JURISDICTIONAL AND MAY BE CURED PURSUANT TO
41 REGULATIONS OF THE BOARD DESIGNED TO AFFORD SUCH PERSONS ADEQUATE NOTICE
42 TO ENABLE THEM TO PARTICIPATE EFFECTIVELY IN THE PROCEEDING. IN ADDI-
43 TION, THE BOARD MAY, AFTER FILING, REQUIRE THE APPLICANT TO SERVE NOTICE
44 OF THE APPLICATION OR COPIES THEREOF OR BOTH UPON SUCH OTHER PERSONS AND
45 FILE PROOF THEREOF AS THE BOARD MAY DEEM APPROPRIATE.
46 4. THE BOARD SHALL PRESCRIBE THE FORM AND CONTENT OF AN APPLICATION
47 FOR AN AMENDMENT OF A CERTIFICATE TO BE ISSUED PURSUANT TO THIS ARTICLE.
48 NOTICE OF SUCH AN APPLICATION SHALL BE GIVEN AS SET FORTH IN SUBDIVISION
49 TWO OF THIS SECTION.
50 5. IF A REASONABLE ALTERNATIVE LOCATION OR A REASONABLE ALTERNATIVE
51 ENERGY SUPPLY SOURCE OR DEMAND REDUCING MEASURE NOT LISTED IN THE APPLI-
52 CATION IS PROPOSED IN THE CERTIFICATION PROCEEDING, NOTICE OF SUCH
53 PROPOSED ALTERNATIVE SHALL BE GIVEN AS SET FORTH IN SUBDIVISION TWO OF
54 THIS SECTION.
55 6. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT (I)
56 EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF CAPACITY,

1 BUT NO MORE THAN FOUR HUNDRED THOUSAND DOLLARS, (II) AND FOR FACILITIES
2 THAT WILL REQUIRE SHORTAGE OR DISPOSAL OF FUEL WASTE BYPRODUCT AN ADDI-
3 TIONAL FEE OF FIVE HUNDRED DOLLARS FOR EACH THOUSAND KILOWATT OF CAPACI-
4 TY, BUT NO MORE THAN TWO HUNDRED THOUSAND DOLLARS SHALL BE DEPOSITED IN
5 THE INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-TT
6 OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION, TO
7 DEFRAY EXPENSES INCURRED BY MUNICIPAL AND OTHER LOCAL PARTIES TO THE
8 PROCEEDING (EXCEPT A MUNICIPALITY WHICH IS THE APPLICANT) FOR EXPERT
9 WITNESS, CONSULTANT, ADMINISTRATIVE AND LEGAL FEES, PROVIDED, HOWEVER,
10 SUCH EXPENSES SHALL NOT BE AVAILABLE FOR JUDICIAL REVIEW. IF AT ANY TIME
11 SUBSEQUENT TO THE FILING OF THE APPLICATION, THE APPLICATION IS AMENDED
12 IN A MANNER THAT WARRANTS SUBSTANTIAL ADDITIONAL SCRUTINY, THE BOARD MAY
13 REQUIRE AN ADDITIONAL INTERVENOR FEE IN AN AMOUNT NOT TO EXCEED ONE
14 HUNDRED TWENTY-FIVE THOUSAND DOLLARS. THE BOARD SHALL PROVIDE FOR TRAN-
15 SCRIPTS, THE REPRODUCTION AND SERVICE OF DOCUMENTS, AND THE PUBLICATION
16 OF REQUIRED NOTICES, FOR MUNICIPAL AND OTHER LOCAL PARTIES, IN ALL
17 APPROPRIATE LANGUAGES. ANY MONEYS REMAINING IN THE INTERVENOR ACCOUNT
18 AFTER THE BOARD'S JURISDICTION OVER AN APPLICATION HAS CEASED SHALL BE
19 RETURNED TO THE APPLICANT.

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

33 S 165. HEARING SCHEDULE. 1. AFTER THE RECEIPT OF AN APPLICATION FILED
34 PURSUANT TO SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE CHAIR OF
35 THE BOARD SHALL, WITHIN SIXTY DAYS OF SUCH RECEIPT, DETERMINE WHETHER
36 THE APPLICATION COMPLIES WITH SUCH SECTION AND UPON FINDING THAT THE
37 APPLICATION SO COMPLIES, FIX A DATE FOR THE COMMENCEMENT OF A PUBLIC
38 HEARING. UPON A DETERMINATION THAT AN APPLICATION COMPLIES WITH SECTION
39 ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE THE DEPARTMENT OF ENVIRONMENTAL
40 CONSERVATION MAY INITIATE A REVIEW PURSUANT TO FEDERALLY DELEGATED OR
41 APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE CHAIR OF THE BOARD MAY
42 REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED TO SUPPLEMENT AN
43 APPLICATION BEFORE OR DURING THE HEARINGS.

44 2. WITHIN A REASONABLE TIME AFTER THE DATE HAS BEEN FIXED BY THE CHAIR
45 FOR COMMENCEMENT OF A PUBLIC HEARING, THE PRESIDING EXAMINER SHALL HOLD
46 A PREHEARING CONFERENCE TO EXPEDITE THE ORDERLY CONDUCT AND DISPOSITION
47 OF THE HEARING, TO SPECIFY THE ISSUES, TO OBTAIN STIPULATIONS AS TO
48 MATTERS NOT DISPUTED, AND TO DEAL WITH SUCH OTHER MATTERS AS THE PRESID-
49 ING EXAMINER MAY DEEM PROPER. THEREAFTER, THE PRESIDING EXAMINER SHALL
50 ISSUE AN ORDER IDENTIFYING THE ISSUES TO BE ADDRESSED BY THE PARTIES
51 PROVIDED, HOWEVER, THAT NO SUCH ORDER SHALL PRECLUDE CONSIDERATION OF
52 ADDITIONAL ISSUES OR REQUESTS FOR ADDITIONAL SUBMISSIONS, DOCUMENTATION
53 OR TESTIMONY AT A HEARING WHICH WARRANT CONSIDERATION IN ORDER TO DEVEL-
54 OP AN ADEQUATE RECORD AS DETERMINED BY AN ORDER OF THE BOARD. THE
55 PRESIDING EXAMINER SHALL BE PERMITTED A REASONABLE TIME TO RESPOND TO

1 ANY AND ALL INTERLOCUTORY MOTIONS AND APPEALS, BUT IN NO CASE SHALL SUCH
2 TIME EXTEND BEYOND FORTY-FIVE DAYS.

3 3. ALL PARTIES SHALL BE PREPARED TO PROCEED IN AN EXPEDITIOUS MANNER
4 AT THE HEARING SO THAT IT MAY PROCEED REGULARLY UNTIL COMPLETION, EXCEPT
5 THAT HEARINGS SHALL BE OF SUFFICIENT DURATION TO PROVIDE ADEQUATE OPPOR-
6 TUNITY TO HEAR DIRECT EVIDENCE AND REBUTTAL EVIDENCE FROM RESIDENTS OF
7 THE AREA AFFECTED BY THE PROPOSED MAJOR ELECTRIC GENERATING FACILITY. TO
8 THE EXTENT PRACTICABLE, THE PLACE OF THE HEARING SHALL BE DESIGNATED BY
9 THE PRESIDING EXAMINER AT A LOCATION WITHIN TWO MILES OF THE PROPOSED
10 LOCATION OF THE FACILITY.

11 4. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION,
12 PROCEEDINGS ON AN APPLICATION SHALL BE COMPLETED IN ALL RESPECTS IN A
13 MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL
14 PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN
15 TWELVE MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIR THAT AN
16 APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTI-
17 CLE; PROVIDED, HOWEVER, THE BOARD MAY EXTEND THE DEADLINE IN EXTRAOR-
18 DINARY CIRCUMSTANCES BY NO MORE THAN SIX MONTHS IN ORDER TO GIVE CONSID-
19 ERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE
20 BOARD MUST RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMEN-
21 TIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF,
22 AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A
23 MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY
24 BE EXTENDED BY NO MORE THAN SIX MONTHS, UNLESS SUCH DEADLINE IS WAIVED
25 BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

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

1 GRAPH (I) OF THIS PARAGRAPH. FOR FACILITIES OVER TWO HUNDRED THOUSAND
2 KILOWATTS WHICH HAVE NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCURE-
3 MENT PROCESS THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUM-
4 STANCES BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO
5 SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD SHALL
6 RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEAD-
7 LINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME
8 SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND
9 SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED
10 BY NO MORE THAN THREE MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE
11 APPLICANT, TO CONSIDER SUCH AMENDMENT.

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

20 S 166. PARTIES TO A CERTIFICATION PROCEEDING. 1. THE PARTIES TO THE
21 CERTIFICATION PROCEEDINGS SHALL INCLUDE:

22 (A) THE APPLICANT;

23 (B) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, WHICH SHALL IN ANY
24 SUCH PROCEEDING PRESENT EXPERT TESTIMONY AND INFORMATION INCLUDING:

25 (I) A CUMULATIVE IMPACTS ANALYSIS OF AIR QUALITY BASED ON EXISTING AND
26 PROJECTED EMISSIONS FROM EXISTING AND PROPOSED SOURCES LOCATED WITHIN
27 THE COUNTY IN WHICH THE FACILITY IS PROPOSED AND EACH COUNTY ADJACENT TO
28 SUCH COUNTY, OR WHERE SUCH FACILITY IS PROPOSED IN CITIES WITH A POPU-
29 LATION OF ONE MILLION OR GREATER, FOR AN AREA COMPRISING A FIVE-MILE
30 RADIUS FROM THE LOCATION OF THE PROPOSED FACILITY, THE COUNTY OF THE
31 PROPOSED FACILITY AND EACH COUNTY ADJACENT TO SUCH COUNTY, INCLUDING,
32 BUT NOT LIMITED TO, PARTICULATE MATTER OF 2.5 MICRONS OR SMALLER, FEDER-
33 AL CRITERIA POLLUTANTS AND TOXINS, INCLUDING MERCURY, AND FOR WHICH
34 CUMULATIVE IMPACTS THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL
35 PROMULGATE REGULATIONS WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS
36 SUBPARAGRAPH;

37 (II) A COMPREHENSIVE DEMOGRAPHIC, ECONOMIC AND PHYSICAL DESCRIPTION OF
38 THE COMMUNITY WITHIN WHICH THE FACILITY IS LOCATED, WITHIN A TWO-MILE
39 RADIUS OF THE LOCATION OF THE PROPOSED FACILITY, COMPARED AND CONTRASTED
40 WITH THE COUNTY IN WHICH THE FACILITY IS PROPOSED AND WITH NEIGHBORING
41 COMMUNITIES, INCLUDING RESIDENTIAL PATTERNS, POPULATION, RACIAL AND
42 ETHNIC CHARACTERISTICS, INCOME LEVELS, EMPLOYMENT, OPEN SPACE, EDUCA-
43 TIONAL, BUSINESS, AND PUBLIC HEALTH DATA, INCLUDING BUT NOT LIMITED TO
44 INCIDENTS OF RESPIRATORY AILMENTS, CANCER, AND INFANT MORTALITY, AND FOR
45 WHICH COMPREHENSIVE DESCRIPTION THE DEPARTMENT OF ENVIRONMENTAL CONSER-
46 VATION SHALL PROMULGATE REGULATIONS WITHIN SIX MONTHS OF THE EFFECTIVE
47 DATE OF THIS SUBPARAGRAPH;

48 (III) ANY OTHER POTENTIAL ENVIRONMENTAL IMPACTS OF THE PROPOSED FACIL-
49 ITY, AND, AS APPROPRIATE, ANY ALTERNATE FACILITY OR ENERGY SOURCE ON THE
50 ENVIRONMENT, AND WHETHER AND HOW SUCH FACILITY WOULD COMPLY WITH APPLI-
51 CABLE STATE AND FEDERAL ENVIRONMENTAL PROTECTION LAWS, STANDARDS, RULES
52 AND REGULATIONS;

53 (C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

54 (D) THE DEPARTMENT OF HEALTH, WHICH SHALL CONSULT WITH THE DEPARTMENT
55 OF ENVIRONMENTAL CONSERVATION AND CONTRIBUTE TO THE DEVELOPMENT OF THE

1 ANALYSIS AND TESTIMONY CONCERNING ISSUES DESCRIBED IN SUBPARAGRAPH (II)
2 OF PARAGRAPH (B) OF THIS SUBDIVISION;

3 (E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

4 (F) THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY,
5 WHICH SHALL BE REQUIRED IN ANY SUCH PROCEEDING TO PRESENT EXPERT TESTI-
6 MONY AND INFORMATION CONSISTING OF:

7 (I) A COST-BASED ANALYSIS OF THE POTENTIAL IMPACT OF THE PROPOSED
8 FACILITY ON THE WHOLESALE GENERATION MARKETS, BOTH GENERALLY AND FOR THE
9 LOCATION-BASED MARKET IN WHICH THE FACILITY IS PROPOSED, AS WELL AS THE
10 POTENTIAL IMPACT OF THE PROPOSED FACILITY ON FUEL COSTS, IN COMPARISON
11 WITH THE COSTS FOR ACHIEVING AN EQUAL LEVEL OF CAPACITY THROUGH ALTERNA-
12 TIVE RESOURCES, INCLUDING RENEWABLE ENERGY RESOURCES AND ENERGY CONSER-
13 VATION AND EFFICIENCY PROGRAMS, AND

14 (II) A DISCUSSION OF THE CONTRIBUTION OR IMPAIRMENT OF THE PROPOSED
15 FACILITY TOWARDS MEETING THE ENUMERATED GOALS AS DISCUSSED IN THE MOST
16 RECENT STATE ENERGY PLAN, INCLUDING IMPACTS ON FUEL DIVERSITY, REGIONAL
17 REQUIREMENTS FOR CAPACITY, ELECTRIC TRANSMISSION AND FUEL DELIVERY
18 CONSTRAINTS AND OTHER ISSUES AS APPROPRIATE, INCLUDING THE COMPARATIVE
19 ADVANTAGES AND DISADVANTAGES OF REASONABLE ALTERNATE LOCATIONS OR PROP-
20 erties IDENTIFIED FOR POWER PLANT CONSTRUCTION, AND A STATEMENT OF THE
21 REASONS WHY THE PROPOSED LOCATION AND SOURCE IS BEST SUITED, AMONG THE
22 ALTERNATIVES IDENTIFIED, TO PROMOTE PUBLIC HEALTH AND WELFARE;

23 (G) THE DEPARTMENT OF STATE, WHICH SHALL BE REQUIRED IN ANY SUCH
24 PROCEEDING TO PRESENT EXPERT TESTIMONY AND INFORMATION CONCERNING THE
25 COMPATIBILITY OF THE PROPOSED FACILITY WITH FEDERAL AND STATE COASTAL
26 ZONE MANAGEMENT LAWS, REGULATIONS AND POLICIES;

27 (H) THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, WHICH
28 SHALL BE REQUIRED IN ANY SUCH PROCEEDING TO PRESENT EXPERT TESTIMONY AND
29 INFORMATION CONCERNING THE IMPACT OF THE PROPOSED FACILITY ON PARKLANDS
30 AND ARCHEOLOGICAL, HISTORICAL, CULTURAL AND RECREATIONAL RESOURCES;

31 (I) WHERE THE FACILITY OR ANY PORTION THEREOF OR OF ANY ALTERNATE IS
32 TO BE LOCATED WITHIN THE ADIRONDACK PARK, AS DEFINED IN SUBDIVISION ONE
33 OF SECTION 9-0101 OF THE ENVIRONMENTAL CONSERVATION LAW, THE ADIRONDACK
34 PARK AGENCY;

35 (J) A MUNICIPALITY ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER
36 PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF
37 THIS ARTICLE, IF IT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BE A
38 PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED
39 NOTICE AS THE DATE FOR THE FILING OF THE APPLICATION; ANY MUNICIPALITY
40 ENTITLED TO BE A PARTY HEREIN AND SEEKING TO ENFORCE ANY LOCAL ORDI-
41 NANCE, LAW, RESOLUTION OR OTHER ACTION OR REGULATION OTHERWISE APPLICA-
42 BLE SHALL PRESENT EVIDENCE IN SUPPORT THEREOF OR SHALL BE BARRED FROM
43 THE ENFORCEMENT THEREOF;

44 (K) ANY INDIVIDUAL RESIDENT IN A MUNICIPALITY ENTITLED TO RECEIVE A
45 COPY OF THE APPLICATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF
46 SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE IF HE HAS FILED WITH THE
47 BOARD A NOTICE OF INTENT TO BE A PARTY, WITHIN FORTY-FIVE DAYS AFTER THE
48 DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLI-
49 CATION;

50 (1) ANY NON-PROFIT CORPORATION OR ASSOCIATION, FORMED IN WHOLE OR IN
51 PART TO PROMOTE CONSERVATION OR NATURAL BEAUTY, TO PROTECT THE ENVIRON-
52 MENT, PERSONAL HEALTH OR OTHER BIOLOGICAL VALUES, TO PRESERVE HISTORICAL
53 SITES, TO PROMOTE CONSUMER INTERESTS, TO REPRESENT COMMERCIAL AND INDUS-
54 TRIAL GROUPS OR TO PROMOTE THE ORDERLY DEVELOPMENT OF ANY AREA IN WHICH
55 THE FACILITY IS TO BE LOCATED, IF IT HAS FILED WITH THE BOARD A NOTICE

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

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

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

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

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

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

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

33 S 167. CONDUCT OF HEARING. 1. (A) THE HEARING SHALL BE CONDUCTED IN AN
34 EXPEDITIOUS MANNER BY A PRESIDING EXAMINER APPOINTED BY THE DEPARTMENT.
35 AN ASSOCIATE HEARING EXAMINER SHALL BE APPOINTED BY THE DEPARTMENT OF
36 ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE
37 PUBLIC HEARING. THE ASSOCIATE EXAMINER SHALL ATTEND ALL HEARINGS AS
38 SCHEDULED BY THE PRESIDING EXAMINER AND SHALL ASSIST THE PRESIDING EXAM-
39 INER IN INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND
40 MATERIAL MATTERS. THE CONCLUSIONS AND RECOMMENDATIONS OF THE ASSOCIATE
41 EXAMINER SHALL BE INCORPORATED IN THE RECOMMENDED DECISION OF THE
42 PRESIDING EXAMINER, UNLESS THE ASSOCIATE EXAMINER PREFERS TO SUBMIT A
43 SEPARATE REPORT OF DISSENTING OR CONCURRING CONCLUSIONS AND RECOMMENDA-
44 TIONS. IN THE EVENT THAT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION
45 ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY
46 UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE
47 FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE RECORD IN THE
48 PROCEEDING AND THE ASSOCIATE EXAMINER'S CONCLUSIONS AND RECOMMENDATIONS
49 SHALL, INsofar AS IS CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED
50 ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE DECISION
51 OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR NOT TO
52 ISSUE SUCH PERMITS.

53 (B) THE TESTIMONY PRESENTED AT A HEARING MAY BE PRESENTED IN WRITING
54 OR ORALLY. THE BOARD MAY REQUIRE ANY STATE AGENCY TO PROVIDE EXPERT
55 TESTIMONY ON SPECIFIC SUBJECTS WHERE ITS PERSONNEL HAVE THE REQUISITE
56 EXPERTISE AND SUCH TESTIMONY IS CONSIDERED NECESSARY TO THE DEVELOPMENT

1 OF AN ADEQUATE RECORD. ALL TESTIMONY AND INFORMATION PRESENTED BY THE
2 APPLICANT, ANY STATE AGENCY OR OTHER PARTY SHALL BE SUBJECT TO DISCOVERY
3 AND CROSS-EXAMINATION. A RECORD SHALL BE MADE OF THE HEARING AND OF ALL
4 TESTIMONY TAKEN AND THE CROSS-EXAMINATIONS THEREON. THE RULES OF
5 EVIDENCE APPLICABLE TO PROCEEDINGS BEFORE A COURT SHALL NOT APPLY. THE
6 PRESIDING EXAMINER MAY PROVIDE FOR THE CONSOLIDATION OF THE REPRESENTATION
7 OF PARTIES, OTHER THAN GOVERNMENTAL BODIES OR AGENCIES, HAVING
8 SIMILAR INTERESTS. IN THE CASE OF SUCH A CONSOLIDATION, THE RIGHT TO
9 COUNSEL OF ITS OWN CHOOSING SHALL BE PRESERVED TO EACH PARTY TO THE
10 PROCEEDING PROVIDED THAT THE CONSOLIDATED GROUP MAY BE REQUIRED TO BE
11 HEARD THROUGH SUCH REASONABLE NUMBER OF COUNSEL AS THE PRESIDING EXAMINER
12 SHALL DETERMINE. APPROPRIATE REGULATIONS SHALL BE ISSUED BY THE BOARD
13 TO PROVIDE FOR PREHEARING DISCOVERY PROCEDURES BY PARTIES TO A PROCEEDING,
14 CONSOLIDATION OF THE REPRESENTATION OF PARTIES, THE EXCLUSION OF
15 IRRELEVANT, REPETITIVE, REDUNDANT OR IMMATERIAL EVIDENCE, AND THE REVIEW
16 OF RULINGS BY PRESIDING EXAMINERS.

17 2. A COPY OF THE RECORD INCLUDING, BUT NOT LIMITED TO, TESTIMONY,
18 BRIEFS, E-MAILS AND HEARING TESTIMONY SHALL BE MADE AVAILABLE BY THE
19 BOARD WITHIN THIRTY DAYS FOR EXAMINATION BY THE PUBLIC, AND SHALL BE
20 MADE AVAILABLE ON THE DEPARTMENT'S WEBSITE.

21 3. THE CHAIR OF THE BOARD MAY ENTER INTO AN AGREEMENT WITH AN AGENCY
22 OR DEPARTMENT OF THE UNITED STATES HAVING CONCURRENT JURISDICTION OVER
23 ALL OR PART OF THE LOCATION, CONSTRUCTION, OR OPERATION OF A MAJOR ELECTRIC
24 GENERATING FACILITY SUBJECT TO THIS ARTICLE WITH RESPECT TO PROVIDING
25 FOR JOINT PROCEDURES AND A JOINT HEARING OF COMMON ISSUES ON A
26 COMBINED RECORD, PROVIDED THAT SUCH AGREEMENT SHALL NOT DIMINISH THE
27 RIGHTS ACCORDED TO ANY PARTY UNDER THIS ARTICLE.

28 4. THE PRESIDING EXAMINER SHALL ALLOW TESTIMONY TO BE RECEIVED ON
29 REASONABLE AND AVAILABLE ALTERNATE LOCATIONS FOR THE PROPOSED FACILITY,
30 ALTERNATE ENERGY SUPPLY SOURCES AND DEMAND-REDUCING MEASURES, PROVIDED
31 NOTICE OF THE INTENT TO SUBMIT SUCH TESTIMONY SHALL BE GIVEN WITHIN SUCH
32 PERIOD AS THE BOARD SHALL PRESCRIBE BY REGULATION, WHICH PERIOD SHALL BE
33 NOT LESS THAN THIRTY NOR MORE THAN SIXTY DAYS AFTER THE COMMENCEMENT OF
34 THE HEARING. NEVERTHELESS, IN ITS DISCRETION, THE BOARD MAY THEREAFTER
35 CAUSE TO BE CONSIDERED OTHER REASONABLE AND AVAILABLE LOCATIONS FOR THE
36 PROPOSED FACILITY, ALTERNATE ENERGY SUPPLY SOURCES AND, WHERE APPROPRIATE,
37 DEMAND-REDUCING MEASURES.

38 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION,
39 THE BOARD MAY MAKE A PROMPT DETERMINATION ON THE SUFFICIENCY OF THE
40 APPLICANT'S CONSIDERATION AND EVALUATION OF REASONABLE ALTERNATIVES TO
41 ITS PROPOSED TYPE OF MAJOR ELECTRIC GENERATING FACILITY AND ITS PROPOSED
42 LOCATION FOR THAT FACILITY, AS REQUIRED PURSUANT TO PARAGRAPH (B) OF
43 SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE,
44 BEFORE RESOLUTION OF OTHER ISSUES PERTINENT TO A FINAL DETERMINATION ON
45 THE APPLICATION; PROVIDED, HOWEVER, THAT ALL INTERESTED PARTIES HAVE
46 REASONABLE OPPORTUNITY TO QUESTION AND PRESENT EVIDENCE IN SUPPORT OF OR
47 AGAINST THE MERITS OF THE APPLICANT'S CONSIDERATION AND EVALUATION OF
48 SUCH ALTERNATIVES, AS REQUIRED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION
49 ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, SO THAT THE BOARD
50 IS ABLE TO DECIDE, IN THE FIRST INSTANCE, WHETHER THE APPLICANT'S
51 PROPOSAL IS PREFERABLE TO ALTERNATIVES.

52 S 168. BOARD DECISIONS. 1. THE BOARD SHALL MAKE THE FINAL DECISION ON
53 AN APPLICATION UNDER THIS ARTICLE FOR A CERTIFICATE OR AMENDMENT THEREOF,
54 UPON THE RECORD MADE BEFORE THE PRESIDING EXAMINER, AFTER RECEIVING
55 BRIEFS AND EXCEPTIONS TO THE RECOMMENDED DECISION OF SUCH EXAMINER AND
56 TO THE REPORT OF THE ASSOCIATE EXAMINER, AND AFTER HEARING SUCH ORAL

1 ARGUMENT AS THE BOARD SHALL DETERMINE. EXCEPT FOR GOOD CAUSE SHOWN TO
2 THE SATISFACTION OF THE BOARD, A DETERMINATION UNDER SUBDIVISION FIVE OF
3 SECTION ONE HUNDRED SIXTY-SEVEN OF THIS ARTICLE THAT THE APPLICANT'S
4 PROPOSAL IS PREFERABLE TO ALTERNATIVES SHALL BE FINAL. SUCH A DETERMI-
5 NATION SHALL BE SUBJECT TO REHEARING AND REVIEW ONLY AFTER THE FINAL
6 DECISION ON AN APPLICATION IS RENDERED.

7 2. THE BOARD SHALL RENDER A DECISION UPON THE RECORD EITHER TO GRANT
8 OR DENY THE APPLICATION AS FILED OR TO CERTIFY THE FACILITY UPON SUCH
9 TERMS, CONDITIONS, LIMITATIONS OR MODIFICATIONS OF THE CONSTRUCTION OR
10 OPERATION OF THE FACILITY AS THE BOARD MAY DEEM APPROPRIATE. THE BOARD
11 SHALL ISSUE, WITH ITS DECISION, AN OPINION STATING IN FULL ITS REASONS
12 FOR ITS DECISION, INCLUDING A STATEMENT OF HOW THE DECISION IS CONSIST-
13 ENT WITH THE STATE ENERGY PLAN. THE BOARD SHALL ISSUE AN ORDER UPON THE
14 DECISION AND THE OPINION EMBODYING THE TERMS AND CONDITIONS THEREOF IN
15 FULL. FOLLOWING ANY REHEARING AND ANY JUDICIAL REVIEW OF THE BOARD'S
16 DECISION, THE BOARD'S JURISDICTION OVER AN APPLICATION SHALL CEASE,
17 PROVIDED, HOWEVER, THAT THE BOARD SHALL RETAIN JURISDICTION WITH RESPECT
18 TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A CERTIFICATE. THE COMMIS-
19 SION SHALL MONITOR, ENFORCE AND ADMINISTER COMPLIANCE WITH ANY TERMS AND
20 CONDITIONS SET FORTH IN THE BOARD'S ORDER. THE BOARD MAY NOT GRANT A
21 CERTIFICATE FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENER-
22 ATING FACILITY, EITHER AS PROPOSED OR AS MODIFIED BY THE BOARD, UNLESS
23 IT SHALL FIRST FIND AND DETERMINE:

24 (A) THAT THE FACILITY WILL SATISFY ADDITIONAL ELECTRIC CAPACITY NEEDS
25 OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE CONSTRUCTION OF THE FACILI-
26 TY IS CONSISTENT WITH LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATE-
27 GIES, THE BOARD SHALL FIND AND DETERMINE THAT THE CONSTRUCTION OF THE
28 FACILITY IS REASONABLY CONSISTENT WITH THE POLICIES AND LONG-RANGE ENER-
29 GY PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE MOST RECENT STATE
30 ENERGY PLAN, INCLUDING THAT THE ADDITIONAL ELECTRICITY PROVIDED BY THE
31 FACILITY AS PROPOSED IS NEEDED AND IS THE MOST EFFECTIVE OPTION FOR
32 RATEPAYERS, CONSIDERING REQUIRED CAPITAL INVESTMENT, COST, RATEPAYER
33 IMPACTS, SECURITY AND DIVERSITY OF FUEL SUPPLIES AND GENERATING MODES,
34 PROTECTION OF PUBLIC HEALTH AND SAFETY, ADVERSE AND BENEFICIAL ENVIRON-
35 MENTAL IMPACTS, CONSERVATION OF ENERGY AND ENERGY RESOURCES AND ANY
36 OTHER POLICY OBJECTIVES DEEMED APPROPRIATE, COMPARED TO ALL OTHER ALTER-
37 NATIVES, INCLUDING DEMAND REDUCTION OPTIONS, AND THAT THE LOCATION
38 PROPOSED FOR THE FACILITY IS IDENTIFIED AS A SUITABLE LOCATION FOR POWER
39 PLANT CONSTRUCTION;

40 (B) THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACTS, INCLUDING AN
41 EVALUATION OF THE PREDICTABLE ADVERSE AND BENEFICIAL IMPACTS ON THE
42 ENVIRONMENT AND ECOLOGY, PUBLIC HEALTH AND SAFETY, AESTHETICS, SCENIC,
43 HISTORIC AND RECREATIONAL VALUE, FOREST AND PARKS, AIR AND WATER QUALI-
44 TY, INCLUDING THE CUMULATIVE EFFECT OF AIR EMISSIONS FROM EXISTING AND
45 PROPOSED FACILITIES AND THE POTENTIAL FOR SIGNIFICANT DETERIORATION IN
46 LOCAL AIR QUALITY, WITH PARTICULAR ATTENTION TO FACILITIES LOCATED IN OR
47 NEAR AREAS DESIGNATED AS SEVERE NONATTAINMENT, FISH AND OTHER MARINE
48 LIFE AND WILDLIFE, OR LANDS INCLUDED IN THE STATE OPEN SPACE PLAN;

49 (C) THAT THE FACILITY (I) MINIMIZES ADVERSE ENVIRONMENTAL IMPACTS,
50 CONSIDERING THE STATE OF AVAILABLE TECHNOLOGY, THE NATURE AND ECONOMICS
51 OF SUCH REASONABLE ALTERNATIVES AS ARE REQUIRED TO BE EXAMINED PURSUANT
52 TO PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-SIX OF
53 THIS ARTICLE, THE INTEREST OF THE STATE WITH RESPECT TO AESTHETICS,
54 PRESERVATION OF HISTORIC SITES, FOREST AND PARKS, FISH AND WILDLIFE,
55 VIABLE AGRICULTURAL LANDS, AND OTHER PERTINENT CONSIDERATIONS, (II) IS
56 COMPATIBLE WITH PUBLIC HEALTH AND SAFETY, (III) WILL NOT BE IN CONTRA-

1 VENTION OF WATER QUALITY STANDARDS OR BE INCONSISTENT WITH APPLICABLE
2 REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR IN CASE
3 NO CLASSIFICATION HAS BEEN MADE OF THE RECEIVING WATERS ASSOCIATED WITH
4 THE FACILITY, WILL NOT DISCHARGE ANY EFFLUENT THAT WILL BE UNDULY INJU-
5 RIOUS TO THE PROPAGATION AND PROTECTION OF FISH AND WILDLIFE, THE INDUS-
6 TRIAL DEVELOPMENT OF THE STATE, AND PUBLIC HEALTH AND PUBLIC ENJOYMENT
7 OF THE RECEIVING WATERS, (IV) WILL NOT EMIT ANY POLLUTANTS TO THE AIR
8 THAT WILL BE IN CONTRAVENTION OF APPLICABLE AIR EMISSION CONTROL
9 REQUIREMENTS OR AIR QUALITY STANDARDS, (V) WILL CONTROL THE RUNOFF AND
10 LEACHATE FROM ANY SOLID WASTE DISPOSAL FACILITY, AND (VI) WILL CONTROL
11 THE DISPOSAL OF ANY HAZARDOUS WASTE;

12 (D) WHERE APPLICABLE, THAT THE FACILITY POSSESSES ADEQUATE ON-SITE
13 PETROLEUM OR OTHER BACK-UP FUEL SUPPLY AND STORAGE TO ACCOMMODATE AND
14 MEET THE SUPPLY NEEDS OF THE FACILITY DURING PERIODS OF INTERRUPTION OF
15 ITS PRIMARY FUEL WHILE NOT DISRUPTING OR NEGATIVELY IMPACTING THE FUEL
16 SUPPLY AND DISTRIBUTION INDUSTRIES;

17 (E) THAT THE FACILITY IS DESIGNED TO OPERATE IN COMPLIANCE WITH APPLI-
18 CABLE STATE AND LOCAL LAWS AND REGULATIONS ISSUED THEREUNDER CONCERNING,
19 AMONG OTHER MATTERS, THE ENVIRONMENT, PUBLIC HEALTH AND SAFETY, ALL OF
20 WHICH SHALL BE BINDING UPON THE APPLICANT, EXCEPT THAT THE BOARD MAY
21 REFUSE TO APPLY ANY LOCAL ORDINANCE, LAW, RESOLUTION OR OTHER ACTION OR
22 ANY REGULATION ISSUED THEREUNDER OR ANY LOCAL STANDARD OR REQUIREMENT
23 WHICH WOULD BE OTHERWISE APPLICABLE IF IT FINDS THAT AS APPLIED TO THE
24 PROPOSED FACILITY SUCH IS UNREASONABLY RESTRICTIVE IN VIEW OF THE EXIST-
25 ING TECHNOLOGY OR THE NEEDS OF OR COSTS TO RATEPAYERS WHETHER LOCATED
26 INSIDE OR OUTSIDE OF SUCH MUNICIPALITY. THE BOARD SHALL PROVIDE THE
27 MUNICIPALITY AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF SUCH ORDI-
28 NANCE, LAW, RESOLUTION, REGULATION OR OTHER LOCAL ACTION ISSUED THERE-
29 UNDER;

30 (F) THAT THE CONSTRUCTION AND OPERATION OF THE FACILITY IS IN THE
31 PUBLIC INTEREST, CONSIDERING THE ENVIRONMENTAL AND HEALTH IMPACTS OF THE
32 FACILITY AND REASONABLE ALTERNATIVES EXAMINED AS REQUIRED PURSUANT TO
33 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF
34 THIS ARTICLE; AND

35 (G) THAT THE FACILITY BASED ON INFORMATION PRESENTED PURSUANT TO
36 SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (B) OF SUBDIVISION ONE OF
37 SECTION ONE HUNDRED SIXTY-SIX OF THIS ARTICLE, AS PROPOSED DOES NOT
38 PLACE OR INCREASE AN ADDITIONAL ENVIRONMENTAL OR HEALTH BURDEN ON A
39 COMMUNITY THAT HAS A SIGNIFICANT LEVEL OF EMISSIONS GENERATED WITHIN THE
40 COMMUNITY AS COMPARED WITH THE COUNTY AVERAGE.

41 3. A COPY OF THE BOARD'S DECISION AND OPINION SHALL BE SERVED ON EACH
42 PARTY PERSONALLY OR BY MAIL.

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

51 S 170. REHEARING AND JUDICIAL REVIEW. 1. ANY PARTY AGGRIEVED BY THE
52 BOARD'S DECISION DENYING OR GRANTING A CERTIFICATE MAY APPLY TO THE
53 BOARD FOR A REHEARING WITHIN THIRTY DAYS AFTER ISSUANCE OF THE AGGRIEV-
54 ING DECISION. ANY SUCH APPLICATION SHALL BE CONSIDERED AND DECIDED BY
55 THE BOARD AND ANY REHEARING SHALL BE COMPLETED AND A DECISION RENDERED
56 THEREON WITHIN NINETY DAYS OF THE EXPIRATION OF THE PERIOD FOR FILING

1 REHEARING PETITIONS, PROVIDED HOWEVER THAT THE BOARD MAY EXTEND THE
2 DEADLINE BY NO MORE THAN NINETY DAYS WHERE A REHEARING IS REQUIRED IF
3 NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE APPLICANT MAY WAIVE SUCH
4 DEADLINE. THEREAFTER SUCH A PARTY MAY OBTAIN JUDICIAL REVIEW OF SUCH
5 DECISION AS PROVIDED IN THIS SECTION. A JUDICIAL PROCEEDING SHALL BE
6 BROUGHT IN THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF
7 NEW YORK IN THE JUDICIAL DEPARTMENT EMBRACING THE COUNTY WHEREIN THE
8 FACILITY IS TO BE LOCATED OR, IF THE APPLICATION IS DENIED, THE COUNTY
9 WHEREIN THE APPLICANT HAS PROPOSED TO LOCATE THE FACILITY. SUCH PROCEED-
10 ING SHALL BE INITIATED BY THE FILING OF A PETITION IN SUCH COURT WITHIN
11 THIRTY DAYS AFTER THE ISSUANCE OF A FINAL DECISION BY THE BOARD UPON THE
12 APPLICATION FOR REHEARING TOGETHER WITH PROOF OF SERVICE OF A DEMAND ON
13 THE BOARD TO FILE WITH SAID COURT A COPY OF A WRITTEN TRANSCRIPT OF THE
14 RECORD OF THE PROCEEDING AND A COPY OF THE BOARD'S DECISION AND OPINION.
15 THE BOARD'S COPY OF SAID TRANSCRIPT, DECISION AND OPINION, SHALL BE
16 AVAILABLE AT ALL REASONABLE TIMES TO ALL PARTIES FOR EXAMINATION WITHOUT
17 COST. UPON RECEIPT OF SUCH PETITION AND DEMAND THE BOARD SHALL FORTH-
18 WITH DELIVER TO THE COURT A COPY OF THE RECORD AND A COPY OF THE BOARD'S
19 DECISION AND OPINION. THEREUPON, THE COURT SHALL HAVE JURISDICTION OF
20 THE PROCEEDING AND SHALL HAVE THE POWER TO GRANT SUCH RELIEF AS IT DEEMS
21 JUST AND PROPER, AND TO MAKE AND ENTER AN ORDER ENFORCING, MODIFYING AND
22 ENFORCING AS SO MODIFIED, REMANDING FOR FURTHER SPECIFIC EVIDENCE OR
23 FINDINGS OR SETTING ASIDE IN WHOLE OR IN PART SUCH DECISION. THE APPEAL
24 SHALL BE HEARD ON THE RECORD, WITHOUT REQUIREMENT OF REPRODUCTION, AND
25 UPON BRIEFS TO THE COURT. NO OBJECTION THAT HAS NOT BEEN URGED BY THE
26 PARTY IN HIS OR HER APPLICATION FOR REHEARING BEFORE THE BOARD SHALL BE
27 CONSIDERED BY THE COURT, UNLESS THE FAILURE OR NEGLIGENCE TO URGE SUCH
28 OBJECTION SHALL BE EXCUSED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES. THE
29 FINDINGS OF FACT ON WHICH SUCH DECISION IS BASED SHALL BE CONCLUSIVE IF
30 SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE
31 AND MATTERS OF JUDICIAL NOTICE SET FORTH IN THE OPINION. THE JURISDIC-
32 TION OF THE APPELLATE DIVISION OF THE SUPREME COURT SHALL BE EXCLUSIVE
33 AND ITS JUDGMENT AND ORDER SHALL BE FINAL, SUBJECT TO REVIEW BY THE
34 COURT OF APPEALS IN THE SAME MANNER AND FORM AND WITH THE SAME EFFECT AS
35 PROVIDED FOR APPEALS IN A SPECIAL PROCEEDING. ALL SUCH PROCEEDINGS SHALL
36 BE HEARD AND DETERMINED BY THE APPELLATE DIVISION OF THE SUPREME COURT
37 AND BY THE COURT OF APPEALS AS EXPEDITIOUSLY AS POSSIBLE AND WITH LAWFUL
38 PRECEDENCE OVER ALL OTHER MATTERS.

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

41 (A) IN CONFORMITY WITH THE CONSTITUTION, LAWS AND REGULATIONS OF THE
42 STATE AND THE UNITED STATES;

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

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

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

48 (E) ARBITRARY, CAPRICIOUS OR AN ABUSE OF DISCRETION; OR

49 (F) MADE TO ENSURE FAIR TREATMENT AND MEANINGFUL INVOLVEMENT OF ALL
50 PEOPLE REGARDLESS OF AGE, RACE, COLOR, NATIONAL ORIGIN AND INCOME.

51 3. EXCEPT AS HEREIN PROVIDED ARTICLE SEVENTY-EIGHT OF THE CIVIL PRAC-
52 TICE LAW AND RULES SHALL APPLY TO APPEALS TAKEN HEREUNDER.

53 S 171. JURISDICTION OF COURTS. EXCEPT AS EXPRESSLY SET FORTH IN
54 SECTION ONE HUNDRED SEVENTY OF THIS ARTICLE AND EXCEPT FOR REVIEW BY THE
55 COURT OF APPEALS OF A DECISION OF THE APPELLATE DIVISION OF THE SUPREME
56 COURT AS PROVIDED FOR THEREIN, NO COURT OF THIS STATE SHALL HAVE JURIS-

1 DICTION TO HEAR OR DETERMINE ANY MATTER, CASE OR CONTROVERSY CONCERNING
2 ANY MATTER WHICH WAS OR COULD HAVE BEEN DETERMINED IN A PROCEEDING UNDER
3 THIS ARTICLE OR TO STOP OR DELAY THE CONSTRUCTION OR OPERATION OF A
4 MAJOR ELECTRIC GENERATING FACILITY EXCEPT TO ENFORCE COMPLIANCE WITH
5 THIS ARTICLE OR THE TERMS AND CONDITIONS ISSUED THEREUNDER.

6 S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTAND-
7 ING ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY
8 AGENCY THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY
9 THE BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER
10 CONDITION FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERAT-
11 ING FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE
12 HEREUNDER HAS BEEN FILED, OTHER THAN THOSE PROVIDED BY OTHERWISE APPLI-
13 CABLE STATE LAW FOR THE PROTECTION OF EMPLOYEES ENGAGED IN THE
14 CONSTRUCTION AND OPERATION OF SUCH FACILITY; PROVIDED, HOWEVER, THAT IN
15 THE CASE OF A MUNICIPALITY OR AN AGENCY THEREOF, SUCH MUNICIPALITY HAS
16 RECEIVED NOTICE OF THE FILING OF THE APPLICATION THEREFOR; AND PROVIDED
17 FURTHER, HOWEVER, THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
18 SHALL BE THE PERMITTING AGENCY FOR PERMITS ISSUED PURSUANT TO FEDERALLY
19 DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE
20 FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY
21 ACT. IN ISSUING SUCH PERMITS, THE COMMISSIONER OF ENVIRONMENTAL CONSER-
22 VATION SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT
23 THAT THEY ARE CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRON-
24 MENTAL PERMITTING AUTHORITY. THE COMMISSIONER OF ENVIRONMENTAL CONSERVA-
25 TION SHALL PROVIDE SUCH PERMITS TO THE BOARD PRIOR TO ITS DETERMINATION
26 WHETHER OR NOT TO ISSUE A CERTIFICATE. THE ISSUANCE BY THE DEPARTMENT
27 OF ENVIRONMENTAL CONSERVATION OF SUCH PERMITS SHALL IN NO WAY INTERFERE
28 WITH OR AFFECT THE REQUIRED REVIEW BY THE BOARD OF THE ANTICIPATED ENVI-
29 RONMENTAL AND HEALTH IMPACTS RELATING TO THE CONSTRUCTION AND OPERATION
30 OF THE FACILITY AS PROPOSED, OR ITS AUTHORITY TO DENY AN APPLICATION FOR
31 CERTIFICATION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTI-
32 CLE, AND, IN THE EVENT OF SUCH A DENIAL, ANY SUCH PERMITS SHALL BE
33 DEEMED NULL AND VOID.

34 2. THE ADIRONDACK PARK AGENCY SHALL NOT HOLD PUBLIC HEARINGS FOR A
35 MAJOR ELECTRIC GENERATING FACILITY WITH RESPECT TO WHICH AN APPLICATION
36 HEREUNDER IS FILED, PROVIDED THAT SUCH AGENCY HAS RECEIVED NOTICE OF THE
37 FILING OF SUCH APPLICATION.

38 S 173. APPLICABILITY TO PUBLIC AUTHORITIES. FOR PURPOSES OF THIS ARTI-
39 CLE, THE POWER AUTHORITY OF THE STATE OF NEW YORK, THE GREEN ISLAND
40 POWER AUTHORITY AND THE LONG ISLAND POWER AUTHORITY SHALL BE REQUIRED TO
41 APPLY ALL PROVISIONS OF THIS ARTICLE FOR MAJOR ELECTRIC GENERATING
42 FACILITIES WHICH EITHER AUTHORITY BUILDS OR CAUSES TO BE BUILT. FOR
43 GENERATING FACILITIES WHICH ARE NOT MAJOR ELECTRIC GENERATING FACILI-
44 TIES, NEITHER AUTHORITY SHALL BE PERMITTED TO SERVE AS LEAD AGENCY FOR
45 PURPOSES OF ENVIRONMENTAL REVIEW PURSUANT TO THE PROVISIONS OF THE ENVI-
46 RONMENTAL CONSERVATION LAW.

47 S 2. 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 THE SITING OF A MAJOR ELECTRIC GENERATING FACILITY AS DEFINED
3 THEREIN, and except to the extent section eighteen-a of such law
4 provides for assessment of the authority for certain costs relating
5 thereto, the provisions of the public service law and of the conserva-
6 tion law and every other law relating to the department of public
7 service or the public service commission or to the ENVIRONMENTAL conser-
8 vation department or to the functions, powers or duties assigned to the
9 division of water power and control by chapter six hundred nineteen[,]
10 of the laws of nineteen hundred twenty-six, shall so far as is necessary
11 to make this title effective in accordance with its terms and purposes
12 be deemed to be superseded, and wherever any provision of law shall be
13 found in conflict with the provisions of this title or inconsistent with
14 the purposes thereof, it shall be deemed to be superseded, modified or
15 repealed as the case may require.

16 S 3. Paragraph c of subdivision 8 of section 1020-c of the public
17 authorities law, as amended by chapter 7 of the laws of 1987, is amended
18 to read as follows:

19 c. Article seven of the public service law shall apply to the authori-
20 ty's siting and operation of a major transmission facility as therein
21 defined and article [eight] TEN of the public service law shall apply to
22 the authority's siting and operation of a major [steam] electric gener-
23 ating facility as therein defined.

24 S 4. Section 1020-s of the public authorities law, as added by chapter
25 517 of the laws of 1986, is amended to read as follows:

26 S 1020-s. Public service law generally not applicable to authority;
27 inconsistent provisions in certain other acts superseded. 1. The rates,
28 services and practices relating to the electricity generated by facili-
29 ties owned or operated by the authority shall not be subject to the
30 provisions of the public service law or to regulation by, or the juris-
31 diction of, the public service commission, except to the extent (a)
32 article seven of the public service law applies to the siting and opera-
33 tion of a major utility transmission facility as defined therein, (b)
34 article [eight] TEN of such law applies to the siting of a MAJOR ELEC-
35 TRIC generating facility as defined therein, and (c) section eighteen-a
36 of such law provides for assessment for certain costs, property or oper-
37 ations.

38 2. The issuance by the authority of its obligations to acquire the
39 securities or assets of LILCO shall be deemed not to be "state action"
40 within the meaning of the state environmental quality review act, and
41 such act shall not be applicable in any respect to such acquisition or
42 any action of the authority to effect such acquisition.

43 S 5. The state finance law is amended by adding a new section 97-tt to
44 read as follows:

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

48 2. SUCH ACCOUNT SHALL CONSIST OF ALL REVENUES RECEIVED FROM SITING
49 APPLICATION FEES FOR ELECTRIC GENERATING FACILITIES PURSUANT TO SECTIONS
50 ONE HUNDRED SIXTY-THREE AND ONE HUNDRED SIXTY-FOUR OF THE PUBLIC SERVICE
51 LAW.

52 3. MONEYS OF THE ACCOUNT, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
53 MAY BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS ONE
54 HUNDRED SIXTY-THREE AND ONE HUNDRED SIXTY-FOUR OF THE PUBLIC SERVICE
55 LAW. MONEYS SHALL BE PAID OUT OF THE ACCOUNT ON THE AUDIT AND WARRANT OF

1 THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE CHAIR OF
2 THE PUBLIC SERVICE COMMISSION.

3 S 6. The environmental conservation law is amended by adding a new
4 section 19-0312 to read as follows:

5 S 19-0312. POWER PLANT EMISSIONS AND PERFORMANCE STANDARDS.

6 1. DEFINITIONS. AS USED IN THIS SECTION:

7 A. "MERCURY" MEANS ELEMENTAL MERCURY AND ANY COMPOUND CONTAINING
8 MERCURY.

9 B. "MAJOR ELECTRIC GENERATING FACILITY" MEANS ANY ELECTRICITY GENERAT-
10 ING FACILITY WITH A NAMEPLATE CAPACITY OF THIRTY THOUSAND KILOWATTS OR
11 MORE.

12 C. "ANNUAL MERCURY EMISSIONS RATE" MEANS THE POUNDS OF MERCURY EMITTED
13 BY MAJOR ELECTRIC GENERATING FACILITIES IN A GIVEN CALENDAR YEAR DIVIDED
14 BY THE TOTAL MEGAWATTS GENERATED IN A CALENDAR YEAR, USING METHODOLOGY
15 SET FORTH IN PARAGRAPH F OF SUBDIVISION TWO OF THIS SECTION.

16 2. A. NO LATER THAN JANUARY FIRST, TWO THOUSAND TEN, THE COMMISSIONER
17 SHALL PROMULGATE RULES AND REGULATIONS SUCH THAT ALL SOURCES SUBJECT TO
18 THIS SECTION EMIT NO MORE THAN 1.5 POUNDS PER MEGAWATT HOUR OF TOTAL
19 NITROGEN OXIDE EMISSIONS BY MAY FIRST, TWO THOUSAND TEN.

20 B. NO LATER THAN JANUARY FIRST, TWO THOUSAND TEN, THE COMMISSIONER
21 SHALL PROMULGATE RULES AND REGULATIONS SUCH THAT ALL SOURCES SUBJECT TO
22 THIS SECTION EMIT NO MORE THAN THREE POUNDS PER MEGAWATT HOUR OF TOTAL
23 SULFUR DIOXIDE EMISSIONS BY JANUARY FIRST, TWO THOUSAND TWELVE.

24 C. NO LATER THAN JANUARY FIRST, TWO THOUSAND TEN, THE COMMISSIONER
25 SHALL PROMULGATE RULES AND REGULATIONS IMPLEMENTING REDUCTIONS IN EMIS-
26 SIONS OF CARBON DIOXIDE IN ACCORDANCE WITH THE PROVISIONS OF THIS
27 SECTION. THE COMMISSIONER SHALL DEVELOP A MECHANISM FOR AFFECTED SOURCES
28 TO COMPLY BASED ON AN EMISSIONS PERFORMANCE STANDARD EXPRESSED IN POUNDS
29 OF POLLUTANT EMITTED PER MEGAWATT HOUR GENERATED.

30 D. THE COMMISSIONER SHALL SET A PERMANENT CAP ON TOTAL EMISSIONS OF
31 CARBON DIOXIDE NO LATER THAN JANUARY FIRST, TWO THOUSAND TWELVE, THAT IS
32 SEVEN PERCENT LESS THAN THE TOTAL NINETEEN HUNDRED NINETY CARBON DIOXIDE
33 EMISSIONS FOR ALL SOURCES SUBJECT TO THIS SECTION.

34 E. THE COMMISSIONER MAY ESTABLISH OR EMPLOY AN EMISSIONS CREDIT TRAD-
35 ING MECHANISM TO FACILITATE COMPLIANCE WITH CARBON DIOXIDE REQUIREMENTS.

36 F. BY JANUARY FIRST, TWO THOUSAND TEN, THE COMMISSIONER SHALL PROMUL-
37 GATE RULES AND REGULATIONS THAT PROVIDE A METHODOLOGY FOR DETERMINING
38 THE ANNUAL MERCURY EMISSIONS RATE, MEASURED IN POUNDS PER MEGAWATT, FROM
39 MAJOR ELECTRIC GENERATING FACILITIES IN THIS STATE.

40 G. THE COMMISSIONER SHALL PROMULGATE, NO LATER THAN JANUARY FIRST, TWO
41 THOUSAND TEN, RULES AND REGULATIONS SUCH THAT NO MAJOR ELECTRIC GENERAT-
42 ING FACILITY EMIT NO MORE THAN TEN PERCENT OF THE MERCURY EMISSIONS
43 GENERATED IN NINETEEN HUNDRED NINETY-NINE, USING THE METHODOLOGY SET
44 FORTH IN PARAGRAPH F OF THIS SUBDIVISION, BY JANUARY FIRST, TWO THOUSAND
45 TWELVE.

46 3. THE EMISSION RATES, LIMITATIONS, AND PRACTICES REQUIRED BY THIS
47 SECTION SHALL NOT BE CONSTRUED TO SUPERSEDE MORE STRINGENT EMISSION
48 RATES, LIMITATIONS, AND PRACTICES THAT ARE APPLICABLE ON THE EFFECTIVE
49 DATE OF THIS SECTION OR MAY BECOME APPLICABLE AFTER SUCH EFFECTIVE DATE.

50 S 7. Severability. If any clause, sentence, paragraph, section or part
51 of this act shall be adjudged by any court of competent jurisdiction to
52 be invalid, such judgment shall not affect, impair or invalidate the
53 remainder thereof, but shall be confined in its operation to the clause,
54 sentence, paragraph, section or part thereof directly involved in the
55 controversy in which such judgment shall have been rendered.

1 S 8. This act shall take effect immediately and shall expire and be
2 deemed repealed December 31, 2020; and provided that nothing in this act
3 shall be construed to limit any administrative authority, with respect
4 to matters included in this act, which existed prior to the effective
5 date of this act.