S T A T E O F N E W Y O R K

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I N S E N A T E

February 11, 2009

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, the environmental conservation law, the public authorities law and the state finance law, in relation to siting of major electric generating facilities

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

Section 1. 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.
162-A. APPLICATIONS FOR SITING CERTAIN OTHER ELECTRIC GENERATING FACILITIES.
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:

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

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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 FIFTY 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.

3. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, LIMITED LIABILITY COMPANY, PUBLIC BENEFIT CORPORATION, POLITICAL SUBDIVISION, GOVERNMENTAL AGENCY, MUNICIPALITY, PARTNERSHIP, COOPERATIVE 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 CHAIRPERSON OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; THE COMMISSIONER OF HEALTH, THE CHAIRPERSON 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 FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEEDING FOR WHICH THEY WERE APPOINTED. WHERE THE FACILITY OR ANY PORTION THEREOF OR ANY ALTERNATIVE PROPOSED TO BE LOCATED WITHIN A CITY WITH A POPULATION OF ONE MILLION OR MORE, ONE OF THE AD HOC PUBLIC MEMBERS CITED IN THIS SECTION SHALL BE APPOINTED BY THE GOVERNOR AND SHALL BE A RESIDENT OF THE JUDICIAL DISTRICT IN WHICH THE FACILITY IS TO BE LOCATED, AND THE OTHER AD HOC PUBLIC MEMBER CITED IN THIS SECTION SHALL BE APPOINTED BY THE GOVERNOR, IN CONSULTATION WITH THE BOROUGH PRESIDENT OF THE BOROUGH IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED AND SHALL BE A RESIDENT OF THE BOROUGH IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED.

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

6. "APPROVED PROCUREMENT PROCESS" MEANS ANY ELECTRIC CAPACITY PROCUREMENT PROCESS APPROVED BY THE COMMISSION AND SUBSEQUENT TO MAY FIRST, TWO THOUSAND FOUR, APPROVED BY THE COMMISSION AS REASONABLY CONSISTENT WITH THE MOST RECENT STATE ENERGY PLAN ADOPTED PURSUANT TO FORMER ARTICLE SIX OF THE ENERGY LAW.

S 161. GENERAL PROVISIONS RELATING TO THE BOARD. 1. UPON RECEIPT OF AN APPLICATION UNDER THIS ARTICLE, THE CHAIRPERSON SHALL PROMPTLY NOTIFY THE GOVERNOR. WITHIN THIRTY DAYS OF SUCH NOTIFICATION THE GOVERNOR SHALL APPOINT THE AD HOC MEMBERS. FOUR OF THE SEVEN PERSONS ON THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE BOARD, AND THE DECISION OF FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE ACTION OF THE BOARD. THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE THE POWER TO ADOPT RULES AND REGULATIONS RELATING TO THE PROCEDURES TO BE USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTICLE, INCLUDING THE SUSPENSION OR REVOCATION THEREOF, AND SHALL FURTHER HAVE THE POWER TO SEEK DELEGATION FROM THE FEDERAL GOVERNMENT PURSUANT TO FEDERAL REGULATORY PROGRAMS APPLICABLE TO THE SITING OF MAJOR ELECTRIC GENERATING FACILITIES. THE CHAIRPERSON, AFTER CONSULTATION WITH THE OTHER MEMBERS OF THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY RULINGS REGARDING THE APPLICABILITY OF, OR ANY OTHER QUESTION UNDER, THIS ARTICLE AND RULES AND

REGULATIONS ADOPTED HEREUNDER. REGULATIONS ADOPTED BY THE BOARD MAY PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY.

2. IN ADDITION TO THE REQUIREMENTS OF THE PUBLIC OFFICERS LAW, NO PERSON SHALL BE ELIGIBLE TO BE AN APPOINTEE OF THE GOVERNOR TO THE BOARD WHO HOLDS ANOTHER STATE OR LOCAL OFFICE. NO MEMBER OF THE BOARD MAY RETAIN OR HOLD ANY OFFICIAL RELATION TO, OR ANY SECURITIES OF AN ELECTRIC UTILITY CORPORATION OPERATING IN THE STATE OR PROPOSED FOR OPERATION IN THE STATE, ANY AFFILIATE THEREOF OR ANY OTHER COMPANY, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR JOINT-STOCK ASSOCIATION THAT MAY APPEAR BEFORE THE BOARD, NOR SHALL EITHER OF THE APPOINTEES HAVE BEEN A DIRECTOR, OFFICER OR, WITHIN THE PREVIOUS TEN YEARS, AN EMPLOYEE THEREOF. THE APPOINTEES OF THE GOVERNOR SHALL RECEIVE THE SUM OF TWO HUNDRED DOLLARS FOR EACH DAY IN WHICH THEY ARE ACTUALLY ENGAGED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS ARTICLE PLUS ACTUAL AND NECESSARY EXPENSES INCURRED BY THEM IN THE PERFORMANCE OF SUCH DUTIES. THE CHAIRPERSON SHALL PROVIDE SUCH PERSONNEL, HEARING EXAMINERS, SUBORDINATES, EMPLOYEES AND SUCH LEGAL, TECHNOLOGICAL, SCIENTIFIC, ENGINEERING AND OTHER SERVICES AND SUCH MEETING ROOMS, HEARING ROOMS AND OTHER FACILITIES AS MAY BE REQUIRED IN PROCEEDINGS UNDER THIS ARTICLE. THE BOARD MAY PROVIDE FOR ITS OWN REPRESENTATION AND APPEARANCE IN ALL ACTIONS AND PROCEEDINGS INVOLVING ANY QUESTION UNDER THIS ARTICLE. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE ASSOCIATE HEARING EXAMINERS. EACH MEMBER OF THE BOARD OTHER THAN THE APPOINTEES OF THE GOVERNOR MAY DESIGNATE AN ALTERNATE TO SERVE INSTEAD OF THE MEMBER WITH RESPECT TO ALL PROCEEDINGS PURSUANT TO THIS ARTICLE. SUCH DESIGNATION SHALL BE IN WRITING AND FILED WITH THE CHAIRPERSON.

S 162. BOARD CERTIFICATE. 1. NO PERSON SHALL COMMENCE THE PREPARATION OF A SITE FOR, OR BEGIN THE CONSTRUCTION OF A MAJOR ELECTRIC GENERATING FACILITY IN THE STATE WITHOUT HAVING FIRST OBTAINED A CERTIFICATE ISSUED WITH RESPECT TO SUCH FACILITY BY THE BOARD. ANY SUCH FACILITY WITH RESPECT TO WHICH A CERTIFICATE IS ISSUED SHALL NOT THEREAFTER BE BUILT, MAINTAINED OR OPERATED EXCEPT IN CONFORMITY WITH SUCH CERTIFICATE AND ANY TERMS, LIMITATIONS OR CONDITIONS CONTAINED THEREIN, PROVIDED THAT NOTHING IN THIS ARTICLE SHALL EXEMPT SUCH FACILITY FROM COMPLIANCE WITH STATE LAW AND REGULATIONS THEREUNDER SUBSEQUENTLY ADOPTED OR WITH MUNICIPAL LAWS AND REGULATIONS THEREUNDER NOT INCONSISTENT WITH THE PROVISIONS OF SUCH CERTIFICATE. A CERTIFICATE FOR A MAJOR ELECTRIC GENERATING FACILITY MAY BE ISSUED ONLY PURSUANT TO THIS ARTICLE.

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

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

4. THIS ARTICLE SHALL NOT APPLY:

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

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

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

(D) TO A MAJOR ELECTRIC GENERATING FACILITY WHICH GENERATES ELECTRICITY FROM THE COMBUSTION OF SOLID WASTE OR FROM FUEL DERIVED FROM SOLID WASTE.

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

S 162-A. APPLICATIONS FOR SITING CERTAIN OTHER ELECTRIC GENERATING FACILITIES. APPLICATIONS FOR SITING ELECTRIC GENERATING FACILITIES THAT OPERATE AT A TOTAL NET GENERATING OUTPUT TO THE ELECTRIC SYSTEM OF 49.99 THOUSAND KILOWATTS OR LESS, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAPTER, SHALL RECEIVE A POSITIVE DECLARATION FROM THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND SHALL BE SUBJECT TO FULL REVIEW UNDER ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW.

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

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

(B) ANTICIPATED ENVIRONMENTAL AND HEALTH IMPACTS FROM THE CONSTRUCTION AND/OR OPERATION OF THE PROPOSED FACILITY;

(C) A PROPOSED STUDY OR PROGRAM OF STUDIES DESIGNED TO EVALUATE POTENTIAL ENVIRONMENTAL IMPACTS AND ANALYZE POTENTIAL IMPACTS OF PARTICULATE MATTER OF 2.5 MICRONS OR GREATER ON THE GEOGRAPHIC AREA IN WHICH THE FACILITY IS PROPOSED;

(D) MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS;

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

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

(G) A DETERMINATION OF WHETHER THE PROPOSED FACILITY IS TO BE LOCATED IN A POTENTIAL ENVIRONMENTAL JUSTICE AREA, AS DEFINED BY THE DEPARTMENT OF ENVIRONMENTAL JUSTICE POLICY DIRECTIVE CP-29, ENVIRONMENTAL JUSTICE AND PERMITTING; AND

(H) ANY OTHER INFORMATION THAT MAY BE RELEVANT OR THAT THE BOARD MAY REQUIRE.

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

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

4. TO FACILITATE THE APPLICATION PROCESS AND ENABLE CITIZENS TO PARTICIPATE IN DECISIONS THAT AFFECT THEIR HEALTH AND SAFETY AND THE ENVIRONMENT, THE DEPARTMENT SHALL PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT. SUCH OPPORTUNITIES SHALL ENCOURAGE CONSULTATION WITH THE PUBLIC EARLY IN THE APPLICATION PROCESS, ESPECIALLY BEFORE ANY PARTIES ENTER A STIPULATION PURSUANT TO SUBDIVISION FIVE OF THIS SECTION. THE PRIMARY GOALS OF THE CITIZEN PARTICIPATION PROCESS SHALL BE TO FACILITATE COMMUNICATION BETWEEN THE APPLICANT AND INTERESTED OR AFFECTED PERSONS. THE PROCESS SHALL FOSTER THE ACTIVE INVOLVEMENT OF THE INTERESTED OR AFFECTED PERSONS.

5. SUCH PERSON MAY CONSULT AND SEEK AGREEMENT WITH ANY INTERESTED PERSON INCLUDING, BUT NOT LIMITED TO, THE STAFF OF THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE AND THE DEPARTMENT OF HEALTH, AS APPROPRIATE, AS TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE OR TO BE MADE TO SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE, THE DEPARTMENT OF HEALTH, THE PERSON PROPOSING TO FILE AN APPLICATION, AND ANY OTHER INTERESTED PERSON MAY ENTER INTO A STIPULATION SETTING FORTH AN AGREEMENT ON ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE STUDIES OR PROGRAM OF STUDIES TO BE CONDUCTED. ANY SUCH PERSON PROPOSING TO SUBMIT AN APPLICATION FOR A CERTIFICATE SHALL SERVE A COPY OF THE PROPOSED STIPULATION UPON ALL PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, PROVIDE NOTICE OF SUCH STIPULATION TO THOSE PERSONS IDENTIFIED IN PARAGRAPH (B) OF SUCH SUBDIVISION, AND AFFORD THE PUBLIC A REASONABLE OPPORTUNITY TO SUBMIT COMMENTS ON THE STIPULATION BEFORE IT IS EXECUTED BY THE INTERESTED PARTIES. NOTHING IN THIS SUBDIVISION, HOWEVER, SHALL BAR ANY PARTY TO A HEARING ON AN APPLICATION, OTHER THAN ANY PARTY TO A PRE-APPLICATION STIPULATION, FROM TIMELY RAISING OBJECTIONS TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY STIPULATED STUDIES OR PROGRAM OF STUDIES IN ANY SUCH AGREEMENT. IN ORDER TO ATTEMPT TO RESOLVE ANY QUESTIONS THAT MAY ARISE AS A

RESULT OF SUCH CONSULTATION, THE BOARD MAY DESIGNATE A HEARING EXAMINER WHO SHALL MEDIATE ANY ISSUE RELATING TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY SUCH STUDIES OR PROGRAMS OF STUDY.

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

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

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

(C) WHEN A COOLING WATER INTAKE STRUCTURE IS PLANNED, INCORPORATES COOLING WATER INTAKE STRUCTURE TECHNOLOGY CONSISTENT WITH THE BEST TECHNOLOGY AVAILABLE STANDARDS APPLICABLE TO NEW COOLING WATER INTAKE STRUCTURES (AS REFLECTED IN THE STATE POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION); AND

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

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

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

(B) ANALYSES THAT HAVE BEEN MADE OF (I) THE ENVIRONMENTAL IMPACTS OF THE EXISTING ELECTRIC GENERATING FACILITY; (II) CONCEPTUAL ARCHITECTURAL AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE FACILITY WITH THE ENVIRONMENT; AND (III) THE EXPECTED ENVIRONMENTAL IMPACTS OF THE REPOWERING PROJECT, INCLUDING, BUT NOT LIMITED TO, THE GENERATION OF SOLID WASTES, AIR EMISSIONS INCLUDING PARTICULATE MATTER OF 2.5 MICRONS OR GREATER, DISCHARGES INTO NAVIGABLE WATERS AND GROUNDWATER, IMPACTS UPON WETLANDS, AND VISUAL IMPACTS, THE PROBABLE LEVEL OF NOISE DURING CONSTRUCTION AND OPERATION OF THE REPOWERING PROJECT, AND ANY MEASURES FOR CONTROL, ABATEMENT, OR MITIGATION OF SUCH IMPACTS, AND THE COMPATIBILITY OF THE REPOWERING PROJECT WITH EXISTING FEDERAL, STATE AND MUNICIPAL ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS;

(C) SUCH EVIDENCE AS MAY ENABLE THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION TO EVALUATE THE REPOWERING PROJECT'S PROPOSED POLLUTION CONTROL SYSTEMS AND TO REACH A DETERMINATION AS TO WHETHER OR NOT TO ISSUE, SUBJECT TO APPROPRIATE CONDITIONS AND LIMITATIONS, PERMITS PURSU-

ANT 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;

(D) A STATEMENT AS TO HOW THE CONSTRUCTION AND OPERATION OF THE REPOWERING PROJECT, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES, COMPLY WITH ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS, REQUIREMENTS, REGULATIONS, AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A STATEMENT AS TO WHY ANY VARIANCES OR EXCEPTIONS MAY BE GRANTED;

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

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

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

(H) SUCH OTHER INFORMATION AS THE APPLICANT MAY CONSIDER RELEVANT OR AS MAY BE REQUIRED BY THE BOARD TO MAKE ITS FINDINGS PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE. COPIES OF THE APPLICATION, INCLUDING THE REQUIRED INFORMATION, SHALL BE AVAILABLE FOR PUBLIC INSPECTION; PROVIDED, HOWEVER THAT THE SECURITY PLAN REQUIRED TO BE FILED PURSUANT TO PARAGRAPH (G) OF THIS SUBDIVISION SHALL BE KEPT CONFIDENTIAL, 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 LOGBOOK OF ALL THOSE WHO HAVE REQUESTED ACCESS TO SUCH INFORMATION.

3. THE APPLICATION SHALL BE ACCOMPANIED BY:

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

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

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

4. FOLLOWING THE FILING OF AN APPLICATION PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY INITIATE A REVIEW PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY.

5. WITHIN SIXTY DAYS OF RECEIPT OF AN APPLICATION FILED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE CHAIRPERSON OF THE BOARD SHALL DETERMINE WHETHER OR NOT THE APPLICATION IS FOR A REPOWERING PROJECT, AS DEFINED IN SUBDIVISION ONE OF THIS SECTION, AND WHETHER OR NOT THE APPLICATION COMPLIES WITH SUBDIVISION TWO OF THIS SECTION AND ANY REGULATIONS PROMULGATED PURSUANT THERETO, AND SHALL, AFTER CONSULTATION WITH

THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, RENDER A PRELIMINARY DETERMINATION AS TO WHETHER OR NOT THE REPOWERING PROJECT MAY HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT. IN THE EVENT THAT THE CHAIRPERSON OF THE BOARD DETERMINES EITHER THAT THE APPLICATION IS NOT FOR A REPOWERING PROJECT OR THAT THE REPOWERING PROJECT MAY HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT, THE APPLICATION SHALL BE DEEMED TO SATISFY THE REQUIREMENTS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE AND THE APPLICATION SHALL NO LONGER BE SUBJECT TO, OR ELIGIBLE FOR, THE PROCEDURES SET FORTH IN THIS SECTION. THE CHAIRPERSON OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED TO SUPPLEMENT AN APPLICATION. IN THE EVENT OF A DETERMINATION THAT A REPOWERING PROJECT IS NOT LIKELY TO HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT, A PRELIMINARY DETERMINATION OF NON-SIGNIFICANCE SHALL BE ISSUED. NOTICE OF ISSUANCE SHALL BE GIVEN TO PARTIES TO THE CERTIFICATION PROCEEDING PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-SIX OF THIS ARTICLE AND SHALL ADDITIONALLY BE PUBLISHED ON THE WEB SITE OF THE DEPARTMENT.

6. SIMULTANEOUSLY WITH THE ISSUANCE OF A PRELIMINARY DETERMINATION OF SIGNIFICANCE, THE SECRETARY OF THE BOARD SHALL PROVIDE NOTICE OF A PUBLIC HEARING TO ADDRESS DISBURSEMENT OF THE FEE PROVIDED FOR BY SUBDIVISION THREE OF THIS SECTION, WHICH HEARING SHALL BE HELD BY THE PRESIDING AND ASSOCIATE EXAMINERS, AND IN NO EVENT LATER THAN TWENTY-ONE DAYS FOLLOWING ISSUANCE OF THE PRELIMINARY DETERMINATION OF NON-SIGNIFICANCE.

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

8. WITHIN THIRTY DAYS OF THE CLOSE OF THE PUBLIC COMMENT PERIOD, OR WITHIN TWENTY-ONE DAYS AFTER THE TERMINATION OF A PUBLIC HEARING RESPECTING THE APPLICABILITY OF LOCAL LAWS HELD IN ACCORDANCE WITH SUBDIVISION SEVEN OF THIS SECTION, WHICHEVER IS LATER, THE CHAIRPERSON OF THE BOARD, AFTER CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL RENDER A FINAL DETERMINATION AS TO WHETHER OR NOT THE REPOWERING PROJECT MAY HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT. UPON A DETERMINATION THAT THE REPOWERING PROJECT IS NOT LIKELY TO HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT, THE CHAIRPERSON SHALL ISSUE A FINAL DETERMINATION OF NON-SIGNIFICANT ENVIRONMENTAL IMPACT. IN THE EVENT THAT THE CHAIRPERSON, AFTER CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, DETERMINES THAT THE REPOWERING PROJECT MAY HAVE A SIGNIFICANT ENVIRONMENTAL IMPACT, THE APPLICATION SHALL BE DEEMED TO SATISFY THE REQUIREMENTS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE, BUT SHALL NO LONGER BE SUBJECT TO, OR ELIGIBLE FOR, THE PROCEDURES SET FORTH IN THIS SECTION.

9. IN THE EVENT THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED PERMITTING AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE SUCH PERMITS TO THE CHAIR-

PERSON OF THE BOARD PRIOR TO THE DETERMINATION OF NON-SIGNIFICANCE. THE CHAIRPERSON OF THE BOARD SHALL SUBMIT THE FINAL DETERMINATION OF NON-SIGNIFICANCE TO THE BOARD, WHICH SHALL ISSUE A DECISION WITH RESPECT TO THE APPLICATION WITHIN TWENTY-ONE DAYS AFTER SUCH SUBMISSION IN ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE.

S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIFICATE SHALL FILE WITH THE CHAIRPERSON OF THE BOARD AN APPLICATION, IN SUCH FORM AS THE BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND MATERIALS:

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

(B) A DESCRIPTION AND EVALUATION OF REASONABLE ALTERNATIVE LOCATIONS TO THE PROPOSED FACILITY, IF ANY, AND WITH RESPECT TO A FACILITY THAT HAS NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS, A DESCRIPTION AND EVALUATION OF REASONABLE DEMAND ENERGY SUPPLY SOURCE ALTERNATIVES AND, WHERE APPROPRIATE, DEMAND-REDUCING MEASURES TO THE PROPOSED FACILITY; A DESCRIPTION OF THE COMPARATIVE ADVANTAGES AND DISADVANTAGES AS APPROPRIATE; AND A STATEMENT OF THE REASONS WHY THE PRIMARY PROPOSED LOCATION AND SOURCE, AS APPROPRIATE, IS BEST SUITED, AMONG THE ALTERNATIVES CONSIDERED, TO PROMOTE PUBLIC HEALTH AND WELFARE, INCLUDING THE RECREATIONAL AND OTHER CONCURRENT USES WHICH THE SITE MAY SERVE, PROVIDED THAT THE INFORMATION REQUIRED PURSUANT TO THIS PARAGRAPH SHALL BE NO MORE EXTENSIVE THAN REQUIRED UNDER ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW;

(C) STUDIES, IDENTIFYING THE AUTHOR AND DATE THEREOF, WHICH HAVE BEEN MADE OF THE EXPECTED ENVIRONMENTAL IMPACT AND SAFETY OF THE FACILITY, BOTH DURING ITS CONSTRUCTION AND ITS OPERATION, WHICH STUDIES ARE SUFFICIENT TO IDENTIFY (I) THE ANTICIPATED GASEOUS, LIQUID AND SOLID WASTES TO BE PRODUCED AT THE FACILITY INCLUDING THEIR SOURCE, ANTICIPATED VOLUMES, COMPOSITION AND TEMPERATURE, AND SUCH OTHER ATTRIBUTES AS THE BOARD MAY SPECIFY AND THE PROBABLE LEVEL OF NOISE DURING CONSTRUCTION AND OPERATION OF THE FACILITY; (II) THE TREATMENT PROCESSES TO REDUCE WASTES TO BE RELEASED TO THE ENVIRONMENT, THE MANNER OF DISPOSAL FOR WASTES RETAINED AND MEASURES FOR NOISE ABATEMENT; (III) THE ANTICIPATED VOLUMES OF WASTES TO BE RELEASED TO THE ENVIRONMENT UNDER ANY OPERATING CONDITION OF THE FACILITY, INCLUDING SUCH METEOROLOGICAL, HYDROLOGICAL AND OTHER INFORMATION NEEDED TO SUPPORT SUCH ESTIMATES; (IV) CONCEPTUAL ARCHITECTURAL AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE FACILITY WITH THE ENVIRONMENT; (V) HOW THE CONSTRUCTION AND OPERATION OF THE FACILITY, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES WOULD 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; (VIII) AN ELECTRIC INTERCONNECTION STUDY, CONSISTING GENERALLY OF A DESIGN STUDY AND A SYSTEM RELIABILITY IMPACT STUDY; (IX) THE EXPECTED EMISSIONS FROM THE PROPOSED FACILITY OF PARTICULATE MATTER OF 2.5 MICRONS OR GREATER; (X) THE CUMULATIVE AIR AND ENVIRONMENTAL IMPACTS OF THE PROPOSED FACILITY IN AGGREGATE WITH EXISTING EMISSION SOURCES ON THE GEOGRAPHIC AREA IN WHICH THE FACILITY IS PROPOSED; AND (XI) IF THE FACILITY IS PROPOSED FOR A POTENTIAL ENVIRONMENTAL JUSTICE AREA, AS DEFINED IN THE DEPARTMENT OF ENVIRONMENTAL

CONSERVATION POLICY DIRECTIVE CP-29, ENVIRONMENTAL JUSTICE AND PERMITTING, EXISTING EMISSION SOURCES THEREIN.

(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 FORMER 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;

(V) THE ATTORNEY GENERAL;

(VI) THE DEPARTMENT OF TRANSPORTATION;

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

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

(B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICIPALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARAGRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPAPERS AS WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICATION;

(II) EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY PORTION OF THE FACILITY IS TO BE LOCATED AS PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED; AND

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

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

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

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

6. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF GENERATING CAPACITY OF THE SUBJECT FACILITY, BUT NO MORE THAN THREE HUNDRED THOUSAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE PRE-APPLICATION FEE PROVIDED FOR IN SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE, TO BE DEPOSITED IN THE INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-TT OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION, TO DEFRAY EXPENSES INCURRED BY MUNICIPAL AND OTHER LOCAL PARTIES TO THE PROCEEDING (EXCEPT A MUNICIPALITY WHICH IS THE APPLICANT) FOR EXPERT WITNESS, LEGAL AND CONSULTANT FEES. IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE APPLICATION, THE APPLICATION IS AMENDED IN A MANNER THAT WARRANTS SUBSTANTIAL ADDITIONAL SCRUTINY, THE BOARD MAY REQUIRE AN ADDITIONAL INTERVENOR FEE IN AN AMOUNT NOT 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 THIS 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 CHAIRPERSON 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 CHAIRPERSON 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 CHAIRPERSON FOR COMMENCEMENT OF A PUBLIC HEARING, THE PRESIDING EXAMINER SHALL HOLD A PRE-HEARING 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 PLACE OF THE HEARING SHALL BE DESIGNATED BY THE PRESIDING EXAMINER.

HEARINGS SHALL BE HELD OF SUFFICIENT DURATION TO PROVIDE ADEQUATE OPPORTUNITY TO HEAR DIRECT EVIDENCE AND REBUTTAL EVIDENCE FROM RESIDENTS OF THE AREA AFFECTED BY THE MAJOR ELECTRIC GENERATING FACILITY.

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

(B) PROCEEDINGS ON AN APPLICATION BY AN OWNER OF AN EXISTING MAJOR ELECTRIC GENERATING FACILITY TO MODIFY SUCH EXISTING FACILITY OR SITE A NEW MAJOR ELECTRIC GENERATING FACILITY ADJACENT OR CONTIGUOUS TO SUCH EXISTING FACILITY, SHALL BE COMPLETED IN ALL RESPECTS IN A MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN SIX MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIRPERSON THAT SUCH APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, WHENEVER SUCH APPLICATION DEMONSTRATES THAT THE OPERATION OF THE MODIFIED FACILITY OR OF THE EXISTING FACILITY AND NEW FACILITY IN COMBINATION WOULD RESULT IN: (I) A DECREASE OF NOT LESS THAN SEVENTY-FIVE PERCENT IN THE RATE OF EMISSIONS OF EACH OF THE FOLLOWING ON A POUNDS PER MEGAWATT-HOUR BASIS: (A) OXIDES OF NITROGEN, (B) OXIDES OF SULFUR AND (C) PARTICULATE MATTER OF 2.5 MICRONS OR GREATER. THE PERCENTAGE REDUCTIONS IN THE RATE OF SUCH EMISSIONS SHALL BE CALCULATED BY COMPARING THE ANNUALIZED POTENTIAL TO EMIT OF THE EXISTING FACILITY (EXPRESSED IN POUNDS PER MEGAWATT-HOUR) AT THE TIME THE APPLICATION UNDER THIS ARTICLE IS FILED WITH THE CHAIRPERSON AND THE FUTURE ANNUALIZED POTENTIAL TO EMIT OF THE MODIFIED FACILITY OR OF THE COMBINATION OF THE EXISTING AND NEW FACILITY (EXPRESSED IN POUNDS PER MEGAWATT-HOUR AND BASED UPON REASONABLY EXPECTED OPERATING CONDITIONS) PROPOSED IN THE APPLICATION; AND (II) INSTALLATION OF AIR COOLED CONDENSERS OR INSTALLATION OF EVAPORATIVE COOLING WATER INTAKE SYSTEMS OR SUCH OTHER TECHNOLOGIES FOR THE MODIFIED FACILITY OR FOR THE EXISTING AND NEW FACILITY THAT WOULD BE DESIGNED TO WITHDRAW NO MORE THAN FIFTEEN GALLONS PER MINUTE PER MEGAWATT OF TOTAL PLANT GENERATING CAPACITY FOR COMBINED CYCLE COMBUSTION TURBINE TECHNOLOGY PLANTS, FROM A SOURCE WATER BODY FOR COOLING PURPOSES. THE APPLICANT SHALL SUPPLY THE DETAILS OF THE ANALYSIS IN THE APPLICATION AND SUCH SUPPORTING INFORMATION, AS MAY BE REQUESTED BY THE BOARD OR, IN THE EXERCISE OF FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NECESSARY TO SHOW COMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH. FOR FACILITIES OVER TWO HUNDRED THOUSAND KILOWATTS WHICH HAVE NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC

ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD SHALL RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE THAN THREE MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

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

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

(A) THE APPLICANT;

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

(C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

(D) THE DEPARTMENT OF HEALTH;

(E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

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

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

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

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

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

(K) A MUNICIPALITY ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, IF IT 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 THE FILING OF THE APPLICATION; ANY MUNICIPALITY ENTITLED TO BE A PARTY HEREIN AND SEEKING TO ENFORCE ANY LOCAL ORDINANCE, LAW, RESOLUTION OR OTHER ACTION OR REGULATION OTHERWISE APPLICABLE SHALL PRESENT EVIDENCE IN SUPPORT THEREOF OR SHALL BE BARRED FROM THE ENFORCEMENT THEREOF;

(L) ANY INDIVIDUAL RESIDENT IN A MUNICIPALITY ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE IF HE OR SHE 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 NONPROFIT 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 OR HER INTENT TO LIMIT HIS OR HER 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 PROCEEDINGS.

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 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 PREFERS 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

PROCEEDING AND THE ASSOCIATE HEARING EXAMINER'S CONCLUSIONS AND RECOMMENDATIONS SHALL, INSOFAR AS IS CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE DECISION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR NOT TO ISSUE SUCH PERMITS.

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

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

(D) WHEN THE PROPOSED FACILITY IS TO BE LOCATED IN A POTENTIAL ENVIRONMENTAL JUSTICE AREA, AS DEFINED IN THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION POLICY DIRECTIVE CP-29, ENVIRONMENTAL JUSTICE AND PERMITTING, AN ENVIRONMENTAL JUSTICE SPECIALIST SHALL BE DESIGNATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE PUBLIC HEARING. THE ENVIRONMENTAL JUSTICE SPECIALIST SHALL ATTEND ALL HEARINGS AS SCHEDULED BY THE PRESIDING AND ASSOCIATE EXAMINERS AND SHALL ASSIST THE PRESIDING AND ASSOCIATE EXAMINERS IN INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND MATERIAL MATTERS.

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

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

4. THE PRESIDING EXAMINER SHALL ALLOW TESTIMONY TO BE RECEIVED ON REASONABLE AND AVAILABLE ALTERNATE LOCATIONS, AND, WITH RESPECT TO A

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

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

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

2. THE BOARD SHALL RENDER A DECISION UPON THE RECORD EITHER TO GRANT OR DENY THE APPLICATION AS FILED OR TO CERTIFY THE FACILITY UPON SUCH TERMS, CONDITIONS, LIMITATIONS OR MODIFICATIONS OF THE CONSTRUCTION OR OPERATION OF THE FACILITY AS THE BOARD MAY DEEM APPROPRIATE. THE BOARD SHALL ISSUE, WITH ITS DECISION, AN OPINION STATING IN FULL ITS REASONS FOR ITS DECISION. THE BOARD SHALL ISSUE AN ORDER UPON THE DECISION AND THE OPINION EMBODYING THE TERMS AND CONDITIONS THEREOF IN FULL. FOLLOWING ANY REHEARING AND ANY JUDICIAL REVIEW OF THE BOARD'S DECISION, THE BOARD'S JURISDICTION OVER AN APPLICATION SHALL CEASE, PROVIDED HOWEVER, THAT THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL RETAIN JURISDICTION WITH RESPECT TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A CERTIFICATE. THE COMMISSION SHALL MONITOR, ENFORCE AND ADMINISTER COMPLIANCE WITH ANY TERMS AND CONDITIONS SET FORTH IN THE BOARD'S ORDER. THE BOARD SHALL NOT GRANT A CERTIFICATE FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERATING FACILITY, EITHER AS PROPOSED OR AS MODIFIED BY THE BOARD, UNLESS IT SHALL FIRST FIND AND DETERMINE:

(A)(I) THAT THE FACILITY WILL SATISFY ADDITIONAL ELECTRIC CAPACITY NEEDS OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE CONSTRUCTION OF THE FACILITY IS CONSISTENT WITH LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES, PROVIDED HOWEVER, THAT SUBSEQUENT TO THE ADOPTION OF A STATE

ENERGY PLAN PURSUANT TO FORMER ARTICLE SIX OF THE ENERGY LAW, THE BOARD SHALL FIND AND DETERMINE THAT THE CONSTRUCTION OF THE FACILITY IS REASONABLY CONSISTENT WITH THE 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;

(B) THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACTS, INCLUDING AN EVALUATION OF THE PREDICTABLE ADVERSE AND BENEFICIAL IMPACTS ON THE ENVIRONMENT AND ECOLOGY, PUBLIC HEALTH AND SAFETY, AESTHETICS, SCENIC, HISTORIC AND RECREATIONAL VALUE, FOREST AND PARKS, AIR AND WATER QUALITY, INCLUDING, THE CUMULATIVE AIR AND ENVIRONMENTAL IMPACTS OF THE PROPOSED FACILITY IN THE AGGREGATE WITH EXISTING EMISSION SOURCES ON THE GEOGRAPHIC AREA IN WHICH THE FACILITY IS PROPOSED; AND THE POTENTIAL FOR SIGNIFICANT DETERIORATION IN LOCAL AIR QUALITY FROM PARTICULATE MATTER OF 2.5 MICRONS OR GREATER IN SIZE, WITH PARTICULAR ATTENTION TO FACILITIES LOCATED IN AREAS DESIGNATED AS SEVERE NON-ATTAINMENT, FISH AND OTHER MARINE LIFE AND WILDLIFE;

(C) THAT THE FACILITY (I) MITIGATES TO THE EXTENT PRACTICABLE ADVERSE ENVIRONMENTAL IMPACTS, CONSIDERING THE STATE OF AVAILABLE TECHNOLOGY, THE NATURE AND ECONOMICS OF SUCH REASONABLE ALTERNATIVES AS ARE REQUIRED TO BE EXAMINED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE INTEREST OF THE STATE WITH RESPECT TO AESTHETICS, PRESERVATION OF HISTORIC SITES, FOREST AND PARKS, FISH AND WILDLIFE, VIABLE AGRICULTURAL LANDS, AND OTHER PERTINENT CONSIDERATIONS, (II) IS COMPATIBLE WITH PUBLIC HEALTH AND SAFETY, (III) WILL NOT BE IN CONTRAVENTION OF WATER QUALITY STANDARDS OR BE INCONSISTENT WITH APPLICABLE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR IN CASE NO CLASSIFICATION HAS BEEN MADE OF THE RECEIVING WATERS ASSOCIATED WITH THE FACILITY, WILL NOT DISCHARGE ANY EFFLUENT THAT WILL BE UNDULY INJURIOUS TO THE PROPAGATION AND PROTECTION OF FISH AND WILDLIFE, THE INDUSTRIAL DEVELOPMENT OF THE STATE, AND PUBLIC HEALTH AND PUBLIC ENJOYMENT OF THE RECEIVING WATERS, (IV) WILL NOT EMIT ANY POLLUTANTS TO THE AIR THAT WILL BE IN CONTRAVENTION OF APPLICABLE AIR EMISSION CONTROL REQUIREMENTS OR AIR QUALITY STANDARDS, (V) WILL CONTROL THE RUNOFF AND LEACHATE FROM ANY SOLID WASTE DISPOSAL FACILITY, AND (VI) WILL CONTROL THE DISPOSAL OF ANY HAZARDOUS WASTE;

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

(E) THAT THE FACILITY IS DESIGNATED TO OPERATE IN COMPLIANCE WITH APPLICABLE STATE AND LOCAL LAWS AND REGULATIONS ISSUED THEREUNDER CONCERNING, AMONG OTHER MATTERS, THE ENVIRONMENT, PUBLIC HEALTH AND SAFETY, ALL OF WHICH SHALL BE BINDING UPON THE APPLICANT, EXCEPT THAT THE BOARD MAY REFUSE TO APPLY ANY LOCAL ORDINANCE, LAW, RESOLUTION OR OTHER ACTION OR ANY REGULATION ISSUED THEREUNDER OR ANY LOCAL STANDARD OR REQUIREMENT WHICH WOULD BE OTHERWISE APPLICABLE IF IT FINDS THAT AS APPLIED TO THE PROPOSED FACILITY SUCH IS UNREASONABLY RESTRICTIVE IN VIEW OF THE EXISTING TECHNOLOGY FOR THE NEEDS OF OR COSTS TO RATE PAYERS WHETHER LOCATED INSIDE OR OUTSIDE OF SUCH MUNICIPALITY. THE BOARD SHALL PROVIDE THE MUNICIPALITY AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF SUCH ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER LOCAL ACTION ISSUED THEREUNDER; AND

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

3. THE BOARD MAY, EITHER AS A PART OF THE DECISION DESCRIBED IN SUBDIVISION TWO OF THIS SECTION OR AS A PART OF ANY DETERMINATION AS MAY BE APPROPRIATELY MADE IN CONFORMANCE WITH REGULATIONS ADOPTED PURSUANT TO SUBDIVISION SEVEN OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, ISSUE PERMITS PURSUANT TO FEDERAL RECOGNITION OF STATE AUTHORITY IN ACCORDANCE WITH FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT. SUCH PERMITS SHALL BE BASED UPON THE EVIDENCE OF RECORD WITH RESPECT TO THE CONSTRUCTION AND OPERATION OF THE POLLUTION CONTROL SYSTEMS OF THE FACILITY AND SHALL CONTAIN SUCH CONDITIONS AND LIMITATIONS AS THE BOARD SHALL DEEM APPROPRIATE. THE ISSUANCE OF SUCH PERMITS AS PART OF A DETERMINATION HEREUNDER SHALL NOT PREVENT THE BOARD, IF IT BE SO DISPOSED, FROM DENYING THE APPLICATION UNDER SUBDIVISION TWO OF THIS SECTION IN WHICH EVENT THE PERMIT SHALL THENCEFORTH BE DEEMED TO BE OF NO FORCE OR EFFECT.

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

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

S 170. REHEARING AND JUDICIAL REVIEW. 1. ANY PARTY AGGRIEVED BY THE BOARD'S DECISION DENYING OR GRANTING A CERTIFICATE MAY APPLY TO THE BOARD FOR A REHEARING WITHIN THIRTY DAYS AFTER ISSUANCE OF THE AGGRIEVING DECISION. ANY SUCH APPLICATION SHALL BE CONSIDERED AND DECIDED BY THE BOARD AND ANY REHEARING SHALL BE COMPLETED AND A DECISION RENDERED THEREON WITHIN NINETY DAYS OF THE EXPIRATION OF THE PERIOD FOR FILING REHEARING PETITIONS, PROVIDED HOWEVER THAT THE BOARD MAY EXTEND THE DEADLINE BY NO MORE THAN NINETY DAYS WHERE A REHEARING IS REQUIRED IF NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE APPLICANT MAY WAIVE SUCH DEADLINE. THEREAFTER SUCH A PARTY MAY OBTAIN JUDICIAL REVIEW OF SUCH DECISION AS PROVIDED IN THIS SECTION. A JUDICIAL PROCEEDING SHALL BE BROUGHT IN THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK IN THE JUDICIAL DEPARTMENT EMBRACING THE COUNTY WHEREIN THE FACILITY IS TO BE LOCATED OR, IF THE APPLICATION IS DENIED, THE COUNTY WHEREIN THE APPLICANT HAS PROPOSED TO LOCATE THE FACILITY. SUCH PROCEEDING SHALL BE INITIATED BY THE FILING OF A PETITION IN SUCH COURT WITHIN THIRTY DAYS AFTER THE ISSUANCE OF A FINAL DECISION BY THE BOARD UPON THE APPLICATION FOR REHEARING TOGETHER WITH PROOF OF SERVICE OF A DEMAND ON THE BOARD TO FILE WITH SAID COURT A COPY OF A WRITTEN TRANSCRIPT OF THE RECORD OF THE PROCEEDING AND A COPY OF THE BOARD'S DECISION AND OPINION. THE BOARD'S COPY OF SAID TRANSCRIPT, DECISION AND OPINION, SHALL BE AVAILABLE AT ALL REASONABLE TIMES TO ALL PARTIES FOR EXAMINATION WITHOUT COST. UPON RECEIPT OF SUCH PETITION AND DEMAND THE BOARD SHALL FORTHWITH DELIVER TO THE COURT A COPY OF THE RECORD AND A COPY OF THE BOARD'S DECISION AND OPINION. THEREUPON, THE COURT SHALL HAVE JURISDICTION OF THE PROCEEDING AND SHALL HAVE THE POWER TO GRANT SUCH RELIEF AS IT DEEMS JUST AND PROPER, AND TO MAKE AND ENTER AN ORDER ENFORCING, MODIFYING AND

ENFORCING AS SO MODIFIED, REMANDING FOR FURTHER SPECIFIC EVIDENCE OR FINDINGS OR SETTING ASIDE IN WHOLE OR IN PART SUCH DECISION. THE APPEAL SHALL BE HEARD ON THE RECORD, WITHOUT REQUIREMENT OF REPRODUCTION, AND UPON BRIEFS TO THE COURT. NO OBJECTION THAT HAS NOT BEEN URGED BY THE PARTY IN HIS OR HER APPLICATION FOR REHEARING BEFORE THE BOARD SHALL BE CONSIDERED BY THE COURT, UNLESS THE FAILURE OR NEGLECT TO URGE SUCH OBJECTION SHALL BE EXCUSED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES. THE FINDINGS OF FACT ON WHICH SUCH DECISION IS BASED SHALL BE CONCLUSIVE IF SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE AND MATTERS OF JUDICIAL NOTICE SET FORTH IN THE OPINION. THE JURISDICTION OF THE APPELLATE DIVISION OF THE SUPREME COURT SHALL BE EXCLUSIVE AND ITS JUDGMENT AND ORDER SHALL BE FINAL, SUBJECT TO REVIEW BY THE COURT OF APPEALS IN THE SAME MANNER AND FORM AND WITH THE SAME EFFECT AS PROVIDED FOR APPEALS IN SPECIAL PROCEEDING. ALL SUCH PROCEEDINGS SHALL BE HEARD AND DETERMINED BY THE APPELLATE DIVISION OF THE SUPREME COURT AND BY THE COURT OF APPEALS AS EXPEDITIOUSLY AS POSSIBLE AND WITH LAWFUL PRECEDENCE OVER ALL OTHER MATTERS.

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

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

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

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

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

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

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

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

S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY AGENCY THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY THE BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER CONDITION FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERATING FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE HEREUNDER HAS BEEN FILED, OTHER THAN THOSE PROVIDED BY OTHERWISE APPLICABLE STATE LAW FOR THE PROTECTION OF EMPLOYEES ENGAGED IN THE CONSTRUCTION AND OPERATION OF SUCH FACILITY; PROVIDED, HOWEVER, THAT IN THE CASE OF A MUNICIPALITY OR AN AGENCY THEREOF, SUCH MUNICIPALITY HAS RECEIVED NOTICE OF THE FILING OF THE APPLICATION THEREFOR; AND PROVIDED FURTHER HOWEVER, THAT THE DEPARTMENT OF STATE MAY MAKE CONSISTENCY DETERMINATIONS PURSUANT TO THE FEDERAL COASTAL ZONE MANAGEMENT ACT. IN ISSUING SUCH DETERMINATIONS, THE SECRETARY OF STATE SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY ARE CONSISTENT WITH THE FEDERAL COASTAL ZONE MANAGEMENT ACT AND ITS IMPLEMENTING REGULATION; AND PROVIDED FURTHER, HOWEVER, THAT THE DEPARTMENT OF ENVIRON-

MENTAL CONSERVATION MAY ISSUE 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. IN ISSUING SUCH PERMITS, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY ARE CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND THE SECRETARY OF STATE SHALL PROVIDE SUCH PERMITS TO THE BOARD PRIOR TO ITS DETERMINATION WHETHER OR NOT TO ISSUE A CERTIFICATE.

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

S 2. The opening paragraph and paragraph (b) of subdivision 5 of section 8-0111 of the environmental conservation law, as added by chapter 612 of the laws of 1975, are amended to read as follows:

The requirements of [subdivision two of section 8-0109 of] this article shall not apply to:

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

S 3. Section 17-0701 of the environmental conservation law is amended by adding a new subdivision 8 to read as follows:

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

S 4. Section 17-0823 of the environmental conservation law, as added by chapter 801 of the laws of 1973, is amended to read as follows:

S 17-0823. Power plant siting.

In the case of a major steam electric generating facility, as defined in section one hundred forty of the public service law, for the construction or operation of which a certificate is required under FORMER article eight of [such] THE PUBLIC SERVICE law, OR A MAJOR ELECTRIC GENERATING FACILITY AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THE PUBLIC SERVICE LAW, FOR THE CONSTRUCTION OR OPERATION OF WHICH A CERTIFICATE IS REQUIRED UNDER ARTICLE TEN OF THE PUBLIC SERVICE LAW, [an applicant shall apply for and obtain such certificate in lieu of filing an application and obtaining a permit under this article. Any reference in this article to a permit shall, in the case of such major steam electric generating facility, be deemed for all purposes to refer to such certificate, provided that nothing] SUCH CERTIFICATE SHALL BE DEEMED A PERMIT UNDER THIS SECTION IF ISSUED BY THE STATE BOARD ON ELECTIVE GENERATION SITING AND THE ENVIRONMENT PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMIT AUTHORITY. NOTHING herein shall limit the authority of the [departments] DEPARTMENT of health and [environmental conservation] THE DEPARTMENT to monitor the environmental and health

impacts resulting from the operation of such major steam electric generating facility OR MAJOR ELECTRIC GENERATING FACILITY and to enforce applicable provisions of the public health LAW and [environmental conservation laws] THIS CHAPTER and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation. In such case all powers, duties, obligations and privileges conferred upon the department by this article shall devolve upon the New York state board on electric generation siting and the environment. In considering the granting of permits, such board shall apply the provisions of this article and the Act.

S 5. Paragraph j of subdivision 2 of section 19-0305 of the environmental conservation law, as amended by chapter 525 of the laws of 1981, is amended to read as follows:

j. Consider for approval or disapproval applications for permits and certificates including plans or specifications for air contamination sources and air cleaning installations or any part thereof submitted [to him pursuant to] CONSISTENT WITH the rules of the department, and inspect the installation for compliance with the plans or specifications; provided that in the case of a major steam electric generating facility, as defined in [either] FORMER section one hundred forty of the public service law, for which a certificate is required pursuant to [either] FORMER article eight of [such] THE PUBLIC SERVICE law, PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY such approval functions shall be performed by the state board on electric generation siting and the environment, as defined in such law, and such inspection functions shall be performed by the department[; provided further that nothing]. NOTHING herein shall limit the authority of the [departments] DEPARTMENT of health and [environmental conservation] THE DEPARTMENT to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility and to enforce applicable provisions of the public health LAW and [the environmental conservation laws] THIS CHAPTER and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation.

S 6. Paragraph (e) of subdivision 3 of section 49-0307 of the environmental conservation law, as added by chapter 292 of the laws of 1984, is amended to read as follows:

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

S 7. Section 1014 of the public authorities law, as amended by chapter 446 of the laws of 1972, is amended to read as follows:

S 1014. Public service law not applicable to authority; inconsistent provisions in other acts superseded. The rates, services and practices relating to the generation, transmission, distribution and sale by the authority, of power to be generated from the projects authorized by this title shall not be subject to the provisions of the public service law nor to regulation by, nor the jurisdiction of the department of public service. Except to the extent article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined therein, AND ARTICLE TEN OF THE PUBLIC SERVICE LAW APPLIES TO SITING OF MAJOR ELECTRIC GENERATING FACILITIES AS DEFINED THEREIN, and except to the extent section eighteen-a of such law provides for assessment of the authority for certain costs relating thereto, the provisions of the public service law and of the ENVIRONMENTAL conservation law and every other law relating to the department of public service or the public service commission or to the [conservation] department OF ENVIRONMENTAL CONSERVATION or to the functions, powers or duties assigned to the division of water power and control by chapter six hundred nineteen, of the laws of nineteen hundred twenty-six, shall so far as is necessary to make this title effective in accordance with its terms and purposes be deemed to be superseded, and wherever any provision of law shall be found in conflict with the provisions of this title or inconsistent with the purposes thereof, it shall be deemed to be superseded, modified or repealed as the case may require.

S 8. Subdivision 1 of section 1020-s of the public authorities law, as added by chapter 517 of the laws of 1986, is amended to read as follows:

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

S 9. The state finance law is amended by adding a new section 97-tt to read as follows:

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

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

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

S 10. Separability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 11. This act shall take effect immediately, provided that nothing in this act shall be construed to limit any administrative authority, with respect to matters included in this act, which existed prior to the effective date of this act.