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2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

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

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

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

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

3 ARTICLE 6

4 ENERGY PLANNING

5 SECTION 6-101. STATE ENERGY PLANNING BOARD.

6 6-103. STATE ENERGY PLAN.

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

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

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

LBD03335-01-9

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

9 3. THE BOARD SHALL HAVE THE POWERS:

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

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

14 (C) TO ISSUE SUBPOENAS AND SUBPOENAS DUCES TECUM;

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

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

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

24 2. THE STATE ENERGY PLAN SHALL INCLUDE:

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

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

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

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

44 (V) ENERGY PRICES;

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

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

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

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

7 (E) RECOMMENDATIONS, AS APPROPRIATE AND DESIRABLE, FOR ADMINISTRATIVE
8 AND LEGISLATIVE ACTIONS TO IMPLEMENT SUCH POLICIES, OBJECTIVES AND STRA-
9 TEGIES;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (IV) AN INVENTORY OF (1) ALL EXISTING ELECTRIC GENERATING AND TRANS-
48 MISSION FACILITIES OWNED OR OPERATED BY PARTICIPANTS IN THE ELECTRICITY
49 MARKETS ADMINISTERED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR, AND
50 ENTITIES OTHERWISE SUBJECT TO THIS ARTICLE, (2) ELECTRIC GENERATING AND
51 TRANSMISSION FACILITIES UNDER CONSTRUCTION BY PARTICIPANTS IN THE ELEC-
52 TRICITY MARKETS ADMINISTERED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR
53 AND ENTITIES OTHERWISE SUBJECT TO THIS ARTICLE, INCLUDING THE DATES FOR
54 COMPLETION AND OPERATION, (3) THE ANTICIPATED RETIREMENT DATES FOR ELEC-
55 TRIC GENERATING FACILITIES CURRENTLY OWNED OR OPERATED BY PARTICIPANTS
56 IN THE ELECTRICITY MARKETS ADMINISTERED BY THE NEW YORK INDEPENDENT

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (VI) A PROJECTION OF ESTIMATED GAS PRICES TO CONSUMERS OVER THE FORE-
6 CAST PERIOD;

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

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

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

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

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

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

27 5. COPIES OF THE DRAFT PLAN, AND ALL NON-CONFIDENTIAL INFORMATION AND
28 COMMENTS FILED PURSUANT TO THIS SECTION SHALL BE MADE AVAILABLE TO THE
29 PUBLIC FOR INSPECTION, PROVIDED SUCH INSPECTION IS CONSISTENT WITH ARTI-
30 CLE SIX OF THE PUBLIC OFFICERS LAW AND ARTICLE TWENTY-SIX OF THE EXECU-
31 TIVE LAW.

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

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

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

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

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

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

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

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

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

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

10 ARTICLE 10
 11 SITING OF MAJOR ELECTRIC
 12 GENERATING FACILITIES

13 SECTION 160. DEFINITIONS.

14 161. GENERAL PROVISIONS RELATING TO THE BOARD.

15 162. BOARD CERTIFICATE.

16 163. PRE-APPLICATION PROCEDURES.

17 163-A. REPOWERING PROJECTS.

18 164. APPLICATION FOR A CERTIFICATE.

19 165. HEARING SCHEDULE.

20 166. PARTIES TO A CERTIFICATION PROCEEDING.

21 167. CONDUCT OF HEARING.

22 168. BOARD DECISIONS.

23 169. OPINION TO BE ISSUED WITH DECISION.

24 170. REHEARING AND JUDICIAL REVIEW.

25 171. JURISDICTION OF COURTS.

26 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.

27 S 160. DEFINITIONS. WHERE USED IN THIS ARTICLE, THE FOLLOWING TERMS,
 28 UNLESS THE CONTEXT OTHERWISE REQUIRES, SHALL HAVE THE FOLLOWING MEAN-
 29 INGS:

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

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

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

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

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

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

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

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

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

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

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

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

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

16 4. THIS ARTICLE SHALL NOT APPLY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 3. THE APPLICATION SHALL BE ACCOMPANIED BY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (E) A STATEMENT (I) DEMONSTRATING THAT THE FACILITY WILL SATISFY ADDI-
14 TIONAL ELECTRIC CAPACITY OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE
15 CONSTRUCTION OF THE FACILITY IS REASONABLY CONSISTENT WITH LONG-RANGE
16 ENERGY PLANNING OBJECTIVES AND STRATEGIES, PROVIDED HOWEVER, THAT SUBSE-
17 QUENT TO THE ADOPTION OF A STATE ENERGY PLAN PURSUANT TO ARTICLE SIX OF
18 THE ENERGY LAW, AN APPLICANT SHALL DEMONSTRATE THAT THE CONSTRUCTION OF
19 THE FACILITY IS REASONABLY CONSISTENT WITH THE ENERGY POLICIES AND
20 LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE
21 MOST RECENT STATE ENERGY PLAN; OR (II) THAT THE FACILITY WAS SELECTED
22 PURSUANT TO AN APPROVED PROCUREMENT PROCESS;

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

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

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

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

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

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

54 (II) EACH MEMBER OF THE BOARD;

55 (III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

56 (IV) THE SECRETARY OF STATE;

1 (V) THE ATTORNEY GENERAL;

2 (VI) THE DEPARTMENT OF TRANSPORTATION;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (A) THE APPLICANT;

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

25 (C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

26 (D) THE DEPARTMENT OF HEALTH;

27 (E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 S 167. CONDUCT OF HEARING. 1. (A) THE HEARING SHALL BE CONDUCTED IN AN
43 EXPEDITIOUS MANNER BY A PRESIDING EXAMINER APPOINTED BY THE DEPARTMENT.
44 AN ASSOCIATE HEARING EXAMINER SHALL BE APPOINTED BY THE DEPARTMENT OF
45 ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE
46 PUBLIC HEARING. THE ASSOCIATE EXAMINER SHALL ATTEND ALL HEARINGS AS
47 SCHEDULED BY THE PRESIDING EXAMINER AND HE SHALL ASSIST THE PRESIDING
48 EXAMINER IN INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT
49 AND MATERIAL MATTERS. THE CONCLUSIONS AND RECOMMENDATIONS OF THE ASSOCI-
50 ATE EXAMINER SHALL BE INCORPORATED IN THE RECOMMENDED DECISION OF THE
51 PRESIDING EXAMINER, UNLESS THE ASSOCIATE EXAMINER PREFERS TO SUBMIT A
52 SEPARATE REPORT OF DISSENTING OR CONCURRING CONCLUSIONS AND RECOMMENDA-
53 TIONS. IN THE EVENT THAT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION
54 ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY
55 UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE
56 FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE RECORD IN THE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 S 17-0823. Power plant siting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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