

2082--A

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 15, 2009

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Introduced by M. of A. O'MARA, KOLB, TEDISCO, CROUCH, CALHOUN, FINCH --  
Multi-Sponsored by -- M. of A. BACALLES, BALL, BARCLAY, BOYLE,  
BURLING, BUTLER, DUPREY, ERRIGO, GIGLIO, HAWLEY, HAYES, P. LOPEZ,  
McDONOUGH, McKEVITT, J. MILLER, MOLINARO, OAKS, QUINN, RAIA, REILICH,  
SALADINO, SCOZZAFAVA, SPANO, TOWNSEND -- read once and referred to the  
Committee on Energy -- recommitted to the Committee on Energy in  
accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill  
amended, ordered reprinted as amended and recommitted to said commit-  
tee

AN ACT to amend the public service law, in relation to siting major  
electric generating facilities; to amend the environmental conserva-  
tion 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 relat-  
ing 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; and to amend the state finance law, in relation to  
establishing the electric generating facilities intervenor account

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

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

3                                 ARTICLE 10

4                                 SITING OF MAJOR ELECTRIC  
5                                 GENERATING FACILITIES

6     SECTION 160. DEFINITIONS.

7         161. GENERAL PROVISIONS RELATING TO THE BOARD.

8         162. BOARD CERTIFICATE.

9         163. PRE-APPLICATION PROCEDURES.

10        163-A. REPOWERING PROJECTS.

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

LBD03335-02-0

1 164. APPLICATION FOR A CERTIFICATE.  
2 165. HEARING SCHEDULE.  
3 166. PARTIES TO A CERTIFICATION PROCEEDING.  
4 167. CONDUCT OF HEARING.  
5 168. BOARD DECISIONS.  
6 169. OPINION TO BE ISSUED WITH DECISION.  
7 170. REHEARING AND JUDICIAL REVIEW.  
8 171. JURISDICTION OF COURTS.  
9 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.

10 S 160. DEFINITIONS. WHERE USED IN THIS ARTICLE, THE FOLLOWING TERMS,  
11 UNLESS THE CONTEXT OTHERWISE REQUIRES, SHALL HAVE THE FOLLOWING MEAN-  
12 INGS:

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

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

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

27 4. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION  
28 SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST  
29 OF SEVEN PERSONS: THE CHAIRMAN OF THE DEPARTMENT, WHO SHALL SERVE AS  
30 CHAIRMAN OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION;  
31 THE COMMISSIONER OF HEALTH; THE CHAIRMAN OF THE NEW YORK STATE ENERGY  
32 RESEARCH AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC DEVEL-  
33 OPMENT AND TWO AD HOC PUBLIC MEMBERS APPOINTED BY THE GOVERNOR. ONE AD  
34 HOC PUBLIC MEMBER SHALL BE A RESIDENT OF THE JUDICIAL DISTRICT IN WHICH  
35 THE FACILITY AS PROPOSED IS TO BE LOCATED AND ONE AD HOC PUBLIC MEMBER  
36 SHALL BE A RESIDENT OF THE COUNTY IN WHICH THE FACILITY AS PROPOSED IS  
37 TO BE LOCATED. THE TERM OF THE AD HOC MEMBERS SHALL CONTINUE UNTIL A  
38 FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEEDING FOR WHICH THEY  
39 WERE APPOINTED.

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

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

48 S 161. GENERAL PROVISIONS RELATING TO THE BOARD. UPON RECEIPT OF AN  
49 APPLICATION UNDER THIS ARTICLE, THE CHAIRPERSON SHALL PROMPTLY NOTIFY  
50 THE GOVERNOR. WITHIN THIRTY DAYS OF SUCH NOTIFICATION THE GOVERNOR SHALL  
51 APPOINT THE AD HOC MEMBERS. FOUR OF THE SEVEN PERSONS ON THE BOARD SHALL  
52 CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE BOARD,  
53 AND THE DECISION OF FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE ACTION OF  
54 THE BOARD. THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE THE  
55 POWER TO ADOPT RULES AND REGULATIONS RELATING TO THE PROCEDURES TO BE  
56 USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTICLE,

1 INCLUDING THE SUSPENSION OR REVOCATION THEREOF, AND SHALL FURTHER HAVE  
2 THE POWER TO SEEK DELEGATION FROM THE FEDERAL GOVERNMENT PURSUANT TO  
3 FEDERAL REGULATORY PROGRAMS APPLICABLE TO THE SITING OF MAJOR ELECTRIC  
4 GENERATING FACILITIES. THE CHAIRPERSON, AFTER CONSULTATION WITH THE  
5 OTHER MEMBERS OF THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE  
6 EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY RULINGS REGARDING THE APPLI-  
7 CABILITY OF, OR ANY OTHER QUESTION UNDER, THIS ARTICLE AND RULES AND  
8 REGULATIONS ADOPTED HEREUNDER. REGULATIONS ADOPTED BY THE BOARD MAY  
9 PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE  
10 SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-  
11 TION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY.

12 IN ADDITION TO THE REQUIREMENTS OF THE PUBLIC OFFICERS LAW, NO PERSON  
13 SHALL BE ELIGIBLE TO BE AN APPOINTEE OF THE GOVERNOR TO THE BOARD WHO  
14 HOLDS ANOTHER STATE OR LOCAL OFFICE. NO MEMBER OF THE BOARD MAY RETAIN  
15 OR HOLD ANY OFFICIAL RELATION TO, OR ANY SECURITIES OF AN ELECTRIC UTIL-  
16 ITY CORPORATION OPERATING IN THE STATE OR PROPOSED FOR OPERATION IN THE  
17 STATE, ANY AFFILIATE THEREOF OR ANY OTHER COMPANY, FIRM, PARTNERSHIP,  
18 CORPORATION, ASSOCIATION OR JOINT-STOCK ASSOCIATION THAT MAY APPEAR  
19 BEFORE THE BOARD, NOR SHALL EITHER OF THE APPOINTEES HAVE BEEN A DIREC-  
20 TOR, OFFICER OR, WITHIN THE PREVIOUS TEN YEARS, AN EMPLOYEE THEREOF.  
21 THE APPOINTEES OF THE GOVERNOR SHALL RECEIVE THE SUM OF TWO HUNDRED  
22 DOLLARS FOR EACH DAY IN WHICH THEY ARE ACTUALLY ENGAGED IN THE PERFORM-  
23 ANCE OF THEIR DUTIES PURSUANT TO THIS ARTICLE PLUS ACTUAL AND NECESSARY  
24 EXPENSES INCURRED BY THEM IN THE PERFORMANCE OF SUCH DUTIES. THE CHAIR-  
25 PERSON SHALL PROVIDE SUCH PERSONNEL, HEARING EXAMINERS, SUBORDINATES,  
26 EMPLOYEES AND SUCH LEGAL, TECHNOLOGICAL, SCIENTIFIC, ENGINEERING AND  
27 OTHER SERVICES AND SUCH MEETING ROOMS, HEARING ROOMS AND OTHER FACILI-  
28 TIES AS MAY BE REQUIRED IN PROCEEDINGS UNDER THIS ARTICLE. THE BOARD MAY  
29 PROVIDE FOR ITS OWN REPRESENTATION AND APPEARANCE IN ALL ACTIONS AND  
30 PROCEEDINGS INVOLVING ANY QUESTION UNDER THIS ARTICLE. THE DEPARTMENT OF  
31 ENVIRONMENTAL CONSERVATION SHALL PROVIDE ASSOCIATE HEARING EXAMINERS.  
32 EACH MEMBER OF THE BOARD OTHER THAN THE APPOINTEES OF THE GOVERNOR MAY  
33 DESIGNATE AN ALTERNATE TO SERVE INSTEAD OF THE MEMBER WITH RESPECT TO  
34 ALL PROCEEDINGS PURSUANT TO THIS ARTICLE. SUCH DESIGNATION SHALL BE IN  
35 WRITING AND FILED WITH THE CHAIRMAN.

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

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

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

53 4. THIS ARTICLE SHALL NOT APPLY:

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

JURISDICTION, TO THE EXCLUSION OF REGULATION OF THE FACILITY BY THE STATE;

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

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

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

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

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

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

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

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

(D) ANY MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS;

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

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

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

1-A. EACH PRELIMINARY SCOPING STATEMENT SHALL BE ACCOMPANIED BY A FEE OF FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE ELECTRIC GENERATING FACILITIES INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-JJJJ OF THE STATE FINANCE LAW, AND SHALL BE DISBURSED AT THE BOARD'S DIRECTION TO DEFRAY EXPENSES INCURRED BY MUNICIPAL AND OTHER LOCAL, INTERESTED PERSONS (EXCEPT A MUNICIPALITY WHICH IS THE APPLICANT)

1 FOR CONSULTANTS' FEES TO EVALUATE THE PRELIMINARY SCOPING STATEMENT AND  
2 ANALYZE THE METHODOLOGY AND SCOPE OF ANY STUDY OR PROGRAM OF STUDIES TO  
3 BE UNDERTAKEN BY THE APPLICANT IN SUPPORT OF ITS APPLICATION. SUCH FUNDS  
4 SHALL BE MADE AVAILABLE ON AN EQUITABLE BASIS IN A MANNER WHICH FACILI-  
5 TATES BROAD PUBLIC PARTICIPATION IN THE PRE-APPLICATION PROCESS. ANY  
6 UNUSED FUNDS SHALL BE MADE AVAILABLE AND DISBURSED IN ACCORDANCE WITH  
7 THE PROVISIONS OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF  
8 THIS ARTICLE IF AN APPLICATION IS FILED OR, IF THE PRELIMINARY SCOPING  
9 STATEMENT IS WITHDRAWN, RETURNED TO THE APPLICANT. NOTWITHSTANDING ANY  
10 OTHER PROVISION OF LAW TO THE CONTRARY, THE BOARD MAY PROVIDE BY RULES  
11 AND REGULATIONS FOR DISBURSEMENTS FROM THE FUND FOR THE STATED PURPOSES.

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

16 3. TO FACILITATE THE APPLICATION PROCESS AND ENABLE CITIZENS TO  
17 PARTICIPATE IN DECISIONS THAT AFFECT THEIR HEALTH AND SAFETY AND THE  
18 ENVIRONMENT, THE DEPARTMENT SHALL PROVIDE OPPORTUNITIES FOR CITIZEN  
19 INVOLVEMENT. SUCH OPPORTUNITIES SHALL ENCOURAGE CONSULTATION WITH THE  
20 PUBLIC EARLY IN THE APPLICATION PROCESS, ESPECIALLY BEFORE ANY PARTIES  
21 ENTER A STIPULATION PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. THE  
22 PRIMARY GOALS OF THE CITIZEN PARTICIPATION PROCESS SHALL BE TO FACILI-  
23 TATE COMMUNICATION BETWEEN THE APPLICANT AND INTERESTED OR AFFECTED  
24 PERSONS. THE PROCESS SHALL FOSTER THE ACTIVE INVOLVEMENT OF THE INTER-  
25 ESTED OR AFFECTED PERSONS.

26 4. SUCH PERSON MAY CONSULT AND SEEK AGREEMENT WITH ANY INTERESTED  
27 PERSON, INCLUDING, BUT NOT LIMITED TO, THE STAFF OF THE DEPARTMENT, THE  
28 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE AND  
29 THE DEPARTMENT OF HEALTH, AS APPROPRIATE, AS TO ANY ASPECT OF THE  
30 PRELIMINARY SCOPING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE  
31 OR TO BE MADE TO SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT,  
32 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE,  
33 THE DEPARTMENT OF HEALTH, THE PERSON PROPOSING TO FILE AN APPLICATION,  
34 AND ANY OTHER INTERESTED PERSON MAY ENTER INTO A STIPULATION SETTING  
35 FORTH AN AGREEMENT ON ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT  
36 AND THE STUDIES OR PROGRAM OF STUDIES TO BE CONDUCTED. ANY SUCH PERSON  
37 PROPOSING TO SUBMIT AN APPLICATION FOR A CERTIFICATE SHALL SERVE A COPY  
38 OF THE PROPOSED STIPULATION UPON ALL PERSONS ENUMERATED IN PARAGRAPH (A)  
39 OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE,  
40 PROVIDE NOTICE OF SUCH STIPULATION TO THOSE PERSONS IDENTIFIED IN PARA-  
41 GRAPH (B) OF SUCH SUBDIVISION, AND AFFORD THE PUBLIC A REASONABLE OPPOR-  
42 TUNITY TO SUBMIT COMMENTS ON THE STIPULATION BEFORE IT IS EXECUTED BY  
43 THE INTERESTED PARTIES. NOTHING IN THIS SUBDIVISION, HOWEVER, SHALL BAR  
44 ANY PARTY TO A HEARING ON AN APPLICATION, OTHER THAN ANY PARTY TO A  
45 PRE-APPLICATION STIPULATION, FROM TIMELY RAISING OBJECTIONS TO ANY  
46 ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND  
47 SCOPE OF ANY STIPULATED STUDIES OR PROGRAM OF STUDIES IN ANY SUCH AGREE-  
48 MENT. IN ORDER TO ATTEMPT TO RESOLVE ANY QUESTIONS THAT MAY ARISE AS A  
49 RESULT OF SUCH CONSULTATION, THE BOARD MAY DESIGNATE A HEARING EXAMINER  
50 WHO SHALL MEDIATE ANY ISSUE RELATING TO ANY ASPECT OF THE PRELIMINARY  
51 SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY SUCH STUDIES OR  
52 PROGRAMS OF STUDY.

53 S 163-A. REPOWERING PROJECTS. 1. FOR PURPOSES OF THIS SECTION, THE  
54 TERM "REPOWERING PROJECT" MEANS A MAJOR ELECTRIC GENERATING FACILITY  
55 THAT PROPOSES TO ENTIRELY OR PARTIALLY REPLACE AN EXISTING MAJOR ELEC-

TRIC GENERATING FACILITY IN SUBSTANTIALLY THE SAME LOCATION AS THE EXISTING FACILITY WHERE SUCH PROPOSED FACILITY:

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

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

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

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

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

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

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

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

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

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

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

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

8 (H) SUCH OTHER INFORMATION AS THE APPLICANT MAY CONSIDER RELEVANT OR  
9 AS MAY BE REQUIRED BY THE BOARD TO MAKE ITS FINDINGS PURSUANT TO SECTION  
10 ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE. COPIES OF THE APPLICATION,  
11 INCLUDING THE REQUIRED INFORMATION, SHALL BE AVAILABLE FOR PUBLIC  
12 INSPECTION; PROVIDED, HOWEVER, THAT THE SECURITY PLAN REQUIRED TO BE  
13 FILED PURSUANT TO PARAGRAPH (G) OF THIS SUBDIVISION SHALL BE KEPT CONFIDENTIAL,  
14 SHALL NOT BE AVAILABLE FOR PUBLIC INSPECTION, AND PROVIDED  
15 FURTHER THAT INFORMATION CONCERNING ELECTRIC AND NATURAL GAS INTERCONNECTIONS  
16 BETWEEN THE FACILITY AND THE ELECTRIC AND NATURAL GAS SYSTEMS  
17 SHALL NOT BE PLACED IN PUBLIC LIBRARIES OR ON THE INTERNET, AND THAT THE  
18 DEPARTMENT SHALL MAKE SUCH INFORMATION AVAILABLE FOR INSPECTION AT ITS  
19 OFFICES AND SHALL MAINTAIN A LOGBOOK OF ALL THOSE WHO HAVE REQUESTED  
20 ACCESS TO SUCH INFORMATION.

21 3. THE APPLICATION SHALL BE ACCOMPANIED BY:

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

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

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

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

43 5. WITHIN SIXTY DAYS OF RECEIPT OF AN APPLICATION FILED PURSUANT TO  
44 SUBDIVISION TWO OF THIS SECTION, THE CHAIRPERSON OF THE BOARD SHALL  
45 DETERMINE WHETHER OR NOT THE APPLICATION IS FOR A REPOWERING PROJECT, AS  
46 DEFINED IN SUBDIVISION ONE OF THIS SECTION, AND WHETHER OR NOT THE  
47 APPLICATION COMPLIES WITH SUBDIVISION TWO OF THIS SECTION AND ANY REGULATIONS  
48 PROMULGATED PURSUANT THERETO, AND SHALL, AFTER CONSULTATION WITH  
49 THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, RENDER A PRELIMINARY  
50 DETERMINATION AS TO WHETHER OR NOT THE REPOWERING PROJECT MAY HAVE A  
51 SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT. IN THE EVENT THAT THE CHAIRPERSON  
52 OF THE BOARD DETERMINES EITHER THAT THE APPLICATION IS NOT FOR A  
53 REPOWERING PROJECT OR THAT THE REPOWERING PROJECT MAY HAVE A SIGNIFICANT  
54 ADVERSE ENVIRONMENTAL IMPACT, THE APPLICATION SHALL BE DEEMED TO SATISFY  
55 THE REQUIREMENTS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE  
56 OF THIS ARTICLE AND THE APPLICATION SHALL NO LONGER BE SUBJECT TO, OR

1 ELIGIBLE FOR, THE PROCEDURES SET FORTH IN THIS SECTION. THE CHAIRPERSON  
2 OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED  
3 TO SUPPLEMENT AN APPLICATION. IN THE EVENT OF A DETERMINATION THAT A  
4 REPOWERING PROJECT IS NOT LIKELY TO HAVE A SIGNIFICANT ADVERSE ENVIRON-  
5 MENTAL IMPACT, A PRELIMINARY DETERMINATION OF NON-SIGNIFICANCE SHALL BE  
6 ISSUED. NOTICE OF ISSUANCE SHALL BE GIVEN TO PARTIES TO THE CERTIF-  
7 ICATION PROCEEDING PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED  
8 SIXTY-SIX OF THIS ARTICLE AND SHALL ADDITIONALLY BE PUBLISHED ON THE  
9 WEBSITE OF THE DEPARTMENT.

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

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

28 8. WITHIN THIRTY DAYS OF THE CLOSE OF THE PUBLIC COMMENT PERIOD, OR  
29 WITHIN TWENTY-ONE DAYS AFTER THE TERMINATION OF A PUBLIC HEARING  
30 RESPECTING THE APPLICABILITY OF LOCAL LAWS HELD IN ACCORDANCE WITH  
31 SUBDIVISION SEVEN OF THIS SECTION, WHICHEVER IS LATER, THE CHAIRPERSON  
32 OF THE BOARD, AFTER CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL  
33 CONSERVATION SHALL RENDER A FINAL DETERMINATION AS TO WHETHER OR NOT THE  
34 REPOWERING PROJECT MAY HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT.  
35 UPON A DETERMINATION THAT THE REPOWERING PROJECT IS NOT LIKELY TO HAVE A  
36 SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT, THE CHAIRPERSON SHALL ISSUE A  
37 FINAL DETERMINATION OF NON-SIGNIFICANCE. IN THE EVENT THAT THE CHAIR-  
38 PERSON, AFTER CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL  
39 CONSERVATION, DETERMINES THAT THE REPOWERING PROJECT MAY HAVE A SIGNIF-  
40 ICANT ENVIRONMENTAL IMPACT, THE APPLICATION SHALL BE DEEMED TO SATISFY  
41 THE REQUIREMENTS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE  
42 OF THIS ARTICLE, BUT SHALL NO LONGER BE SUBJECT TO, OR ELIGIBLE FOR, THE  
43 PROCEDURES SET FORTH IN THIS SECTION.

44 9. IN THE EVENT THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
45 ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED PERMITTING  
46 AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT  
47 AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE COMMISSIONER  
48 OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE SUCH PERMITS TO THE CHAIR-  
49 PERSON OF THE BOARD PRIOR TO THE DETERMINATION OF NON-SIGNIFICANCE. THE  
50 CHAIRPERSON OF THE BOARD SHALL SUBMIT THE FINAL DETERMINATION OF  
51 NON-SIGNIFICANCE TO THE BOARD, WHICH SHALL ISSUE A DECISION WITH RESPECT  
52 TO THE APPLICATION WITHIN TWENTY-ONE DAYS AFTER SUCH SUBMISSION IN  
53 ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE.

54 S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIF-  
55 ICATE SHALL FILE WITH THE CHAIRMAN OF THE BOARD AN APPLICATION, IN SUCH



1 FORM AS THE BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND  
2 MATERIALS:

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

9 (B) A DESCRIPTION AND EVALUATION OF REASONABLE ALTERNATIVE LOCATIONS  
10 TO THE PROPOSED FACILITY, IF ANY, AND WITH RESPECT TO A FACILITY THAT  
11 HAS NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS, A  
12 DESCRIPTION AND EVALUATION OF REASONABLE ENERGY SUPPLY SOURCE ALTERNA-  
13 TIVES AND, WHERE APPROPRIATE, DEMAND-REDUCING MEASURES TO THE PROPOSED  
14 FACILITY; A DESCRIPTION OF THE COMPARATIVE ADVANTAGES AND DISADVANTAGES  
15 OF EACH SUCH LOCATION, ENERGY SUPPLY SOURCE AND DEMAND-REDUCING MEASURE,  
16 AS APPROPRIATE; AND A STATEMENT OF THE REASONS WHY THE PRIMARY PROPOSED  
17 LOCATION AND SOURCE, AS APPROPRIATE, IS BEST SUITED, AMONG THE ALTERNA-  
18 TIVES CONSIDERED, TO PROMOTE PUBLIC HEALTH AND WELFARE, INCLUDING THE  
19 RECREATIONAL AND OTHER CONCURRENT USES WHICH THE SITE MAY SERVE,  
20 PROVIDED THAT THE INFORMATION REQUIRED PURSUANT TO THIS PARAGRAPH SHALL  
21 BE NO MORE EXTENSIVE THAN REQUIRED UNDER ARTICLE EIGHT OF THE ENVIRON-  
22 MENTAL CONSERVATION LAW;

23 (C) STUDIES, IDENTIFYING THE AUTHOR AND DATE THEREOF, WHICH HAVE BEEN  
24 MADE OF THE EXPECTED ENVIRONMENTAL IMPACT AND SAFETY OF THE FACILITY,  
25 BOTH DURING ITS CONSTRUCTION AND ITS OPERATION, WHICH STUDIES ARE SUFFI-  
26 CIENT TO IDENTIFY (I) THE ANTICIPATED GASEOUS, LIQUID AND SOLID WASTES  
27 TO BE PRODUCED AT THE FACILITY INCLUDING THEIR SOURCE, ANTICIPATED  
28 VOLUMES, COMPOSITION AND TEMPERATURE, AND SUCH OTHER ATTRIBUTES AS THE  
29 BOARD MAY SPECIFY AND THE PROBABLE LEVEL OF NOISE DURING CONSTRUCTION  
30 AND OPERATION OF THE FACILITY; (II) THE TREATMENT PROCESSES TO REDUCE  
31 WASTES TO BE RELEASED TO THE ENVIRONMENT, THE MANNER OF DISPOSAL FOR  
32 WASTES RETAINED AND MEASURES FOR NOISE ABATEMENT; (III) THE ANTICIPATED  
33 VOLUMES OF WASTES TO BE RELEASED TO THE ENVIRONMENT UNDER ANY OPERATING  
34 CONDITION OF THE FACILITY, INCLUDING SUCH METEOROLOGICAL, HYDROLOGICAL  
35 AND OTHER INFORMATION NEEDED TO SUPPORT SUCH ESTIMATES; (IV) CONCEPTUAL  
36 ARCHITECTURAL AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE  
37 FACILITY WITH THE ENVIRONMENT; (V) HOW THE CONSTRUCTION AND OPERATION OF  
38 THE FACILITY, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES WOULD  
39 COMPLY WITH ENVIRONMENTAL HEALTH AND SAFETY STANDARDS, REQUIREMENTS,  
40 REGULATIONS AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A STATEMENT  
41 WHY ANY VARIANCES OR EXCEPTIONS SHOULD BE GRANTED; (VI) WATER WITH-  
42 DRAWS AND DISCHARGES; (VII) A DESCRIPTION OF THE FUEL INTERCONNECTION  
43 AND SUPPLY FOR THE PROJECT; AND (VIII) AN ELECTRIC INTERCONNECTION  
44 STUDY, CONSISTING GENERALLY OF A DESIGN STUDY AND A SYSTEM RELIABILITY  
45 IMPACT STUDY;

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

52 (E) A STATEMENT (I) DEMONSTRATING THAT THE FACILITY WILL SATISFY ADDI-  
53 TIONAL ELECTRIC CAPACITY OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE  
54 CONSTRUCTION OF THE FACILITY IS REASONABLY CONSISTENT WITH LONG-RANGE  
55 ENERGY PLANNING OBJECTIVES AND STRATEGIES, PROVIDED HOWEVER, THAT SUBSE-  
56 QUENT TO THE ADOPTION OF A STATE ENERGY PLAN PURSUANT TO ARTICLE SIX OF

1 THE ENERGY LAW, AN APPLICANT SHALL DEMONSTRATE THAT THE CONSTRUCTION OF  
2 THE FACILITY IS REASONABLY CONSISTENT WITH THE ENERGY POLICIES AND  
3 LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE  
4 MOST RECENT STATE ENERGY PLAN; OR (II) THAT THE FACILITY WAS SELECTED  
5 PURSUANT TO AN APPROVED PROCUREMENT PROCESS;

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

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

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

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

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

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

37 (II) EACH MEMBER OF THE BOARD;

38 (III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

39 (IV) THE SECRETARY OF STATE;

40 (V) THE ATTORNEY GENERAL;

41 (VI) THE DEPARTMENT OF TRANSPORTATION;

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

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

49 (B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICI-  
50 PALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARA-  
51 GRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE  
52 GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON  
53 OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE  
54 PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPA-  
55 PERS AS WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICA-  
56 TION;

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

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

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

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

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

26 6. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT  
27 EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF GENERATING  
28 CAPACITY OF THE SUBJECT FACILITY, BUT NO MORE THAN THREE HUNDRED THOU-  
29 SAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE PRE-APPLICATION FEE  
30 PROVIDED FOR IN SUBDIVISION ONE-A OF SECTION ONE HUNDRED SIXTY-THREE OF  
31 THIS ARTICLE, TO BE DEPOSITED IN THE ELECTRIC GENERATING FACILITIES  
32 INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-JJJJ OF  
33 THE STATE FINANCE LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION, TO  
34 DEFRAY EXPENSES INCURRED BY MUNICIPAL AND OTHER LOCAL PARTIES TO THE  
35 PROCEEDING (EXCEPT A MUNICIPALITY WHICH IS THE APPLICANT) FOR EXPERT  
36 WITNESS AND CONSULTANT FEES. IF AT ANY TIME SUBSEQUENT TO THE FILING OF  
37 THE APPLICATION, THE APPLICATION IS AMENDED IN A MANNER THAT WARRANTS  
38 SUBSTANTIAL ADDITIONAL SCRUTINY, THE BOARD MAY REQUIRE AN ADDITIONAL  
39 INTERVENOR FEE IN AN AMOUNT NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS.  
40 THE BOARD SHALL PROVIDE FOR TRANSCRIPTS, THE REPRODUCTION AND SERVICE OF  
41 DOCUMENTS, AND THE PUBLICATION OF REQUIRED NOTICES, FOR MUNICIPAL  
42 PARTIES. ANY MONEYS REMAINING IN THE INTERVENOR FUND, AFTER THE BOARD  
43 HAS ISSUED ITS DECISION ON AN APPLICATION UNDER THIS ARTICLE AND THE  
44 TIME FOR APPLYING FOR A REHEARING AND JUDICIAL REVIEW HAS EXPIRED, SHALL  
45 BE RETURNED TO THE APPLICANT.

46 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE  
47 BOARD SHALL PROVIDE BY RULES AND REGULATIONS FOR THE MANAGEMENT OF THE  
48 INTERVENOR FUND AND FOR DISBURSEMENTS FROM THE FUND, WHICH RULES AND  
49 REGULATIONS SHALL BE CONSISTENT WITH THE PURPOSE OF THIS SECTION TO MAKE  
50 AVAILABLE TO MUNICIPAL PARTIES AT LEAST ONE-HALF OF THE AMOUNT OF THE  
51 INTERVENOR FUND AND FOR USES SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVI-  
52 SION. IN ADDITION, THE BOARD SHALL PROVIDE OTHER LOCAL PARTIES UP TO  
53 ONE-HALF OF THE AMOUNT OF THE INTERVENOR FUND, PROVIDED, HOWEVER, THAT  
54 THE BOARD SHALL ASSURE THAT THE PURPOSES FOR WHICH MONEYS IN THE  
55 INTERVENOR FUND WILL BE EXPENDED WILL CONTRIBUTE TO AN INFORMED DECISION  
56 AS TO THE APPROPRIATENESS OF THE SITE AND FACILITY AND ARE MADE AVAIL-

ABLE ON AN EQUITABLE BASIS IN A MANNER WHICH FACILITATES BROAD PUBLIC PARTICIPATION.

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

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

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

3. ALL PARTIES SHALL BE PREPARED TO PROCEED IN AN EXPEDITIOUS MANNER AT THE HEARING SO THAT IT MAY PROCEED REGULARLY UNTIL COMPLETION. THE PLACE OF THE HEARING SHALL BE DESIGNATED BY THE PRESIDING EXAMINER. HEARINGS SHALL BE HELD OF SUFFICIENT DURATION TO PROVIDE ADEQUATE OPPORTUNITY TO HEAR DIRECT EVIDENCE AND REBUTTAL EVIDENCE FROM RESIDENTS OF THE AREA AFFECTED BY THE MAJOR ELECTRIC GENERATING FACILITY.

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

1 SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT  
2 TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL  
3 AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE  
4 THAN SIX MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO  
5 CONSIDER SUCH AMENDMENT.

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

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

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

3 (A) THE APPLICANT;

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

10 (C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

11 (D) THE DEPARTMENT OF HEALTH;

12 (E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

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

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

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

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

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

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

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

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

53 (N) ANY OTHER MUNICIPALITY OR RESIDENT OF SUCH MUNICIPALITY LOCATED  
54 WITHIN A FIVE MILE RADIUS OF SUCH PROPOSED FACILITY, IF IT OR THE RESI-  
55 DENT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BECOME A PARTY,

1 WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS  
2 THE DATE FOR FILING OF THE APPLICATION;

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

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

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

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

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

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

48 (B) WHEN THE FACILITY IS PROPOSED TO BE LOCATED IN THE COASTAL AREA  
49 AND FEDERAL AUTHORIZATION IS REQUIRED, A COASTAL RESOURCE SPECIALIST  
50 SHALL BE DESIGNATED BY THE DEPARTMENT OF STATE PRIOR TO THE DATE SET FOR  
51 COMMENCEMENT OF THE PUBLIC HEARING. THE COASTAL RESOURCE SPECIALIST  
52 SHALL ATTEND ALL HEARINGS AS SCHEDULED BY THE PRESIDING AND ASSOCIATE  
53 EXAMINERS AND SHALL ASSIST THE PRESIDING AND ASSOCIATE EXAMINERS IN  
54 INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND MATERI-  
55 AL MATTERS. IN THE EVENT THAT THE SECRETARY OF STATE IS REQUIRED TO  
56 RENDER A CONSISTENCY DETERMINATION PURSUANT TO THE FEDERAL COASTAL ZONE

MANAGEMENT ACT, THE RECORD IN THE PROCEEDINGS SHALL PROVIDE INFORMATION ON WHICH TO BASE THE DETERMINATION OF THE SECRETARY OF STATE WHETHER OR NOT TO CONCUR WITH THE APPLICANT'S CERTIFICATION.

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

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

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

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

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



1 IS ABLE TO DECIDE, IN THE FIRST INSTANCE, WHETHER THE APPLICANT'S  
2 PROPOSAL IS PREFERABLE TO ALTERNATIVES.

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

14 2. THE BOARD SHALL RENDER A DECISION UPON THE RECORD EITHER TO GRANT  
15 OR DENY THE APPLICATION AS FILED OR TO CERTIFY THE FACILITY UPON SUCH  
16 TERMS, CONDITIONS, LIMITATIONS OR MODIFICATIONS OF THE CONSTRUCTION OR  
17 OPERATION OF THE FACILITY AS THE BOARD MAY DEEM APPROPRIATE. THE BOARD  
18 SHALL ISSUE, WITH ITS DECISION, AN OPINION STATING IN FULL ITS REASONS  
19 FOR ITS DECISION. THE BOARD SHALL ISSUE AN ORDER UPON THE DECISION AND  
20 THE OPINION EMBODYING THE TERMS AND CONDITIONS THEREOF IN FULL. FOLLOW-  
21 ING ANY REHEARING AND ANY JUDICIAL REVIEW OF THE BOARD'S DECISION, THE  
22 BOARD'S JURISDICTION OVER AN APPLICATION SHALL CEASE, PROVIDED, HOWEVER,  
23 THAT THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL RETAIN JURISDIC-  
24 TION WITH RESPECT TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A  
25 CERTIFICATE. THE COMMISSION SHALL MONITOR, ENFORCE AND ADMINISTER  
26 COMPLIANCE WITH ANY TERMS AND CONDITIONS SET FORTH IN THE BOARD'S ORDER.  
27 THE BOARD MAY NOT GRANT A CERTIFICATE FOR THE CONSTRUCTION OR OPERATION  
28 OF A MAJOR ELECTRIC GENERATING FACILITY, EITHER AS PROPOSED OR AS MODI-  
29 FIED BY THE BOARD, UNLESS IT SHALL FIRST FIND AND DETERMINE:

30 (A)(I) THAT THE FACILITY WILL SATISFY ADDITIONAL ELECTRIC CAPACITY  
31 NEEDS OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE CONSTRUCTION OF THE  
32 FACILITY IS CONSISTENT WITH LONG-RANGE ENERGY PLANNING OBJECTIVES AND  
33 STRATEGIES, PROVIDED HOWEVER, THAT SUBSEQUENT TO THE ADOPTION OF A STATE  
34 ENERGY PLAN PURSUANT TO ARTICLE SIX OF THE ENERGY LAW, THE BOARD SHALL  
35 FIND AND DETERMINE THAT THE CONSTRUCTION OF THE FACILITY IS REASONABLY  
36 CONSISTENT WITH THE POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES  
37 AND STRATEGIES CONTAINED IN THE MOST RECENT STATE ENERGY PLAN; OR (II)  
38 THAT THE FACILITY WAS SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROC-  
39 ESS;

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

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

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

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

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

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

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

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

53 S 169. OPINION TO BE ISSUED WITH DECISION. IN RENDERING A DECISION ON  
54 AN APPLICATION FOR A CERTIFICATE, THE BOARD SHALL ISSUE AN OPINION STAT-  
55 ING ITS REASONS FOR THE ACTION TAKEN. IF THE BOARD HAS FOUND THAT ANY  
56 LOCAL ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER ACTION ISSUED

1 THEREUNDER OR ANY OTHER LOCAL STANDARD OR REQUIREMENT WHICH WOULD BE  
2 OTHERWISE APPLICABLE IS UNREASONABLY RESTRICTIVE PURSUANT TO PARAGRAPH  
3 (E) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTI-  
4 CLE, IT SHALL STATE IN ITS OPINION THE REASONS THEREFOR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 j. Consider for approval or disapproval applications for permits and  
48 certificates including plans or specifications for air contamination  
49 sources and air cleaning installations or any part thereof submitted [to  
50 him pursuant to] CONSISTENT WITH the rules of the department, and  
51 inspect the installation for compliance with the plans or specifica-  
52 tions; provided that in the case of a major steam electric generating  
53 facility, as defined in [either] FORMER section one hundred forty of the  
54 public service law, for which a certificate is required pursuant to  
55 [either] FORMER article eight of [such] THE PUBLIC SERVICE law, OR A  
56 MAJOR ELECTRIC GENERATING FACILITY AS DEFINED IN SECTION ONE HUNDRED

1 SIXTY OF THE PUBLIC SERVICE LAW, FOR WHICH A CERTIFICATE IS REQUIRED  
2 PURSUANT TO ARTICLE TEN OF THE PUBLIC SERVICE LAW, such approval func-  
3 tions [shall] MAY be performed by the state board on electric generation  
4 siting and the environment, as defined in [such] THE PUBLIC SERVICE law,  
5 PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING  
6 AUTHORITY, and such inspection functions shall be performed by the  
7 department[; provided further that nothing]. NOTHING herein shall limit  
8 the authority of the [departments] DEPARTMENT of health and [environ-  
9 mental conservation] THE DEPARTMENT to monitor the environmental and  
10 health impacts resulting from the operation of such major steam electric  
11 generating facility and to enforce applicable provisions of the public  
12 health LAW and [the environmental conservation laws] THIS CHAPTER and  
13 the terms and conditions of the certificate governing the environmental  
14 and health impacts resulting from such operation.

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

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

34 S 7. Section 1014 of the public authorities law, as amended by chapter  
35 446 of the laws of 1972, is amended to read as follows:

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

1 with the provisions of this title or inconsistent with the purposes  
2 thereof, it shall be deemed to be superseded, modified or repealed as  
3 the case may require.

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

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

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

18 S 97-JJJJ. ELECTRIC GENERATING FACILITIES INTERVENOR ACCOUNT. 1. THERE  
19 IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND  
20 THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT TO BE KNOWN AS THE  
21 ELECTRIC GENERATING FACILITIES INTERVENOR ACCOUNT.

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

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

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

36 S 11. This act shall take effect on the one hundred eightieth day  
37 after it shall have become a law, provided that nothing in this section  
38 shall be construed to limit any administrative authority, with respect  
39 to matters included in this act, which existed prior to the effective  
40 date of this act.