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

7250

2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. BALL, ERRIGO, CALHOUN, BACALLES, McDONOUGH, BARCLAY -- Multi-Sponsored by -- M. of A. CROUCH, MOLINARO, OAKS -- 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 electric generating facilities; to amend the environmental conservation law, in relation to making certain conforming changes relating to the siting of electric generating facilities; to amend the public authorities law, in relation to making provisions of law relating to the siting of 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 intervenor account

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

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

ARTICLE 6

ENERGY PLANNING

SECTION 6-102. STATE ENERGY PLANNING BOARD.

6-104. STATE ENERGY PLAN.

6-106. CONDUCT OF THE STATE ENERGY PLANNING PROCEEDING.

S 6-102. STATE ENERGY PLANNING BOARD. 1. THERE SHALL BE ESTABLISHED A STATE ENERGY PLANNING BOARD, HEREINAFTER REFERRED TO IN THIS ARTICLE AS THE "BOARD," WHICH SHALL CONSIST OF THE CHAIR OF THE PUBLIC SERVICE COMMISSION, THE DIRECTOR OF THE BUDGET, THE SECRETARY OF STATE, THE COMMISSIONER OF HEALTH, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF TRANSPORTATION AND THE PRESIDENT OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY. ANY DECISION OR ACTION BY THE BOARD SHALL BE BY MAJORITY VOTE.

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

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

3. THE BOARD SHALL HAVE THE POWERS:

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

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

(C) TO ISSUE SUBPOENAS AND SUBPOENAS DUCES TECUM;

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

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

S 6-104. STATE ENERGY PLAN. 1. THE BOARD SHALL ADOPT A STATE ENERGY PLAN IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

2. THE STATE ENERGY PLAN SHALL INCLUDE:

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

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

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

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

(V) ENERGY PRICES;

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

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

(D) A STATEMENT OF ENERGY POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES APPROPRIATE TO ACHIEVE, AMONG OTHER THINGS, THE LEAST COST INTEGRATION OF ENERGY SUPPLY SOURCES AND DEMAND-REDUCING MEASURES FOR SATISFYING ENERGY SUPPLY REQUIREMENTS, GIVING DUE REGARD TO SUCH FACTORS AS RATEPAYER IMPACTS, SECURITY AND DIVERSITY OF FUEL SUPPLIES AND GENERATING MODES, PROTECTION OF PUBLIC HEALTH AND SAFETY, ADVERSE AND BENEFICIAL ENVIRONMENTAL IMPACTS, CONSERVATION OF ENERGY AND ENERGY RESOURCES, AND THE ABILITY OF THE STATE TO COMPETE ECONOMICALLY;

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

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

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

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

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

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

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

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

S 6-106. CONDUCT OF THE STATE ENERGY PLANNING PROCEEDING. 1. BY MAY FIRST, TWO THOUSAND ELEVEN, AND EVERY FOUR YEARS FOLLOWING THE ADOPTION OF THE MOST RECENT PLAN, THE STATE ENERGY PLANNING BOARD SHALL ADOPT A STATE ENERGY PLAN, WHICH ADDRESSES EACH ITEM IDENTIFIED IN SUBDIVISION TWO OF SECTION 6-104 OF THIS ARTICLE PROVIDED, HOWEVER, THE BOARD MAY ADOPT SUCH A PLAN MORE FREQUENTLY FOR GOOD CAUSE SHOWN.

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

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

(B) THE PREPARATION AND ISSUANCE OF A DRAFT PLAN, SUBSEQUENT TO THE FILING OF INFORMATION BY ENERGY MARKET PARTICIPANTS, WHICH SHALL ADDRESS EACH ITEM IDENTIFIED IN SUBDIVISION TWO OF SECTION 6-104 OF THIS ARTICLE;

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

(D) EVIDENTIARY HEARINGS, AT THE REQUEST OF ANY INTERESTED PERSON, SUBSEQUENT TO THE ISSUANCE OF A DRAFT PLAN, ON THE ISSUES IDENTIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 6-104 OF THIS ARTICLE OR ON THE FACTUAL BASIS FOR ANY OTHER ISSUE IDENTIFIED IN SUBDIVISION TWO OF SECTION 6-104 OF THIS ARTICLE; AND

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

3. INFORMATION FILED BY ENERGY MARKET PARTICIPANTS SHALL INCLUDE THE FOLLOWING:

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

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

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

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

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

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

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

(VI) A STATEMENT OF RESEARCH AND DEVELOPMENT PLANS, INCLUDING OBJECTIVES AND PROGRAMS IN THE AREAS OF ENERGY CONSERVATION, LOAD MANAGEMENT, ELECTRIC GENERATION AND TRANSMISSION, NEW ENERGY TECHNOLOGIES AND POLLUTION ABATEMENT AND CONTROL, RECENT RESULTS OF SUCH PROGRAMS UNDERTAKEN OR FUNDED TO DATE, AND AN ASSESSMENT OF THE POTENTIAL IMPACTS OF SUCH RESULTS;

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

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

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

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

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

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

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

(III) AN ASSESSMENT OF THE ABILITY OF EXISTING GAS SUPPLY SOURCES, AND THOSE REASONABLY CERTAIN TO BE AVAILABLE, TO SATISFY GAS SUPPLY REQUIREMENTS;

(IV) AN INVENTORY OF (1) ALL EXISTING SUPPLY SOURCES, STORAGE FACILITIES, AND TRANSMISSION FACILITIES WHICH ARE USED IN PROVIDING SERVICE WITHIN THE STATE, (2) THE TRANSMISSION AND STORAGE FACILITIES UNDER CONSTRUCTION WHICH WOULD BE USED IN PROVIDING SERVICE WITHIN THE STATE, THEIR PROJECTED COSTS AND CAPACITIES, INCLUDING PEAKING CAPACITY, (3) TRANSMISSION FACILITY ADDITIONS PROPOSED TO BE CONSTRUCTED BY MEMBERS OF THE NORTHEAST GAS ASSOCIATION OR ANY SUCCESSOR ORGANIZATION, (4) TRANS-

MISSION FACILITIES OPERATED, OR PLANNED TO BE OPERATED, BY OTHERS, TO THE EXTENT INFORMATION CONCERNING THE SAME IS KNOWN;

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

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

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

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

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

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

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

(D) EACH ELECTRIC UTILITY CORPORATION OWNING BOTH TRANSMISSION AND DISTRIBUTION FACILITIES AND PROVIDING ELECTRIC CAPACITY AND ENERGY SERVICES TO CUSTOMERS WHO DO NOT CHOOSE TO RECEIVE ELECTRIC CAPACITY AND ENERGY SERVICES FROM ANOTHER PROVIDER, IN THE PROCUREMENT OF THOSE REASONABLY AVAILABLE SUPPLY-SIDE AND DEMAND-SIDE RESOURCES THAT SERVE THE PUBLIC INTEREST, TAKES INTO ACCOUNT SUCH FACTORS AS SYSTEM RELIABILITY, BILL IMPACTS, IMPACTS ON EFFICIENT WHOLESALE COMPETITIVE MARKETS, ENVIRONMENTAL IMPACTS, EFFICIENT USE OF ENERGY RESOURCES, PRESERVATION OR CREATION OF ECONOMIC OPPORTUNITIES AND GROWTH, FUEL AVAILABILITY AND DIVERSITY, AND PUBLIC HEALTH AND WELFARE.

(I) EACH SUCH ELECTRIC CORPORATION SHALL PROVIDE A REPORT ANNUALLY TO THE MEMBERS OF THE BOARD DESCRIBING ITS CURRENT ELECTRIC RESOURCE PORTFOLIO UTILIZED IN PROVIDING SERVICES TO ELECTRIC CUSTOMERS WITHIN ITS SERVICE TERRITORY WHO DO NOT CHOOSE TO RECEIVE ELECTRIC CAPACITY AND ENERGY SERVICE FROM ANOTHER PROVIDER. FOR THE PURPOSES OF THIS PARAGRAPH, "ELECTRIC RESOURCE PORTFOLIO" SHALL MEAN THE COMBINATION OF SUPPLY-SIDE RESOURCES AND DEMAND-SIDE RESOURCES THAT TOGETHER PROVIDE RELIABLE ELECTRIC CAPACITY AND ENERGY SERVICES TO ELECTRIC UTILITY CORPORATION CUSTOMERS.

(II) FOR THE PURPOSES OF THIS PARAGRAPH, "SUPPLY-SIDE RESOURCES" SHALL INCLUDE CAPACITY AND ENERGY DERIVED, DURING THE PERIOD COVERED BY THE MOST RECENT ANNUAL ELECTRIC RESOURCE REPORT FILED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, FROM EXISTING POWER PLANTS, INCLUDING RENEWABLE ENERGY RESOURCES AND DISTRIBUTED GENERATION RESOURCES, WHICH DELIVER POWER TO THE TRANSMISSION AND/OR DISTRIBUTION SYSTEM.

(III) FOR THE PURPOSES OF THIS PARAGRAPH, "DEMAND-SIDE RESOURCES" SHALL INCLUDE CAPACITY AND ENERGY DERIVED FROM, AMONG OTHER THINGS, ENERGY EFFICIENCY, PUBLIC AWARENESS AND OUTREACH PLANS, AND LOAD MANAGEMENT EFFORTS THAT CAN BE MONITORED IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR OR ANY SUCCESSOR ORGANIZATION.

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

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

6. THE BOARD MAY AMEND THE STATE ENERGY PLAN, OR ASPECTS THEREOF, UPON ITS OWN INITIATIVE OR UPON THE WRITTEN APPLICATION OF ANY INTERESTED PERSON. IN CONNECTION WITH ANY SUCH AMENDMENT, THE BOARD MAY REQUIRE THE FILING OF SUCH INFORMATION BY ENERGY MARKET PARTICIPANTS AS MAY BE REQUIRED, CONSISTENT WITH REGULATION. PRIOR TO ADOPTING ANY PROPOSED AMENDMENT TO AN ELEMENT OF THE PLAN IDENTIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 6-104 OF THIS ARTICLE, THE BOARD SHALL HOLD EVIDENTIARY HEARINGS, UPON THE WRITTEN APPLICATION OF AN INTERESTED PARTY. IN ADDITION, UPON THE WRITTEN APPLICATION OF AN INTERESTED PARTY, THE BOARD SHALL CONDUCT EVIDENTIARY HEARINGS ON THE FACTUAL BASIS FOR ANY OTHER ISSUE IDENTIFIED IN SUBDIVISION TWO OF SECTION 6-104 OF THIS ARTICLE. PRIOR TO ADOPTING A PROPOSED AMENDMENT TO ANY ELEMENT OF THE PLAN, THE BOARD SHALL PREPARE AND PUBLISH IN THE STATE REGISTER NOTICE OF ANY DRAFT AMENDMENT AND REASONS THEREFOR AND SHALL SOLICIT PUBLIC COMMENTS THEREON. THE BOARD SHALL ADOPT AN AMENDMENT TO THE STATE ENERGY PLAN, OR ASPECTS THEREOF, UPON A FINDING BY THE BOARD THAT THERE HAS BEEN A MATERIAL AND SUBSTANTIAL CHANGE IN FACT OR CIRCUMSTANCE SINCE THE MOST RECENT PLAN WAS ADOPTED. A DECISION OF THE BOARD THAT NO AMENDMENT IS NECESSARY, TOGETHER WITH THE REASONS SUPPORTING SUCH DETERMINATION, SHALL BE FINAL.

7. ANY PERSON WHO PARTICIPATED IN THE STATE ENERGY PLANNING PROCEEDING OR ANY PERSON WHO SOUGHT AN AMENDMENT OF THE STATE ENERGY PLAN PURSUANT TO SUBDIVISION SIX OF THIS SECTION, MAY OBTAIN, PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, JUDICIAL REVIEW OF THE BOARD'S DECISION ADOPTING A PLAN, OR ANY AMENDMENT THERETO, OR OF THE BOARD'S DECISION NOT TO AMEND SUCH PLAN PURSUANT TO SUBDIVISION SIX OF THIS SECTION. ANY SUCH SPECIAL PROCEEDING SHALL BE BROUGHT IN THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE THIRD JUDICIAL DEPARTMENT. SUCH PROCEEDING SHALL BE INITIATED BY THE FILING OF A PETITION IN SUCH COURT WITHIN THIRTY DAYS AFTER THE ISSUANCE OF A DECISION BY THE BOARD. THE PROCEEDING SHALL HAVE A LAWFUL PREFERENCE OVER ANY OTHER MATTER, SHALL BE HEARD ON AN EXPEDITED BASIS AND SHALL BE COMPLETED IN ALL RESPECTS, INCLUDING ANY SUBSEQUENT APPEAL, WITHIN ONE HUNDRED EIGHTY DAYS OF THE FILING OF THE PETITION. WHERE MORE THAN ONE SUCH PETITION IS FILED, THE COURT MAY PROVIDE FOR CONSOLIDATION OF THE PROCEEDINGS. NOTWITHSTANDING THE PROVISIONS OF ARTICLE SEVEN OR TEN OF THE PUBLIC SERVICE LAW, THE PROCEDURE SET FORTH IN THIS SUBDIVISION SHALL CONSTITUTE THE EXCLUSIVE MEANS FOR SEEKING JUDICIAL REVIEW OF ANY ELEMENT OF THE PLAN.

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

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

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

2. THE COMMISSION SHALL HAVE AUTHORITY TO REQUIRE EACH ELECTRIC CORPORATION TO CONDUCT COMPETITIVE BIDDING AUCTIONS OR OTHER PROCUREMENT PROGRAMS FOR THE PURPOSE OF SATISFYING ELECTRIC CAPACITY NEEDS FROM REASONABLY AVAILABLE SOURCES AND SUPPLIERS OF ELECTRIC CAPACITY.

3. THE COMMISSION SHALL HAVE AUTHORITY TO PRESCRIBE GUIDELINES, RULES AND REGULATIONS REGARDING THE PARTICIPATION OF UTILITY COMPANIES, THEIR AFFILIATES, SUBSIDIARIES AND ANY OTHER CORPORATION OR PERSON IN COMPETITIVE BIDDING AUCTIONS, OR REGARDING ANY OTHER METHOD OF ACQUIRING ELECTRIC CAPACITY. ANY RULES, REGULATIONS, GUIDELINES AND DETERMINATIONS ADOPTED OR ISSUED BY THE COMMISSION PERTAINING TO ACQUISITION OF ELECTRIC CAPACITY SHALL BE CONSISTENT WITH THE POLICY STATED IN SUBDIVISION ONE OF THIS SECTION, AND SUBSEQUENT TO MAY FIRST, TWO THOUSAND ELEVEN, SHALL ALSO REQUIRE ACQUISITIONS OF ELECTRIC CAPACITY TO BE REASONABLY CONSISTENT WITH THE FORECASTS, POLICIES AND LONG-RANGE PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE MOST RECENT FINAL STATE ENERGY PLAN ADOPTED PURSUANT TO ARTICLE SIX OF THE ENERGY LAW, PROVIDED, HOWEVER, THAT ANY DETERMINATION MADE BY THE COMMISSION UNDER THIS SECTION THAT IS NOT REASONABLY CONSISTENT WITH THE PLAN SHALL BE DEEMED IN COMPLIANCE WITH THIS SECTION, PROVIDED THAT SUCH DETERMINATION BY THE COMMISSION INCLUDES A FINDING THAT THE ELEMENT OF THE PLAN IS NO LONGER REASONABLE OR PROBABLE BASED ON A MATERIAL AND SUBSTANTIAL CHANGE IN FACT OR CIRCUMSTANCE, AND A STATEMENT EXPLAINING THE BASIS FOR THIS FINDING.

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

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

ARTICLE 10
SITING OF ELECTRIC
GENERATING FACILITIES

SECTION 160. DEFINITIONS.
161. GENERAL PROVISIONS RELATING TO THE BOARD.
162. BOARD CERTIFICATE.
163. PRE-APPLICATION PROCEDURES.
163-A. REPOWERING PROJECTS AND NON-MAJOR ELECTRIC GENERATING FACILITIES.
164. APPLICATION FOR A CERTIFICATE.
165. HEARING SCHEDULE.

166. PARTIES TO A CERTIFICATION PROCEEDING.
167. CONDUCT OF HEARING.
168. BOARD DECISIONS.
169. OPINION TO BE ISSUED WITH DECISION.
170. REHEARING AND JUDICIAL REVIEW.
171. JURISDICTION OF COURTS.
172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.

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

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

2. "MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING FACILITY THAT IS OPERATED AT A TOTAL NET GENERATING OUTPUT TO THE ELECTRIC SYSTEM OF EIGHTY THOUSAND KILOWATTS OR MORE, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAPTER.

3. "NON-MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING FACILITY THAT IS OPERATED AT A TOTAL NET GENERATING OUTPUT TO THE ELECTRIC SYSTEM OF FIFTY THOUSAND KILOWATTS OR MORE, BUT LESS THAN EIGHTY THOUSAND KILOWATTS, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAPTER.

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

5. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST OF SEVEN PERSONS: THE CHAIRPERSON OF THE COMMISSION, WHO SHALL SERVE AS CHAIRPERSON OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; THE COMMISSIONER OF HEALTH; THE CHAIRPERSON OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC DEVELOPMENT, AND TWO AD HOC PUBLIC MEMBERS APPOINTED BY THE GOVERNOR. ONE AD HOC PUBLIC MEMBER SHALL BE A RESIDENT OF THE JUDICIAL DISTRICT IN WHICH THE FACILITY AS PROPOSED IS TO BE LOCATED AND ONE AD HOC PUBLIC MEMBER SHALL BE A RESIDENT OF THE COUNTY IN WHICH THE FACILITY AS PROPOSED IS TO BE LOCATED. IN SELECTING THE AD HOC MEMBERS, THE GOVERNOR MAY CONSIDER RECOMMENDATIONS FROM COMMUNITY-BASED ORGANIZATIONS AND RESIDENTS FROM THE COUNTY, MUNICIPALITY AND/OR COMMUNITY IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED. THE TERM OF THE AD HOC MEMBERS SHALL CONTINUE UNTIL A FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEEDING FOR WHICH THEY WERE APPOINTED, INCLUDING ANY REHEARING AND ANY JUDICIAL REVIEW OF SUCH DECISION.

6. "REPOWERING PROJECT" MEANS A MAJOR OR NON-MAJOR ELECTRIC GENERATING FACILITY THAT PROPOSES TO MODIFY OR ENTIRELY OR PARTIALLY REPLACE AN EXISTING ELECTRIC GENERATING FACILITY, IN A MANNER BEYOND THE SCOPE OF THE PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION FOUR OF SECTION ONE HUNDRED SIXTY-TWO OF THIS ARTICLE, IN SUBSTANTIALLY THE SAME LOCATION AS THE EXISTING FACILITY OR TO SITE A NEW MAJOR OR NON-MAJOR ELECTRIC GENERATING FACILITY ADJACENT OR CONTIGUOUS TO SUCH EXISTING FACILITY, WHERE SUCH PROPOSED MODIFIED FACILITY OR EXISTING AND NEW FACILITY IN COMBINATION:

(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) PARTICU-

LATE MATTER. THE PERCENTAGE REDUCTION IN THE RATE OF SUCH EMISSIONS SHALL BE CALCULATED BY COMPARING THE ANNUALIZED POTENTIAL TO EMIT OF THE EXISTING FACILITY (EXPRESSED IN POUNDS PER MEGAWATT-HOUR) AT THE TIME THE APPLICATION UNDER THIS ARTICLE IS FILED WITH THE CHAIRPERSON AND THE FUTURE ANNUALIZED POTENTIAL TO EMIT OF THE MODIFIED FACILITY OR OF THE COMBINATION OF THE EXISTING AND NEW FACILITY (EXPRESSED IN POUNDS PER MEGAWATT-HOUR) AND BASED UPON REASONABLY EXPECTED OPERATING CONDITIONS PROPOSED OR IDENTIFIED 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 EMISSION RATE, CONSISTENT WITH REQUIREMENTS OF APPLICABLE FEDERAL OR STATE LAW;

(C) WHEN A COOLING WATER INTAKE STRUCTURE IS PLANNED, INSTALLS AIR COOLED CONDENSERS OR INSTALLS EVAPORATIVE COOLING WATER SYSTEMS OR SUCH OTHER TECHNOLOGIES FOR THE MODIFIED FACILITY OR FOR THE EXISTING AND NEW FACILITY THAT WOULD BE DESIGNED TO WITHDRAW NO MORE THAN FIFTEEN GALLONS PER MINUTE PER MEGAWATT OF TOTAL PLANT GENERATING CAPACITY FOR COMBINED CYCLE COMBUSTION TURBINE TECHNOLOGY PLANTS, FROM A SOURCE WATER BODY FOR COOLING PURPOSES; AND

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

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

8. "APPROVED PROCUREMENT PROCESS" MEANS ANY ELECTRIC CAPACITY PROCUREMENT PROCESS APPROVED BY THE COMMISSION AS REASONABLY CONSISTENT WITH THE MOST RECENT STATE ENERGY PLAN ADOPTED PURSUANT TO ARTICLE SIX OF THE ENERGY LAW.

S 161. GENERAL PROVISIONS RELATING TO THE BOARD. UPON RECEIPT OF AN APPLICATION UNDER THIS ARTICLE, THE CHAIRPERSON SHALL PROMPTLY NOTIFY THE GOVERNOR. WITHIN THIRTY DAYS OF SUCH NOTIFICATION, THE GOVERNOR SHALL APPOINT THE AD HOC MEMBERS. FOUR OF THE SEVEN PERSONS ON THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE BOARD, AND THE DECISION OF FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE ACTION OF THE BOARD. THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE THE POWER TO ADOPT RULES AND REGULATIONS RELATING TO THE PROCEDURES TO BE USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTICLE, INCLUDING THE SUSPENSION OR REVOCATION THEREOF. THE CHAIRPERSON, AFTER CONSULTATION WITH THE OTHER MEMBERS OF THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY RULINGS REGARDING THE APPLICABILITY OF, OR ANY OTHER QUESTION UNDER, THIS ARTICLE AND RULES AND REGULATIONS ADOPTED HEREUNDER AND TO GRANT REQUESTS FOR EXTENSIONS OR AMENDMENTS TO CERTIFICATE TERMS AND CONDITIONS, PROVIDED THAT NO PARTY TO THE PROCEEDING OPPOSES SUCH REQUEST FOR EXTENSIONS OR AMENDMENTS WITHIN THIRTY DAYS OF THE FILING OF SUCH REQUEST. REGULATIONS ADOPTED BY THE BOARD MAY PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY.

IN ADDITION TO THE REQUIREMENTS OF THE PUBLIC OFFICERS LAW, NO PERSON SHALL BE ELIGIBLE TO BE AN APPOINTEE OF THE GOVERNOR TO THE BOARD WHO HOLDS ANOTHER STATE OR LOCAL OFFICE. NO MEMBER OF THE BOARD MAY RETAIN OR HOLD ANY OFFICIAL RELATION TO, OR ANY SECURITIES OF AN ELECTRIC UTILITY CORPORATION OPERATING IN THE STATE OR PROPOSED FOR OPERATION IN THE STATE, ANY AFFILIATE THEREOF OR ANY OTHER COMPANY, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR JOINT-STOCK ASSOCIATION THAT MAY APPEAR

BEFORE THE BOARD, NOR SHALL EITHER OF THE APPOINTEES HAVE BEEN A DIRECTOR, OFFICER OR, WITHIN THE PREVIOUS TEN YEARS, AN EMPLOYEE THEREOF. THE AD HOC APPOINTEES OF THE GOVERNOR SHALL RECEIVE THE SUM OF TWO HUNDRED DOLLARS FOR EACH DAY IN WHICH THEY ARE ACTUALLY ENGAGED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS ARTICLE PLUS ACTUAL AND NECESSARY EXPENSES INCURRED BY THEM IN THE PERFORMANCE OF SUCH DUTIES. THE CHAIRPERSON SHALL PROVIDE SUCH PERSONNEL, HEARING EXAMINERS, SUBORDINATES AND EMPLOYEES AND SUCH LEGAL, TECHNOLOGICAL, SCIENTIFIC, ENGINEERING AND OTHER SERVICES AND SUCH MEETING ROOMS, HEARING ROOMS AND OTHER FACILITIES AS MAY BE REQUIRED IN PROCEEDINGS UNDER THIS ARTICLE. THE BOARD MAY PROVIDE FOR ITS OWN REPRESENTATION AND APPEARANCE IN ALL ACTIONS AND PROCEEDINGS INVOLVING ANY QUESTION UNDER THIS ARTICLE. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE ASSOCIATE HEARING EXAMINERS. EACH MEMBER OF THE BOARD OTHER THAN THE AD HOC APPOINTEES OF THE GOVERNOR MAY DESIGNATE AN ALTERNATE TO SERVE INSTEAD OF THE MEMBER WITH RESPECT TO ALL PROCEEDINGS PURSUANT TO THIS ARTICLE. SUCH DESIGNATION SHALL BE IN WRITING AND FILED WITH THE CHAIRPERSON.

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

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

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

4. THIS ARTICLE SHALL NOT APPLY:

(A) TO AN ELECTRIC GENERATING FACILITY IF, ON OR BEFORE THE ONE HUNDRED EIGHTIETH DAY AFTER THE EFFECTIVE DATE OF THIS ARTICLE, AN APPLICATION HAS BEEN MADE FOR A LICENSE, PERMIT, CERTIFICATE, CONSENT OR APPROVAL FROM ANY FEDERAL, STATE OR LOCAL COMMISSION, AGENCY, BOARD OR REGULATORY BODY, IN WHICH APPLICATION THE LOCATION OF AN ELECTRIC GENERATING FACILITY HAS BEEN DESIGNATED BY THE APPLICANT; OR IF THE FACILITY IS UNDER CONSTRUCTION AT SUCH TIME;

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

(C) TO REPAIRS, REPLACEMENTS, MODIFICATIONS AND IMPROVEMENTS OF AN 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;

(D) TO AN 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

(E) TO AN 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 AN ELECTRIC GENERATING FACILITY EXCLUDED FROM THIS ARTICLE PURSUANT TO PARAGRAPH (A), (C), (D) OR (E) OF SUBDIVISION FOUR OF THIS SECTION MAY ELECT TO BECOME SUBJECT TO THE PROVISIONS OF THIS ARTICLE BY DELIVERING NOTICE OF SUCH ELECTION TO THE CHAIRPERSON OF THE BOARD. THIS ARTICLE SHALL THEREAFTER APPLY TO EACH ELECTRIC GENERATING FACILITY IDENTIFIED IN SUCH NOTICE FROM THE DATE OF ITS RECEIPT BY THE CHAIRPERSON OF THE BOARD. FOR THE PURPOSES OF THIS ARTICLE, EACH SUCH FACILITY SHALL BE TREATED IN THE SAME MANNER AS A MAJOR OR NON-MAJOR ELECTRIC GENERATING FACILITY OR REPOWERING PROJECT AS APPROPRIATE AND 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 CHAIRPERSON OF THE BOARD A PRELIMINARY SCOPING STATEMENT CONTAINING A BRIEF DISCUSSION, ON THE BASIS OF AVAILABLE INFORMATION, OF THE FOLLOWING ITEMS:

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

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

(C) A PRELIMINARY DESCRIPTION OF PREDICTABLE, SIGNIFICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACTS, IF ANY, FROM THE CONSTRUCTION AND/OR OPERATION OF THE PROPOSED FACILITY IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE ANALYSIS OF ENVIRONMENTAL JUSTICE ISSUES;

(D) ANY PROPOSED STUDY OR PROGRAM OF STUDIES DESIGNED TO EVALUATE POTENTIAL ENVIRONMENTAL IMPACTS, INCLUDING THE PREDICTABLE HEALTH IMPACTS THEREOF;

(E) ANY MEASURES PROPOSED TO MITIGATE ENVIRONMENTAL IMPACTS, INCLUDING THE PREDICTABLE HEALTH IMPACTS THEREOF;

(F) 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;

(G) 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

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

2. EACH PRELIMINARY SCOPING STATEMENT SHALL BE ACCOMPANIED BY A FEE OF FIFTY THOUSAND DOLLARS, PROVIDED, HOWEVER, IN THE CASE OF A NON-MAJOR ELECTRIC GENERATING FACILITY OR A REPOWERING PROJECT WHICH INCREASES THE TOTAL NET GENERATING OUTPUT TO THE ELECTRIC SYSTEM BY LESS THAN EIGHTY THOUSAND KILOWATTS, EACH SUCH STATEMENT SHALL BE ACCOMPANIED BY A FEE OF TWENTY THOUSAND DOLLARS, TO BE DEPOSITED IN THE INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-TT OF THE STATE FINANCE

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

3. SUCH PERSON SHALL SERVE COPIES OF THE PRELIMINARY SCOPING STATEMENT ON PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE AND PROVIDE NOTICE OF SUCH STATEMENT AS PROVIDED IN PARAGRAPH (B) OF SUCH SUBDIVISION. SUCH NOTICE SHALL INCLUDE THE AVAILABILITY OF FUNDS FOR ELIGIBLE PERSONS TO PARTICIPATE IN THE PRE-APPLICATION PROCESS.

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

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

PRE-APPLICATION PROCESS, INCLUDING THE DISBURSEMENT OF THE FUNDS PROVIDED FOR IN SUBDIVISION TWO OF THIS SECTION, AND MEDIATE ANY ISSUE RELATING TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY SUCH STUDIES OR PROGRAMS OF STUDY.

S 163-A. REPOWERING PROJECTS AND NON-MAJOR ELECTRIC GENERATING FACILITIES. 1. ANY PERSON PROPOSING TO SITE A NON-MAJOR ELECTRIC GENERATING FACILITY OR A REPOWERING PROJECT SHALL BE REQUIRED TO FOLLOW THE PROCEDURES SET FORTH IN THIS SECTION. ANY PERSON PROPOSING TO UNDERTAKE A REPOWERING PROJECT OR TO SITE A NON-MAJOR ELECTRIC GENERATING FACILITY 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 OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY, INCLUDING, BUT NOT LIMITED TO, AVAILABLE SITE INFORMATION, MAPS, AND DESCRIPTIONS;

(B) ANALYSES THAT HAVE BEEN MADE (I) FOR REPOWERING PROJECTS, OF THE EXPECTED ENVIRONMENTAL IMPACTS OF THE EXISTING ELECTRIC GENERATING FACILITY; (II) OF CONCEPTUAL ARCHITECTURAL AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE REPOWERING PROJECT OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY WITH THE ENVIRONMENT; AND (III) OF THE EXPECTED ENVIRONMENTAL IMPACTS OF THE REPOWERING PROJECT OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY, 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 OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY, AND ANY MEASURES FOR CONTROL, ABATEMENT, OR MITIGATION OF SUCH IMPACTS, AND THE COMPATIBILITY OF THE REPOWERING PROJECT OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY WITH EXISTING FEDERAL, STATE AND MUNICIPAL ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS;

(C) ANALYSES THAT HAVE BEEN MADE OF THE CONSISTENCY WITH ANY APPLICABLE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION REGARDING ENVIRONMENTAL JUSTICE ISSUES, IF THE PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY MAY HAVE PREDICTABLE SIGNIFICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACTS FROM THE CONSTRUCTION AND/OR OPERATION OF THE PROPOSED FACILITY IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

(D) SUCH EVIDENCE AS MAY ENABLE THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION TO EVALUATE THE PROPOSED POLLUTION CONTROL SYSTEMS OF THE REPOWERING PROJECT OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY 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 CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT;

(E) A STATEMENT AS TO HOW THE CONSTRUCTION AND OPERATION OF THE REPOWERING PROJECT OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES, WILL COMPLY WITH ENVIRONMENTAL, HEALTH AND SAFETY REGULATIONS AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A STATEMENT AS TO WHY ANY VARIANCES OR EXCEPTIONS MAY BE GRANTED;

(F) A DESCRIPTION OF THE FUEL INTERCONNECTION AND SUPPLY FOR THE REPOWERING PROJECT OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY AND AN ELECTRIC INTERCONNECTION STUDY, CONSISTING GENERALLY OF A DESIGN STUDY AND A SYSTEM RELIABILITY IMPACT STUDY;

(G) A PLAN FOR SECURITY OF THE REPOWERING PROJECT OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY DURING ITS CONSTRUCTION AND OPERATION, TO BE REVIEWED BY THE BOARD IN CONSULTATION WITH THE OFFICE OF HOMELAND SECURITY; AND

(H) SUCH OTHER INFORMATION AS THE APPLICANT MAY CONSIDER RELEVANT OR AS MAY BE REQUIRED BY THE BOARD TO MAKE ITS FINDINGS PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE. COPIES OF THE APPLICATION, INCLUDING THE REQUIRED INFORMATION, SHALL BE AVAILABLE FOR PUBLIC INSPECTION, PROVIDED, HOWEVER, THAT SUCH INSPECTION IS CONSISTENT WITH ARTICLE SIX OF THE PUBLIC OFFICERS LAW AND ARTICLE TWENTY-SIX OF THE EXECUTIVE LAW.

2. THE APPLICATION SHALL BE ACCOMPANIED BY:

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

(B) PROOF THAT THE APPLICANT HAS CONDUCTED PUBLIC OUTREACH WITHIN THE SIXTY DAYS PRECEDING THE FILING OF THE APPLICATION, FOR PURPOSES OF FACILITATING COMMUNICATION BETWEEN THE APPLICANT AND INTERESTED AND AFFECTED PERSONS AND ADVISING SUCH PERSONS ABOUT THE REPOWERING PROJECT OR PROPOSED NON-MAJOR ELECTRIC GENERATING FACILITY.

3. THE APPLICATION SHALL BE ACCOMPANIED BY A FEE TO BE DETERMINED PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION. FOR THE PURPOSES OF THIS SUBDIVISION, "INCREASED NET GENERATING OUTPUT" SHALL BE DETERMINED USING THE FOLLOWING FORMULA: THE NET GENERATING OUTPUT OF THE PROPOSED FACILITY IN THOUSANDS OF KILOWATTS MINUS THE NET GENERATING OUTPUT OF THE EXISTING FACILITY IN THOUSANDS OF KILOWATTS.

(A) FOR A REPOWERING PROJECT THAT RESULTS IN AN INCREASED NET GENERATING OUTPUT OF MORE THAN FIFTY THOUSAND KILOWATTS BUT LESS THAN EIGHTY THOUSAND KILOWATTS, A FEE IN AN AMOUNT EQUAL TO FIVE HUNDRED DOLLARS FOR EACH THOUSAND KILOWATTS OF INCREASED NET GENERATING OUTPUT, BUT A FEE NO MORE THAN FORTY THOUSAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE PRE-APPLICATION FEE PROVIDED FOR IN SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE.

(B) FOR A REPOWERING PROJECT THAT RESULTS IN AN INCREASED NET GENERATING OUTPUT OF EIGHTY THOUSAND KILOWATTS OR MORE, A FEE IN AN AMOUNT EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF INCREASED NET GENERATING OUTPUT, BUT A FEE NO MORE THAN THREE HUNDRED THOUSAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE PRE-APPLICATION FEE PROVIDED FOR IN SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE.

(C) FOR A NON-MAJOR ELECTRIC GENERATING FACILITY, A FEE IN AN AMOUNT EQUAL TO FIVE HUNDRED DOLLARS FOR EACH THOUSAND KILOWATTS OF GENERATING CAPACITY OF THE SUBJECT FACILITY, BUT A FEE NO MORE THAN FORTY THOUSAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE PRE-APPLICATION FEE PROVIDED FOR IN SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE.

4. SUCH FEE SHALL BE DEPOSITED IN THE INTERVENOR ACCOUNT ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-TT OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION IN ACCORDANCE WITH SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE. ANY MONEYS REMAINING IN THE INTERVENOR ACCOUNT SHALL BE RETURNED TO THE APPLICANT WITHIN FORTY-FIVE DAYS AFTER THE BOARD HAS ISSUED ITS DECISION ON AN APPLICATION UNDER THIS ARTICLE AND THE TIME FOR APPLYING FOR A REHEARING AND JUDICIAL REVIEW HAS EXPIRED.

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

6. WITHIN SIXTY DAYS OF RECEIPT OF AN APPLICATION FILED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE CHAIRPERSON OF THE BOARD SHALL DETERMINE WHETHER OR NOT THE APPLICATION COMPLIES WITH SUBDIVISION TWO OF THIS SECTION AND ANY REGULATIONS PROMULGATED PURSUANT THERETO. THE CHAIRPERSON OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED TO SUPPLEMENT AN APPLICATION. IN THE EVENT THAT THE CHAIRPERSON OF THE BOARD DETERMINES THAT THE APPLICATION IS FOR A FACILITY NOT ELIGIBLE TO BE SUBJECT TO THE REQUIREMENTS OF THIS SECTION, THE APPLICATION SHALL NO LONGER BE SUBJECT TO, OR ELIGIBLE FOR, THE PROCEDURES SET FORTH IN THIS SECTION AND SHALL BE SUBJECT TO THE PROCEDURES SET FORTH IN SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE. THE APPLICATION FILED HEREUNDER MAY BE USED TO PREPARE AN APPLICATION UNDER SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE. NOTICE OF COMPLIANCE SHALL BE GIVEN TO PARTIES TO THE CERTIFICATION PROCEEDING PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-SIX OF THIS ARTICLE AND SHALL ADDITIONALLY BE PUBLISHED ON THE WEB SITE OF THE DEPARTMENT.

7. PARTIES AND INTERESTED PERSONS SHALL HAVE FORTY-FIVE DAYS FROM THE DATE THE APPLICATION IS DEEMED COMPLIANT TO FILE WRITTEN COMMENTS WITH REGARD TO SUCH APPLICATION. A PUBLIC STATEMENT HEARING SHALL BE HELD WITHIN THE COMMENT PERIOD AT WHICH THE PRESIDING EXAMINER AND ASSOCIATE EXAMINER SHALL JOINTLY PRESIDE. WITHIN SIXTY DAYS OF THE APPLICATION BEING DEEMED COMPLIANT, THE PRESIDING EXAMINER, AFTER CONSULTATION WITH THE ASSOCIATE EXAMINER, SHALL DETERMINE WHETHER THERE IS A RELEVANT AND MATERIAL ISSUE OF FACT AND SHALL DETERMINE WHETHER OR NOT TO SCHEDULE AN EVIDENTIARY HEARING ON SUCH ISSUE OF FACT. SUCH EVIDENTIARY HEARING, IF APPLICABLE, SHALL BE CONDUCTED PURSUANT TO THE RELEVANT PROVISIONS OF SECTIONS ONE HUNDRED SIXTY-FIVE AND ONE HUNDRED SIXTY-SEVEN OF THIS ARTICLE, WHICH ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

8. WITHIN THIRTY DAYS OF THE CLOSE OF THE PUBLIC STATEMENT HEARING AND ANY EVIDENTIARY HEARING, IF APPLICABLE, AND THE FILING OF ANY BRIEFS, IF APPLICABLE, THE BOARD SHALL RENDER A FINAL DETERMINATION ON AN APPLICATION UNDER THIS SECTION FOR A CERTIFICATE UPON THE RECORD MADE BEFORE THE PRESIDING AND ASSOCIATE EXAMINERS AND PURSUANT TO THE REQUIREMENTS OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE. THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. FOR REPOWERING PROJECTS INVOLVING FACILITIES OVER TWO HUNDRED THOUSAND KILOWATTS WHICH HAVE NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS, THE BOARD MAY EXTEND THE DEADLINE BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD SHALL RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINE, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT. IF AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE PUBLIC STATEMENT HEARING OR EVIDENTIARY HEARING, IF APPLICABLE, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINE MAY BE EXTENDED BY NO MORE THAN THREE MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

9. IN THE EVENT THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED PERMITTING AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE SUCH PERMITS TO THE BOARD PRIOR TO THE DETERMINATION OF WHETHER OR NOT TO ISSUE A CERTIFICATE.

S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIFICATE TO CONSTRUCT A MAJOR ELECTRIC GENERATING FACILITY SHALL FILE WITH

THE CHAIRPERSON OF THE BOARD AN APPLICATION, IN SUCH FORM AS THE BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND MATERIALS:

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

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

(C) STUDIES, IDENTIFYING THE AUTHOR AND DATE THEREOF, WHICH EVALUATE PREDICTABLE, SIGNIFICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACTS OF THE PROPOSED FACILITY, IF ANY, RESULTING FROM ITS CONSTRUCTION AND OPERATION, IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE ANALYSIS OF ENVIRONMENTAL JUSTICE ISSUES;

(D) STUDIES, IDENTIFYING THE AUTHOR AND DATE THEREOF, WHICH HAVE BEEN MADE OF THE EXPECTED ENVIRONMENTAL IMPACTS, INCLUDING THE PREDICTABLE HEALTH IMPACTS THEREOF, AND OF THE SAFETY OF THE FACILITY, BOTH DURING ITS CONSTRUCTION AND ITS OPERATION, WHICH STUDIES ARE SUFFICIENT TO IDENTIFY: (I) THE ANTICIPATED GASEOUS, LIQUID AND SOLID WASTES TO BE PRODUCED AT THE FACILITY INCLUDING THEIR SOURCE, ANTICIPATED VOLUMES, COMPOSITION AND TEMPERATURE, AND SUCH OTHER ATTRIBUTES AS THE BOARD MAY SPECIFY AND THE PROBABLE LEVEL OF NOISE DURING CONSTRUCTION AND OPERATION OF THE FACILITY; (II) THE TREATMENT PROCESSES TO REDUCE WASTES TO BE RELEASED TO THE ENVIRONMENT, THE MANNER OF DISPOSAL FOR WASTES RETAINED AND MEASURES FOR NOISE ABATEMENT; (III) THE ANTICIPATED VOLUMES OF WASTES TO BE RELEASED TO THE ENVIRONMENT UNDER ANY OPERATING CONDITION OF THE FACILITY, INCLUDING SUCH METEOROLOGICAL, HYDROLOGICAL AND OTHER INFORMATION NEEDED TO SUPPORT SUCH ESTIMATES; (IV) CONCEPTUAL ARCHITECTURAL AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE FACILITY WITH THE ENVIRONMENT; (V) HOW THE CONSTRUCTION AND OPERATION OF THE FACILITY, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES WOULD COMPLY WITH ENVIRONMENTAL, PUBLIC HEALTH, SAFETY AND INFRASTRUCTURE SECURITY REGULATIONS AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A STATEMENT WHY ANY VARIANCES OR EXCEPTIONS SHOULD BE GRANTED; (VI) WATER WITHDRAWALS AND DISCHARGES; (VII) A DESCRIPTION OF THE FUEL INTERCONNECTION AND SUPPLY FOR THE PROJECT; AND (VIII) AN ELECTRIC INTERCONNECTION STUDY, CONSISTING GENERALLY OF A DESIGN STUDY AND A SYSTEM RELIABILITY IMPACT STUDY;

(E) EXCEPT WITH RESPECT TO A FACILITY THAT HAS BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS, ESTIMATED COST INFORMATION, INCLUDING PLANT COSTS BY ACCOUNT, ALL EXPENSES BY CATEGORIES, INCLUDING FUEL COSTS, PLANT SERVICE LIFE AND CAPACITY FACTOR AND TOTAL GENERATING COST

PER KILOWATT-HOUR, INCLUDING BOTH PLANT AND RELATED TRANSMISSION, AND COMPARATIVE COSTS OF ALTERNATIVES CONSIDERED;

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

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

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

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

(J) COPIES OF THE APPLICATION, INCLUDING THE REQUIRED INFORMATION, SHALL BE FILED WITH THE BOARD AND SHALL BE AVAILABLE FOR PUBLIC INSPECTION, PROVIDED, HOWEVER, THAT SUCH INSPECTION IS CONSISTENT WITH ARTICLE SIX OF THE PUBLIC OFFICERS LAW AND ARTICLE TWENTY-SIX OF THE EXECUTIVE LAW.

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

(A) A COPY OF SUCH APPLICATION ON (I) EACH MUNICIPALITY AND, ADDITIONALLY, ANY COMMUNITY-BASED BOARD OR ORGANIZATION THAT HAS FILED A STATEMENT WITH THE BOARD WITHIN THE PAST TWELVE MONTHS THAT IT WISHES TO RECEIVE INFORMATION ON FACILITIES IN AREAS IN WHICH ANY PORTION OF SUCH FACILITY IS TO BE LOCATED AS PROPOSED OR IN ANY ALTERNATIVE LOCATION LISTED. SUCH COPY TO A MUNICIPALITY SHALL BE ADDRESSED TO THE CHIEF EXECUTIVE OFFICER THEREOF AND SHALL SPECIFY THE DATE ON OR ABOUT WHICH THE APPLICATION IS TO BE FILED;

(II) EACH MEMBER OF THE BOARD;

(III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

(IV) THE SECRETARY OF STATE;

(V) THE ATTORNEY GENERAL;

(VI) THE DEPARTMENT OF TRANSPORTATION;

(VII) THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION;

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

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

(B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICIPALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARAGRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE

PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPAPERS AS WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICATION;

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

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

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

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

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

6. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF GENERATING CAPACITY OF THE SUBJECT FACILITY, BUT NO MORE THAN THREE HUNDRED THOUSAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE PRE-APPLICATION FEE PROVIDED FOR IN SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE. SUCH FEE SHALL BE DEPOSITED IN THE INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-TT OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION, TO DEFRAY EXPENSES INCURRED BY MUNICIPAL AND OTHER LOCAL PARTIES TO THE PROCEEDING (EXCEPT A MUNICIPALITY WHICH IS THE APPLICANT) FOR EXPERT WITNESS AND CONSULTANT FEES. IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE APPLICATION, THE APPLICATION IS AMENDED IN A MANNER THAT WARRANTS SUBSTANTIAL ADDITIONAL SCRUTINY, THE BOARD MAY REQUIRE AN ADDITIONAL INTERVENOR FEE IN AN AMOUNT NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS. THE BOARD SHALL PROVIDE FOR TRANSCRIPTS, THE REPRODUCTION AND SERVICE OF DOCUMENTS, AND THE PUBLICATION OF REQUIRED NOTICES FOR MUNICIPAL PARTIES. ANY MONEYS REMAINING IN THE INTERVENOR ACCOUNT SHALL BE RETURNED TO THE APPLICANT WITHIN FORTY-FIVE DAYS AFTER THE BOARD HAS ISSUED ITS DECISION ON AN APPLICATION UNDER THIS ARTICLE AND THE TIME FOR APPLYING FOR A REHEARING AND JUDICIAL REVIEW HAS EXPIRED.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE BOARD SHALL PROVIDE BY RULES AND REGULATIONS FOR THE MANAGEMENT OF THE INTERVENOR ACCOUNT AND FOR DISBURSEMENTS FROM THE ACCOUNT, WHICH RULES AND REGULATIONS SHALL BE CONSISTENT WITH THE PURPOSE OF THIS SECTION TO MAKE AVAILABLE TO MUNICIPAL PARTIES AT LEAST ONE-HALF OF THE AMOUNT OF THE INTERVENOR ACCOUNT AND FOR USES SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION. IN ADDITION, THE BOARD SHALL PROVIDE OTHER LOCAL PARTIES UP TO ONE-HALF OF THE AMOUNT OF THE INTERVENOR ACCOUNT; PROVIDED, HOWEVER,

THAT THE BOARD SHALL ENSURE THAT THE PURPOSES FOR WHICH MONEYS IN THE INTERVENOR ACCOUNT WILL BE EXPENDED WILL CONTRIBUTE TO AN INFORMED DECISION AS TO THE APPROPRIATENESS OF THE SITE AND FACILITY AND ARE MADE AVAILABLE ON AN EQUITABLE BASIS IN A MANNER WHICH FACILITATES BROAD PUBLIC PARTICIPATION.

S 165. HEARING SCHEDULE. 1. AFTER THE RECEIPT OF AN APPLICATION FILED PURSUANT TO SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE CHAIRPERSON OF THE BOARD SHALL, WITHIN SIXTY DAYS OF SUCH RECEIPT, DETERMINE WHETHER THE APPLICATION COMPLIES WITH SUCH SECTION AND UPON A FINDING THAT THE APPLICATION SO COMPLIES, FIX A DATE FOR THE COMMENCEMENT OF A PUBLIC HEARING. THE CHAIRPERSON OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED TO SUPPLEMENT AN APPLICATION BEFORE OR DURING THE HEARINGS. 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.

2. WITHIN A REASONABLE TIME AFTER THE DATE HAS BEEN FIXED BY THE CHAIRPERSON FOR COMMENCEMENT OF A PUBLIC HEARING, THE PRESIDING EXAMINER SHALL HOLD A 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 OF SUFFICIENT DURATION TO PROVIDE ADEQUATE OPPORTUNITY TO HEAR DIRECT EVIDENCE AND REBUTTAL EVIDENCE FROM RESIDENTS OF THE AREA AFFECTED BY THE PROPOSED ELECTRIC GENERATING FACILITY.

4. 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 CHAIRPERSON THAT AN APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE; PROVIDED, HOWEVER, THAT FOR FACILITIES OVER TWO HUNDRED THOUSAND KILOWATTS WHICH HAVE NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS, THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN SIX MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD MUST RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE THAN SIX MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

5. ON AN APPLICATION FOR AN AMENDMENT OF A CERTIFICATE PROPOSING A CHANGE IN THE FACILITY LIKELY TO RESULT IN ANY MATERIAL INCREASE IN ANY ENVIRONMENTAL IMPACT OF THE FACILITY OR A SUBSTANTIAL CHANGE IN THE LOCATION OF ALL OR A PORTION OF SUCH FACILITY, A HEARING SHALL BE HELD

IN THE SAME MANNER AS A HEARING ON AN APPLICATION FOR A CERTIFICATE. THE BOARD SHALL PROMULGATE RULES, REGULATIONS AND STANDARDS UNDER WHICH IT SHALL DETERMINE WHETHER HEARINGS ARE REQUIRED UNDER THIS SUBDIVISION AND SHALL MAKE SUCH DETERMINATIONS.

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

(A) THE APPLICANT;

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

(C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

(D) THE DEPARTMENT OF HEALTH;

(E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 167. CONDUCT OF HEARING. 1. (A) THE HEARING SHALL BE CONDUCTED IN AN EXPEDITIOUS MANNER BY A PRESIDING EXAMINER APPOINTED BY THE DEPARTMENT. AN ASSOCIATE HEARING EXAMINER SHALL BE APPOINTED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE PUBLIC HEARING. THE ASSOCIATE EXAMINER SHALL ATTEND ALL HEARINGS AS SCHEDULED BY THE PRESIDING EXAMINER AND HE OR SHE SHALL ASSIST THE PRESIDING EXAMINER IN INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND MATERIAL MATTERS. THE CONCLUSIONS AND RECOMMENDATIONS OF THE ASSOCIATE EXAMINER SHALL BE INCORPORATED IN THE RECOMMENDED DECISION OF THE PRESIDING EXAMINER, UNLESS THE ASSOCIATE EXAMINER PREFERS TO SUBMIT A SEPARATE REPORT OF DISSENTING OR CONCURRING CONCLUSIONS AND RECOMMENDATIONS. IN THE EVENT THAT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE RECORD IN THE PROCEEDING AND THE ASSOCIATE EXAMINER'S CONCLUSIONS AND RECOMMENDATIONS SHALL, IN SO FAR AS IS CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE DECISION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR NOT TO ISSUE SUCH PERMITS.

(B) WHEN THE FACILITY IS PROPOSED TO BE LOCATED IN THE COASTAL AREA AND FEDERAL AUTHORIZATION IS REQUIRED, A COASTAL RESOURCE SPECIALIST SHALL BE DESIGNATED BY THE DEPARTMENT OF STATE PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE PUBLIC HEARING. THE COASTAL RESOURCE SPECIALIST SHALL ATTEND ALL HEARINGS AS SCHEDULED BY THE PRESIDING AND ASSOCIATE EXAMINERS AND SHALL ASSIST THE PRESIDING AND ASSOCIATE EXAMINERS IN

INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND MATERIAL MATTERS. IN THE EVENT THAT THE SECRETARY OF STATE IS REQUIRED TO RENDER A CONSISTENCY DETERMINATION PURSUANT TO THE FEDERAL COASTAL ZONE MANAGEMENT ACT, THE RECORD IN THE PROCEEDINGS SHALL PROVIDE INFORMATION ON WHICH TO BASE THE DETERMINATION OF THE SECRETARY OF STATE WHETHER OR NOT TO CONCUR WITH THE APPLICANT'S CERTIFICATION.

(C) THE TESTIMONY PRESENTED AT A HEARING MAY BE PRESENTED IN WRITING OR ORALLY. THE BOARD MAY REQUIRE ANY STATE AGENCY TO PROVIDE EXPERT TESTIMONY ON SPECIFIC SUBJECTS WHERE ITS PERSONNEL HAVE THE REQUISITE EXPERTISE AND SUCH TESTIMONY IS CONSIDERED NECESSARY TO THE DEVELOPMENT OF AN ADEQUATE RECORD. A RECORD SHALL BE MADE OF THE HEARING AND OF ALL TESTIMONY TAKEN AND THE CROSS-EXAMINATIONS THEREON. THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS BEFORE A COURT SHALL NOT APPLY. THE PRESIDING EXAMINER MAY PROVIDE FOR THE CONSOLIDATION OF THE REPRESENTATION OF PARTIES, OTHER THAN GOVERNMENTAL BODIES OR AGENCIES, HAVING SIMILAR INTERESTS. IN THE CASE OF SUCH A CONSOLIDATION, THE RIGHT TO COUNSEL OF ITS OWN CHOOSING SHALL BE PRESERVED TO EACH PARTY TO THE PROCEEDING; PROVIDED THAT THE CONSOLIDATED GROUP MAY BE REQUIRED TO BE HEARD THROUGH SUCH REASONABLE NUMBER OF COUNSEL AS THE PRESIDING EXAMINER SHALL DETERMINE. APPROPRIATE REGULATIONS SHALL BE ISSUED BY THE BOARD TO PROVIDE FOR 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 CHAIRPERSON OF THE BOARD MAY ENTER INTO AN AGREEMENT WITH AN AGENCY OR DEPARTMENT OF THE UNITED STATES HAVING CONCURRENT JURISDICTION OVER ALL OR PART OF THE LOCATION, CONSTRUCTION, OR OPERATION OF AN 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, HOWEVER, THAT NOTICE OF THE INTENT TO SUBMIT SUCH TESTIMONY SHALL BE GIVEN WITHIN SUCH PERIOD AS THE PRESIDING EXAMINER SHALL PRESCRIBE, WHICH PERIOD SHALL BE NOT LESS THAN THIRTY NOR MORE THAN SIXTY DAYS AFTER THE COMMENCEMENT OF THE HEARING. 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 ELECTRIC GENERATING FACILITY AND ITS PROPOSED LOCATION FOR THAT FACILITY, AS REQUIRED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, BEFORE RESOLUTION OF OTHER ISSUES PERTINENT TO A FINAL DETERMINATION ON THE APPLICATION; PROVIDED, HOWEVER, THAT ALL INTERESTED PARTIES HAVE REASONABLE OPPORTUNITY TO QUESTION AND PRESENT EVIDENCE IN SUPPORT OF OR AGAINST THE MERITS OF THE APPLICANT'S CONSIDERATION AND EVALUATION OF

SUCH ALTERNATIVES, AS REQUIRED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, SO THAT THE BOARD IS ABLE TO DECIDE, IN THE FIRST INSTANCE, WHETHER THE APPLICANT'S PROPOSAL IS PREFERABLE TO ALTERNATIVES.

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

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

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

(B) THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACTS, INCLUDING AN EVALUATION OF THE PREDICTABLE ADVERSE AND BENEFICIAL IMPACTS ON THE ENVIRONMENT AND ECOLOGY, PUBLIC HEALTH AND SAFETY, AESTHETICS, SCENIC, HISTORIC AND RECREATIONAL VALUE, FOREST AND PARKS, FISH AND OTHER MARINE LIFE, AND WILDLIFE, AIR AND WATER QUALITY, INCLUDING THE CUMULATIVE EFFECT OF AIR EMISSIONS FROM EXISTING MAJOR AND NON-MAJOR ELECTRIC GENERATING FACILITIES AND FACILITIES CERTIFICATED BY THE BOARD SIXTY DAYS OR MORE PRIOR TO THE DATE OF THE FILING OF THE APPLICATION, AND THE POTENTIAL FOR SIGNIFICANT DETERIORATION IN LOCAL AIR QUALITY, WITH PARTICULAR ATTENTION TO FACILITIES LOCATED IN AREAS DESIGNATED AS SEVERE NONATTAINMENT, AND PREDICTABLE, SIGNIFICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACTS, IF ANY, FROM THE CONSTRUCTION AND/OR OPERATION OF

THE PROPOSED FACILITY IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE ANALYSIS OF ENVIRONMENTAL JUSTICE ISSUES;

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

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

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

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

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

S 169. OPINION TO BE ISSUED WITH DECISION. IN RENDERING A DECISION ON AN APPLICATION FOR A CERTIFICATE, THE BOARD SHALL ISSUE AN OPINION STATING ITS REASONS FOR THE ACTION TAKEN. IF THE BOARD HAS FOUND THAT ANY

LOCAL ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER ACTION ISSUED THEREUNDER OR ANY OTHER LOCAL STANDARD OR REQUIREMENT WHICH WOULD BE OTHERWISE APPLICABLE IS UNREASONABLY RESTRICTIVE PURSUANT TO PARAGRAPH (E) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE, IT SHALL STATE IN ITS OPINION THE REASONS THEREFOR.

S 170. REHEARING AND JUDICIAL REVIEW. 1. ANY PARTY AGGRIEVED BY THE BOARD'S DECISION DENYING OR GRANTING A CERTIFICATE MAY APPLY TO THE BOARD FOR A REHEARING WITHIN THIRTY DAYS AFTER ISSUANCE OF THE AGGRIEVING DECISION. ANY SUCH APPLICATION SHALL BE CONSIDERED AND DECIDED BY THE BOARD, AND ANY REHEARING SHALL BE COMPLETED AND A DECISION RENDERED THEREON WITHIN NINETY DAYS OF THE EXPIRATION OF THE PERIOD FOR FILING REHEARING PETITIONS; PROVIDED, HOWEVER, THAT THE BOARD MAY EXTEND THE DEADLINE BY NO MORE THAN NINETY DAYS WHERE A REHEARING IS REQUIRED IF NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE APPLICANT MAY WAIVE SUCH DEADLINE. THEREAFTER ANY SUCH PARTY MAY OBTAIN JUDICIAL REVIEW OF SUCH DECISION AS PROVIDED IN THIS SECTION. A JUDICIAL PROCEEDING SHALL BE BROUGHT IN THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK IN THE JUDICIAL DEPARTMENT EMBRACING THE COUNTY WHEREIN THE FACILITY IS TO BE LOCATED OR, IF THE APPLICATION IS DENIED, THE COUNTY WHEREIN THE APPLICANT HAS PROPOSED TO LOCATE THE FACILITY. SUCH PROCEEDING SHALL BE INITIATED BY THE FILING OF A PETITION IN SUCH COURT WITHIN THIRTY DAYS AFTER THE ISSUANCE OF A FINAL DECISION BY THE BOARD UPON THE APPLICATION FOR REHEARING TOGETHER WITH PROOF OF SERVICE ON THE BOARD OF A DEMAND THAT THE BOARD FILE WITH SAID COURT A COPY OF A WRITTEN TRANSCRIPT OF THE RECORD OF THE PROCEEDING AND A COPY OF THE BOARD'S DECISION AND OPINION. THE BOARD'S COPY OF SAID TRANSCRIPT, DECISION AND OPINION SHALL BE AVAILABLE AT ALL REASONABLE TIMES TO ALL PARTIES FOR EXAMINATION WITHOUT COST. UPON RECEIPT OF SUCH PETITION AND DEMAND, THE BOARD SHALL FORTHWITH DELIVER TO THE COURT A COPY OF THE RECORD AND A COPY OF THE BOARD'S DECISION AND OPINION. THEREUPON, THE COURT SHALL HAVE JURISDICTION OF THE PROCEEDING AND SHALL HAVE THE POWER TO GRANT SUCH RELIEF AS IT DEEMS JUST AND PROPER, AND TO MAKE AND ENTER AN ORDER ENFORCING, MODIFYING AND ENFORCING AS SO MODIFIED, REMANDING FOR FURTHER SPECIFIC EVIDENCE OR FINDINGS, OR SETTING ASIDE IN WHOLE OR IN PART SUCH DECISION. THE APPEAL SHALL BE HEARD ON THE RECORD, WITHOUT REQUIREMENT OF REPRODUCTION, AND UPON BRIEFS TO THE COURT. NO OBJECTION THAT HAS NOT BEEN URGED BY THE PARTY IN HIS OR HER APPLICATION FOR REHEARING BEFORE THE BOARD SHALL BE CONSIDERED BY THE COURT, UNLESS THE FAILURE OR NEGLECT TO URGE SUCH OBJECTION SHALL BE EXCUSED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES. THE FINDINGS OF FACT ON WHICH SUCH DECISION IS BASED SHALL BE CONCLUSIVE IF SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE AND MATTERS OF OFFICIAL NOTICE SET FORTH IN THE OPINION. THE JURISDICTION OF THE APPELLATE DIVISION OF THE SUPREME COURT SHALL BE EXCLUSIVE, AND ITS JUDGMENT AND ORDER SHALL BE FINAL, SUBJECT TO REVIEW BY THE COURT OF APPEALS IN THE SAME MANNER AND FORM AND WITH THE SAME EFFECT AS PROVIDED FOR APPEALS IN A SPECIAL PROCEEDING. ALL SUCH PROCEEDINGS SHALL BE HEARD AND DETERMINED BY THE APPELLATE DIVISION OF THE SUPREME COURT AND BY THE COURT OF APPEALS AS EXPEDITIOUSLY AS POSSIBLE AND WITH LAWFUL PRECEDENCE OVER ALL OTHER MATTERS.

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

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

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

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

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

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

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

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

S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY AGENCY THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY THE BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER CONDITION FOR THE CONSTRUCTION OR OPERATION OF AN ELECTRIC GENERATING FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE HEREUNDER HAS BEEN FILED, OTHER THAN THOSE PROVIDED BY OTHERWISE APPLICABLE STATE LAW FOR THE PROTECTION OF EMPLOYEES ENGAGED IN THE CONSTRUCTION AND OPERATION OF SUCH FACILITY; PROVIDED, HOWEVER, THAT IN THE CASE OF A MUNICIPALITY OR AN AGENCY THEREOF, SUCH MUNICIPALITY HAS RECEIVED NOTICE OF THE FILING OF THE APPLICATION THEREFOR; AND PROVIDED FURTHER, HOWEVER, THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION MAY ISSUE PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT; AND PROVIDED FURTHER HOWEVER, THAT THE DEPARTMENT OF STATE MAY MAKE CONSISTENCY DETERMINATIONS PURSUANT TO THE FEDERAL COASTAL ZONE MANAGEMENT ACT. IN ISSUING SUCH DETERMINATIONS, THE SECRETARY OF STATE SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY ARE CONSISTENT WITH THE FEDERAL COASTAL ZONE MANAGEMENT ACT AND ITS IMPLEMENTING REGULATIONS. IN ISSUING SUCH PERMITS, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY ARE CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND THE SECRETARY OF STATE SHALL PROVIDE SUCH PERMITS AND DETERMINATIONS, RESPECTIVELY, TO THE BOARD PRIOR TO ITS DETERMINATION WHETHER OR NOT TO ISSUE A CERTIFICATE.

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

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

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

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

S 5. Section 17-0823 of the environmental conservation law, as added by chapter 801 of the laws of 1973, is amended to read as follows:

S 17-0823. Power plant siting.

In the case of a major steam electric generating facility, as defined in FORMER section one hundred forty of the public service law, for the construction or operation of which a certificate is required under THE FORMER article eight of [such] THE PUBLIC SERVICE law, OR A MAJOR OR NON-MAJOR ELECTRIC GENERATING FACILITY OR REPOWERING PROJECT AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THE PUBLIC SERVICE LAW, FOR THE CONSTRUCTION OR OPERATION OF WHICH A CERTIFICATE IS REQUIRED UNDER ARTICLE TEN OF THE PUBLIC SERVICE LAW, [an applicant shall apply for and obtain such certificate in lieu of filing an application and obtaining a permit under this article. Any reference in this article to a permit shall, in the case of such major steam electric generating facility, be deemed for all purposes to refer to such certificate, provided that nothing] SUCH CERTIFICATE SHALL BE DEEMED A PERMIT UNDER THIS SECTION IF ISSUED BY THE STATE BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMIT AUTHORITY. NOTHING herein shall limit the authority of the [departments] DEPARTMENT of health and [environmental conservation] THE DEPARTMENT to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility OR MAJOR OR NON-MAJOR ELECTRIC GENERATING FACILITY OR REPOWERING PROJECT and to enforce applicable provisions of the public health LAW and [environmental conservation laws] THIS ARTICLE and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation. In such case all powers, duties, obligations and privileges conferred upon the department by this article shall devolve upon the New York state board on electric generation siting and the environment. In considering the granting of permits, such board shall apply the provisions of this article and the Act.

S 6. Paragraph j of subdivision 2 of section 19-0305 of the environmental conservation law, as amended by chapter 525 of the laws of 1981, is amended to read as follows:

j. Consider for approval or disapproval applications for permits and certificates including plans or specifications for air contamination sources and air cleaning installations or any part thereof submitted [to him pursuant to] CONSISTENT WITH the rules of the department, and inspect the installation for compliance with the plans or specifications; provided that in the case of a major steam electric generating facility, as defined in [either] FORMER section one hundred forty of the public service law, for which a certificate is required pursuant to [either] THE FORMER article eight of [such] THE PUBLIC SERVICE law, OR A MAJOR OR NON-MAJOR ELECTRIC GENERATING FACILITY OR REPOWERING PROJECT AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THE PUBLIC SERVICE LAW, FOR WHICH A CERTIFICATE IS REQUIRED PURSUANT TO ARTICLE TEN OF THE PUBLIC SERVICE LAW, such approval functions [shall] MAY be performed by the state board on electric generation siting and the environment, as defined in [such] THE PUBLIC SERVICE law, PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, and such inspection functions shall be performed by the department[; provided further that nothing]. NOTHING herein shall limit the authority of the [departments] DEPARTMENT of health and [environmental conservation] THE DEPARTMENT to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility and to enforce applicable provisions of the public health LAW and [the environmental

conservation laws] THIS CHAPTER and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation.

S 7. Paragraph (e) of subdivision 3 of section 49-0307 of the environmental conservation law, as added by chapter 292 of the laws of 1984, is amended to read as follows:

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

S 8. Section 1014 of the public authorities law, as amended by chapter 446 of the laws of 1972, is amended to read as follows:

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

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

1. The rates, services and practices relating to the electricity generated by facilities owned or operated by the authority shall not be subject to the provisions of the public service law or to regulation by, or the jurisdiction of, the public service commission, except to the extent (a) article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined there-

in, (b) article [eight] TEN of such law applies to the siting of a MAJOR OR NON-MAJOR ELECTRIC generating facility OR REPOWERING PROJECT as defined therein, and (c) section eighteen-a of such law provides for assessment for certain costs, property or operations.

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

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

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

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

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

S 12. This act shall take effect immediately, provided that nothing in this act shall be construed to limit any administrative authority, with respect to matters included in this act, which existed prior to the effective date of this act, and provided further that prior to the effective date of the rules and regulations of the department of environmental conservation relating to the analysis of environmental justice issues pursuant to this act, the policies and guidelines of such department relating thereto in effect at the time an application is filed shall be applied in lieu of such rules and regulations.