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

7005--A

2011-2012 Regular Sessions

I N A S S E M B L Y

April 7, 2011

Introduced by M. of A. CAHILL, ROSENTHAL, LINARES, P. RIVERA -- Multi-Sponsored by -- M. of A. ABINANTI, LATIMER -- read once and referred to the Committee on Energy -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law and the public authorities law, in relation to the siting of major electric generating facilities; to amend the state finance law, in relation to establishing the intervenor account; and to amend the environmental conservation law, in relation to power plant emissions and performance standards

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

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

ARTICLE 10

SITING OF MAJOR ELECTRIC GENERATING FACILITIES

SECTION 160. DEFINITIONS.
161. GENERAL PROVISIONS RELATING TO THE BOARD.
162. BOARD CERTIFICATE.
163. PRE-APPLICATION PROCEDURES.
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.
173. APPLICABILITY TO PUBLIC AUTHORITIES.

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

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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 WITH A NAMEPLATE GENERATING CAPACITY OF TWENTY-FIVE THOUSAND KILOWATTS OR MORE.

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

4. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST OF SEVEN PERSONS: THE CHAIR OF THE DEPARTMENT, WHO SHALL SERVE AS CHAIR OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; THE COMMISSIONER OF HEALTH; THE CHAIR OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND TWO AD HOC PUBLIC MEMBERS. ONE AD HOC PUBLIC MEMBER SHALL BE APPOINTED BY THE GOVERNOR FROM AMONG FIVE CANDIDATES SUBMITTED BY THE CHIEF EXECUTIVE OFFICER REPRESENTING THE MUNICIPALITY IN WHICH THE FACILITY IS PROPOSED, OR, IN THE CITY OF NEW YORK, BY THE CHAIRPERSON OF THE COMMUNITY BOARD OF THE COMMUNITY DISTRICT IN WHICH THE FACILITY IS PROPOSED, AND WHICH MEMBER SHALL BE A RESIDENT OF SUCH MUNICIPALITY OR SUCH COMMUNITY DISTRICT IN WHICH THE FACILITY IS PROPOSED. THE SECOND AD HOC PUBLIC MEMBER SHALL BE APPOINTED BY THE GOVERNOR FROM AMONG FIVE CANDIDATES SUBMITTED BY THE CHIEF EXECUTIVE OFFICER OF THE COUNTY IN WHICH THE FACILITY IS PROPOSED, OR IN THE CITY OF NEW YORK, BY THE BOROUGH PRESIDENT OF THE COUNTY IN WHICH THE FACILITY IS PROPOSED, AND WHICH MEMBER SHALL BE A RESIDENT OF SUCH COUNTY OR SUCH BOROUGH. THE TERM OF THE AD HOC PUBLIC MEMBERS SHALL CONTINUE UNTIL A FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEEDING FOR WHICH THEY WERE APPOINTED.

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

6. "FUEL WASTE BYPRODUCT" SHALL MEAN WASTE OR COMBINATION OF WASTES PRODUCED AS A BYPRODUCT OF GENERATING ELECTRICITY FROM A MAJOR ELECTRIC GENERATING FACILITY IN AN AMOUNT WHICH REQUIRES STORAGE OR DISPOSAL AND, BECAUSE OF ITS QUANTITY, CONCENTRATION, OR PHYSICAL, CHEMICAL OR OTHER CHARACTERISTICS, MAY POSE A SUBSTANTIAL PRESENT OR POTENTIAL HAZARD TO HUMAN HEALTH OR THE ENVIRONMENT.

7. "NAMEPLATE" MEANS A MANUFACTURER'S DESIGNATION, GENERALLY AS AFFIXED TO THE GENERATOR UNIT, WHICH STATES THE TOTAL OUTPUT OF SUCH GENERATING FACILITY AS ORIGINALLY DESIGNED ACCORDING TO THE MANUFACTURER'S ORIGINAL DESIGN SPECIFICATIONS.

8. "PUBLIC INFORMATION COORDINATOR" MEANS AN OFFICE CREATED WITHIN THE DEPARTMENT WHICH SHALL ASSIST AND ADVISE INTERESTED PARTIES AND MEMBERS OF THE PUBLIC IN PARTICIPATING IN THE SITING AND CERTIFICATION OF MAJOR ELECTRIC GENERATING FACILITIES. THE DUTIES OF THE PUBLIC INFORMATION OFFICER SHALL INCLUDE, BUT NOT BE LIMITED TO: (A) IMPLEMENTING MEASURES THAT ASSURE FULL AND ADEQUATE PUBLIC PARTICIPATION IN MATTERS BEFORE THE BOARD; (B) RESPONDING TO INQUIRIES FROM THE PUBLIC FOR INFORMATION ON HOW TO PARTICIPATE IN MATTERS BEFORE THE BOARD; (C) ASSISTING THE PUBLIC IN REQUESTING RECORDS RELATING TO MATTERS BEFORE THE BOARD; (D) ENSURING ALL INTERESTED PERSONS ARE PROVIDED WITH A REASONABLE OPPORTUNITY TO PARTICIPATE AT PUBLIC MEETINGS RELATING TO MATTERS BEFORE THE BOARD; (E) ENSURING THAT ALL NECESSARY OR REQUIRED DOCUMENTS ARE AVAILABLE FOR

PUBLIC ACCESS ON THE DEPARTMENT'S WEBSITE WITHIN ANY TIME PERIODS SPECIFIED WITHIN THIS ARTICLE; AND (F) ANY OTHER DUTIES AS MAY BE PRESCRIBED BY THE BOARD, AFTER CONSULTATION WITH THE DEPARTMENT.

9. "LOCAL PARTIES" SHALL MEAN PERSONS RESIDING IN A COMMUNITY WHO MAY BE AFFECTED BY THE PROPOSED MAJOR ELECTRIC GENERATING FACILITY WHO INDIVIDUALLY OR COLLECTIVELY SEEK INTERVENOR FUNDING PURSUANT TO SECTIONS ONE HUNDRED SIXTY-THREE AND ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, PROVIDED FURTHER THAT IN A PROCEEDING FOR A MAJOR ELECTRIC GENERATING FACILITY PROPOSED TO BE LOCATED OUTSIDE OF THE CITY OF NEW YORK, "LOCAL PARTIES" SHALL BE LOCATED IN THE COUNTY IN WHICH THE PROPOSED MAJOR ELECTRIC GENERATING FACILITY IS TO BE LOCATED OR ANY COUNTY CONTIGUOUS TO SUCH PROPOSED FACILITY.

S 161. GENERAL PROVISIONS RELATING TO THE BOARD. UPON RECEIPT OF AN PRE-APPLICATION PRELIMINARY SCOPING STATEMENT UNDER THIS ARTICLE, THE CHAIR SHALL PROMPTLY NOTIFY THE GOVERNOR; THE CHIEF EXECUTIVE OFFICER REPRESENTING THE MUNICIPALITY IN WHICH THE FACILITY IS PROPOSED, OR, IN THE CITY OF NEW YORK, THE CHAIRPERSON OF THE COMMUNITY BOARD OF THE COMMUNITY DISTRICT IN WHICH THE FACILITY IS PROPOSED; AND THE CHIEF EXECUTIVE OFFICER OF THE COUNTY IN WHICH THE FACILITY IS PROPOSED, OR IN THE CITY OF NEW YORK, THE BOROUGH PRESIDENT OF THE COUNTY IN WHICH THE FACILITY IS PROPOSED. WITHIN FIFTEEN DAYS OF SUCH NOTIFICATION EACH OF THE CHIEF EXECUTIVE OFFICERS SHALL SUBMIT FIVE CANDIDATES TO THE GOVERNOR TO BE CONSIDERED FOR APPOINTMENT AS THE AD HOC PUBLIC MEMBERS TO BE APPOINTED BY THE GOVERNOR WITHIN THIRTY DAYS OF SUCH SUBMISSION. 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. IN THE EVENT THAT THE CHIEF EXECUTIVE OFFICERS DO NOT SUBMIT FIVE CANDIDATES TO THE GOVERNOR WITHIN FIFTEEN DAYS OF SUCH NOTIFICATION, THE GOVERNOR SHALL APPOINT THE AD HOC MEMBERS. 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 UNDER THE DIRECTION OF THE CHAIRPERSON 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 ELECTRIC GENERATING FACILITY IN THE STATE, OR INCREASE THE CAPACITY OF AN EXISTING ELECTRIC GENERATING FACILITY BY MORE THAN TWENTY-FIVE THOUSAND KILOWATTS 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 HEREIN SHALL EXEMPT SUCH FACILITY FROM COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE. A CERTIFICATE FOR A MAJOR ELECTRIC GENERATING FACILITY, OR AN INCREASE IN THE CAPACITY OF AN EXISTING ELECTRIC GENERATING FACILITY BY MORE THAN TWENTY-FIVE THOUSAND KILOWATTS, 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 UNDER THIS ARTICLE MAY BE AMENDED PURSUANT TO THIS SECTION.

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

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

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

(D) TO A MAJOR ELECTRIC GENERATING FACILITY IF, ON OR BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, ALL NECESSARY APPLICATIONS HAVE 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 THE MAJOR ELECTRIC GENERATING FACILITY HAS BEEN DESIGNATED BY THE APPLICANT; OR IF THE FACILITY IS UNDER CONSTRUCTION AT SUCH TIME.

5. ANY PERSON INTENDING TO CONSTRUCT A MAJOR ELECTRIC GENERATING FACILITY EXCLUDED FROM THIS ARTICLE PURSUANT TO PARAGRAPH (B), (C), OR (D) 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 CHAIR 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 CHAIR OF THE BOARD. FOR THE PURPOSES OF THIS ARTICLE, EACH SUCH FACILITY SHALL BE TREATED IN THE SAME MANNER AS A MAJOR ELECTRIC GENERATING FACILITY AS DEFINED IN THIS ARTICLE.

S 163. PRE-APPLICATION PROCEDURES. 1. ANY PERSON PROPOSING TO SUBMIT AN APPLICATION FOR A CERTIFICATE SHALL FILE WITH THE CHAIR 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 AND HEALTH IMPACTS RESULTING FROM THE CONSTRUCTION AND OPERATION OF THE PROPOSED FACILITY;

(C) PROPOSED STUDIES OR PROGRAM OF STUDIES DESIGNED TO EVALUATE POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS, INCLUDING, FOR PROPOSED WIND-POWERED FACILITIES, PROPOSED STUDIES DURING PRE-CONSTRUCTION ACTIVITIES AND A PROPOSED PERIOD OF POST-CONSTRUCTION OPERATIONS MONITORING FOR POTENTIAL IMPACTS TO AVIAN AND BAT SPECIES;

(D) MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS; AND

(E) WHERE THE PROPOSED FACILITY INTENDS TO USE PETROLEUM OR OTHER BACK-UP FUEL FOR GENERATING ELECTRICITY, A DISCUSSION AND/OR STUDY OF THE SUFFICIENCY OF THE PROPOSED ON-SITE FUEL STORAGE CAPACITY AND SUPPLY; AND

(F) REASONABLE ALTERNATIVES TO THE FACILITY THAT MAY BE REQUIRED BY PARAGRAPH (I) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE;

(G) IDENTIFICATION OF ALL OTHER STATE AND FEDERAL PERMITS, CERTIFICATIONS, OR OTHER AUTHORIZATIONS NEEDED FOR CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROPOSED FACILITY; AND

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

2. 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 IN PLAIN LANGUAGE, IN ENGLISH AND IN ANY OTHER LANGUAGE SPOKEN AS DETERMINED BY THE BOARD BY A SIGNIFICANT PORTION OF THE POPULATION IN THE COMMUNITY, THAT DESCRIBES THE PROPOSED FACILITY AND ITS LOCATION, THE RANGE OF POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS OF EACH POLLUTANT, THE APPLICATION AND REVIEW PROCESS, AND A CONTACT PERSON, WITH PHONE NUMBER AND ADDRESS, FROM WHOM INFORMATION WILL BE AVAILABLE AS THE APPLICATION PROCEEDS.

3. TO FACILITATE THE PRE-APPLICATION AND APPLICATION PROCESSES AND ENABLE CITIZENS TO PARTICIPATE IN DECISIONS THAT AFFECT THEIR HEALTH AND SAFETY AND THE ENVIRONMENT, THE DEPARTMENT AND SUCH PERSON SHALL PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT INCLUDING HOLDING AT LEAST TWO PUBLIC MEETINGS AT A LOCATION WITHIN TWO MILES OF THE PROPOSED FACILITY. SUCH OPPORTUNITIES SHALL ENCOURAGE CONSULTATION WITH THE PUBLIC EARLY IN THE PRE-APPLICATION AND APPLICATION PROCESSES, ESPECIALLY BEFORE ANY PARTIES ENTER A STIPULATION PURSUANT TO SUBDIVISION FIVE OF THIS SECTION. THE PRIMARY GOALS OF THE CITIZEN PARTICIPATION PROCESS SHALL BE TO FACILITATE COMMUNICATION BETWEEN THE APPLICANT AND INTERESTED OR AFFECTED PERSONS. THE PROCESS SHALL FOSTER THE ACTIVE INVOLVEMENT OF THE INTERESTED OR AFFECTED PERSONS.

4. (A) EACH PRE-APPLICATION PRELIMINARY SCOPING STATEMENT SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT EQUAL TO THREE HUNDRED FIFTY DOLLARS

FOR EACH THOUSAND KILOWATTS OF GENERATING CAPACITY OF THE SUBJECT FACILITY, BUT NO MORE THAN TWO HUNDRED THOUSAND DOLLARS, TO BE DEPOSITED IN THE INTERVENOR ACCOUNT ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-KKKK OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE HEARING EXAMINER'S DIRECTION TO DEFRAY PRE-APPLICATION EXPENSES INCURRED BY MUNICIPAL AND OTHER INTERESTED PARTIES (EXCEPT FOR A MUNICIPALITY SUBMITTING THE PRE-APPLICATION SCOPING STATEMENT) FOR EXPERT WITNESS, CONSULTANT, ADMINISTRATIVE AND LEGAL FEES. IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE PRE-APPLICATION THE PRE-APPLICATION IS SUBSTANTIALLY MODIFIED OR REVISED, THE BOARD MAY REQUIRE AN ADDITIONAL PRE-APPLICATION INTERVENOR FEE IN AN AMOUNT NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS. ANY MONEYS REMAINING IN THE INTERVENOR ACCOUNT UPON THE SUBMISSION OF AN APPLICATION FOR A CERTIFICATE SHALL BE MADE AVAILABLE TO INTERVENORS ACCORDING TO PARAGRAPH (A) OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE.

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

5. AFTER MEETING THE REQUIREMENTS OF SUBDIVISIONS ONE THROUGH THREE OF THIS SECTION, AND AFTER PRE-APPLICATION INTERVENOR FUNDS HAVE BEEN ALLOCATED BY THE PRE-HEARING EXAMINER PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION, 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 AND THE DEPARTMENT OF HEALTH, AS APPROPRIATE, AS TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE OR TO BE MADE TO SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH, THE PERSON PROPOSING TO FILE AN APPLICATION, AND ANY OTHER INTERESTED PERSON MAY ENTER INTO A STIPULATION SETTING FORTH AN AGREEMENT ON ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE STUDIES OR PROGRAM OF STUDIES TO BE CONDUCTED. ANY SUCH PERSON PROPOSING TO SUBMIT AN APPLICATION FOR A CERTIFICATE SHALL SERVE A COPY OF THE PROPOSED STIPULATION UPON ALL PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, PROVIDE NOTICE OF SUCH STIPULATION TO THOSE PERSONS IDENTIFIED IN PARAGRAPH (B) OF SUCH SUBDIVISION, AND AFFORD THE PUBLIC A REASONABLE OPPORTUNITY TO SUBMIT COMMENTS ON THE STIPULATION BEFORE IT IS EXECUTED BY THE INTERESTED PARTIES. NOTHING IN THIS SECTION, 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 SHALL DESIGNATE A HEARING EXAMINER WHO SHALL OVERSEE THE PRE-APPLICATION PROCESS 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. UPON COMPLETION OF THE NOTICE PROVISIONS PROVIDED IN THIS SECTION, SUCH HEARING EXAMINER SHALL, WITHIN SIXTY DAYS OF THE FILING OF A PRELIMINARY SCOPING STATEMENT, CONVENE A MEETING OF INTERESTED PARTIES IN ORDER TO INITIATE THE STIPULATION PROCESS.

S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIFICATE SHALL FILE WITH THE CHAIR 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, ANTICIPATED EMISSIONS TO AIR, INCLUDING BUT NOT LIMITED TO PARTICULATE MATTER OF 2.5 MICRONS OR SMALLER, FEDERAL CRITERIA POLLUTANTS AND TOXINS, INCLUDING MERCURY, ANTICIPATED DISCHARGES TO WATER AND GROUNDWATER, POLLUTION CONTROL EQUIPMENT, AND, AS APPROPRIATE, GEOLOGICAL, VISUAL OR OTHER AESTHETIC, ECOLOGICAL, TSUNAMI, SEISMIC, BIOLOGICAL, WATER SUPPLY, POPULATION AND LOAD CENTER DATA;

(B) AN EVALUATION OF THE EXPECTED ENVIRONMENTAL AND HEALTH IMPACTS AND SAFETY IMPLICATIONS OF THE FACILITY, BOTH DURING ITS CONSTRUCTION AND ITS OPERATION, INCLUDING ANY STUDIES, IDENTIFYING THE AUTHOR AND DATE THEREOF, USED IN THE EVALUATION, WHICH IDENTIFIES (I) THE ANTICIPATED GASEOUS, LIQUID AND SOLID WASTES TO BE PRODUCED AT THE FACILITY INCLUDING THEIR SOURCE, ANTICIPATED VOLUMES, COMPOSITION AND TEMPERATURE, AND SUCH OTHER ATTRIBUTES AS THE BOARD MAY SPECIFY AND THE PROBABLE LEVEL OF NOISE DURING CONSTRUCTION AND OPERATION OF THE FACILITY; (II) THE TREATMENT PROCESSES TO REDUCE WASTES TO BE RELEASED TO THE ENVIRONMENT, THE MANNER OF DISPOSAL FOR WASTES RETAINED AND MEASURES FOR NOISE ABATEMENT; (III) THE ANTICIPATED VOLUMES OF WASTES TO BE RELEASED TO THE ENVIRONMENT UNDER ANY OPERATING CONDITION OF THE FACILITY, INCLUDING SUCH METEOROLOGICAL, HYDROLOGICAL AND OTHER INFORMATION NEEDED TO SUPPORT SUCH ESTIMATES; (IV) CONCEPTUAL ARCHITECTURAL AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE FACILITY WITH THE ENVIRONMENT; (V) HOW THE CONSTRUCTION AND OPERATION OF THE FACILITY, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES WOULD COMPLY WITH ENVIRONMENTAL HEALTH AND SAFETY STANDARDS, REQUIREMENTS, REGULATIONS AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A STATEMENT WHY ANY VARIANCES OR EXCEPTIONS SHOULD BE GRANTED; (VI) WATER WITHDRAWALS FROM AND DISCHARGES TO THE WATERSHED; (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;

(C) SUCH EVIDENCE AS WILL ENABLE THE BOARD AND 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, AND PERMITS PURSUANT TO SECTION 15-1503 OF THE ENVIRONMENTAL CONSERVATION LAW;

(D) WHERE THE PROPOSED FACILITY INTENDS TO USE PETROLEUM OR OTHER BACK-UP FUEL FOR GENERATING ELECTRICITY, EVIDENCE AND AN EVALUATION ON THE ADEQUACY OF THE FACILITY'S ON-SITE BACK-UP FUEL STORAGE AND SUPPLY;

(E) A PLAN FOR SECURITY OF THE PROPOSED FACILITY DURING CONSTRUCTION AND OPERATION OF SUCH FACILITY AND THE MEASURES TO BE TAKEN TO ENSURE THE SAFETY AND SECURITY OF THE LOCAL COMMUNITY, INCLUDING CONTINGENCY, EMERGENCY RESPONSE AND EVACUATION CONTROL, TO BE REVIEWED BY THE BOARD IN CONSULTATION WITH THE NEW YORK STATE EMERGENCY MANAGEMENT OFFICE AND IN CITIES WITH A POPULATION OVER ONE MILLION, SUCH PLAN SHALL ALSO BE REVIEWED BY THE LOCAL OFFICE OF EMERGENCY MANAGEMENT;

(F) IN ACCORDANCE WITH RULES AND REGULATIONS THAT SHALL BE PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE ANALYSIS OF ENVIRONMENTAL JUSTICE ISSUES, INCLUDING THE REQUIREMENTS OF PARAGRAPHS (G) AND (H) OF SUBDIVISION ONE OF THIS SECTION, AN EVALUATION OF PREDICTABLE, ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACTS OF THE PROPOSED FACILITY, IF ANY, RESULTING FROM ITS CONSTRUCTION AND OPERATION, INCLUDING ANY STUDIES IDENTIFYING THE AUTHOR AND DATES THEREOF, WHICH WERE USED IN THE EVALUATION;

(G) A CUMULATIVE IMPACT ANALYSIS OF AIR QUALITY IN THE COMMUNITY WITHIN WHICH THE FACILITY IS LOCATED, WITHIN A FIVE MILE RADIUS OF THE LOCATION OF THE PROPOSED FACILITY BASED ON PROJECTED EMISSIONS OF AIR POLLUTANTS, INCLUDING FEDERAL CRITERIA POLLUTANTS AND MERCURY, FROM THE FACILITY, FROM EXISTING SOURCES, AND PROPOSED SOURCES PROVIDED THAT SUCH ANALYSIS SHALL BE IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION;

(H) A COMPREHENSIVE DEMOGRAPHIC, ECONOMIC AND PHYSICAL DESCRIPTION OF THE COMMUNITY WITHIN WHICH THE FACILITY IS LOCATED, WITHIN A TWO MILE RADIUS OF THE LOCATION OF THE PROPOSED FACILITY, COMPARED AND CONTRASTED WITH THE COUNTY IN WHICH THE FACILITY IS PROPOSED AND WITH ADJACENT COMMUNITIES WITHIN SUCH COUNTY, INCLUDING REASONABLY AVAILABLE DATA ON RESIDENTIAL PATTERNS, POPULATION, RACIAL AND ETHNIC CHARACTERISTICS, INCOME LEVELS, EMPLOYMENT, OPEN SPACE, EDUCATIONAL, BUSINESS, AND PUBLIC HEALTH DATA, INCLUDING AVAILABLE DEPARTMENT OF PUBLIC HEALTH DATA ON INCIDENTS OF ASTHMA AND CANCER PROVIDED THAT SUCH DESCRIPTION AND ANALYSIS SHALL BE IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION;

(I) A DESCRIPTION AND EVALUATION OF REASONABLE AND ALTERNATIVE LOCATIONS TO THE PROPOSED FACILITY, IF ANY, AND, WHERE APPROPRIATE, A DESCRIPTION AND EVALUATION OF REASONABLE DEMAND-SIDE ENERGY SUPPLY SOURCE ALTERNATIVES AND REASONABLE DEMAND-REDUCING MEASURES TO THE PROPOSED FACILITY; A DESCRIPTION OF THE COMPARATIVE ADVANTAGES AND DISADVANTAGES AS APPROPRIATE; AND A STATEMENT OF THE REASONS WHY THE PRIMARY PROPOSED LOCATION AND SOURCE, AS APPROPRIATE, IS BEST SUITED, AMONG THE ALTERNATIVES CONSIDERED, TO PROMOTE PUBLIC HEALTH AND WELFARE, INCLUDING THE RECREATIONAL AND OTHER CONCURRENT USES WHICH THE SITE MAY SERVE, PROVIDED THAT THE INFORMATION REQUIRED PURSUANT TO THIS PARAGRAPH SHALL BE NO MORE EXTENSIVE THAN REQUIRED UNDER ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW;

(J) FOR PROPOSED WIND-POWERED FACILITIES, THE EXPECTED ENVIRONMENTAL IMPACTS OF THE FACILITY ON AVIAN AND BAT SPECIES BASED ON PRE-CONSTRUCTION STUDIES CONDUCTED PURSUANT TO PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE; AND A PROPOSED PLAN TO AVOID OR, WHERE UNAVOIDABLE, MINIMIZE AND MITIGATE ANY SUCH IMPACTS DURING CONSTRUCTION AND OPERATION OF THE FACILITY BASED ON EXISTING INFORMATION AND RESULTS OF POST-CONSTRUCTION MONITORING PROPOSED IN THE PLAN;

(K) AN ANALYSIS OF THE POTENTIAL IMPACT THAT THE PROPOSED FACILITY WILL HAVE ON THE WHOLESALE GENERATION MARKETS, BOTH GENERALLY AND FOR THE LOCATION-BASED MARKET IN WHICH THE FACILITY IS PROPOSED, AS WELL AS THE POTENTIAL IMPACT OF THE PROPOSED FACILITY ON FUEL COSTS;

(L) A STATEMENT DEMONSTRATING THAT THE FACILITY IS REASONABLY CONSISTENT WITH THE MOST RECENT STATE ENERGY PLAN, INCLUDING, BUT NOT LIMITED TO, IMPACTS ON FUEL DIVERSITY, REGIONAL REQUIREMENTS FOR CAPACITY, ELECTRIC TRANSMISSION AND FUEL DELIVERY CONSTRAINTS AND OTHER ISSUES AS APPROPRIATE, INCLUDING THE COMPARATIVE ADVANTAGES AND DISADVANTAGES OF REASONABLE ALTERNATE LOCATIONS OR PROPERTIES IDENTIFIED FOR POWER PLANT

CONSTRUCTION, AND A STATEMENT OF THE REASONS WHY THE PROPOSED LOCATION AND SOURCE IS BEST SUITED, AMONG THE ALTERNATIVES IDENTIFIED, TO PROMOTE PUBLIC HEALTH AND WELFARE;

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

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

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

(II) EACH MEMBER OF THE BOARD;

(III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

(IV) THE SECRETARY OF STATE;

(V) THE ATTORNEY GENERAL;

(VI) THE DEPARTMENT OF TRANSPORTATION;

(VII) 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

(X) THE PUBLIC INFORMATION COORDINATOR FOR PLACEMENT ON THE WEBSITE OF THE DEPARTMENT; 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, INCLUDING LOCAL COMMUNITY AND GENERAL CIRCULATION NEWSPAPERS, AS WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICATION, IN PLAIN LANGUAGE, IN ENGLISH AND IN ANY OTHER LANGUAGE SPOKEN AS DETERMINED BY THE BOARD BY A SIGNIFICANT PORTION OF THE POPULATION IN THE COMMUNITY, THAT DESCRIBES THE PROPOSED FACILITY AND ITS LOCATION, THE RANGE OF POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS OF EACH POLLUTANT, THE APPLICATION AND REVIEW PROCESS, AND A CONTACT PERSON, WITH PHONE NUMBER AND ADDRESS, FROM WHOM INFORMATION WILL BE AVAILABLE AS THE APPLICATION PROCEEDS;

(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 ADDI-

TION, 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 PURSUANT TO THIS ARTICLE. NOTICE OF SUCH AN APPLICATION SHALL BE GIVEN AS SET FORTH IN SUBDIVISION TWO OF THIS SECTION.

5. IF A REASONABLE ALTERNATIVE LOCATION OR A REASONABLE ALTERNATIVE ENERGY SUPPLY SOURCE OR DEMAND REDUCING MEASURE NOT LISTED IN THE APPLICATION IS PROPOSED IN THE CERTIFICATION PROCEEDING, NOTICE OF SUCH PROPOSED ALTERNATIVE SHALL BE GIVEN AS SET FORTH IN SUBDIVISION TWO OF THIS SECTION.

6. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT (I) EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF CAPACITY, BUT NO MORE THAN FOUR HUNDRED THOUSAND DOLLARS, (II) AND FOR FACILITIES THAT WILL REQUIRE STORAGE OR DISPOSAL OF FUEL WASTE BYPRODUCT AN ADDITIONAL FEE OF FIVE HUNDRED DOLLARS FOR EACH THOUSAND KILOWATT OF CAPACITY, BUT NO MORE THAN ONE HUNDRED THOUSAND DOLLARS SHALL BE DEPOSITED IN THE INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-KKKK OF THE STATE FINANCE LAW IN ADDITION TO ANY FUNDS DEPOSITED PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE THAT REMAIN. SUCH FUNDS SHALL 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, CONSULTANT, ADMINISTRATIVE AND LEGAL FEES, PROVIDED, HOWEVER, SUCH EXPENSES SHALL NOT BE AVAILABLE FOR JUDICIAL REVIEW OR LITIGATION. 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 TWENTY-FIVE THOUSAND DOLLARS. THE BOARD SHALL PROVIDE FOR TRANSCRIPTS, THE REPRODUCTION AND SERVICE OF DOCUMENTS, AND THE PUBLICATION OF REQUIRED NOTICES, FOR MUNICIPAL AND OTHER LOCAL PARTIES, IN ALL APPROPRIATE LANGUAGES. ANY MONEYS REMAINING IN THE INTERVENOR ACCOUNT AFTER THE BOARD'S JURISDICTION OVER AN APPLICATION HAS CEASED SHALL BE RETURNED TO THE APPLICANT.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE BOARD SHALL PROVIDE BY RULES AND REGULATIONS FOR THE MANAGEMENT OF THE INTERVENOR 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 ASSURE 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.

7. THE CHAIRPERSON SHALL NOT ACCEPT AN APPLICATION FOR A CERTIFICATE PURSUANT TO THIS SECTION UNTIL THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS PROMULGATED RULES AND REGULATIONS CONCERNING (A) ENVIRONMENTAL JUSTICE ISSUES AS REQUIRED BY PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE AND (B) REDUCTIONS IN EMISSIONS OF CARBON DIOXIDE AS REQUIRED BY SECTION 19-0312 OF THE ENVIRONMENTAL CONSERVATION LAW.

S 165. HEARING SCHEDULE. 1. AFTER THE RECEIPT OF AN APPLICATION FILED PURSUANT TO SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE CHAIR OF THE BOARD SHALL, WITHIN SIXTY DAYS OF SUCH RECEIPT, DETERMINE WHETHER THE APPLICATION COMPLIES WITH SUCH SECTION AND UPON FINDING THAT THE APPLICATION SO COMPLIES, FIX A DATE FOR THE COMMENCEMENT OF A PUBLIC HEARING. NO LATER THAN THE DATE OF THE DETERMINATION THAT AN APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL INITIATE ITS REVIEW PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE CHAIR OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED TO SUPPLEMENT AN APPLICATION BEFORE OR DURING THE HEARINGS.

2. WITHIN A REASONABLE TIME AFTER THE DATE HAS BEEN FIXED BY THE CHAIR 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 ADDITIONAL ISSUES OR REQUESTS FOR ADDITIONAL SUBMISSIONS, DOCUMENTATION OR TESTIMONY AT A HEARING WHICH WARRANT CONSIDERATION IN ORDER TO DEVELOP AN ADEQUATE RECORD AS DETERMINED BY AN ORDER OF THE BOARD. THE PRESIDING EXAMINER SHALL BE PERMITTED A REASONABLE TIME TO RESPOND TO ANY AND ALL INTERLOCUTORY MOTIONS AND APPEALS, BUT IN NO CASE SHALL SUCH TIME EXTEND BEYOND FORTY-FIVE DAYS.

3. ALL PARTIES SHALL BE PREPARED TO PROCEED IN AN EXPEDITIOUS MANNER AT THE HEARING SO THAT IT MAY PROCEED REGULARLY UNTIL COMPLETION, EXCEPT THAT 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 MAJOR ELECTRIC GENERATING FACILITY. TO THE EXTENT PRACTICABLE, THE PLACE OF THE HEARING SHALL BE DESIGNATED BY THE PRESIDING EXAMINER AT A LOCATION WITHIN TWO MILES OF THE PROPOSED LOCATION OF THE FACILITY.

4. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, PROCEEDINGS ON AN APPLICATION SHALL BE COMPLETED IN ALL RESPECTS IN A MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN TWELVE MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIR THAT AN APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE; PROVIDED, HOWEVER, THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN SIX MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD MUST RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE THAN SIX MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

(B) PROCEEDINGS ON AN APPLICATION BY AN OWNER OF AN EXISTING MAJOR ELECTRIC GENERATING FACILITY TO MODIFY SUCH EXISTING FACILITY OR SITE A NEW MAJOR ELECTRIC GENERATING FACILITY ADJACENT OR CONTIGUOUS TO SUCH EXISTING FACILITY, SHALL BE COMPLETED IN ALL RESPECTS IN A MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN SIX MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIR THAT SUCH APPLICATION

COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, WHENEVER SUCH APPLICATION DEMONSTRATES THAT THE OPERATION OF THE MODIFIED FACILITY, OR OF THE EXISTING FACILITY AND NEW FACILITY IN COMBINATION, WOULD RESULT IN:

(I) A DECREASE IN THE RATE OF EMISSION OF EACH OF THE RELEVANT SITING AIR CONTAMINANTS BY A PERCENTAGE WHICH SHALL BE DETERMINED FOR EACH FACILITY BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. FOR FACILITIES THAT ARE PARTIALLY REPLACED OR MODIFIED, THE PERCENTAGE DECREASE SHALL BE CALCULATED BY COMPARING (ON A POUNDS-PER-MEGAWATT HOUR BASIS) THE POTENTIAL TO EMIT OF EACH SUCH CONTAMINANT OF THE EXISTING UNIT THAT IS TO BE MODIFIED OR REPLACED AS OF THE DATE OF APPLICATION UNDER THIS ARTICLE TO THE FUTURE POTENTIAL TO EMIT EACH SUCH CONTAMINANT OF THE MODIFIED OR REPLACEMENT UNIT AS PROPOSED IN THE APPLICATION. FOR FACILITIES THAT ARE SITED PHYSICALLY ADJACENT OR CONTIGUOUS TO AN EXISTING FACILITY, THE PERCENTAGE DECREASE SHALL BE CALCULATED BY COMPARING (ON A POUNDS-PER-MEGAWATT HOUR BASIS) THE POTENTIAL TO EMIT OF EACH SUCH CONTAMINANT OF THE EXISTING FACILITY AS OF THE DATE OF APPLICATION UNDER THIS ARTICLE, TO THE FUTURE POTENTIAL TO EMIT EACH SUCH CONTAMINANT OF THE EXISTING AND NEW FACILITY COMBINED AS PROPOSED IN THE APPLICATION;

(II) A REDUCTION OF THE TOTAL ANNUAL EMISSIONS OF EACH OF THE RELEVANT SITING AIR CONTAMINANTS EMITTED BY THE EXISTING FACILITY BY A PERCENTAGE WHICH SHALL BE DETERMINED FOR EACH FACILITY BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. THE PERCENTAGE REDUCTION SHALL BE CALCULATED BY COMPARING (ON A POUNDS-PER-YEAR BASIS) THE PAST ACTUAL EMISSIONS OF EACH OF THE RELEVANT SITING AIR CONTAMINANTS EMITTED BY THE EXISTING FACILITY AVERAGED OVER THE THREE YEARS PRECEDING THE DATE OF APPLICATION UNDER THIS ARTICLE, TO THE ANNUALIZED POTENTIAL TO EMIT EACH SUCH CONTAMINANT OF THE MODIFIED FACILITY OR OF THE COMBINED EXISTING AND NEW FACILITY AS PROPOSED IN THE APPLICATION;

(III) WHEN A NEW COOLING WATER INTAKE STRUCTURE IS PLANNED, INSTALLS CLOSED-CYCLE COOLING OR SOME OTHER TECHNOLOGY THAT WITHDRAWS WATER AT AN AMOUNT EQUAL TO OR LESS THAN CLOSED-CYCLE COOLING; AND

(IV) WILL RESULT IN A LOWER HEAT RATE THAN THE HEAT RATE OF THE EXISTING FACILITY.

THE APPLICANT SHALL SUPPLY THE DETAILS OF THE ANALYSIS IN THE APPLICATION AND SUCH SUPPORTING INFORMATION, AS MAY BE REQUESTED BY THE BOARD OR, IN THE EXERCISE OF FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NECESSARY TO SHOW COMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH. THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD SHALL RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE THAN THREE MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

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

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

(A) THE APPLICANT;

(B) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

(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;

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

(I) 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;

(J) 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;

(K) 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;

(1) 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;

(M) 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;

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

(O) 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 TESTIMONY OR CROSS-EXAMINE WITNESSES OR PARTIES.

4. THE BOARD MAY FOR GOOD CAUSE SHOWN, PERMIT A MUNICIPALITY OR OTHER PERSON ENTITLED TO BECOME A PARTY UNDER SUBDIVISION ONE OF THIS SECTION, BUT WHICH HAS FAILED TO FILE THE REQUISITE NOTICE OF INTENT WITHIN THE TIME REQUIRED, TO BECOME A PARTY, AND TO PARTICIPATE IN ALL SUBSEQUENT STAGES OF THE 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 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, INSOFAR AS IS CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE DECISION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR NOT TO ISSUE SUCH PERMITS.

(B) THE TESTIMONY PRESENTED AT A HEARING MAY BE PRESENTED IN WRITING. ORAL TESTIMONY MAY BE PRESENTED AT ANY PUBLIC STATEMENT HEARING CONDUCTED BY THE BOARD FOR THE TAKING OF UNSWORN STATEMENTS. 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. ALL TESTIMONY AND INFORMATION PRESENTED BY THE APPLICANT, ANY STATE AGENCY OR OTHER PARTY SHALL BE SUBJECT TO DISCOVERY AND CROSS-EXAMINATION. 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 INCLUDING, BUT NOT LIMITED TO, TESTIMONY, BRIEFS, E-MAILS AND HEARING TESTIMONY SHALL BE MADE AVAILABLE BY THE

BOARD WITHIN THIRTY DAYS OF THE CLOSE OF THE EVIDENTIARY RECORD FOR EXAMINATION BY THE PUBLIC, AND SHALL BE MADE AVAILABLE ON THE DEPARTMENT'S WEBSITE.

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

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

5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION, THE BOARD MAY MAKE A PROMPT DETERMINATION ON THE SUFFICIENCY OF THE APPLICANT'S CONSIDERATION AND EVALUATION OF REASONABLE ALTERNATIVES TO ITS PROPOSED TYPE OF MAJOR ELECTRIC GENERATING FACILITY AND ITS PROPOSED LOCATION FOR THAT FACILITY, AS REQUIRED PURSUANT TO PARAGRAPH (I) 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 (I) 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 NOT GRANT A CERTIFICATE OR AMENDMENT THEREOF FOR THE CONSTRUCTION OR OPERATION OF A FACILITY, EITHER AS PROPOSED OR AS MODIFIED BY THE BOARD, WITHOUT MAKING EXPLICIT FINDINGS REGARDING THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACTS OF THE CONSTRUCTION AND OPERATION OF THE FACILITY, INCLUDING THE CUMULATIVE ENVIRONMENTAL IMPACTS OF THE CONSTRUCTION AND OPERATION OF RELATED FACILITIES SUCH AS ELECTRIC LINES, GAS LINES, WATER SUPPLY LINES, WASTE WATER OR OTHER SEWAGE TREATMENT FACILITIES, COMMUNICATIONS AND RELAY FACILITIES, ACCESS ROADS, RAIL FACILITIES, OR STEAM LINES, INCLUDING IMPACTS ON:

(A) ECOLOGY, AIR, GROUND AND SURFACE WATER, WILDLIFE, AND HABITAT;

(B) PUBLIC HEALTH AND SAFETY;

(C) CULTURAL, HISTORIC, AND RECREATIONAL RESOURCES, INCLUDING AESTHETICS AND SCENIC VALUES; AND

(D) TRANSPORTATION, COMMUNICATION, UTILITIES AND OTHER INFRASTRUCTURE.

SUCH FINDINGS SHALL INCLUDE THE CUMULATIVE IMPACT OF EMISSIONS ON THE LOCAL COMMUNITY INCLUDING WHETHER THE CONSTRUCTION AND OPERATION OF THE FACILITY RESULTS IN AN ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACT, IN ACCORDANCE WITH REGULATIONS PROMULGATED PURSUANT TO PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION REGARDING ENVIRONMENTAL JUSTICE ISSUES.

3. THE BOARD MAY NOT GRANT A CERTIFICATE FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERATING FACILITY, EITHER AS PROPOSED OR AS MODIFIED BY THE BOARD, UNLESS THE BOARD DETERMINES THAT:

(A) THE FACILITY IS A BENEFICIAL ADDITION TO OR SUBSTITUTION FOR THE ELECTRIC GENERATION CAPACITY OF THE STATE;

(B) THE CONSTRUCTION AND OPERATION OF THE FACILITY WILL SERVE THE PUBLIC INTEREST;

(C) THE ADVERSE ENVIRONMENTAL EFFECTS OF THE CONSTRUCTION AND OPERATION OF THE FACILITY WILL BE AVOIDED OR MINIMIZED; AND

(D) 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 INCLUDING BUT NOT LIMITED TO THOSE RELATING TO INTERCONNECTION, WATER, SEWER, TELECOMMUNICATION, FUEL AND STEAM LINES, 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.

4. IN MAKING THE DETERMINATIONS REQUIRED IN SUBDIVISION THREE OF THIS SECTION, THE BOARD SHALL CONSIDER THE FOLLOWING FACTORS, PROVIDED THAT IN MAKING THE DETERMINATION REQUIRED IN PARAGRAPH (C) OF THIS SUBDIVISION THE BOARD SHALL NOT CONSIDER THE FACTORS LISTED IN PARAGRAPHS (C) AND (D) OF THIS SUBDIVISION:

(A) THE STATE OF AVAILABLE TECHNOLOGY;

(B) NATURE AND ECONOMICS OF REASONABLE ALTERNATIVES;

(C) THE IMPACT OF THE FACILITY UPON THE RELIABILITY OF THE LOCAL, STATE OR REGIONAL BULK ELECTRIC POWER SYSTEM;

(D) THE ECONOMIC IMPACT, INCLUDING IMPACTS ON RATEPAYERS, THE TOTAL COST OF ELECTRICITY PRODUCTION, JOB CREATION AND ECONOMIC DEVELOPMENT;

(E) ENVIRONMENTAL IMPACTS FOUND PURSUANT TO SUBDIVISION TWO OF THIS SECTION;

(F) THE IMPACT OF CONSTRUCTION AND OPERATION OF RELATED FACILITIES, SUCH AS ELECTRIC LINES, GAS LINES, WATER SUPPLY LINES, WASTE WATER OR OTHER SEWAGE TREATMENT FACILITIES, COMMUNICATIONS AND RELAY FACILITIES, ACCESS ROADS, RAIL FACILITIES, OR STEAM LINES;

(G) THE CONSISTENCY OF THE CONSTRUCTION AND OPERATION OF THE FACILITY WITH THE ENERGY POLICIES AND LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE MOST RECENT STATE ENERGY PLAN;

(H) THE IMPACT ON COMMUNITY CHARACTER AND WHETHER THE FACILITY WOULD AFFECT COMMUNITIES THAT ARE DISPROPORTIONATELY IMPACTED BY CUMULATIVE LEVELS OF POLLUTANTS; AND

(I) SUCH ADDITIONAL SOCIAL, ECONOMIC, VISUAL OR OTHER AESTHETIC, ENVIRONMENTAL AND OTHER CONSIDERATIONS DEEMED PERTINENT BY THE BOARD.

5. IF THE BOARD DETERMINES THAT THE FACILITY WOULD, BASED ON INFORMATION PROVIDED BY THE APPLICANT PURSUANT TO PARAGRAPHS (F), (G) AND (H) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, PLACE OR INCREASE AN ADDITIONAL ENVIRONMENTAL OR HEALTH BURDEN ON A COMMUNITY IN WHICH THE FACILITY WOULD BE LOCATED, THE BOARD SHALL REQUIRE AN APPLICANT TO UNDERTAKE MEASURES WITHIN THE RADIUS ANALYZED IN PARAGRAPH (G) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THAT ARE VERIFIABLE, MEASURABLE, AND THAT OFFSET SUCH BURDENS; PROVIDED THAT SUCH MEASURES SHALL BE IN PLACE FOR AT LEAST THE DURATION OF THE CERTIFICATE ISSUED. THE DEPARTMENT SHALL PROMULGATE RULES AND REGULATIONS PROVIDING FOR SUCH MEASURES AND ANY MEASURES THAT ARE REQUIRED TO BE PERFORMED BY AN APPLICANT SHALL BE IN ACCORDANCE WITH SUCH RULES AND REGULATIONS.

6. THE DEPARTMENT OR THE COMMISSION SHALL MONITOR, ENFORCE AND ADMINISTER COMPLIANCE WITH ANY TERMS AND CONDITIONS SET FORTH IN THE BOARD'S ORDER.

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

8. 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 PERMANENT BOARD SHALL RETAIN JURISDICTION WITH RESPECT TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A CERTIFICATE.

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 (D) OF SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE, IT SHALL STATE IN ITS OPINION THE REASONS THEREFOR.

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

DELIVER TO THE COURT A COPY OF THE RECORD AND A COPY OF THE BOARD'S DECISION AND OPINION. THEREUPON, THE COURT SHALL HAVE JURISDICTION OF THE PROCEEDING AND SHALL HAVE THE POWER TO GRANT SUCH RELIEF AS IT DEEMS JUST AND PROPER, AND TO MAKE AND ENTER AN ORDER ENFORCING, MODIFYING AND ENFORCING AS SO MODIFIED, REMANDING FOR FURTHER SPECIFIC EVIDENCE OR FINDINGS OR SETTING ASIDE IN WHOLE OR IN PART SUCH DECISION. THE APPEAL SHALL BE HEARD ON THE RECORD, WITHOUT REQUIREMENT OF REPRODUCTION, AND UPON BRIEFS TO THE COURT. NO OBJECTION THAT HAS NOT BEEN URGED BY THE PARTY IN HIS OR HER APPLICATION FOR REHEARING BEFORE THE BOARD SHALL BE CONSIDERED BY THE COURT, UNLESS THE FAILURE OR NEGLECT TO URGE SUCH OBJECTION SHALL BE EXCUSED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES. THE FINDINGS OF FACT ON WHICH SUCH DECISION IS BASED SHALL BE CONCLUSIVE IF SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE AND MATTERS OF JUDICIAL NOTICE SET FORTH IN THE OPINION. THE JURISDICTION OF THE APPELLATE DIVISION OF THE SUPREME COURT SHALL BE EXCLUSIVE AND ITS JUDGMENT AND ORDER SHALL BE FINAL, SUBJECT TO REVIEW BY THE COURT OF APPEALS IN THE SAME MANNER AND FORM AND WITH THE SAME EFFECT AS PROVIDED FOR APPEALS IN 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, LAWS AND REGULATIONS OF THE STATE AND THE UNITED STATES;

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

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

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

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

(F) MADE TO ENSURE FAIR TREATMENT AND MEANINGFUL INVOLVEMENT OF CITIZENS AFFECTED BY THE FACILITY REGARDLESS OF AGE, RACE, COLOR, NATIONAL ORIGIN AND INCOME.

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

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

S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY AGENCY THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY THE BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER CONDITION FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERATING FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE HEREUNDER HAS BEEN FILED, OTHER THAN THOSE PROVIDED BY OTHERWISE APPLICABLE STATE LAW FOR THE PROTECTION OF EMPLOYEES ENGAGED IN THE CONSTRUCTION AND OPERATION OF SUCH FACILITY; PROVIDED, HOWEVER, THAT IN THE CASE OF A MUNICIPALITY OR AN AGENCY THEREOF, SUCH MUNICIPALITY HAS RECEIVED NOTICE OF THE FILING OF THE APPLICATION THEREFOR; AND PROVIDED

FURTHER, HOWEVER, THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE THE PERMITTING AGENCY FOR PERMITS ISSUED 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 PERMITS ISSUED PURSUANT TO SECTION 15-1503 OF THE ENVIRONMENTAL CONSERVATION LAW. 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 SHALL PROVIDE SUCH PERMITS TO THE BOARD PRIOR TO ITS DETERMINATION WHETHER OR NOT TO ISSUE A CERTIFICATE. THE ISSUANCE BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF SUCH PERMITS SHALL IN NO WAY INTERFERE WITH OR AFFECT THE REQUIRED REVIEW BY THE BOARD OF THE ANTICIPATED ENVIRONMENTAL AND HEALTH IMPACTS RELATING TO THE CONSTRUCTION AND OPERATION OF THE FACILITY AS PROPOSED, OR ITS AUTHORITY TO DENY AN APPLICATION FOR CERTIFICATION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE, AND, IN THE EVENT OF SUCH A DENIAL, ANY SUCH PERMITS SHALL BE DEEMED NULL AND VOID.

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 173. APPLICABILITY TO PUBLIC AUTHORITIES. THE POWER AUTHORITY OF THE STATE OF NEW YORK, THE GREEN ISLAND POWER AUTHORITY AND THE LONG ISLAND POWER AUTHORITY SHALL BE SUBJECT TO ALL PROVISIONS OF THIS ARTICLE FOR MAJOR ELECTRIC GENERATING FACILITIES WHICH ANY SUCH AUTHORITY BUILDS OR CAUSES TO BE BUILT. FOR GENERATING FACILITIES WHICH ARE NOT MAJOR ELECTRIC GENERATING FACILITIES, NEITHER AUTHORITY SHALL BE PERMITTED TO SERVE AS LEAD AGENCY FOR PURPOSES OF ENVIRONMENTAL REVIEW PURSUANT TO THE PROVISIONS OF THE ENVIRONMENTAL CONSERVATION LAW.

S 2. 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 THE SITING OF A MAJOR ELECTRIC GENERATING FACILITY AS DEFINED THEREIN, AND except to the extent section eighteen-a of [such] THE PUBLIC SERVICE 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 ENVIRONMENTAL conservation department 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 3. Paragraph c of subdivision 8 of section 1020-c of the public authorities law, as amended by chapter 7 of the laws of 1987, is amended to read as follows:

c. Article seven of the public service law shall apply to the authority's siting and operation of a major transmission facility as therein defined and article [eight] TEN of the public service law shall apply to the authority's siting and operation of a major [steam] electric generating facility as therein defined.

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

S 1020-s. Public service law generally not applicable to authority; inconsistent provisions in certain other acts superseded. 1. The rates, services and practices relating to the electricity generated by facilities owned or operated by the authority shall not be subject to the provisions of the public service law or to regulation by, or the jurisdiction of, the public service commission, except to the extent (a) article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined therein, (b) article [eight] TEN of such law applies to the siting of a generating facility as defined therein, and (c) section eighteen-a of such law provides for assessment for certain costs, property or operations.

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

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

S 97-KKKK. 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 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 SECTIONS ONE HUNDRED SIXTY-THREE AND 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 6. The environmental conservation law is amended by adding a new section 19-0312 to read as follows:

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

1. DEFINITIONS. AS USED IN THIS SECTION:

A. "MERCURY" MEANS ELEMENTAL, OXIDIZED, AND PARTICLE-BOUND MERCURY IN SOURCE EMISSIONS.

B. "MAJOR ELECTRIC GENERATING FACILITY" MEANS ANY ELECTRICITY GENERATING FACILITY WITH A NAMEPLATE CAPACITY OF TWENTY-FIVE THOUSAND KILOWATTS OR MORE.

2. ANY MAJOR ELECTRIC GENERATING FACILITY SHALL DEMONSTRATE COMPLIANCE WITH ALL APPLICABLE EMISSION REQUIREMENTS ESTABLISHED BY THE DEPARTMENT FOR THE PURPOSE OF COMPLYING WITH ALL STATE AND FEDERAL AIR QUALITY REQUIREMENTS, INCLUDING REQUIREMENTS FOR SULFUR DIOXIDE, NITROGEN OXIDES, MERCURY, CARBON DIOXIDE AND PARTICULATE MATTER OF LESS THAN 2.5

MICRONS. SUCH FACILITY MUST ALSO COMPLY WITH OTHER APPLICABLE DEPARTMENT AIR QUALITY REQUIREMENTS RELATING TO OFFSETTING OF EMISSIONS.

3. NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE, THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS TARGETING REDUCTIONS IN EMISSIONS OF CARBON DIOXIDE THAT WOULD APPLY TO MAJOR ELECTRIC GENERATING FACILITIES THAT COMMENCED CONSTRUCTION AFTER THE EFFECTIVE DATE OF THE REGULATIONS.

S 7. Severability. 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 8. 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. Within twelve months of the effective date of this act, all rules and regulations required pursuant to this act shall be adopted by the New York state board on electric generation siting and the environment and the department of environmental conservation.