

1045

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sens. PARKER, PERKINS -- read twice and ordered printed,  
and when printed to be committed to the Committee on Energy and Tele-  
communications

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

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

1     Section 1. The public service law is amended by adding a new article  
2     10 to read as follows:  
3  
4                                     ARTICLE 10  
5     SECTION 160.     DEFINITIONS.  
6             161.     GENERAL PROVISIONS RELATING TO THE BOARD.  
7             162.     BOARD CERTIFICATE.  
8             162-A.   APPLICATIONS FOR SITING CERTAIN OTHER ELECTRIC GENERATING  
9                             FACILITIES.  
10            163.     PRE-APPLICATION PROCEDURES.  
11            163-A.   REPOWERING PROJECTS.  
12            164.     APPLICATION FOR A CERTIFICATE.  
13            165.     HEARING SCHEDULE.  
14            166.     PARTIES TO A CERTIFICATION PROCEEDING.  
15            167.     CONDUCT OF HEARING.  
16            168.     BOARD DECISIONS.  
17            169.     OPINION TO BE ISSUED WITH DECISION.  
18            170.     REHEARING AND JUDICIAL REVIEW.  
19            171.     JURISDICTION OF COURTS.  
20            172.     POWERS OF MUNICIPALITIES AND STATE AGENCIES.

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

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1 S 160. DEFINITIONS. WHERE USED IN THIS ARTICLE, THE FOLLOWING TERMS,  
2 UNLESS THE CONTEXT OTHERWISE REQUIRES, SHALL HAVE THE FOLLOWING MEAN-  
3 INGS:

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

6 2. "MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING  
7 FACILITY THAT IS OPERATED AT A TOTAL NET GENERATING OUTPUT TO THE ELEC-  
8 TRIC SYSTEM OF FIFTY THOUSAND KILOWATTS OR MORE, INCLUDING INTERCON-  
9 NECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT  
10 ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAPTER.

11 3. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, LIMITED LIABILITY  
12 COMPANY, PUBLIC BENEFIT CORPORATION, POLITICAL SUBDIVISION, GOVERNMENTAL  
13 AGENCY, MUNICIPALITY, PARTNERSHIP, COOPERATIVE ASSOCIATION, TRUST OR  
14 ESTATE.

15 4. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION  
16 SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST  
17 OF SEVEN PERSONS: THE CHAIRMAN OF THE DEPARTMENT, WHO SHALL SERVE AS  
18 CHAIRPERSON OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVA-  
19 TION; THE COMMISSIONER OF HEALTH, THE CHAIRPERSON OF THE NEW YORK STATE  
20 ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC  
21 DEVELOPMENT AND TWO AD HOC PUBLIC MEMBERS APPOINTED BY THE GOVERNOR. ONE  
22 AD HOC PUBLIC MEMBER SHALL BE A RESIDENT OF THE JUDICIAL DISTRICT IN  
23 WHICH THE FACILITY AS PROPOSED IS TO BE LOCATED AND ONE AD HOC PUBLIC  
24 MEMBER SHALL BE A RESIDENT OF THE COUNTY IN WHICH THE FACILITY AS  
25 PROPOSED IS TO BE LOCATED. THE TERM OF THE AD HOC MEMBERS SHALL CONTINUE  
26 UNTIL A FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEEDING FOR  
27 WHICH THEY WERE APPOINTED. WHERE THE FACILITY OR ANY PORTION THEREOF OR  
28 ANY ALTERNATIVE PROPOSED TO BE LOCATED WITHIN A CITY WITH A POPULATION  
29 OF ONE MILLION OR MORE, ONE OF THE AD HOC PUBLIC MEMBERS CITED IN THIS  
30 SECTION SHALL BE APPOINTED BY THE GOVERNOR AND SHALL BE A RESIDENT OF  
31 THE JUDICIAL DISTRICT IN WHICH THE FACILITY IS TO BE LOCATED, AND THE  
32 OTHER AD HOC PUBLIC MEMBER CITED IN THIS SECTION SHALL BE APPOINTED BY  
33 THE GOVERNOR, IN CONSULTATION WITH THE BOROUGH PRESIDENT OF THE BOROUGH  
34 IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED AND SHALL BE A RESIDENT  
35 OF THE BOROUGH IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED.

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

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

44 S 161. GENERAL PROVISIONS RELATING TO THE BOARD. 1. UPON RECEIPT OF AN  
45 APPLICATION UNDER THIS ARTICLE, THE CHAIRPERSON SHALL PROMPTLY NOTIFY  
46 THE GOVERNOR. WITHIN THIRTY DAYS OF SUCH NOTIFICATION THE GOVERNOR SHALL  
47 APPOINT THE AD HOC MEMBERS. FOUR OF THE SEVEN PERSONS ON THE BOARD SHALL  
48 CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE BOARD,  
49 AND THE DECISION OF FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE ACTION OF  
50 THE BOARD. THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE THE  
51 POWER TO ADOPT RULES AND REGULATIONS RELATING TO THE PROCEDURES TO BE  
52 USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTICLE,  
53 INCLUDING THE SUSPENSION OR REVOCATION THEREOF, AND SHALL FURTHER HAVE  
54 THE POWER TO SEEK DELEGATION FROM THE FEDERAL GOVERNMENT PURSUANT TO  
55 FEDERAL REGULATORY PROGRAMS APPLICABLE TO THE SITING OF MAJOR ELECTRIC  
56 GENERATING FACILITIES. THE CHAIRPERSON, AFTER CONSULTATION WITH THE

1 OTHER MEMBERS OF THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE  
2 EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY RULINGS REGARDING THE APPLI-  
3 CABILITY OF, OR ANY OTHER QUESTION UNDER, THIS ARTICLE AND RULES AND  
4 REGULATIONS ADOPTED HEREUNDER. REGULATIONS ADOPTED BY THE BOARD MAY  
5 PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE  
6 SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-  
7 TION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY.

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

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

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

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

49 4. THIS ARTICLE SHALL NOT APPLY:

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

55 (B) TO NORMAL REPAIRS, REPLACEMENTS, MODIFICATIONS AND IMPROVEMENTS OF  
56 A MAJOR ELECTRIC GENERATING FACILITY, WHENEVER BUILT, WHICH DO NOT

1 CONSTITUTE A VIOLATION OF ANY CERTIFICATE ISSUED UNDER THIS ARTICLE AND  
2 WHICH DO NOT RESULT IN AN INCREASE IN CAPACITY OF THE FACILITY OF MORE  
3 THAN FIFTY THOUSAND KILOWATTS;

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

8 (D) TO A MAJOR ELECTRIC GENERATING FACILITY WHICH GENERATES ELECTRIC-  
9 ITY FROM THE COMBUSTION OF SOLID WASTE OR FROM FUEL DERIVED FROM SOLID  
10 WASTE.

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

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

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

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

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

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

41 (D) MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS;

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

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

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

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

7 2. EACH PRELIMINARY SCOPING STATEMENT SHALL BE ACCOMPANIED BY A FEE OF  
8 FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE INTERVENOR ACCOUNT, ESTAB-  
9 LISHED PURSUANT TO SECTION NINETY-NINE-T OF THE STATE FINANCE LAW, AND  
10 SHALL BE DISBURSED AT THE BOARD'S DIRECTION TO DEFRAY EXPENSES INCURRED  
11 BY MUNICIPAL AND OTHER LOCAL, INTERESTED PERSONS (EXCEPT A MUNICIPALITY  
12 WHICH IS THE APPLICANT) FOR CONSULTANTS' FEES TO EVALUATE THE PRELIMI-  
13 NARY SCOPING STATEMENT AND ANALYZE THE METHODOLOGY AND SCOPE OF ANY  
14 STUDY OR PROGRAM OF STUDIES TO BE UNDERTAKEN BY THE APPLICANT IN SUPPORT  
15 OF ITS APPLICATION. SUCH FUNDS SHALL BE MADE AVAILABLE ON AN EQUITABLE  
16 BASIS IN A MANNER WHICH FACILITATES BROAD PUBLIC PARTICIPATION IN THE  
17 PRE-APPLICATION PROCESS. ANY UNUSED FUNDS SHALL BE MADE AVAILABLE AND  
18 DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION SIX OF  
19 SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE IF AN APPLICATION IS  
20 FILED OR, IF THE PRELIMINARY SCOPING STATEMENT IS WITHDRAWN, RETURNED TO  
21 THE APPLICANT. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRA-  
22 RY, THE BOARD MAY PROVIDE BY RULES AND REGULATIONS FOR DISBURSEMENTS  
23 FROM THE FUND FOR THE STATED PURPOSES.

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

28 4. TO FACILITATE THE APPLICATION PROCESS AND ENABLE CITIZENS TO  
29 PARTICIPATE IN DECISIONS THAT AFFECT THEIR HEALTH AND SAFETY AND THE  
30 ENVIRONMENT, THE DEPARTMENT SHALL PROVIDE OPPORTUNITIES FOR CITIZEN  
31 INVOLVEMENT. SUCH OPPORTUNITIES SHALL ENCOURAGE CONSULTATION WITH THE  
32 PUBLIC EARLY IN THE APPLICATION PROCESS, ESPECIALLY BEFORE ANY PARTIES  
33 ENTER A STIPULATION PURSUANT TO SUBDIVISION FIVE OF THIS SECTION. THE  
34 PRIMARY GOALS OF THE CITIZEN PARTICIPATION PROCESS SHALL BE TO FACILI-  
35 TATE COMMUNICATION BETWEEN THE APPLICANT AND INTERESTED OR AFFECTED  
36 PERSONS. THE PROCESS SHALL FOSTER THE ACTIVE INVOLVEMENT OF THE INTER-  
37 ESTED OR AFFECTED PERSONS.

38 5. SUCH PERSON MAY CONSULT AND SEEK AGREEMENT WITH ANY INTERESTED  
39 PERSON INCLUDING, BUT NOT LIMITED TO, THE STAFF OF THE DEPARTMENT, THE  
40 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE AND  
41 THE DEPARTMENT OF HEALTH, AS APPROPRIATE, AS TO ANY ASPECT OF THE  
42 PRELIMINARY SCOPING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE  
43 OR TO BE MADE TO SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT,  
44 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE,  
45 THE DEPARTMENT OF HEALTH, THE PERSON PROPOSING TO FILE AN APPLICATION,  
46 AND ANY OTHER INTERESTED PERSON MAY ENTER INTO A STIPULATION SETTING  
47 FORTH AN AGREEMENT ON ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT  
48 AND THE STUDIES OR PROGRAM OF STUDIES TO BE CONDUCTED. ANY SUCH PERSON  
49 PROPOSING TO SUBMIT AN APPLICATION FOR A CERTIFICATE SHALL SERVE A COPY  
50 OF THE PROPOSED STIPULATION UPON ALL PERSONS ENUMERATED IN PARAGRAPH (A)  
51 OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE,  
52 PROVIDE NOTICE OF SUCH STIPULATION TO THOSE PERSONS IDENTIFIED IN PARA-  
53 GRAPH (B) OF SUCH SUBDIVISION, AND AFFORD THE PUBLIC A REASONABLE OPPOR-  
54 TUNITY TO SUBMIT COMMENTS ON THE STIPULATION BEFORE IT IS EXECUTED BY  
55 THE INTERESTED PARTIES. NOTHING IN THIS SUBDIVISION, HOWEVER, SHALL BAR  
56 ANY PARTY TO A HEARING ON AN APPLICATION, OTHER THAN ANY PARTY TO A

PRE-APPLICATION STIPULATION, FROM TIMELY RAISING OBJECTIONS TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY STIPULATED STUDIES OR PROGRAM OF STUDIES IN ANY SUCH AGREEMENT. IN ORDER TO ATTEMPT TO RESOLVE ANY QUESTIONS THAT MAY ARISE AS A RESULT OF SUCH CONSULTATION, THE BOARD MAY DESIGNATE A HEARING EXAMINER WHO SHALL MEDIATE ANY ISSUE RELATING TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY SUCH STUDIES OR PROGRAMS OF STUDY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. THE APPLICATION SHALL BE ACCOMPANIED BY:

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

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

(C) A FEE IN AN AMOUNT EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF GENERATING CAPACITY IN EXCESS OF THE GENERATING OUTPUT OF THE EXISTING FACILITY IN THOUSANDS OF KILOWATTS MULTIPLIED BY ONE THOUSAND DOLLARS, BUT IN NO EVENT SHALL SUCH FEE EXCEED THREE HUNDRED THOUSAND DOLLARS. SUCH FEE SHALL BE DEPOSITED IN THE INTERVENOR ACCOUNT ESTABLISHED PURSUANT TO SECTION NINETY-NINE-T OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE.

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

5. WITHIN SIXTY DAYS OF RECEIPT OF AN APPLICATION FILED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE CHAIRPERSON OF THE BOARD SHALL

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

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

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

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



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

11 S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIF-  
12 ICATE SHALL FILE WITH THE CHAIRPERSON OF THE BOARD AN APPLICATION, IN  
13 SUCH FORM AS THE BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMA-  
14 TION AND MATERIALS:

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

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

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

CULATE MATTER OF 2.5 MICRONS OR GREATER; (X) THE CUMULATIVE AIR AND ENVIRONMENTAL IMPACTS OF THE PROPOSED FACILITY IN AGGREGATE WITH EXISTING EMISSION SOURCES ON THE GEOGRAPHIC AREA IN WHICH THE FACILITY IS PROPOSED; AND (XI) IF THE FACILITY IS PROPOSED FOR A POTENTIAL ENVIRONMENTAL JUSTICE AREA, AS DEFINED IN THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION POLICY DIRECTIVE CP-29, ENVIRONMENTAL JUSTICE AND PERMITTING, EXISTING EMISSION SOURCES THEREIN.

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

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

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

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

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

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

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

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

(II) EACH MEMBER OF THE BOARD;

(III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

1 (IV) THE SECRETARY OF STATE;

2 (V) THE ATTORNEY GENERAL;

3 (VI) THE DEPARTMENT OF TRANSPORTATION;

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

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

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

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

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

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

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

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

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

1 AMOUNT NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS. THE BOARD SHALL  
2 PROVIDE FOR TRANSCRIPTS, THE REPRODUCTION AND SERVICE OF DOCUMENTS, AND  
3 THE PUBLICATION OF REQUIRED NOTICES, FOR MUNICIPAL PARTIES. ANY MONEYS  
4 REMAINING IN THE INTERVENOR FUND, AFTER THE BOARD HAS ISSUED ITS DECISION ON AN APPLICATION UNDER THIS ARTICLE AND THE TIME FOR APPLYING FOR  
5 A REHEARING AND JUDICIAL REVIEW HAS EXPIRED, SHALL BE RETURNED TO THE  
6 APPLICANT.

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

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

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

46  
47 2. WITHIN A REASONABLE TIME AFTER THE DATE HAS BEEN FIXED BY THE  
48 CHAIRPERSON FOR COMMENCEMENT OF A PUBLIC HEARING, THE PRESIDING EXAMINER  
49 SHALL HOLD A PRE-HEARING CONFERENCE TO EXPEDITE THE ORDERLY CONDUCT AND  
50 DISPOSITION OF THE HEARING, TO SPECIFY THE ISSUES, TO OBTAIN STIPULATIONS AS TO MATTERS NOT DISPUTED, AND TO DEAL WITH SUCH OTHER MATTERS  
51 AS THE PRESIDING EXAMINER MAY DEEM PROPER. THEREAFTER, THE PRESIDING  
52 EXAMINER SHALL ISSUE AN ORDER IDENTIFYING THE ISSUES TO BE ADDRESSED BY  
53 THE PARTIES, PROVIDED, HOWEVER, THAT NO SUCH ORDER SHALL PRECLUDE  
54 CONSIDERATION OF ISSUES WHICH WARRANT CONSIDERATION IN ORDER TO DEVELOP  
55 AN ADEQUATE RECORD AS DETERMINED BY AN ORDER OF THE BOARD.  
56

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

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

24 (B) PROCEEDINGS ON AN APPLICATION BY AN OWNER OF AN EXISTING MAJOR  
25 ELECTRIC GENERATING FACILITY TO MODIFY SUCH EXISTING FACILITY OR SITE A  
26 NEW MAJOR ELECTRIC GENERATING FACILITY ADJACENT OR CONTIGUOUS TO SUCH  
27 EXISTING FACILITY, SHALL BE COMPLETED IN ALL RESPECTS IN A MANNER  
28 CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING  
29 AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN SIX MONTHS  
30 FROM THE DATE OF A DETERMINATION BY THE CHAIRPERSON THAT SUCH APPLICA-  
31 TION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, WHEN-  
32 EVER SUCH APPLICATION DEMONSTRATES THAT THE OPERATION OF THE MODIFIED  
33 FACILITY OR OF THE EXISTING FACILITY AND NEW FACILITY IN COMBINATION  
34 WOULD RESULT IN: (I) A DECREASE OF NOT LESS THAN SEVENTY-FIVE PERCENT IN  
35 THE RATE OF EMISSIONS OF EACH OF THE FOLLOWING ON A POUNDS PER MEGA-  
36 WATT-HOUR BASIS: (A) OXIDES OF NITROGEN, (B) OXIDES OF SULFUR AND (C)  
37 PARTICULATE MATTER OF 2.5 MICRONS OR GREATER. THE PERCENTAGE REDUCTIONS  
38 IN THE RATE OF SUCH EMISSIONS SHALL BE CALCULATED BY COMPARING THE ANNU-  
39 ALIZED POTENTIAL TO EMIT OF THE EXISTING FACILITY (EXPRESSED IN POUNDS  
40 PER MEGAWATT-HOUR) AT THE TIME THE APPLICATION UNDER THIS ARTICLE IS  
41 FILED WITH THE CHAIRPERSON AND THE FUTURE ANNUALIZED POTENTIAL TO EMIT  
42 OF THE MODIFIED FACILITY OR OF THE COMBINATION OF THE EXISTING AND NEW  
43 FACILITY (EXPRESSED IN POUNDS PER MEGAWATT-HOUR AND BASED UPON REASON-  
44 ABLY EXPECTED OPERATING CONDITIONS) PROPOSED IN THE APPLICATION; AND  
45 (II) INSTALLATION OF AIR COOLED CONDENSERS OR INSTALLATION OF EVAPORA-  
46 TIVE COOLING WATER INTAKE SYSTEMS OR SUCH OTHER TECHNOLOGIES FOR THE  
47 MODIFIED FACILITY OR FOR THE EXISTING AND NEW FACILITY THAT WOULD BE  
48 DESIGNED TO WITHDRAW NO MORE THAN FIFTEEN GALLONS PER MINUTE PER MEGA-  
49 WATT OF TOTAL PLANT GENERATING CAPACITY FOR COMBINED CYCLE COMBUSTION  
50 TURBINE TECHNOLOGY PLANTS, FROM A SOURCE WATER BODY FOR COOLING  
51 PURPOSES. THE APPLICANT SHALL SUPPLY THE DETAILS OF THE ANALYSIS IN THE  
52 APPLICATION AND SUCH SUPPORTING INFORMATION, AS MAY BE REQUESTED BY THE  
53 BOARD OR, IN THE EXERCISE OF FEDERALLY DELEGATED OR APPROVED ENVIRON-  
54 MENTAL PERMITTING AUTHORITY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-  
55 TION, NECESSARY TO SHOW COMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH  
56 (I) OF THIS PARAGRAPH. FOR FACILITIES OVER TWO HUNDRED THOUSAND KILO-

WATTS WHICH HAVE NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD SHALL RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE THAN THREE MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

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

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

(A) THE APPLICANT;

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

(C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

(D) THE DEPARTMENT OF HEALTH;

(E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 S 167. CONDUCT OF HEARING. 1. (A) THE HEARING SHALL BE CONDUCTED IN AN  
46 EXPEDITIOUS MANNER BY A PRESIDING EXAMINER APPOINTED BY THE DEPARTMENT.  
47 AN ASSOCIATE HEARING EXAMINER SHALL BE APPOINTED BY THE DEPARTMENT OF  
48 ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE  
49 PUBLIC HEARING. THE ASSOCIATE EXAMINER SHALL ATTEND ALL HEARINGS AS  
50 SCHEDULED BY THE PRESIDING EXAMINER AND SHALL ASSIST THE PRESIDING EXAM-  
51 INER IN INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND  
52 MATERIAL MATTERS. THE CONCLUSIONS AND RECOMMENDATIONS OF THE ASSOCIATE  
53 EXAMINER SHALL BE INCORPORATED IN THE RECOMMENDED DECISION OF THE  
54 PRESIDING EXAMINER, UNLESS THE ASSOCIATE EXAMINER PREFERS TO SUBMIT A  
55 SEPARATE REPORT OF DISSENTING OR CONCURRING CONCLUSIONS AND RECOMMENDA-  
56 TIONS. IN THE EVENT THAT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION

1 ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY  
2 UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE  
3 FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE RECORD IN THE  
4 PROCEEDING AND THE ASSOCIATE HEARING EXAMINER'S CONCLUSIONS AND RECOM-  
5 MENDATIONS SHALL, INsofar AS IS CONSISTENT WITH FEDERALLY DELEGATED OR  
6 APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE  
7 DECISION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR  
8 NOT TO ISSUE SUCH PERMITS.

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

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

39 (D) WHEN THE PROPOSED FACILITY IS TO BE LOCATED IN A POTENTIAL ENVI-  
40 RONMENTAL JUSTICE AREA, AS DEFINED IN THE DEPARTMENT OF ENVIRONMENTAL  
41 CONSERVATION POLICY DIRECTIVE CP-29, ENVIRONMENTAL JUSTICE AND PERMIT-  
42 TING, AN ENVIRONMENTAL JUSTICE SPECIALIST SHALL BE DESIGNATED BY THE  
43 DEPARTMENT OF ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR  
44 COMMENCEMENT OF THE PUBLIC HEARING. THE ENVIRONMENTAL JUSTICE SPECIALIST  
45 SHALL ATTEND ALL HEARINGS AS SCHEDULED BY THE PRESIDING AND ASSOCIATE  
46 EXAMINERS AND SHALL ASSIST THE PRESIDING AND ASSOCIATE EXAMINERS IN  
47 INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND MATERI-  
48 AL MATTERS.

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

51 3. THE CHAIRPERSON OF THE BOARD MAY ENTER INTO AN AGREEMENT WITH AN  
52 AGENCY OR DEPARTMENT OF THE UNITED STATES HAVING CONCURRENT JURISDICTION  
53 OVER ALL OR PART OF THE LOCATION, CONSTRUCTION, OR OPERATION OF A MAJOR  
54 ELECTRIC GENERATING FACILITY SUBJECT TO THIS ARTICLE WITH RESPECT TO  
55 PROVIDING FOR JOINT PROCEDURES AND A JOINT HEARING OF COMMON ISSUES ON A



1 COMBINED RECORD, PROVIDED THAT SUCH AGREEMENT SHALL NOT DIMINISH THE  
2 RIGHTS ACCORDED TO ANY PARTY UNDER THIS ARTICLE.

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

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

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

41 2. THE BOARD SHALL RENDER A DECISION UPON THE RECORD EITHER TO GRANT  
42 OR DENY THE APPLICATION AS FILED OR TO CERTIFY THE FACILITY UPON SUCH  
43 TERMS, CONDITIONS, LIMITATIONS OR MODIFICATIONS OF THE CONSTRUCTION OR  
44 OPERATION OF THE FACILITY AS THE BOARD MAY DEEM APPROPRIATE. THE BOARD  
45 SHALL ISSUE, WITH ITS DECISION, AN OPINION STATING IN FULL ITS REASONS  
46 FOR ITS DECISION. THE BOARD SHALL ISSUE AN ORDER UPON THE DECISION AND  
47 THE OPINION EMBODYING THE TERMS AND CONDITIONS THEREOF IN FULL. FOLLOW-  
48 ING ANY REHEARING AND ANY JUDICIAL REVIEW OF THE BOARD'S DECISION, THE  
49 BOARD'S JURISDICTION OVER AN APPLICATION SHALL CEASE, PROVIDED HOWEVER,  
50 THAT THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL RETAIN JURISDIC-  
51 TION WITH RESPECT TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A  
52 CERTIFICATE. THE COMMISSION SHALL MONITOR, ENFORCE AND ADMINISTER  
53 COMPLIANCE WITH ANY TERMS AND CONDITIONS SET FORTH IN THE BOARD'S ORDER.  
54 THE BOARD SHALL NOT GRANT A CERTIFICATE FOR THE CONSTRUCTION OR OPERA-  
55 TION OF A MAJOR ELECTRIC GENERATING FACILITY, EITHER AS PROPOSED OR AS  
56 MODIFIED BY THE BOARD, UNLESS IT SHALL FIRST FIND AND DETERMINE:

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

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

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

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

48 (E) THAT THE FACILITY IS DESIGNATED TO OPERATE IN COMPLIANCE WITH  
49 APPLICABLE STATE AND LOCAL LAWS AND REGULATIONS ISSUED THEREUNDER  
50 CONCERNING, AMONG OTHER MATTERS, THE ENVIRONMENT, PUBLIC HEALTH AND  
51 SAFETY, ALL OF WHICH SHALL BE BINDING UPON THE APPLICANT, EXCEPT THAT  
52 THE BOARD MAY REFUSE TO APPLY ANY LOCAL ORDINANCE, LAW, RESOLUTION OR  
53 OTHER ACTION OR ANY REGULATION ISSUED THEREUNDER OR ANY LOCAL STANDARD  
54 OR REQUIREMENT WHICH WOULD BE OTHERWISE APPLICABLE IF IT FINDS THAT AS  
55 APPLIED TO THE PROPOSED FACILITY SUCH IS UNREASONABLY RESTRICTIVE IN  
56 VIEW OF THE EXISTING TECHNOLOGY FOR THE NEEDS OF OR COSTS TO RATE PAYERS

1 WHETHER LOCATED INSIDE OR OUTSIDE OF SUCH MUNICIPALITY. THE BOARD SHALL  
2 PROVIDE THE MUNICIPALITY AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT  
3 OF SUCH ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER LOCAL ACTION  
4 ISSUED THEREUNDER; AND

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

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

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

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

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

1 DELIVER TO THE COURT A COPY OF THE RECORD AND A COPY OF THE BOARD'S  
2 DECISION AND OPINION. THEREUPON, THE COURT SHALL HAVE JURISDICTION OF  
3 THE PROCEEDING AND SHALL HAVE THE POWER TO GRANT SUCH RELIEF AS IT DEEMS  
4 JUST AND PROPER, AND TO MAKE AND ENTER AN ORDER ENFORCING, MODIFYING AND  
5 ENFORCING AS SO MODIFIED, REMANDING FOR FURTHER SPECIFIC EVIDENCE OR  
6 FINDINGS OR SETTING ASIDE IN WHOLE OR IN PART SUCH DECISION. THE APPEAL  
7 SHALL BE HEARD ON THE RECORD, WITHOUT REQUIREMENT OF REPRODUCTION, AND  
8 UPON BRIEFS TO THE COURT. NO OBJECTION THAT HAS NOT BEEN URGED BY THE  
9 PARTY IN HIS OR HER APPLICATION FOR REHEARING BEFORE THE BOARD SHALL BE  
10 CONSIDERED BY THE COURT, UNLESS THE FAILURE OR NEGLECT TO URGE SUCH  
11 OBJECTION SHALL BE EXCUSED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES. THE  
12 FINDINGS OF FACT ON WHICH SUCH DECISION IS BASED SHALL BE CONCLUSIVE IF  
13 SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE  
14 AND MATTERS OF JUDICIAL NOTICE SET FORTH IN THE OPINION. THE JURISDIC-  
15 TION OF THE APPELLATE DIVISION OF THE SUPREME COURT SHALL BE EXCLUSIVE  
16 AND ITS JUDGMENT AND ORDER SHALL BE FINAL, SUBJECT TO REVIEW BY THE  
17 COURT OF APPEALS IN THE SAME MANNER AND FORM AND WITH THE SAME EFFECT AS  
18 PROVIDED FOR APPEALS IN SPECIAL PROCEEDING. ALL SUCH PROCEEDINGS SHALL  
19 BE HEARD AND DETERMINED BY THE APPELLATE DIVISION OF THE SUPREME COURT  
20 AND BY THE COURT OF APPEALS AS EXPEDITIOUSLY AS POSSIBLE AND WITH LAWFUL  
21 PRECEDENCE OVER ALL OTHER MATTERS.

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

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

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

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

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

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

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

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

44 S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTANDING  
45 ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY AGENCY  
46 THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY THE  
47 BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER  
48 CONDITION FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERAT-  
49 ING FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE  
50 HEREUNDER HAS BEEN FILED, OTHER THAN THOSE PROVIDED BY OTHERWISE APPLI-  
51 CABLE STATE LAW FOR THE PROTECTION OF EMPLOYEES ENGAGED IN THE  
52 CONSTRUCTION AND OPERATION OF SUCH FACILITY; PROVIDED, HOWEVER, THAT IN  
53 THE CASE OF A MUNICIPALITY OR AN AGENCY THEREOF, SUCH MUNICIPALITY HAS  
54 RECEIVED NOTICE OF THE FILING OF THE APPLICATION THEREFOR; AND PROVIDED  
55 FURTHER HOWEVER, THAT THE DEPARTMENT OF STATE MAY MAKE CONSISTENCY  
56 DETERMINATIONS PURSUANT TO THE FEDERAL COASTAL ZONE MANAGEMENT ACT. IN

1 ISSUING SUCH DETERMINATIONS, THE SECRETARY OF STATE SHALL FOLLOW PROCE-  
2 DURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY ARE CONSISTENT  
3 WITH THE FEDERAL COASTAL ZONE MANAGEMENT ACT AND ITS IMPLEMENTING REGU-  
4 LATION; AND PROVIDED FURTHER, HOWEVER, THAT THE DEPARTMENT OF ENVIRON-  
5 MENTAL CONSERVATION MAY ISSUE PERMITS PURSUANT TO FEDERALLY DELEGATED OR  
6 APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN  
7 AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT. IN ISSU-  
8 ING SUCH PERMITS, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL  
9 FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY  
10 ARE CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL  
11 PERMITTING AUTHORITY. THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND  
12 THE SECRETARY OF STATE SHALL PROVIDE SUCH PERMITS TO THE BOARD PRIOR TO  
13 ITS DETERMINATION WHETHER OR NOT TO ISSUE A CERTIFICATE.

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

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

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

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

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

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

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

44 In the case of a major steam electric generating facility, as defined  
45 in FORMER section one hundred forty of the public service law, for the  
46 construction or operation of which a certificate is required under  
47 FORMER article eight of [such] THE PUBLIC SERVICE law, OR A MAJOR ELEC-  
48 TRIC GENERATING FACILITY AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THE  
49 PUBLIC SERVICE LAW, FOR THE CONSTRUCTION OR OPERATION OF WHICH A CERTIF-  
50 ICATE IS REQUIRED UNDER ARTICLE TEN OF THE PUBLIC SERVICE LAW, [an  
51 applicant shall apply for and obtain such certificate in lieu of filing  
52 an application and obtaining a permit under this article. Any reference  
53 in this article to a permit shall, in the case of such major steam elec-  
54 tric generating facility, be deemed for all purposes to refer to such  
55 certificate, provided that nothing] SUCH CERTIFICATE SHALL BE DEEMED A  
56 PERMIT UNDER THIS SECTION IF ISSUED BY THE STATE BOARD ON ELECTIVE

1 GENERATION SITING AND THE ENVIRONMENT PURSUANT TO FEDERALLY DELEGATED OR  
2 APPROVED ENVIRONMENTAL PERMIT AUTHORITY. NOTHING herein shall limit the  
3 authority of the [departments] DEPARTMENT of health and [environmental  
4 conservation] THE DEPARTMENT to monitor the environmental and health  
5 impacts resulting from the operation of such major steam electric gener-  
6 ating facility OR MAJOR ELECTRIC GENERATING FACILITY and to enforce  
7 applicable provisions of the public health LAW and [environmental  
8 conservation laws] THIS CHAPTER and the terms and conditions of the  
9 certificate governing the environmental and health impacts resulting  
10 from such operation. In such case all powers, duties, obligations and  
11 privileges conferred upon the department by this article shall devolve  
12 upon the New York state board on electric generation siting and the  
13 environment. In considering the granting of permits, such board shall  
14 apply the provisions of this article and the Act.

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

18 j. Consider for approval or disapproval applications for permits and  
19 certificates including plans or specifications for air contamination  
20 sources and air cleaning installations or any part thereof submitted [to  
21 him pursuant to] CONSISTENT WITH the rules of the department, and  
22 inspect the installation for compliance with the plans or specifica-  
23 tions; provided that in the case of a major steam electric generating  
24 facility, as defined in [either] FORMER section one hundred forty of the  
25 public service law, for which a certificate is required pursuant to  
26 [either] FORMER article eight of [such] THE PUBLIC SERVICE law, PURSUANT  
27 TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY  
28 such approval functions shall be performed by the state board on elec-  
29 tric generation siting and the environment, as defined in such law, and  
30 such inspection functions shall be performed by the department[;  
31 provided further that nothing]. NOTHING herein shall limit the authori-  
32 ty of the [departments] DEPARTMENT of health and [environmental conser-  
33 vation] THE DEPARTMENT to monitor the environmental and health impacts  
34 resulting from the operation of such major steam electric generating  
35 facility and to enforce applicable provisions of the public health LAW  
36 and [the environmental conservation laws] THIS CHAPTER and the terms and  
37 conditions of the certificate governing the environmental and health  
38 impacts resulting from such operation.

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

42 (e) where land subject to a conservation easement or an interest in  
43 such land is required for a major utility transmission facility which  
44 has received a certificate of environmental compatibility and public  
45 need pursuant to article seven of the public service law or is required  
46 for a major steam electric generating facility which has received a  
47 certificate [or] OF environmental compatibility and public need pursuant  
48 to article eight of the public service law, OR A MAJOR ELECTRIC GENERAT-  
49 ING FACILITY WHICH HAS RECEIVED A CERTIFICATE OF ENVIRONMENTAL COMPAT-  
50 IBILITY AND PUBLIC NEED PURSUANT TO ARTICLE TEN OF THE PUBLIC SERVICE  
51 LAW, upon the filing of such certificate in a manner prescribed for  
52 recording a conveyance of real property pursuant to section two hundred  
53 ninety-one of the real property law or any other applicable provision of  
54 law, provided that such certificate contains a finding that the public  
55 interest in the conservation and protection of the natural resources,

1 open spaces and scenic beauty of the Adirondack or Catskill parks has  
2 been considered.

3 S 7. Section 1014 of the public authorities law, as amended by chapter  
4 446 of the laws of 1972, is amended to read as follows:

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

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

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

41 S 9. The state finance law is amended by adding a new section 99-t to  
42 read as follows:

43 S 99-T. INTERVENOR ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE  
44 JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION  
45 AND FINANCE AN ACCOUNT TO BE KNOWN AS THE INTERVENOR ACCOUNT.

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

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

54 S 10. Separability. If any clause, sentence, paragraph, section or  
55 part of this act shall be adjudged by any court of competent jurisdic-  
56 tion to be invalid, such judgment shall not affect, impair or invalidate

1 the remainder thereof, but shall be confined in its operation to the  
2 clause, sentence, paragraph, section or part thereof directly involved  
3 in the controversy in which such judgment shall have been rendered.  
4 S 11. This act shall take effect immediately, provided that nothing in  
5 this act shall be construed to limit any administrative authority, with  
6 respect to matters included in this act, which existed prior to the  
7 effective date of this act.