

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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

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

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

3 ARTICLE 10

4 SITING OF ELECTRIC GENERATING FACILITIES

5 SECTION 160. DEFINITIONS.
6 161. GENERAL PROVISIONS RELATING TO THE BOARD.
7 162. BOARD CERTIFICATE.
8 163. PRE-APPLICATION PROCEDURES.
9 163-A. REPOWERING PROJECTS.
10 164. APPLICATION FOR A CERTIFICATE.
11 165. HEARING SCHEDULE.
12 166. PARTIES TO A CERTIFICATION PROCEEDING.
13 167. CONDUCT OF HEARING.
14 168. BOARD DECISIONS.
15 169. OPINION TO BE ISSUED WITH DECISION.
16 170. REHEARING AND JUDICIAL REVIEW.

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

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1 171. JURISDICTION OF COURTS.

2 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.

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

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

8 2. "MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING
9 FACILITY THAT IS OPERATED AT A TOTAL NET GENERATING OUTPUT TO THE ELEC-
10 TRIC SYSTEM OF EIGHTY THOUSAND KILOWATTS OR MORE, INCLUDING INTERCON-
11 NECTION WATER, SEWER, TELECOMMUNICATION, FUEL AND STEAM LINES, AND
12 INTERCONNECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION
13 LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAP-
14 TER.

15 3. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, LIMITED LIABILITY
16 COMPANY, PUBLIC BENEFIT CORPORATION, POLITICAL SUBDIVISION, GOVERNMENTAL
17 AGENCY, MUNICIPALITY, PARTNERSHIP, COOPERATIVE ASSOCIATION, TRUST OR
18 ESTATE.

19 4. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION
20 SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST
21 OF SEVEN PERSONS: THE CHAIRPERSON OF THE COMMISSION, WHO SHALL SERVE AS
22 CHAIRPERSON OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVA-
23 TION; THE COMMISSIONER OF HEALTH; THE CHAIRPERSON OF THE NEW YORK STATE
24 ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC
25 DEVELOPMENT; AND TWO AD HOC PUBLIC MEMBERS APPOINTED BY THE GOVERNOR.
26 ONE AD HOC PUBLIC MEMBER SHALL BE A RESIDENT OF THE JUDICIAL DISTRICT IN
27 WHICH THE FACILITY AS PROPOSED IS TO BE LOCATED AND ONE AD HOC PUBLIC
28 MEMBER SHALL BE A RESIDENT OF THE COUNTY IN WHICH THE FACILITY AS
29 PROPOSED IS TO BE LOCATED. IN SELECTING THE AD HOC MEMBERS, THE GOVERNOR
30 MAY CONSIDER RECOMMENDATIONS FROM COMMUNITY-BASED ORGANIZATIONS AND
31 RESIDENTS FROM THE COUNTY, MUNICIPALITY AND/OR COMMUNITY IN WHICH THE
32 FACILITY IS PROPOSED TO BE LOCATED. THE TERM OF THE AD HOC MEMBERS SHALL
33 CONTINUE UNTIL A FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEED-
34 ING FOR WHICH THEY WERE APPOINTED, INCLUDING ANY REHEARING AND ANY JUDI-
35 CIAL REVIEW OF SUCH DECISION.

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

44 (A) RESULTS IN A DECREASE IN THE RATE OF EMISSIONS OF EACH OF THE
45 FOLLOWING ON A POUNDS PER MEGAWATT-HOUR BASIS: (I) OXIDES OF NITROGEN,
46 (II) OXIDES OF SULFUR, AND (III) PARTICULATE MATTER. THE REDUCTION IN
47 THE RATE OF SUCH EMISSIONS SHALL BE CALCULATED BASED UPON A COMPARISON
48 OF THE POTENTIAL TO EMIT OF THE EXISTING FACILITY (EXPRESSED IN POUNDS
49 PER MEGAWATT-HOUR) AT THE TIME THE APPLICATION UNDER THIS ARTICLE IS
50 FILED WITH THE CHAIRPERSON AND THE FUTURE POTENTIAL TO EMIT OF THE MODI-
51 FIED FACILITY OR OF THE COMBINATION OF THE EXISTING AND NEW FACILITY
52 (EXPRESSED IN POUNDS PER MEGAWATT-HOUR) AND BASED UPON REASONABLY
53 EXPECTED OPERATING CONDITIONS PROPOSED OR IDENTIFIED IN THE APPLICATION;
54 AND

55 (B) REPLACES EXISTING GENERATING CAPACITY WITH GENERATING CAPACITY
56 THAT HAS A LOWER HEAT RATE.

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

4 S 161. GENERAL PROVISIONS RELATING TO THE BOARD. UPON RECEIPT OF AN
5 APPLICATION UNDER THIS ARTICLE, THE CHAIRPERSON SHALL PROMPTLY NOTIFY
6 THE GOVERNOR. WITHIN THIRTY DAYS OF SUCH NOTIFICATION, THE GOVERNOR
7 SHALL APPOINT THE AD HOC MEMBERS. FOUR OF THE SEVEN PERSONS ON THE BOARD
8 SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE
9 BOARD, AND THE DECISION OF FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE
10 ACTION OF THE BOARD. THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL
11 HAVE THE POWER TO ADOPT RULES AND REGULATIONS RELATING TO THE PROCEDURES
12 TO BE USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTI-
13 CLE, INCLUDING THE SUSPENSION OR REVOCATION THEREOF. THE CHAIRPERSON,
14 AFTER CONSULTATION WITH THE OTHER MEMBERS OF THE BOARD EXCLUSIVE OF THE
15 AD HOC MEMBERS, SHALL HAVE EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY
16 RULINGS REGARDING THE APPLICABILITY OF, OR ANY OTHER QUESTION UNDER,
17 THIS ARTICLE AND RULES AND REGULATIONS ADOPTED HEREUNDER AND TO GRANT
18 REQUESTS FOR EXTENSIONS OR AMENDMENTS TO CERTIFICATE TERMS AND CONDI-
19 TIONS, PROVIDED THAT NO PARTY TO THE PROCEEDING OPPOSES SUCH REQUEST FOR
20 EXTENSIONS OR AMENDMENTS WITHIN THIRTY DAYS OF THE FILING OF SUCH
21 REQUEST. REGULATIONS ADOPTED BY THE BOARD MAY PROVIDE FOR RENEWAL APPLI-
22 CATIONS FOR POLLUTANT CONTROL PERMITS TO BE SUBMITTED TO AND ACTED UPON
23 BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOLLOWING COMMERCIAL
24 OPERATION OF A CERTIFIED FACILITY.

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

49 S 162. BOARD CERTIFICATE. 1. NO PERSON SHALL COMMENCE THE PREPARATION
50 OF A SITE FOR, OR BEGIN THE CONSTRUCTION OF, A MAJOR ELECTRIC GENERATING
51 FACILITY OR REPOWERING PROJECT IN THE STATE WITHOUT HAVING FIRST
52 OBTAINED A CERTIFICATE ISSUED WITH RESPECT TO SUCH FACILITY BY THE
53 BOARD. ANY SUCH FACILITY WITH RESPECT TO WHICH A CERTIFICATE IS ISSUED
54 SHALL NOT THEREAFTER BE BUILT, MAINTAINED OR OPERATED EXCEPT IN CONFORM-
55 ITY WITH SUCH CERTIFICATE AND ANY TERMS, LIMITATIONS OR CONDITIONS
56 CONTAINED THEREIN; PROVIDED THAT NOTHING IN THIS ARTICLE SHALL EXEMPT

1 SUCH FACILITY FROM COMPLIANCE WITH STATE LAW AND REGULATIONS THEREUNDER,
2 SUBSEQUENTLY ADOPTED OR WITH MUNICIPAL LAWS AND REGULATIONS THEREUNDER,
3 NOT INCONSISTENT WITH THE PROVISIONS OF SUCH CERTIFICATE. A CERTIFICATE
4 FOR A MAJOR ELECTRIC GENERATING FACILITY OR REPOWERING PROJECT MAY BE
5 ISSUED ONLY PURSUANT TO THIS ARTICLE.

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

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

11 4. THIS ARTICLE SHALL NOT APPLY:

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

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

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

29 (D) TO AN ELECTRIC GENERATING FACILITY (I) CONSTRUCTED ON LANDS DEDI-
30 CATED TO INDUSTRIAL USES, (II) THE OUTPUT OF WHICH SHALL BE USED SOLELY
31 FOR INDUSTRIAL PURPOSES, ON THE PREMISES, AND (III) THE GENERATING
32 CAPACITY OF WHICH DOES NOT EXCEED TWO HUNDRED THOUSAND KILOWATTS.

33 5. ANY PERSON INTENDING TO CONSTRUCT AN ELECTRIC GENERATING FACILITY
34 EXCLUDED FROM THIS ARTICLE PURSUANT TO SUBDIVISION FOUR OF THIS SECTION
35 MAY ELECT TO BECOME SUBJECT TO THE PROVISIONS OF THIS ARTICLE BY DELIV-
36 ERING NOTICE OF SUCH ELECTION TO THE CHAIRPERSON OF THE BOARD. THIS
37 ARTICLE SHALL THEREAFTER APPLY TO EACH ELECTRIC GENERATING FACILITY
38 IDENTIFIED IN SUCH NOTICE FROM THE DATE OF ITS RECEIPT BY THE CHAIR-
39 PERSON OF THE BOARD. FOR THE PURPOSES OF THIS ARTICLE, EACH SUCH FACIL-
40 ITY SHALL BE TREATED IN THE SAME MANNER AS A MAJOR ELECTRIC GENERATING
41 FACILITY OR REPOWERING PROJECT AS APPROPRIATE AND AS DEFINED IN THIS
42 ARTICLE.

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

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

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

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

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

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

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

9 (G) IF THE FACILITY IS PROPOSED TO BE LOCATED IN THE COASTAL AREA, A
10 PRELIMINARY ANALYSIS OF THE CONSISTENCY OF THE PROPOSED FACILITY WITH
11 THE APPLICABLE COASTAL POLICIES OF ARTICLE FORTY-TWO OF THE EXECUTIVE
12 LAW, OR WHEN THE ACTION IS IN AN APPROVED LOCAL WATERFRONT REVITALIZA-
13 TION PROGRAM AREA, WITH THE LOCAL PROGRAM. IF THE PROPOSED FACILITY
14 COULD AFFECT ANY LAND OR WATER USE OR NATURAL RESOURCE OF THE COASTAL
15 AREA AND FEDERAL AUTHORIZATION IS NECESSARY, A PRELIMINARY ANALYSIS OF
16 THE CONSISTENCY OF THE PROPOSED FACILITY WITH THE ENFORCEABLE POLICIES
17 OF THE NEW YORK STATE COASTAL MANAGEMENT PROGRAM OR WHEN THE ACTION IS
18 IN AN APPROVED LOCAL WATERFRONT REVITALIZATION PROGRAM AREA, WITH THE
19 LOCAL PROGRAM; AND

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

22 2. EACH PRELIMINARY SCOPING STATEMENT SHALL BE ACCOMPANIED BY A FEE OF
23 FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE INTERVENOR ACCOUNT, ESTAB-
24 LISHED PURSUANT TO SECTION NINETY-NINE-T OF THE STATE FINANCE LAW, AND
25 SHALL BE DISBURSED AT THE BOARD'S DIRECTION TO DEFRAY EXPENSES INCURRED
26 BY MUNICIPAL AND OTHER LOCAL, INTERESTED PERSONS (EXCEPT A MUNICIPALITY
27 WHICH IS THE APPLICANT) FOR CONSULTANTS' FEES TO EVALUATE THE PRELIMI-
28 NARY SCOPING STATEMENT AND ANALYZE THE METHODOLOGY AND SCOPE OF ANY
29 STUDY OR PROGRAM OF STUDIES TO BE UNDERTAKEN BY THE APPLICANT IN SUPPORT
30 OF ITS APPLICATION. SUCH FUNDS SHALL BE MADE AVAILABLE ON AN EQUITABLE
31 BASIS IN A MANNER WHICH FACILITATES BROAD PUBLIC PARTICIPATION IN THE
32 PRE-APPLICATION PROCESS. ANY UNUSED FUNDS SHALL BE MADE AVAILABLE AND
33 DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION FIVE OF
34 SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE IF AN APPLICATION IS
35 FILED OR, IF THE PRELIMINARY SCOPING STATEMENT IS WITHDRAWN, SUCH FUNDS
36 SHALL BE RETURNED TO THE APPLICANT WITHIN FORTY-FIVE DAYS AFTER SUCH
37 WITHDRAWAL. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY,
38 THE BOARD MAY PROVIDE BY RULES AND REGULATIONS FOR DISBURSEMENTS FROM
39 THE ACCOUNT FOR THE STATED PURPOSES.

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

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

55 5. SUCH PERSON MAY CONSULT AND SEEK AGREEMENT WITH ANY INTERESTED
56 PERSON, INCLUDING, BUT NOT LIMITED TO, THE STAFF OF THE DEPARTMENT, THE

1 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE, THE
2 DEPARTMENT OF HEALTH, AND THE OFFICE OF PARKS, RECREATION AND HISTORIC
3 PRESERVATION, AS APPROPRIATE, AS TO ANY ASPECT OF THE PRELIMINARY SCOP-
4 ING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE OR TO BE MADE TO
5 SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT, THE DEPARTMENT OF
6 ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF STATE, THE DEPARTMENT OF
7 HEALTH, THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, THE
8 PERSON PROPOSING TO FILE AN APPLICATION, AND ANY OTHER INTERESTED PERSON
9 MAY ENTER INTO A STIPULATION SETTING FORTH AN AGREEMENT ON ANY ASPECT OF
10 THE PRELIMINARY SCOPING STATEMENT AND THE STUDIES OR PROGRAM OF STUDIES
11 TO BE CONDUCTED. ANY SUCH PERSON PROPOSING TO SUBMIT AN APPLICATION FOR
12 A CERTIFICATE SHALL SERVE A COPY OF THE PROPOSED STIPULATION UPON ALL
13 PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE
14 HUNDRED SIXTY-FOUR OF THIS ARTICLE, PROVIDE NOTICE OF SUCH STIPULATION
15 TO THOSE PERSONS IDENTIFIED IN PARAGRAPH (B) OF SUCH SUBDIVISION, AND
16 AFFORD THE PUBLIC A REASONABLE OPPORTUNITY TO SUBMIT COMMENTS ON THE
17 STIPULATION BEFORE IT IS EXECUTED BY THE INTERESTED PERSONS. NOTHING IN
18 THIS SUBDIVISION, HOWEVER, SHALL BAR ANY PARTY TO A HEARING ON AN APPLI-
19 CATION, OTHER THAN ANY PARTY TO A PRE-APPLICATION STIPULATION, FROM
20 TIMELY RAISING OBJECTIONS TO ANY ASPECT OF THE PRELIMINARY SCOPING
21 STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY STIPULATED STUDIES OR
22 PROGRAM OF STUDIES IN ANY SUCH AGREEMENT. IN ORDER TO ATTEMPT TO RESOLVE
23 ANY QUESTIONS THAT MAY ARISE AS A RESULT OF SUCH CONSULTATION, THE
24 DEPARTMENT MAY DESIGNATE A HEARING EXAMINER WHO SHALL OVERSEE THE
25 PRE-APPLICATION PROCESS, INCLUDING THE DISBURSEMENT OF THE FUNDS
26 PROVIDED FOR IN SUBDIVISION TWO OF THIS SECTION, AND MEDIATE ANY ISSUE
27 RELATING TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE
28 METHODOLOGY AND SCOPE OF ANY SUCH STUDIES OR PROGRAMS OF STUDY.

29 S 163-A. REPOWERING PROJECTS. 1. ANY PERSON PROPOSING TO SITE A REPOW-
30 ERING PROJECT SHALL BE REQUIRED TO FOLLOW THE PROCEDURES SET FORTH IN
31 THIS SECTION. ANY PERSON PROPOSING TO UNDERTAKE A REPOWERING PROJECT
32 SHALL FILE WITH THE CHAIRPERSON OF THE BOARD AN APPLICATION, IN A FORM
33 TO BE DETERMINED BY THE BOARD, THAT CONTAINS, AT A MINIMUM, THE FOLLOW-
34 ING INFORMATION AND MATERIALS:

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

38 (B) ANALYSES THAT HAVE BEEN MADE (I) FOR REPOWERING PROJECTS, OF THE
39 EXPECTED ENVIRONMENTAL IMPACTS OF THE EXISTING ELECTRIC GENERATING
40 FACILITY; (II) OF CONCEPTUAL ARCHITECTURAL AND ENGINEERING PLANS INDI-
41 CATING COMPATIBILITY OF THE REPOWERING PROJECT WITH THE ENVIRONMENT; AND
42 (III) OF THE EXPECTED ENVIRONMENTAL IMPACTS OF THE REPOWERING PROJECT,
43 INCLUDING, BUT NOT LIMITED TO, THE GENERATION OF SOLID WASTES, AIR EMIS-
44 SIONS, DISCHARGES INTO NAVIGABLE WATERS AND GROUNDWATER, IMPACTS UPON
45 WETLANDS, AND VISUAL IMPACTS, THE PROBABLE LEVEL OF NOISE DURING
46 CONSTRUCTION AND OPERATION OF THE REPOWERING PROJECT, AND ANY MEASURES
47 FOR CONTROL, ABATEMENT, OR MITIGATION OF SUCH IMPACTS, AND THE COMPAT-
48 IBILITY OF THE REPOWERING PROJECT WITH EXISTING FEDERAL, STATE AND
49 MUNICIPAL ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS;

50 (C) SUCH EVIDENCE AS MAY ENABLE THE COMMISSIONER OF ENVIRONMENTAL
51 CONSERVATION TO EVALUATE THE PROPOSED POLLUTION CONTROL SYSTEMS OF THE
52 REPOWERING PROJECT AND TO REACH A DETERMINATION AS TO WHETHER OR NOT TO
53 ISSUE, SUBJECT TO APPROPRIATE CONDITIONS AND LIMITATIONS, PERMITS PURSU-
54 ANT TO FEDERAL RECOGNITION OF STATE AUTHORITY IN ACCORDANCE WITH THE
55 FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL
56 RESOURCE CONSERVATION AND RECOVERY ACT;

1 (D) A STATEMENT AS TO HOW THE CONSTRUCTION AND OPERATION OF THE REPOW-
2 ERING PROJECT, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES, WILL
3 COMPLY WITH ENVIRONMENTAL, HEALTH AND SAFETY REGULATIONS AND RULES UNDER
4 STATE AND MUNICIPAL LAWS, AND A STATEMENT AS TO WHY ANY VARIANCES OR
5 EXCEPTIONS MAY BE GRANTED;

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

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

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

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

20 2. THE APPLICATION SHALL BE ACCOMPANIED BY:

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

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

28 3. THE APPLICATION SHALL BE ACCOMPANIED BY A FEE TO BE DETERMINED
29 PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION. FOR THE PURPOSES OF THIS
30 SUBDIVISION, "INCREASED NET GENERATING OUTPUT" SHALL BE DETERMINED USING
31 THE FOLLOWING FORMULA: THE NET GENERATING OUTPUT OF THE PROPOSED FACIL-
32 ITY IN THOUSANDS OF KILOWATTS MINUS THE NET GENERATING OUTPUT OF THE
33 EXISTING FACILITY IN THOUSANDS OF KILOWATTS. FOR A REPOWERING PROJECT
34 THAT RESULTS IN AN INCREASED NET GENERATING OUTPUT OF EIGHTY THOUSAND
35 KILOWATTS OR MORE, A FEE IN AN AMOUNT EQUAL TO ONE THOUSAND DOLLARS FOR
36 EACH THOUSAND KILOWATTS OF INCREASED NET GENERATING OUTPUT, BUT A FEE NO
37 MORE THAN THREE HUNDRED THOUSAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE
38 PRE-APPLICATION FEE PROVIDED FOR IN SUBDIVISION TWO OF SECTION ONE
39 HUNDRED SIXTY-THREE OF THIS ARTICLE.

40 4. SUCH FEE SHALL BE DEPOSITED IN THE INTERVENOR ACCOUNT ESTABLISHED
41 PURSUANT TO SECTION NINETY-NINE-T OF THE STATE FINANCE LAW, TO BE
42 DISBURSED AT THE BOARD'S DIRECTION IN ACCORDANCE WITH SUBDIVISION FIVE
43 OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE. ANY MONEYS REMAINING
44 IN THE INTERVENOR ACCOUNT SHALL BE RETURNED TO THE APPLICANT WITHIN
45 FORTY-FIVE DAYS AFTER THE BOARD HAS ISSUED ITS DECISION ON AN APPLICA-
46 TION UNDER THIS ARTICLE AND THE TIME FOR APPLYING FOR A REHEARING AND
47 JUDICIAL REVIEW HAS EXPIRED.

48 5. FOLLOWING THE FILING OF AN APPLICATION PURSUANT TO SUBDIVISION TWO
49 OF THIS SECTION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL
50 INITIATE A REVIEW PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRON-
51 MENTAL PERMITTING AUTHORITY.

52 6. WITHIN SIXTY DAYS OF RECEIPT OF AN APPLICATION FILED PURSUANT TO
53 SUBDIVISION ONE OF THIS SECTION, THE CHAIRPERSON OF THE BOARD SHALL
54 DETERMINE WHETHER OR NOT THE APPLICATION COMPLIES WITH THIS SECTION AND
55 ANY REGULATIONS PROMULGATED PURSUANT THERETO. THE CHAIRPERSON OF THE
56 BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED TO

1 SUPPLEMENT AN APPLICATION. NOTICE OF COMPLIANCE SHALL BE GIVEN TO
2 PARTIES TO THE CERTIFICATION PROCEEDING PURSUANT TO SUBDIVISION ONE OF
3 SECTION ONE HUNDRED SIXTY-SIX OF THIS ARTICLE AND SHALL ADDITIONALLY BE
4 PUBLISHED ON THE WEB SITE OF THE DEPARTMENT.

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

17 8. WITHIN SIXTY DAYS OF THE CLOSE OF THE PUBLIC STATEMENT HEARING AND
18 ANY EVIDENTIARY HEARING, IF APPLICABLE, AND THE FILING OF ANY BRIEFS, IF
19 APPLICABLE, THE BOARD SHALL RENDER A FINAL DETERMINATION ON AN APPLICA-
20 TION UNDER THIS SECTION FOR A CERTIFICATE UPON THE RECORD MADE BEFORE
21 THE PRESIDING AND ASSOCIATE EXAMINERS AND PURSUANT TO THE REQUIREMENTS
22 OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE.
23 THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES BY NO
24 MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES
25 NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD SHALL RENDER A FINAL
26 DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINE, UNLESS SUCH
27 DEADLINE IS WAIVED BY THE APPLICANT. IF AT ANY TIME SUBSEQUENT TO THE
28 COMMENCEMENT OF THE PUBLIC STATEMENT HEARING OR EVIDENTIARY HEARING, IF
29 APPLICABLE, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLI-
30 CATION, THE DEADLINE MAY BE EXTENDED BY NO MORE THAN THREE MONTHS,
31 UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMEND-
32 MENT.

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

40 S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIF-
41 ICATE TO CONSTRUCT A MAJOR ELECTRIC GENERATING FACILITY SHALL FILE WITH
42 THE CHAIRPERSON OF THE BOARD AN APPLICATION, IN SUCH FORM AS THE BOARD
43 MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND MATERIALS:

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

50 (B) A DESCRIPTION AND EVALUATION OF REASONABLE ALTERNATIVE LOCATIONS
51 TO THE PROPOSED FACILITY, IF ANY; A DESCRIPTION AND EVALUATION OF
52 REASONABLE ENERGY SUPPLY SOURCE ALTERNATIVES AND, WHERE APPROPRIATE,
53 DEMAND-REDUCING MEASURES TO THE PROPOSED FACILITY; A DESCRIPTION OF THE
54 COMPARATIVE ADVANTAGES AND DISADVANTAGES OF EACH SUCH LOCATION, ENERGY
55 SUPPLY SOURCES AND DEMAND-REDUCING MEASURES, AS APPROPRIATE; AND A
56 STATEMENT OF THE REASONS WHY THE PRIMARY PROPOSED LOCATION AND SOURCE,

1 AS APPROPRIATE, IS BEST SUITED, AMONG THE ALTERNATIVES CONSIDERED, TO
2 PROMOTE PUBLIC HEALTH AND WELFARE, INCLUDING THE RECREATIONAL AND OTHER
3 CONCURRENT USES WHICH THE SITE MAY SERVE, PROVIDED THAT THE INFORMATION
4 REQUIRED PURSUANT TO THIS PARAGRAPH SHALL BE NO MORE EXTENSIVE THAN
5 REQUIRED UNDER ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW;

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

12 (D) STUDIES, IDENTIFYING THE AUTHOR AND DATE THEREOF, WHICH HAVE BEEN
13 MADE OF THE EXPECTED ENVIRONMENTAL IMPACTS, INCLUDING THE PREDICTABLE
14 HEALTH IMPACTS THEREOF, AND OF THE SAFETY OF THE FACILITY, BOTH DURING
15 ITS CONSTRUCTION AND ITS OPERATION, WHICH STUDIES ARE SUFFICIENT TO
16 IDENTIFY: (I) THE ANTICIPATED GASEOUS, LIQUID AND SOLID WASTES TO BE
17 PRODUCED AT THE FACILITY INCLUDING THEIR SOURCE, ANTICIPATED VOLUMES,
18 COMPOSITION AND TEMPERATURE, AND SUCH OTHER ATTRIBUTES AS THE BOARD MAY
19 SPECIFY AND THE PROBABLE LEVEL OF NOISE DURING CONSTRUCTION AND OPERA-
20 TION OF THE FACILITY; (II) THE TREATMENT PROCESSES TO REDUCE WASTES TO
21 BE RELEASED TO THE ENVIRONMENT, THE MANNER OF DISPOSAL FOR WASTES
22 RETAINED AND MEASURES FOR NOISE ABATEMENT; (III) THE ANTICIPATED VOLUMES
23 OF WASTES TO BE RELEASED TO THE ENVIRONMENT UNDER ANY OPERATING CONDI-
24 TION OF THE FACILITY, INCLUDING SUCH METEOROLOGICAL, HYDROLOGICAL AND
25 OTHER INFORMATION NEEDED TO SUPPORT SUCH ESTIMATES; (IV) CONCEPTUAL
26 ARCHITECTURAL AND ENGINEERING PLANS INDICATING COMPATIBILITY OF THE
27 FACILITY WITH THE ENVIRONMENT; (V) HOW THE CONSTRUCTION AND OPERATION OF
28 THE FACILITY, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES WOULD
29 COMPLY WITH ENVIRONMENTAL, PUBLIC HEALTH, SAFETY AND INFRASTRUCTURE
30 SECURITY REGULATIONS AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A
31 STATEMENT WHY ANY VARIANCES OR EXCEPTIONS SHOULD BE GRANTED; (VI) WATER
32 WITHDRAWALS AND DISCHARGES; (VII) A DESCRIPTION OF THE FUEL INTERCON-
33 NECTION AND SUPPLY FOR THE PROJECT; AND (VIII) AN ELECTRIC INTERCON-
34 NECTION STUDY, CONSISTING GENERALLY OF A DESIGN STUDY AND A SYSTEM RELI-
35 ABILITY IMPACT STUDY;

36 (E) SUCH EVIDENCE AS WILL ENABLE THE COMMISSIONER OF ENVIRONMENTAL
37 CONSERVATION TO EVALUATE THE FACILITY'S POLLUTION CONTROL SYSTEMS AND TO
38 REACH A DETERMINATION TO ISSUE THEREFOR, SUBJECT TO APPROPRIATE CONDI-
39 TIONS AND LIMITATIONS, PERMITS PURSUANT TO FEDERAL RECOGNITION OF STATE
40 AUTHORITY IN ACCORDANCE WITH THE FEDERAL CLEAN WATER ACT, THE FEDERAL
41 CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT;

42 (F) ANY OTHER INFORMATION THAT THE APPLICANT DEEMS RELEVANT OR THAT
43 THE BOARD MAY REQUIRE;

44 (G) A PLAN FOR SECURITY OF THE PROPOSED FACILITY DURING CONSTRUCTION
45 AND OPERATION OF SUCH FACILITY, TO BE REVIEWED BY THE BOARD, IN CONSUL-
46 TATION WITH THE NEW YORK STATE OFFICE OF HOMELAND SECURITY;

47 (H) COPIES OF THE APPLICATION, INCLUDING THE REQUIRED INFORMATION,
48 SHALL BE FILED WITH THE BOARD AND SHALL BE AVAILABLE FOR PUBLIC
49 INSPECTION, PROVIDED, HOWEVER, THAT SUCH INSPECTION IS CONSISTENT WITH
50 ARTICLE SIX OF THE PUBLIC OFFICERS LAW AND ARTICLE TWENTY-SIX OF THE
51 EXECUTIVE LAW; AND

52 (I) A STATEMENT EXPLAINING HOW THE FACILITY IS REASONABLY CONSISTENT
53 WITH ENERGY POLICIES, GOALS AND/OR OBJECTIVES IN THE MOST RECENTLY
54 ADOPTED STATE ENERGY PLAN.

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

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

9 (II) EACH MEMBER OF THE BOARD;

10 (III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

11 (IV) THE SECRETARY OF STATE;

12 (V) THE ATTORNEY GENERAL;

13 (VI) THE DEPARTMENT OF TRANSPORTATION;

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

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

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

22 (B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICI-
23 PALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARA-
24 GRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE
25 GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON
26 OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE
27 PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPA-
28 PERS AS WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICA-
29 TION;

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

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

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

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

49 5. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT
50 EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF GENERATING
51 CAPACITY OF THE SUBJECT FACILITY, BUT NO MORE THAN THREE HUNDRED THOU-
52 SAND DOLLARS WITH SUCH AMOUNT TO INCLUDE THE PRE-APPLICATION FEE
53 PROVIDED FOR IN SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-THREE OF
54 THIS ARTICLE. SUCH FEE SHALL BE DEPOSITED IN THE INTERVENOR ACCOUNT,
55 ESTABLISHED PURSUANT TO SECTION NINETY-NINE-T OF THE STATE FINANCE LAW,
56 TO BE DISBURSED AT THE BOARD'S DIRECTION, TO DEFRAY EXPENSES INCURRED BY

1 MUNICIPAL AND OTHER LOCAL PARTIES TO THE PROCEEDING (EXCEPT A MUNICI-
2 PALITY WHICH IS THE APPLICANT) FOR EXPERT WITNESS AND CONSULTANT FEES.
3 IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE APPLICATION, THE APPLICA-
4 TION IS AMENDED IN A MANNER THAT WARRANTS SUBSTANTIAL ADDITIONAL SCRUTI-
5 NY, THE BOARD MAY REQUIRE AN ADDITIONAL INTERVENOR FEE IN AN AMOUNT NOT
6 TO EXCEED ONE HUNDRED THOUSAND DOLLARS. THE BOARD SHALL PROVIDE FOR
7 TRANSCRIPTS, THE REPRODUCTION AND SERVICE OF DOCUMENTS, AND THE PUBLICA-
8 TION OF REQUIRED NOTICES FOR MUNICIPAL PARTIES. ANY MONEYS REMAINING IN
9 THE INTERVENOR ACCOUNT SHALL BE RETURNED TO THE APPLICANT WITHIN FORTY-
10 FIVE DAYS AFTER THE BOARD HAS ISSUED ITS DECISION ON AN APPLICATION
11 UNDER THIS ARTICLE AND THE TIME FOR APPLYING FOR A REHEARING AND JUDI-
12 CIAL REVIEW HAS EXPIRED.

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

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

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

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

1 4. PROCEEDINGS ON AN APPLICATION SHALL BE COMPLETED IN ALL RESPECTS IN
2 A MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL
3 PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN
4 TWELVE MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIRPERSON THAT
5 AN APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS
6 ARTICLE; PROVIDED, HOWEVER, THAT THE BOARD MAY EXTEND THE DEADLINE IN
7 EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN SIX MONTHS IN ORDER TO GIVE
8 CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE
9 RECORD. THE BOARD MUST RENDER A FINAL DECISION ON THE APPLICATION BY THE
10 AFOREMENTIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLI-
11 CANT. IF, AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING,
12 THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE
13 DEADLINES MAY BE EXTENDED BY NO MORE THAN SIX MONTHS, UNLESS SUCH DEAD-
14 LINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

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

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

25 (A) THE APPLICANT;
26 (B) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;
27 (C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;
28 (D) THE DEPARTMENT OF HEALTH;
29 (E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;
30 (F) THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;
31 (G) THE DEPARTMENT OF STATE;
32 (H) THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION;
33 (I) WHERE THE FACILITY OR ANY PORTION THEREOF OR ANY ALTERNATIVE
34 PROPOSED TO BE LOCATED WITHIN A CITY WITH A POPULATION OF ONE MILLION OR
35 MORE, THE APPROPRIATE ENVIRONMENTAL PROTECTION AGENCY OF SUCH CITY;
36 (J) WHERE THE FACILITY OR ANY PORTION THEREOF OR OF ANY ALTERNATE IS
37 TO BE LOCATED WITHIN THE ADIRONDACK PARK, AS DEFINED IN SUBDIVISION ONE
38 OF SECTION 9-0101 OF THE ENVIRONMENTAL CONSERVATION LAW, THE ADIRONDACK
39 PARK AGENCY;

40 (K) A MUNICIPALITY ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER
41 PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF
42 THIS ARTICLE, IF IT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BE A
43 PARTY, WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED
44 NOTICE AS THE DATE FOR THE FILING OF THE APPLICATION; ANY MUNICIPALITY
45 ENTITLED TO BE A PARTY HEREIN AND SEEKING TO ENFORCE ANY LOCAL ORDI-
46 NANCE, LAW, RESOLUTION OR OTHER ACTION OR REGULATION OTHERWISE APPLICA-
47 BLE, INCLUDING BUT NOT LIMITED TO, ANY THAT MAY REQUIRE APPROVAL FOR THE
48 OCCUPATION OF MUNICIPAL PROPERTY BY AN ELECTRIC, FUEL, TELECOMMUNI-
49 CATION, WATER, SEWER OR STEAM LINE OR INTERCONNECTION, SHALL PRESENT
50 EVIDENCE IN SUPPORT THEREOF OR SHALL BE BARRED FROM THE ENFORCEMENT
51 THEREOF;

52 (L) ANY INDIVIDUAL RESIDENT IN A MUNICIPALITY ENTITLED TO RECEIVE A
53 COPY OF THE APPLICATION UNDER PARAGRAPH (A) OF SUBDIVISION TWO OF
54 SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE IF HE OR SHE HAS FILED
55 WITH THE BOARD A NOTICE OF INTENT TO BE A PARTY, WITHIN FORTY-FIVE DAYS

1 AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF
2 THE APPLICATION;

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

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

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

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

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

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

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

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

1 TIONS SHALL, IN SO FAR AS IS CONSISTENT WITH FEDERALLY DELEGATED OR
2 APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE
3 DECISION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR
4 NOT TO ISSUE SUCH PERMITS.

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

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

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

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

44 4. THE PRESIDING EXAMINER SHALL ALLOW TESTIMONY TO BE RECEIVED ON
45 REASONABLE AND AVAILABLE ALTERNATE LOCATIONS AND, WHERE APPROPRIATE,
46 DEMAND-REDUCING MEASURES; PROVIDED, HOWEVER, THAT NOTICE OF THE INTENT
47 TO SUBMIT SUCH TESTIMONY SHALL BE GIVEN WITHIN SUCH PERIOD AS THE
48 PRESIDING EXAMINER SHALL PRESCRIBE, WHICH PERIOD SHALL BE NOT LESS THAN
49 THIRTY NOR MORE THAN SIXTY DAYS AFTER THE COMMENCEMENT OF THE HEARING.
50 IN ITS DISCRETION, THE BOARD MAY THEREAFTER CAUSE TO BE CONSIDERED OTHER
51 REASONABLE AND AVAILABLE LOCATIONS AND, WHERE APPROPRIATE, DEMAND-REDUC-
52 ING MEASURES.

53 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION,
54 THE BOARD MAY MAKE A PROMPT DETERMINATION ON THE SUFFICIENCY OF THE
55 APPLICANT'S CONSIDERATION AND EVALUATION OF REASONABLE ALTERNATIVES TO
56 ITS PROPOSED TYPE OF ELECTRIC GENERATING FACILITY AND ITS PROPOSED

1 LOCATION FOR THAT FACILITY, AS REQUIRED PURSUANT TO PARAGRAPH (B) OF
2 SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE,
3 BEFORE RESOLUTION OF OTHER ISSUES PERTINENT TO A FINAL DETERMINATION ON
4 THE APPLICATION; PROVIDED, HOWEVER, THAT ALL INTERESTED PARTIES HAVE
5 REASONABLE OPPORTUNITY TO QUESTION AND PRESENT EVIDENCE IN SUPPORT OF OR
6 AGAINST THE MERITS OF THE APPLICANT'S CONSIDERATION AND EVALUATION OF
7 SUCH ALTERNATIVES, AS REQUIRED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION
8 ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, SO THAT THE BOARD
9 IS ABLE TO DECIDE, IN THE FIRST INSTANCE, WHETHER THE APPLICANT'S
10 PROPOSAL IS PREFERABLE TO ALTERNATIVES.

11 S 168. BOARD DECISIONS. 1. THE BOARD SHALL MAKE THE FINAL DECISION ON
12 AN APPLICATION UNDER THIS ARTICLE FOR A CERTIFICATE OR AMENDMENT THERE-
13 OF, UPON THE RECORD MADE BEFORE THE PRESIDING EXAMINER ON SUCH APPLICA-
14 TION OR AMENDMENT THEREOF, AFTER RECEIVING BRIEFS AND EXCEPTIONS TO THE
15 RECOMMENDED DECISION OF SUCH EXAMINER AND TO THE REPORT OF THE ASSOCIATE
16 EXAMINER, AND AFTER HEARING SUCH ORAL ARGUMENT AS THE BOARD SHALL DETER-
17 MINE. EXCEPT FOR GOOD CAUSE SHOWN TO THE SATISFACTION OF THE BOARD, A
18 DETERMINATION UNDER SUBDIVISION FIVE OF SECTION ONE HUNDRED SIXTY-SEVEN
19 OF THIS ARTICLE THAT THE APPLICANT'S PROPOSAL IS PREFERABLE TO ALTERNA-
20 TIVES SHALL BE FINAL. SUCH A DETERMINATION SHALL BE SUBJECT TO REHEARING
21 AND REVIEW ONLY AFTER THE FINAL DECISION ON AN APPLICATION IS RENDERED.

22 2. THE BOARD SHALL RENDER A DECISION UPON THE RECORD EITHER TO GRANT
23 OR DENY THE APPLICATION AS FILED OR TO CERTIFY THE FACILITY UPON SUCH
24 TERMS, CONDITIONS, LIMITATIONS OR MODIFICATIONS OF THE CONSTRUCTION OR
25 OPERATION OF THE FACILITY AS THE BOARD MAY DEEM APPROPRIATE. THE BOARD
26 SHALL ISSUE, WITH ITS DECISION, AN OPINION STATING IN FULL ITS REASONS
27 FOR ITS DECISION. THE BOARD SHALL ISSUE AN ORDER UPON THE DECISION AND
28 THE OPINION EMBODYING THE TERMS AND CONDITIONS THEREOF IN FULL. FOLLOW-
29 ING ANY REHEARING AND ANY JUDICIAL REVIEW OF THE BOARD'S DECISION, THE
30 BOARD'S JURISDICTION OVER AN APPLICATION SHALL CEASE; PROVIDED, HOWEVER,
31 THAT THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL RETAIN JURISDIC-
32 TION WITH RESPECT TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A
33 CERTIFICATE. THE COMMISSION SHALL MONITOR, ENFORCE AND ADMINISTER
34 COMPLIANCE WITH ANY TERMS AND CONDITIONS SET FORTH IN THE BOARD'S ORDER.
35 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE RESPONSIBLE FOR
36 ENFORCING CONTINUED COMPLIANCE BY A CERTIFICATED FACILITY WITH ALL ENVI-
37 RONMENTAL LAWS, REGULATIONS AND STANDARDS. THE BOARD MAY NOT GRANT A
38 CERTIFICATE FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENER-
39 ATING FACILITY OR A REPOWERING PROJECT, EITHER AS PROPOSED OR AS MODI-
40 FIED BY THE BOARD, UNLESS IT SHALL FIRST FIND AND DETERMINE:

41 (A) THAT THE FACILITY IS REASONABLY CONSISTENT WITH GOALS, STRATEGIES
42 OR OBJECTIVES IN THE MOST RECENTLY ADOPTED STATE ENERGY PLAN;

43 (B) THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACTS, INCLUDING AN
44 EVALUATION OF THE PREDICTABLE ADVERSE AND BENEFICIAL IMPACTS ON THE
45 ENVIRONMENT AND ECOLOGY, PUBLIC HEALTH AND SAFETY, AESTHETICS, SCENIC,
46 HISTORIC AND RECREATIONAL VALUE, FOREST AND PARKS, FISH AND OTHER MARINE
47 LIFE, AND WILDLIFE, AIR AND WATER QUALITY, INCLUDING THE CUMULATIVE
48 EFFECT OF AIR EMISSIONS FROM EXISTING MAJOR ELECTRIC GENERATING FACILI-
49 TIES AND FACILITIES CERTIFICATED BY THE BOARD SIXTY DAYS OR MORE PRIOR
50 TO THE DATE OF THE FILING OF THE APPLICATION, AND THE POTENTIAL FOR
51 SIGNIFICANT DETERIORATION IN LOCAL AIR QUALITY, WITH PARTICULAR ATTEN-
52 TION TO FACILITIES LOCATED IN AREAS DESIGNATED AS SEVERE NONATTAINMENT,
53 AND PREDICTABLE, SIGNIFICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL
54 IMPACTS, IF ANY, FROM THE CONSTRUCTION AND/OR OPERATION OF THE PROPOSED
55 FACILITY IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT OF

1 ENVIRONMENTAL CONSERVATION FOR THE ANALYSIS OF ENVIRONMENTAL JUSTICE
2 ISSUES;

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

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

32 (E) THAT THE FACILITY IS DESIGNED TO OPERATE IN COMPLIANCE WITH APPLI-
33 CABLE STATE AND LOCAL LAWS AND REGULATIONS ISSUED THEREUNDER CONCERNING,
34 AMONG OTHER MATTERS, THE ENVIRONMENT, PUBLIC HEALTH AND SAFETY, ALL OF
35 WHICH SHALL BE BINDING UPON THE APPLICANT, EXCEPT THAT THE BOARD MAY
36 REFUSE TO APPLY ANY LOCAL ORDINANCE, LAW, RESOLUTION OR OTHER ACTION OR
37 ANY REGULATION ISSUED THEREUNDER OR ANY LOCAL STANDARD OR REQUIREMENT,
38 INCLUDING ANY THAT MAY REQUIRE APPROVAL FOR THE OCCUPATION OF MUNICIPAL
39 PROPERTY BY AN ELECTRIC, FUEL, TELECOMMUNICATION, WATER, SEWER OR STEAM
40 LINE OR INTERCONNECTION, WHICH WOULD BE OTHERWISE APPLICABLE IF IT FINDS
41 THAT, AS APPLIED TO THE PROPOSED FACILITY, SUCH IS UNREASONABLY RESTRIC-
42 TIVE IN VIEW OF THE EXISTING TECHNOLOGY OR THE NEEDS OF OR COSTS TO
43 RATEPAYERS WHETHER LOCATED INSIDE OR OUTSIDE OF SUCH MUNICIPALITY. THE
44 BOARD SHALL PROVIDE THE MUNICIPALITY AN OPPORTUNITY TO PRESENT EVIDENCE
45 IN SUPPORT OF SUCH ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER LOCAL
46 ACTION ISSUED THEREUNDER; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

17 S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTAND-
18 ING ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY
19 AGENCY THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY
20 THE BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER
21 CONDITION FOR THE CONSTRUCTION OR OPERATION OF AN ELECTRIC GENERATING
22 FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE HERE-
23 UNDER HAS BEEN FILED, INCLUDING ANY THAT MAY REQUIRE APPROVAL FOR THE
24 OCCUPATION OF MUNICIPAL PROPERTY BY AN ELECTRIC, FUEL, TELECOMMUNI-
25 CATION, WATER, SEWER OR STEAM LINE OR INTERCONNECTION, OTHER THAN THOSE
26 PROVIDED BY OTHERWISE APPLICABLE STATE LAW FOR THE PROTECTION OF EMPLOY-
27 EES ENGAGED IN THE CONSTRUCTION AND OPERATION OF SUCH FACILITY;
28 PROVIDED, HOWEVER, THAT IN THE CASE OF A MUNICIPALITY OR AN AGENCY THER-
29 EOF, SUCH MUNICIPALITY HAS RECEIVED NOTICE OF THE FILING OF THE APPLICA-
30 TION THEREFOR; AND PROVIDED FURTHER, HOWEVER, THAT THE DEPARTMENT OF
31 ENVIRONMENTAL CONSERVATION MAY ISSUE PERMITS PURSUANT TO FEDERALLY
32 DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE
33 FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY
34 ACT; AND PROVIDED FURTHER HOWEVER, THAT THE DEPARTMENT OF STATE MAY MAKE
35 CONSISTENCY DETERMINATIONS PURSUANT TO THE FEDERAL COASTAL ZONE MANAGE-
36 MENT ACT. IN ISSUING SUCH DETERMINATIONS, THE SECRETARY OF STATE SHALL
37 FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY
38 ARE CONSISTENT WITH THE FEDERAL COASTAL ZONE MANAGEMENT ACT AND ITS
39 IMPLEMENTING REGULATIONS. IN ISSUING SUCH PERMITS, THE COMMISSIONER OF
40 ENVIRONMENTAL CONSERVATION SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS
41 ARTICLE TO THE EXTENT THAT THEY ARE CONSISTENT WITH FEDERALLY DELEGATED
42 OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE COMMISSIONER OF
43 ENVIRONMENTAL CONSERVATION AND THE SECRETARY OF STATE SHALL PROVIDE SUCH
44 PERMITS AND DETERMINATIONS, RESPECTIVELY, TO THE BOARD PRIOR TO ITS
45 DETERMINATION WHETHER OR NOT TO ISSUE A CERTIFICATE.

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

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

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

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

4 S 3. Section 17-0823 of the environmental conservation law, as added
5 by chapter 801 of the laws of 1973, is amended to read as follows:
6 S 17-0823. Power plant siting.

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

35 S 4. Paragraph j of subdivision 2 of section 19-0305 of the environ-
36 mental conservation law, as amended by chapter 525 of the laws of 1981,
37 is amended to read as follows:

38 j. Consider for approval or disapproval applications for permits and
39 certificates including plans or specifications for air contamination
40 sources and air cleaning installations or any part thereof submitted [to
41 him pursuant to] CONSISTENT WITH the rules of the department, and
42 inspect the installation for compliance with the plans or specifica-
43 tions; provided that in the case of a major steam electric generating
44 facility, as defined in [either] FORMER section one hundred forty of the
45 public service law, for which a certificate is required pursuant to
46 [either] THE FORMER article eight of [such] THE PUBLIC SERVICE law, OR A
47 MAJOR ELECTRIC GENERATING FACILITY OR REPOWERING PROJECT AS DEFINED IN
48 SECTION ONE HUNDRED SIXTY OF THE PUBLIC SERVICE LAW, FOR WHICH A CERTIF-
49 ICATE IS REQUIRED PURSUANT TO ARTICLE TEN OF THE PUBLIC SERVICE LAW,
50 such approval functions [shall] MAY be performed by the state board on
51 electric generation siting and the environment, as defined in [such] THE
52 PUBLIC SERVICE law, PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRON-
53 MENTAL PERMITTING AUTHORITY, and such inspection functions shall be
54 performed by the department[; provided further that nothing]. NOTHING
55 herein shall limit the authority of the [departments] DEPARTMENT of
56 health and [environmental conservation] THE DEPARTMENT to monitor the

1 environmental and health impacts resulting from the operation of such
2 major steam electric generating facility and to enforce applicable
3 provisions of the public health LAW and [the environmental conservation
4 laws] THIS CHAPTER and the terms and conditions of the certificate
5 governing the environmental and health impacts resulting from such oper-
6 ation.

7 S 5. Paragraph (e) of subdivision 3 of section 49-0307 of the environ-
8 mental conservation law, as added by chapter 292 of the laws of 1984, is
9 amended to read as follows:

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

26 S 6. Section 1014 of the public authorities law, as amended by chapter
27 446 of the laws of 1972, is amended to read as follows:

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

52 S 7. Subdivision 1 of section 1020-s of the public authorities law, as
53 added by chapter 517 of the laws of 1986, is amended to read as follows:

54 1. The rates, services and practices relating to the electricity
55 generated by facilities owned or operated by the authority shall not be
56 subject to the provisions of the public service law or to regulation by,

1 or the jurisdiction of, the public service commission, except to the
2 extent (a) article seven of the public service law applies to the siting
3 and operation of a major utility transmission facility as defined there-
4 in, (b) article [eight] TEN of such law applies to the siting of a MAJOR
5 ELECTRIC generating facility OR REPOWERING PROJECT as defined therein,
6 and (c) section eighteen-a of such law provides for assessment for
7 certain costs, property or operations.

8 S 8. The state finance law is amended by adding a new section 99-t to
9 read as follows:

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

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

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

22 S 9. Separability. If any clause, sentence, paragraph, section or part
23 of this act shall be adjudged by any court of competent jurisdiction to
24 be invalid, such judgment shall not affect, impair or invalidate the
25 remainder thereof, but shall be confined in its operation to the clause,
26 sentence, paragraph, section or part thereof directly involved in the
27 controversy in which such judgment shall have been rendered.

28 S 10. This act shall take effect immediately, provided that nothing in
29 this act shall be construed to limit any administrative authority, with
30 respect to matters included in this act, which existed prior to the
31 effective date of this act, and provided further that prior to the
32 effective date of the rules and regulations of the department of envi-
33 ronmental conservation relating to the analysis of environmental justice
34 issues pursuant to this act, the policies and guidelines of such depart-
35 ment relating thereto in effect at the time an application is filed
36 shall be applied in lieu of such rules and regulations.