

7122

2011-2012 Regular Sessions

I N A S S E M B L Y

April 13, 2011

Introduced by M. of A. AMEDORE -- read once and referred to the Committee on Energy

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND 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 MAJOR ELECTRIC
5 GENERATING FACILITIES

6 SECTION 160. DEFINITIONS.

7 161. GENERAL PROVISIONS RELATING TO THE BOARD.

8 162. BOARD CERTIFICATE.

9 163. PRE-APPLICATION PROCEDURES.

10 163-A. REPOWERING PROJECTS.

11 164. APPLICATION FOR A CERTIFICATE.

12 165. HEARING SCHEDULE.

13 166. PARTIES TO A CERTIFICATION PROCEEDING.

14 167. CONDUCT OF HEARING.

15 168. BOARD DECISIONS.

16 169. OPINION TO BE ISSUED WITH DECISION.

17 170. 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 ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT
12 ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAPTER, EXCEPT
13 SUCH TERM SHALL NOT INCLUDE WIND GENERATION FACILITIES LOCATED IN THE
14 COUNTY OF LEWIS, WHICH SHALL BE SUBJECT TO THE REQUIREMENTS OF THE STATE
15 ENVIRONMENTAL QUALITY REVIEW ACT.

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

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

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

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

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

1 REGULATIONS ADOPTED HEREUNDER. REGULATIONS ADOPTED BY THE BOARD MAY
2 PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE
3 SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVA-
4 TION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY.

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

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

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

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

46 4. THIS ARTICLE SHALL NOT APPLY:

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

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

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

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

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

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

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

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

24 (D) ANY MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS;

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

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

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

41 1-A. EACH PRELIMINARY SCOPING STATEMENT SHALL BE ACCOMPANIED BY A FEE
42 OF FIFTY THOUSAND DOLLARS TO BE DEPOSITED IN THE ELECTRIC GENERATING
43 FACILITIES INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION
44 NINETY-SEVEN-KKKK OF THE STATE FINANCE LAW, AND SHALL BE DISBURSED AT
45 THE BOARD'S DIRECTION TO DEFRAY EXPENSES INCURRED BY MUNICIPAL AND OTHER
46 LOCAL, INTERESTED PERSONS (EXCEPT A MUNICIPALITY WHICH IS THE APPLICANT)
47 FOR CONSULTANTS' FEES TO EVALUATE THE PRELIMINARY SCOPING STATEMENT AND
48 ANALYZE THE METHODOLOGY AND SCOPE OF ANY STUDY OR PROGRAM OF STUDIES TO
49 BE UNDERTAKEN BY THE APPLICANT IN SUPPORT OF ITS APPLICATION. SUCH FUNDS
50 SHALL BE MADE AVAILABLE ON AN EQUITABLE BASIS IN A MANNER WHICH FACILI-
51 TATES BROAD PUBLIC PARTICIPATION IN THE PRE-APPLICATION PROCESS. ANY
52 UNUSED FUNDS SHALL BE MADE AVAILABLE AND DISBURSED IN ACCORDANCE WITH
53 THE PROVISIONS OF SUBDIVISION SIX OF SECTION ONE HUNDRED SIXTY-FOUR OF
54 THIS ARTICLE IF AN APPLICATION IS FILED OR, IF THE PRELIMINARY SCOPING
55 STATEMENT IS WITHDRAWN, RETURNED TO THE APPLICANT. NOTWITHSTANDING ANY

1 OTHER PROVISION OF LAW TO THE CONTRARY, THE BOARD MAY PROVIDE BY RULES
2 AND REGULATIONS FOR DISBURSEMENTS FROM THE FUND FOR THE STATED PURPOSES.

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

7 3. TO FACILITATE THE APPLICATION PROCESS AND ENABLE CITIZENS TO
8 PARTICIPATE IN DECISIONS THAT AFFECT THEIR HEALTH AND SAFETY AND THE
9 ENVIRONMENT, THE DEPARTMENT SHALL PROVIDE OPPORTUNITIES FOR CITIZEN
10 INVOLVEMENT. SUCH OPPORTUNITIES SHALL ENCOURAGE CONSULTATION WITH THE
11 PUBLIC EARLY IN THE APPLICATION PROCESS, ESPECIALLY BEFORE ANY PARTIES
12 ENTER A STIPULATION PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. THE
13 PRIMARY GOALS OF THE CITIZEN PARTICIPATION PROCESS SHALL BE TO FACILI-
14 TATE COMMUNICATION BETWEEN THE APPLICANT AND INTERESTED OR AFFECTED
15 PERSONS. THE PROCESS SHALL FOSTER THE ACTIVE INVOLVEMENT OF THE INTER-
16 ESTED OR AFFECTED PERSONS.

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

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

49 (A) RESULTS IN A DECREASE IN THE RATE OF EMISSIONS OF EACH OF THE
50 FOLLOWING ON A POUNDS PER MEGAWATT-HOUR BASIS: (I) OXIDES OF NITROGEN,
51 (II) OXIDES OF SULFUR, AND (III) PARTICULATE MATTER. THE PERCENTAGE
52 REDUCTIONS IN THE RATE OF SUCH EMISSIONS SHALL BE CALCULATED BY COMPAR-
53 ING THE ANNUALIZED POTENTIAL TO EMIT OF THE EXISTING FACILITY (EXPRESSED
54 IN POUNDS PER MEGAWATT-HOUR) AT THE TIME THE APPLICATION UNDER THIS
55 ARTICLE IS FILED WITH THE CHAIRMAN AND THE FUTURE ANNUALIZED POTENTIAL
56 TO EMIT OF THE MODIFIED FACILITY OR OF THE COMBINATION OF THE EXISTING

1 AND NEW FACILITY (EXPRESSED IN POUNDS PER MEGAWATT-HOUR AND BASED UPON
2 REASONABLY EXPECTED OPERATING CONDITIONS) PROPOSED IN THE APPLICATION;

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

6 (C) WHEN A COOLING WATER INTAKE STRUCTURE IS PLANNED, INCORPORATES
7 COOLING WATER INTAKE STRUCTURE TECHNOLOGY CONSISTENT WITH THE BEST TECH-
8 NOLOGY AVAILABLE STANDARDS APPLICABLE TO NEW COOLING WATER INTAKE STRUC-
9 TURES (AS REFLECTED IN THE STATE POLLUTION DISCHARGE ELIMINATION SYSTEM
10 PERMIT ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION); AND

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

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

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

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

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

41 (D) A STATEMENT AS TO HOW THE CONSTRUCTION AND OPERATION OF THE REPOW-
42 ERING PROJECT, INCLUDING TRANSPORTATION AND DISPOSAL OF WASTES, COMPLY
43 WITH ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS, REQUIREMENTS, REGU-
44 LATIONS, AND RULES UNDER STATE AND MUNICIPAL LAWS, AND A STATEMENT AS TO
45 WHY ANY VARIANCES OR EXCEPTIONS MAY BE GRANTED;

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

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

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

53 (H) SUCH OTHER INFORMATION AS THE APPLICANT MAY CONSIDER RELEVANT OR
54 AS MAY BE REQUIRED BY THE BOARD TO MAKE ITS FINDINGS PURSUANT TO SECTION
55 ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE. COPIES OF THE APPLICATION,
56 INCLUDING THE REQUIRED INFORMATION, SHALL BE AVAILABLE FOR PUBLIC

1 INSPECTION; PROVIDED, HOWEVER, THAT THE SECURITY PLAN REQUIRED TO BE
2 FILED PURSUANT TO PARAGRAPH (G) OF THIS SUBDIVISION SHALL BE KEPT CONFIDENTIAL,
3 SHALL NOT BE AVAILABLE FOR PUBLIC INSPECTION, AND PROVIDED
4 FURTHER THAT INFORMATION CONCERNING ELECTRIC AND NATURAL GAS INTERCONNECTIONS
5 BETWEEN THE FACILITY AND THE ELECTRIC AND NATURAL GAS SYSTEMS
6 SHALL NOT BE PLACED IN PUBLIC LIBRARIES OR ON THE INTERNET, AND THAT THE
7 DEPARTMENT SHALL MAKE SUCH INFORMATION AVAILABLE FOR INSPECTION AT ITS
8 OFFICES AND SHALL MAINTAIN A LOGBOOK OF ALL THOSE WHO HAVE REQUESTED
9 ACCESS TO SUCH INFORMATION.

10 3. THE APPLICATION SHALL BE ACCOMPANIED BY:

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

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

19 (C) A FEE IN AN AMOUNT EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND
20 KILOWATTS OF GENERATING CAPACITY IN EXCESS OF THE GENERATING OUTPUT OF
21 THE EXISTING FACILITY IN THOUSANDS OF KILOWATTS MULTIPLIED BY ONE THOUSAND
22 DOLLARS, BUT IN NO EVENT SHALL SUCH FEE EXCEED THREE HUNDRED THOUSAND
23 DOLLARS. SUCH FEE SHALL BE DEPOSITED IN THE ELECTRIC GENERATING
24 FACILITIES INTERVENOR ACCOUNT ESTABLISHED PURSUANT TO SECTION
25 NINETY-SEVEN-KKKK OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE
26 BOARD'S DIRECTION IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION SIX OF
27 SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE.

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

32 5. WITHIN SIXTY DAYS OF RECEIPT OF AN APPLICATION FILED PURSUANT TO
33 SUBDIVISION TWO OF THIS SECTION, THE CHAIRPERSON OF THE BOARD SHALL
34 DETERMINE WHETHER OR NOT THE APPLICATION IS FOR A REPOWERING PROJECT, AS
35 DEFINED IN SUBDIVISION ONE OF THIS SECTION, AND WHETHER OR NOT THE
36 APPLICATION COMPLIES WITH SUBDIVISION TWO OF THIS SECTION AND ANY REGULATIONS
37 PROMULGATED PURSUANT THERETO, AND SHALL, AFTER CONSULTATION WITH
38 THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, RENDER A PRELIMINARY
39 DETERMINATION AS TO WHETHER OR NOT THE REPOWERING PROJECT MAY HAVE A
40 SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT. IN THE EVENT THAT THE CHAIRPERSON
41 OF THE BOARD DETERMINES EITHER THAT THE APPLICATION IS NOT FOR A
42 REPOWERING PROJECT OR THAT THE REPOWERING PROJECT MAY HAVE A SIGNIFICANT
43 ADVERSE ENVIRONMENTAL IMPACT, THE APPLICATION SHALL BE DEEMED TO SATISFY
44 THE REQUIREMENTS OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE
45 OF THIS ARTICLE AND THE APPLICATION SHALL NO LONGER BE SUBJECT TO, OR
46 ELIGIBLE FOR, THE PROCEDURES SET FORTH IN THIS SECTION. THE CHAIRPERSON
47 OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED
48 TO SUPPLEMENT AN APPLICATION. IN THE EVENT OF A DETERMINATION THAT A
49 REPOWERING PROJECT IS NOT LIKELY TO HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL
50 IMPACT, A PRELIMINARY DETERMINATION OF NON-SIGNIFICANCE SHALL BE
51 ISSUED. NOTICE OF ISSUANCE SHALL BE GIVEN TO PARTIES TO THE CERTIFICATION
52 PROCEEDING PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED
53 SIXTY-SIX OF THIS ARTICLE AND SHALL ADDITIONALLY BE PUBLISHED ON THE
54 WEBSITE OF THE DEPARTMENT.

55 6. SIMULTANEOUSLY WITH THE ISSUANCE OF A PRELIMINARY DETERMINATION OF
56 SIGNIFICANCE, THE SECRETARY OF THE BOARD SHALL PROVIDE NOTICE OF A

1 PUBLIC HEARING TO ADDRESS DISBURSEMENT OF THE FEE PROVIDED FOR BY SUBDI-
2 VISION THREE OF THIS SECTION, WHICH HEARING SHALL BE HELD BY THE PRESID-
3 ING AND ASSOCIATE EXAMINERS, AND IN NO EVENT LATER THAN TWENTY-ONE DAYS
4 FOLLOWING ISSUANCE OF THE PRELIMINARY DETERMINATION OF NON-SIGNIFICANCE.

5 7. INTERESTED PARTIES SHALL HAVE NOT MORE THAN SIXTY DAYS FROM THE
6 DATE THE PRELIMINARY DETERMINATION OF SIGNIFICANCE IS ISSUED TO FILE
7 WRITTEN COMMENTS WITH REGARD TO SUCH PRELIMINARY DETERMINATION. THE
8 PUBLIC COMMENT PERIOD SHALL INCLUDE A PUBLIC STATEMENT HEARING AT WHICH
9 THE PRESIDING EXAMINER AND ASSOCIATE EXAMINER SHALL JOINTLY PRESIDE.
10 UPON THE CLOSE OF THE PUBLIC COMMENT PERIOD, IN THE EVENT THAT THE
11 PRESIDING EXAMINER DETERMINES THAT THERE IS AN ISSUE OF FACT WITH
12 RESPECT TO THE APPLICABILITY OF ANY LOCAL ORDINANCE, LAW, RESOLUTION,
13 STANDARD, OR OTHER ACTION, OR ANY REGULATION ISSUED THEREUNDER, OR ANY
14 LOCAL STANDARD OR REQUIREMENT THAT WOULD OTHERWISE BE APPLICABLE TO THE
15 REPOWERING PROJECT, THE PRESIDING EXAMINER SHALL SCHEDULE AN EVIDENTIARY
16 HEARING ON SUCH ISSUE OF FACT.

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

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 ENVIRONMENTAL CONSERVATION SHALL PROVIDE SUCH PERMITS TO THE CHAIR-
38 PERSON OF THE BOARD PRIOR TO THE DETERMINATION OF NON-SIGNIFICANCE. THE
39 CHAIRPERSON OF THE BOARD SHALL SUBMIT THE FINAL DETERMINATION OF
40 NON-SIGNIFICANCE TO THE BOARD, WHICH SHALL ISSUE A DECISION WITH RESPECT
41 TO THE APPLICATION WITHIN TWENTY-ONE DAYS AFTER SUCH SUBMISSION IN
42 ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE.

43 S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIF-
44 ICATE SHALL FILE WITH THE CHAIRMAN OF THE BOARD AN APPLICATION, IN SUCH
45 FORM AS THE BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND
46 MATERIALS:

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

53 (B) A DESCRIPTION AND EVALUATION OF REASONABLE ALTERNATIVE LOCATIONS
54 TO THE PROPOSED FACILITY, IF ANY, AND WITH RESPECT TO A FACILITY THAT
55 HAS NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT PROCESS, A
56 DESCRIPTION AND EVALUATION OF REASONABLE ENERGY SUPPLY SOURCE ALTERNA-

1 TIVES AND, WHERE APPROPRIATE, DEMAND-REDUCING MEASURES TO THE PROPOSED
2 FACILITY; A DESCRIPTION OF THE COMPARATIVE ADVANTAGES AND DISADVANTAGES
3 OF EACH SUCH LOCATION, ENERGY SUPPLY SOURCE AND DEMAND-REDUCING MEASURE,
4 AS APPROPRIATE; AND A STATEMENT OF THE REASONS WHY THE PRIMARY PROPOSED
5 LOCATION AND SOURCE, AS APPROPRIATE, IS BEST SUITED, AMONG THE ALTERNA-
6 TIVES CONSIDERED, TO PROMOTE PUBLIC HEALTH AND WELFARE, INCLUDING THE
7 RECREATIONAL AND OTHER CONCURRENT USES WHICH THE SITE MAY SERVE,
8 PROVIDED THAT THE INFORMATION REQUIRED PURSUANT TO THIS PARAGRAPH SHALL
9 BE NO MORE EXTENSIVE THAN REQUIRED UNDER ARTICLE EIGHT OF THE ENVIRON-
10 MENTAL CONSERVATION LAW;

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

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

40 (E) A STATEMENT (I) DEMONSTRATING THAT THE FACILITY WILL SATISFY ADDI-
41 TIONAL ELECTRIC CAPACITY OR OTHER ELECTRIC SYSTEM NEEDS, AND THAT THE
42 CONSTRUCTION OF THE FACILITY IS REASONABLY CONSISTENT WITH LONG-RANGE
43 ENERGY PLANNING OBJECTIVES AND STRATEGIES, PROVIDED HOWEVER, THAT SUBSE-
44 QUENT TO THE ADOPTION OF A STATE ENERGY PLAN PURSUANT TO ARTICLE SIX OF
45 THE ENERGY LAW, AN APPLICANT SHALL DEMONSTRATE THAT THE CONSTRUCTION OF
46 THE FACILITY IS REASONABLY CONSISTENT WITH THE ENERGY POLICIES AND
47 LONG-RANGE ENERGY PLANNING OBJECTIVES AND STRATEGIES CONTAINED IN THE
48 MOST RECENT STATE ENERGY PLAN; OR (II) THAT THE FACILITY WAS SELECTED
49 PURSUANT TO AN APPROVED PROCUREMENT PROCESS;

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

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

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

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

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

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

25 (II) EACH MEMBER OF THE BOARD;

26 (III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

27 (IV) THE SECRETARY OF STATE;

28 (V) THE ATTORNEY GENERAL;

29 (VI) THE DEPARTMENT OF TRANSPORTATION;

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

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

37 (B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICI-
38 PALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARA-
39 GRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE
40 GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON
41 OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE
42 PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPA-
43 PERS AS WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICA-
44 TION;

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

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

52 3. INADVERTENT FAILURE OF SERVICE ON ANY OF THE MUNICIPALITIES,
53 PERSONS, AGENCIES, BODIES OR COMMISSIONS NAMED IN SUBDIVISION TWO OF
54 THIS SECTION SHALL NOT BE JURISDICTIONAL AND MAY BE CURED PURSUANT TO
55 REGULATIONS OF THE BOARD DESIGNED TO AFFORD SUCH PERSONS ADEQUATE NOTICE
56 TO ENABLE THEM TO PARTICIPATE EFFECTIVELY IN THE PROCEEDING. IN ADDI-

1 TION, THE BOARD MAY, AFTER FILING, REQUIRE THE APPLICANT TO SERVE NOTICE
2 OF THE APPLICATION OR COPIES THEREOF OR BOTH UPON SUCH OTHER PERSONS AND
3 FILE PROOF THEREOF AS THE BOARD MAY DEEM APPROPRIATE.

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

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

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

34 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
35 BOARD SHALL PROVIDE BY RULES AND REGULATIONS FOR THE MANAGEMENT OF THE
36 INTERVENOR FUND AND FOR DISBURSEMENTS FROM THE FUND, WHICH RULES AND
37 REGULATIONS SHALL BE CONSISTENT WITH THE PURPOSE OF THIS SECTION TO MAKE
38 AVAILABLE TO MUNICIPAL PARTIES AT LEAST ONE-HALF OF THE AMOUNT OF THE
39 INTERVENOR FUND AND FOR USES SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVI-
40 SION. IN ADDITION, THE BOARD SHALL PROVIDE OTHER LOCAL PARTIES UP TO
41 ONE-HALF OF THE AMOUNT OF THE INTERVENOR FUND, PROVIDED, HOWEVER, THAT
42 THE BOARD SHALL ASSURE THAT THE PURPOSES FOR WHICH MONEYS IN THE
43 INTERVENOR FUND WILL BE EXPENDED WILL CONTRIBUTE TO AN INFORMED DECISION
44 AS TO THE APPROPRIATENESS OF THE SITE AND FACILITY AND ARE MADE AVAIL-
45 ABLE ON AN EQUITABLE BASIS IN A MANNER WHICH FACILITATES BROAD PUBLIC
46 PARTICIPATION.

47 7. AFTER PUBLIC NOTICE AND AN OPPORTUNITY TO COMMENT, THE BOARD SHALL
48 PROMULGATE SUCH REGULATIONS AS MAY BE NECESSARY TO IMPLEMENT, WITH
49 RESPECT TO MAJOR ELECTRIC GENERATING FACILITIES, PERMIT PROGRAMS ESTAB-
50 LISHED PURSUANT TO REQUIREMENTS OF THE FEDERAL CLEAN WATER ACT, THE
51 FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY
52 ACT. SUCH REGULATIONS SHALL BE CONSISTENT WITH ANY STATE PROGRAM
53 REQUIREMENTS ESTABLISHED BY THE UNITED STATES ENVIRONMENTAL PROTECTION
54 AGENCY FOR STATE PARTICIPATION IN SUCH POLLUTANT CONTROL PERMIT PROGRAMS
55 AND SHALL INCLUDE PROCEDURES FOR EARLY CONSIDERATION AND SUCH PROMPT

1 DETERMINATION AS IS FEASIBLE OF ISSUES ARISING UNDER SUCH PERMIT
2 PROGRAMS.

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

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

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

34 4. PROCEEDINGS ON AN APPLICATION SHALL BE COMPLETED IN ALL RESPECTS IN
35 A MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL
36 PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN
37 TWELVE MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIRMAN THAT AN
38 APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTI-
39 CLE; PROVIDED, HOWEVER, FOR FACILITIES OVER TWO HUNDRED THOUSAND KILO-
40 WATTS WHICH HAVE NOT BEEN SELECTED PURSUANT TO AN APPROVED PROCUREMENT
41 PROCESS THE BOARD MAY EXTEND THE DEADLINE IN EXTRAORDINARY CIRCUMSTANCES
42 BY NO MORE THAN SIX MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC
43 ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD MUST RENDER A
44 FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS
45 SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT
46 TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL
47 AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE
48 THAN SIX MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO
49 CONSIDER SUCH AMENDMENT.

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

1 SHALL DETERMINE WHETHER HEARINGS ARE REQUIRED UNDER THIS SUBDIVISION AND
2 SHALL MAKE SUCH DETERMINATIONS.

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

5 (A) THE APPLICANT;

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

12 (C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

13 (D) THE DEPARTMENT OF HEALTH;

14 (E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

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

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

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

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

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

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

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

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

55 (N) ANY OTHER MUNICIPALITY OR RESIDENT OF SUCH MUNICIPALITY LOCATED
56 WITHIN A FIVE MILE RADIUS OF SUCH PROPOSED FACILITY, IF IT OR THE RESI-

1 DENT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BECOME A PARTY,
2 WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS
3 THE DATE FOR FILING OF THE APPLICATION;

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

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

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

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

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

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

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

1 RENDER A CONSISTENCY DETERMINATION PURSUANT TO THE FEDERAL COASTAL ZONE
2 MANAGEMENT ACT, THE RECORD IN THE PROCEEDINGS SHALL PROVIDE INFORMATION
3 ON WHICH TO BASE THE DETERMINATION OF THE SECRETARY OF STATE WHETHER OR
4 NOT TO CONCUR WITH THE APPLICANT'S CERTIFICATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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