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

S. 5844 A. 8510

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

June 22, 2011

IN SENATE -- Introduced by Sens. MAZIARZ, PARKER, GRISANTI -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. CAHILL, SILVER, FARRELL, KOLB, AMEDORE, WEISENBERG, ZEBROWSKI, ROBERTS, SPANO, GABRYSZAK, CRESPO, ENGLEBRIGHT, FINCH, FRIEND, HEVESI, LINARES, MOYA, ROSENTHAL, SIMOTAS, CYMBROWITZ, BRENNAN, LUPARDO -- (at request of the Governor) -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, the public authorities law, the real property law, the state finance law, and the environmental conservation law, in relation to establishing the power NY act of 2011

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

Section 1. This act shall be known and may be cited as the "power NY act of 2011".

S 2. Subdivision 2 of section 18-a of the public service law is amended by adding a new paragraph (h) to read as follows:

(H) ON-BILL RECOVERY CHARGES BILLED PURSUANT TO SECTION SIXTY-SIX-M OF THIS CHAPTER SHALL BE EXCLUDED FROM ANY DETERMINATION OF AN ENTITY'S GROSS OPERATING REVENUES DERIVED FROM INTRASTATE UTILITY OPERATIONS FOR PURPOSES OF THIS SECTION.

S 3. Section 42 of the public service law is amended by adding a new subdivision 3 to read as follows:

3. THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL CUSTOMERS PARTICIPATING IN GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY PURSUANT TO SECTION SIXTY-SIX-M OF THIS CHAPTER SHALL BE SUBSTANTIALLY COMPARABLE TO THOSE OF ELECTRIC AND GAS CUSTOMERS NOT PARTICIPATING IN ON-BILL RECOVERY, AND CHARGES FOR ON-BILL RECOVERY SHALL BE TREATED AS CHARGES FOR UTILITY SERVICE FOR THE PURPOSE OF THIS ARTICLE, PROVIDED THAT:

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

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(A) ALL DETERMINATIONS AND SAFEGUARDS RELATED TO THE TERMINATION AND RECONNECTION OF SERVICE SHALL APPLY TO ON-BILL RECOVERY CHARGES BILLED BY A UTILITY PURSUANT TO SUCH SECTION;

(B) IN THE EVENT THAT THE RESPONSIBILITY FOR MAKING UTILITY PAYMENTS HAS BEEN ASSUMED BY OCCUPANTS OF A MULTIPLE DWELLING PURSUANT TO SECTION THIRTY-THREE OF THIS ARTICLE OR BY OCCUPANTS OF A TWO-FAMILY DWELLING PURSUANT TO SECTION THIRTY-FOUR OF THIS ARTICLE, SUCH OCCUPANTS SHALL NOT BE BILLED FOR ANY ARREARS OF ON-BILL RECOVERY CHARGES OR ANY PROSPECTIVE ON-BILL RECOVERY CHARGES, WHICH SHALL REMAIN THE RESPONSIBILITY OF THE INCURRING CUSTOMER;

(C) DEFERRED PAYMENT AGREEMENTS PURSUANT TO SECTION THIRTY-SEVEN OF THIS ARTICLE SHALL BE AVAILABLE TO CUSTOMERS PARTICIPATING IN ON-BILL RECOVERY ON THE SAME TERMS AS OTHER CUSTOMERS, AND THE UTILITY SHALL RETAIN THE SAME DISCRETION TO DEFER TERMINATION OF SERVICE AS FOR ANY OTHER DELINQUENT CUSTOMER;

(D) WHERE A CUSTOMER HAS A BUDGET BILLING PLAN OR LEVELIZED PAYMENT PLAN PURSUANT TO SECTION THIRTY-EIGHT OF THIS ARTICLE, THE UTILITY SHALL RECALCULATE THE PAYMENTS UNDER SUCH PLAN TO REFLECT THE PROJECTED EFFECTS OF INSTALLING ENERGY EFFICIENCY MEASURES AS SOON AS PRACTICABLE AFTER RECEIPT OF INFORMATION ON THE ENERGY AUDIT AND QUALIFIED ENERGY EFFICIENCY SERVICES SELECTED;

(E) ON-BILL RECOVERY CHARGES SHALL NOT BE SUBJECT TO THE PROVISIONS OF SECTION FORTY-ONE OF THIS ARTICLE;

(F) LATE PAYMENT CHARGES ON UNPAID ON-BILL RECOVERY CHARGES SHALL BE DETERMINED AS PROVIDED IN THIS SECTION, OR AS OTHERWISE CONSENTED TO BY THE CUSTOMER IN THE AGREEMENT FOR GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY AND ANY SUCH CHARGES SHALL BE REMITTED TO THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;

(G) NOTWITHSTANDING THE PROVISIONS OF SECTION FORTY-THREE OF THIS ARTICLE, WHEN A COMPLAINT IS RELATED SOLELY TO WORK PERFORMED UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM OR TO THE APPROPRIATE AMOUNT OF ON-BILL RECOVERY CHARGES, THE UTILITY SHALL ONLY BE REQUIRED TO INFORM THE CUSTOMER OF THE COMPLAINT HANDLING PROCEDURES OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, WHICH SHALL RETAIN RESPONSIBILITY FOR HANDLING SUCH COMPLAINTS, AND SUCH COMPLAINTS SHALL NOT BE DEEMED TO BE COMPLAINTS ABOUT UTILITY SERVICE IN ANY OTHER COMMISSION ACTION OR PROCEEDING; AND

(H) BILLING INFORMATION PROVIDED PURSUANT TO SECTION FORTY-FOUR OF THIS ARTICLE SHALL INCLUDE INFORMATION ON GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGES, INCLUDING THE BASIS FOR SUCH CHARGES, AND ANY INFORMATION OR INSERTS PROVIDED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY RELATED THERETO. IN ADDITION, AT LEAST ANNUALLY THE AUTHORITY SHALL PROVIDE THE UTILITY WITH INFORMATION FOR INCLUSION OR INSERTION IN THE CUSTOMER'S BILL THAT SETS FORTH THE AMOUNT AND DURATION OF REMAINING ON-BILL RECOVERY CHARGES AND THE AUTHORITY'S CONTACT INFORMATION AND PROCEDURES FOR RESOLVING CUSTOMER COMPLAINTS WITH SUCH CHARGES.

S 4. Paragraph (d) of subdivision 6 of section 65 of the public service law, as added by chapter 204 of the laws of 2010, is amended to read as follows:

(d) for installation of capital improvements and fixtures to promote energy efficiency upon the request and consent of the customer, INCLUDING BUT NOT LIMITED TO THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES FOR CUSTOMERS PARTICIPATING IN GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY PURSUANT TO SECTION SIXTY-SIX-M OF THIS ARTICLE.

S 5. The public service law is amended by adding a new section 66-m to read as follows:

S 66-M. GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY. 1.(A) THE COMMISSION SHALL, WITHIN FORTY-FIVE DAYS OF THE EFFECTIVE DATE OF THIS SECTION, COMMENCE A PROCEEDING TO INVESTIGATE THE IMPLEMENTATION BY EACH COMBINATION ELECTRIC AND GAS CORPORATION HAVING ANNUAL REVENUES IN EXCESS OF TWO HUNDRED MILLION DOLLARS OF A BILLING AND COLLECTION SERVICE FOR ON-BILL RECOVERY CHARGES IN PAYMENT OF OBLIGATIONS OF ITS CUSTOMERS TO THE GREEN JOBS-GREEN NEW YORK REVOLVING LOAN FUND ESTABLISHED PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW AND, WITHIN ONE HUNDRED FIFTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSION SHALL MAKE A DETERMINATION ESTABLISHING THE BILLING AND COLLECTION PROCEDURES FOR SUCH ON-BILL RECOVERY CHARGES. THE DEPARTMENT SHALL CONSULT WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY IN THE PREPARATION OF ITS RECOMMENDATIONS TO THE COMMISSION FOR SUCH DETERMINATION. THE COMMISSION SHALL REQUIRE SUCH ELECTRIC AND GAS CORPORATIONS TO OFFER BILLING AND COLLECTION SERVICES FOR GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGES FOR ELIGIBLE CUSTOMERS WITHIN THREE HUNDRED DAYS OF THE EFFECTIVE DATE OF THIS SECTION. TO THE EXTENT PRACTICABLE, SUCH ELECTRIC AND GAS CORPORATIONS SHALL UTILIZE EXISTING ELECTRONIC DATA INTERCHANGE INFRASTRUCTURE OR OTHER EXISTING BILLING INFRASTRUCTURE TO IMPLEMENT THEIR BILLING AND COLLECTION RESPONSIBILITIES UNDER THIS SECTION, AND SHALL UTILIZE FUNDING AVAILABLE FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY TO DEFRAY ANY COSTS ASSOCIATED WITH ELECTRONIC DATA INTERCHANGE IMPROVEMENTS OR OTHER COSTS OF INITIATING AND IMPLEMENTING THIS PROGRAM.

(B) TO ENSURE PROPER PROGRAM DESIGN AND IMPLEMENTATION, EACH ELECTRIC AND GAS CORPORATION SHALL INITIALLY LIMIT THE NUMBER OF CUSTOMERS WHO PAY A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE AT ANY GIVEN TIME TO NO MORE THAN ONE HALF OF ONE PERCENT OF ITS TOTAL CUSTOMERS, ON A FIRST COME, FIRST SERVED BASIS. PRIOR TO REACHING SUCH LIMIT, THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL PETITION THE COMMISSION TO REVIEW SAID LIMIT, AND THE COMMISSION SHALL INCREASE SUCH LIMIT PROVIDED THAT THE COMMISSION FINDS THAT THE PROGRAM HAS NOT CAUSED SIGNIFICANT HARM TO THE ELECTRIC OR GAS COMPANY OR ITS RATEPAYERS.

(C) THE COMMISSION MAY SUSPEND SUCH AN ELECTRIC AND GAS CORPORATION'S OFFERING OF THE ON-BILL RECOVERY CHARGE PROVIDED THAT THE COMMISSION, AFTER CONDUCTING A HEARING AS PROVIDED IN SECTION TWENTY OF THIS CHAPTER, MAKES A FINDING THAT THERE IS A SIGNIFICANT INCREASE IN ARREARS OR UTILITY SERVICE DISCONNECTIONS THAT THE COMMISSION DETERMINES IS DIRECTLY RELATED TO THE ON-BILL RECOVERY CHARGE, OR A FINDING OF OTHER GOOD CAUSE.

(D) THE ON-BILL RECOVERY CHARGE SHALL BE COLLECTED ON THE BILL FROM THE CUSTOMER'S ELECTRIC CORPORATION UNLESS THE QUALIFIED ENERGY EFFICIENCY SERVICES AT THAT CUSTOMER'S PREMISES RESULT IN MORE PROJECTED ENERGY SAVINGS ON THE CUSTOMER'S GAS BILL THAN THE ELECTRIC BILL, IN WHICH CASE SUCH CHARGE SHALL BE COLLECTED ON THE CUSTOMER'S GAS CORPORATION BILL.

(E) THE COMMISSION SHALL DETERMINE AN APPROPRIATE PERCENTAGE, UP TO FIFTEEN PERCENT, OF THE ENERGY SAVINGS FROM QUALIFIED ENERGY EFFICIENCY SERVICES, FINANCED WITH A LOAN PURSUANT TO SECTION EIGHTEEN HUNDRED NINETY-SIX OF THE PUBLIC AUTHORITIES LAW THAT IS SUBJECT TO AN ON-BILL RECOVERY CHARGE, TO BE CREDITED TO THE COMBINATION ELECTRIC AND GAS CORPORATION THAT IS ISSUING THE BILL FOR SUCH CHARGE, FOR PURPOSES OF

MEETING SUCH CORPORATION'S TARGETS UNDER ENERGY EFFICIENCY PROGRAMS ESTABLISHED BY THE COMMISSION.

2. SCHEDULES FOR THE COLLECTION AND BILLING OF ON-BILL RECOVERY CHARGES SHALL PROVIDE:

(A) THAT BILLING AND COLLECTION SERVICES SHALL BE AVAILABLE TO ALL CUSTOMERS WHO HAVE MET THE STANDARDS ESTABLISHED BY THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY FOR PARTICIPATION IN THE ON-BILL RECOVERY MECHANISM UNDER THE GREEN JOBS-GREEN NEW YORK PROGRAM AND HAVE EXECUTED AN AGREEMENT FOR THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES UNDER SUCH PROGRAM; PROVIDED, HOWEVER, THAT FOR RESIDENTIAL PROPERTIES ANY SUCH CUSTOMER MUST HOLD PRIMARY OWNERSHIP OR REPRESENT THE PRIMARY OWNER OR OWNERS OF THE PREMISES AND HOLD PRIMARY METER ACCOUNT RESPONSIBILITY OR REPRESENT THE PRIMARY HOLDER OR HOLDERS OF METER ACCOUNT RESPONSIBILITY FOR ALL METERS TO WHICH SUCH ON-BILL RECOVERY CHARGES WILL APPLY;

(B) THAT THE RESPONSIBILITIES OF SUCH ELECTRIC AND GAS CORPORATION ARE LIMITED TO PROVIDING BILLING AND COLLECTION SERVICES FOR ON-BILL RECOVERY CHARGES AS DIRECTED BY THE AUTHORITY;

(C) THAT THE RIGHTS AND RESPONSIBILITIES OF RESIDENTIAL CUSTOMERS PAYING ON-BILL RECOVERY CHARGES SHALL BE GOVERNED BY THE PROVISIONS OF ARTICLE TWO OF THIS CHAPTER;

(D) UNLESS FULLY SATISFIED PRIOR TO SALE OR TRANSFER, THAT (I) THE ON-BILL RECOVERY CHARGES FOR ANY SERVICES PROVIDED AT THE CUSTOMER'S PREMISES SHALL SURVIVE CHANGES IN OWNERSHIP, TENANCY OR METER ACCOUNT RESPONSIBILITY, AND (II) THAT ARREARS IN ON-BILL RECOVERY CHARGES AT THE TIME OF ACCOUNT CLOSURE OR METER TRANSFER SHALL REMAIN THE RESPONSIBILITY OF THE INCURRING CUSTOMER, UNLESS EXPRESSLY ASSUMED BY A SUBSEQUENT PURCHASER OF THE PROPERTY SUBJECT TO SUCH CHARGES;

(E) NOT LESS THAN FORTY-FIVE DAYS AFTER CLOSURE OF AN ACCOUNT THAT IS SUBJECT TO AN ON-BILL RECOVERY CHARGE, AND PROVIDED THAT THE CUSTOMER DOES NOT RE-ESTABLISH SERVICE WITH SUCH ELECTRIC AND GAS CORPORATION, IT SHALL BE THE RESPONSIBILITY OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AND NOT THE ELECTRIC AND GAS CORPORATION TO COLLECT ANY ARREARS THAT ARE DUE AND OWING;

(F) A CUSTOMER REMITTING LESS THAN THE TOTAL AMOUNT DUE FOR ELECTRIC AND/OR GAS SERVICES AND ON-BILL RECOVERY CHARGES SHALL HAVE SUCH PARTIAL PAYMENT FIRST APPLIED AS PAYMENT FOR ELECTRIC AND/OR GAS SERVICES AND ANY REMAINING AMOUNT WILL BE APPLIED TO THE ON-BILL RECOVERY CHARGE;

(G) BILLING AND COLLECTION SERVICES SHALL BE AVAILABLE WITHOUT REGARD TO WHETHER THE ENERGY OR FUEL DELIVERED BY THE UTILITY IS THE CUSTOMER'S PRIMARY ENERGY SOURCE;

(H) UNLESS OTHERWISE PRECLUDED BY LAW, PARTICIPATION IN THE GREEN JOBS-GREEN NEW YORK PROGRAM SHALL NOT AFFECT A CUSTOMER'S ELIGIBILITY FOR ANY REBATE OR INCENTIVE OFFERED BY A UTILITY; AND

(I) ANY OTHER PROVISIONS NECESSARY TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL RECOVERY CHARGES.

3. THE COMMISSION SHALL NOT APPROVE ANY APPLICATION FOR THE CONVERSION TO SUBMETERING OF ANY MASTER METER WHICH IS SUBJECT TO ANY ON-BILL RECOVERY CHARGES.

S 6. Sections 1020-hh, 1020-ii and 1020-jj of the public authorities law, as renumbered by chapter 433 of the laws of 2009, are renumbered sections 1020-ii, 1020-jj and 1020-kk and a new section 1020-hh is added to read as follows:

S 1020-HH. GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY. 1. WITHIN THREE HUNDRED DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE AUTHORITY SHALL ESTABLISH A PROGRAM TO PROVIDE FOR THE BILLING AND COLLECTION OF ON-BILL

RECOVERY CHARGES FOR PAYMENT OF OBLIGATIONS OF ITS CUSTOMERS TO THE GREEN JOBS-GREEN NEW YORK REVOLVING LOAN FUND ESTABLISHED PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW. SUCH PROGRAM SHALL BE CONSISTENT WITH THE STANDARDS SET FORTH IN SUBDIVISION THREE OF SECTION FORTY-TWO AND SECTION SIXTY-SIX-M OF THE PUBLIC SERVICE LAW. TO THE MAXIMUM EXTENT PRACTICABLE, FUNDING AVAILABLE FROM THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL BE UTILIZED TO DEFRAY ANY COSTS ASSOCIATED WITH ELECTRONIC DATA INTERCHANGE IMPROVEMENTS OR OTHER COSTS OF INITIATING AND IMPLEMENTING THIS PROGRAM. BILLING AND COLLECTION SERVICES UNDER SUCH TARIFFS SHALL COMMENCE AS SOON AS PRACTICABLE AFTER ESTABLISHMENT OF THE PROGRAM.

2. THE AUTHORITY MAY SUSPEND ITS OFFERING OF THE ON-BILL RECOVERY CHARGE PROVIDED THAT THE AUTHORITY MAKES A FINDING THAT THERE IS A SIGNIFICANT INCREASE IN ARREARS OR UTILITY SERVICE DISCONNECTIONS THAT THE AUTHORITY DETERMINES IS DIRECTLY RELATED TO SUCH CHARGE, OR A FINDING OF OTHER GOOD CAUSE.

S 7. Subdivision 5 of section 1891 of the public authorities law, as added by chapter 487 of the laws of 2009, is amended to read as follows:

5. "Eligible project" means qualified energy efficiency services for a non-residential structure, a residential structure or a multi-family structure. AN ELIGIBLE PROJECT SHALL NOT BE CONSIDERED (A) A MAJOR CAPITAL IMPROVEMENT PURSUANT TO SUBPARAGRAPH (G) OF PARAGRAPH ONE OF SUBDIVISION G OF SECTION 26-405 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, SUBPARAGRAPH (K) OF PARAGRAPH ONE OF SUBDIVISION G OF SECTION 26-405 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, PARAGRAPH SIX OF SUBDIVISION C OF SECTION 26-511 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, PARAGRAPH THREE OF SUBDIVISION D OF SECTION SIX OF SECTION FOUR OF CHAPTER FIVE HUNDRED SEVENTY-SIX OF THE LAWS OF NINETEEN HUNDRED SEVENTY-FOUR, AND THE SECOND UNDESIGNATED PARAGRAPH OF PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION FOUR OF CHAPTER TWO HUNDRED SEVENTY-FOUR OF THE LAWS OF NINETEEN HUNDRED FORTY-SIX; OR (B) AN INDIVIDUAL APARTMENT IMPROVEMENT PURSUANT TO SUBPARAGRAPH (E) OF PARAGRAPH ONE OF SUBDIVISION G OF SECTION 26-405 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, PARAGRAPH THIRTEEN OF SUBDIVISION C OF SECTION 26-511 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, PARAGRAPH ONE OF SUBDIVISION D OF SECTION SIX OF SECTION FOUR OF CHAPTER FIVE HUNDRED SEVENTY-SIX OF THE LAWS OF NINETEEN HUNDRED SEVENTY-FOUR, AND CLAUSE FIVE OF THE SECOND UNDESIGNATED PARAGRAPH OF PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION FOUR OF CHAPTER TWO HUNDRED SEVENTY-FOUR OF THE LAWS OF NINETEEN HUNDRED FORTY-SIX.

S 7-a. Section 1894 of the public authorities law is amended by adding a new subdivision 4 to read as follows:

4. ANY ORGANIZATION USING FUNDING PROVIDED UNDER THE PROGRAM FOR MARKETING OR OTHER OUTREACH ACTIVITIES SHALL NOT COMMINGLE SUCH MARKETING OR OUTREACH ACTIVITIES WITH ANY OTHER ADVOCACY OR POLICY PROMOTION EFFORTS.

S 8. Section 1896 of the public authorities law, as added by chapter 487 of the laws of 2009, is amended to read as follows:

S 1896. Green jobs-green New York revolving loan fund. 1. (a) There is hereby created a green jobs-green New York revolving loan fund. The revolving loan fund shall consist of:

(i) all moneys made available for the purpose of the revolving loan fund pursuant to section eighteen hundred ninety-nine-a of this title;

(ii) payments of principal and interest, INCLUDING ANY LATE PAYMENT CHARGES, made pursuant to loan or financing agreements entered into with the authority or its designee pursuant to this section; and

(iii) any interest earned by the investment of moneys in the revolving loan fund.

(b) The revolving loan fund shall consist of two accounts:

(i) one account which shall be maintained for monies to be made available to provide loans to finance the cost of approved qualified energy efficiency services for residential structures and multi-family structures, and

(ii) one account which shall be maintained for monies made available to provide loans to finance the cost of approved qualified energy efficiency services for non-residential structures. The initial balance of the residential account established in [clause] SUBPARAGRAPH (i) of this paragraph shall represent at least fifty percent of the total balance of the two accounts. The authority shall not commingle the monies of the revolving loan fund with any other monies of the authority or held by the authority, nor shall the authority commingle the monies between accounts. Payments of principal, interest and fees shall be deposited into the account created and maintained for the appropriate type of eligible project.

(c) In administering such program, the authority is authorized and directed to:

(i) use monies made available for the revolving loan fund to achieve the purposes of this section by section eighteen hundred ninety-nine-a of this title, including but not limited to making loans available for eligible projects;

(ii) enter into contracts with one or more program implementers to perform such functions as the authority deems appropriate; [and]

(iii) ESTABLISH AN ON-BILL RECOVERY MECHANISM FOR REPAYMENT OF LOANS FOR THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES FOR ELIGIBLE PROJECTS PROVIDED THAT SUCH ON-BILL RECOVERY MECHANISM SHALL PROVIDE FOR THE UTILIZATION OF ANY ON-BILL RECOVERY PROGRAMS ESTABLISHED PURSUANT TO SECTION SIXTY-SIX-M OF THE PUBLIC SERVICE LAW AND SECTION ONE THOUSAND TWENTY-HH OF THIS CHAPTER;

(IV) ESTABLISH STANDARDS FOR CUSTOMER PARTICIPATION IN SUCH ON-BILL RECOVERY MECHANISM, INCLUDING STANDARDS FOR RELIABLE UTILITY BILL PAYMENT, CURRENT GOOD STANDING ON ANY MORTGAGE OBLIGATIONS, AND SUCH ADDITIONAL STANDARDS AS THE AUTHORITY DEEMS NECESSARY; PROVIDED THAT IN ORDER TO PROVIDE BROAD ACCESS TO ON-BILL RECOVERY, THE AUTHORITY SHALL, TO THE FULLEST EXTENT PRACTICABLE, CONSIDER ALTERNATIVE MEASURES OF CREDITWORTHINESS THAT ARE PRUDENT IN ORDER TO INCLUDE PARTICIPATION BY CUSTOMERS WHO ARE LESS LIKELY TO HAVE ACCESS TO TRADITIONAL SOURCES OF FINANCING;

(V) TO THE EXTENT FEASIBLE, MAKE AVAILABLE ON A PRO RATA BASIS, BASED ON THE NUMBER OF ELECTRIC CUSTOMERS WITHIN THE UTILITY SERVICE TERRITORY, TO COMBINATION ELECTRIC AND GAS CORPORATIONS THAT OFFER ON-BILL RECOVERY PURSUANT TO SECTION SIXTY-SIX-M OF THE PUBLIC SERVICE LAW AND THE LONG ISLAND POWER AUTHORITY, UP TO FIVE HUNDRED THOUSAND DOLLARS TO DEFRAY COSTS DIRECTLY ASSOCIATED WITH CHANGING OR UPGRADING BILLING SYSTEMS TO ACCOMMODATE ON-BILL RECOVERY CHARGES;

(VI) WITHIN THIRTY DAYS OF CLOSING OF A LOAN TO A CUSTOMER, PAY A FEE OF ONE HUNDRED DOLLARS PER LOAN TO THE COMBINATION ELECTRIC AND GAS CORPORATION IN WHOSE SERVICE TERRITORY SUCH CUSTOMER IS LOCATED OR TO THE LONG ISLAND POWER AUTHORITY IF SUCH CUSTOMER IS LOCATED IN THE SERVICE TERRITORY OF THAT AUTHORITY TO HELP DEFRAY THE COSTS THAT ARE DIRECTLY ASSOCIATED WITH IMPLEMENTING THE PROGRAM;

(VII) WITHIN THIRTY DAYS OF CLOSING OF A LOAN TO A CUSTOMER, PAY A SERVICING FEE OF ONE PERCENT OF THE LOAN AMOUNT TO THE COMBINATION ELEC-

TRIC AND GAS CORPORATION IN WHOSE SERVICE TERRITORY SUCH CUSTOMER IS LOCATED OR TO THE LONG ISLAND POWER AUTHORITY IF SUCH CUSTOMER IS LOCATED IN THE SERVICE TERRITORY OF THAT AUTHORITY TO HELP DEFRAY THE COSTS THAT ARE DIRECTLY ASSOCIATED WITH THE PROGRAM; AND

(VIII) exercise such other powers as are necessary for the proper administration of the program, INCLUDING AT THE DISCRETION OF THE AUTHORITY, ENTERING INTO AGREEMENTS WITH APPLICANTS AND WITH SUCH STATE OR FEDERAL AGENCIES AS NECESSARY TO DIRECTLY RECEIVE REBATES AND GRANTS AVAILABLE FOR ELIGIBLE PROJECTS AND APPLY SUCH FUNDS TO REPAYMENT OF APPLICANT LOAN OBLIGATIONS.

2. (a) The authority shall provide financial assistance in the form of loans for the performance of qualified energy efficiency services for eligible projects on terms and conditions established by the authority.

(b) Loans made by the authority pursuant to this section shall be subject to the following limitations:

(i) eligible projects shall meet cost effectiveness standards developed by the authority;

(ii) loans shall not exceed thirteen thousand dollars per applicant for approved qualified energy efficiency services for residential structures, and twenty-six thousand dollars per applicant for approved qualified energy efficiency services for non-residential structures, PROVIDED, HOWEVER, THAT THE AUTHORITY MAY PERMIT A LOAN IN EXCESS OF SUCH AMOUNTS IF THE TOTAL COST OF ENERGY EFFICIENCY MEASURES FINANCED BY SUCH LOAN WILL ACHIEVE A PAYBACK PERIOD OF FIFTEEN YEARS OR LESS, BUT IN NO EVENT SHALL ANY SUCH LOAN EXCEED TWENTY-FIVE THOUSAND DOLLARS PER APPLICANT FOR RESIDENTIAL STRUCTURES AND FIFTY THOUSAND DOLLARS PER APPLICANT FOR NON-RESIDENTIAL STRUCTURES; and for multi-family structures loans shall be in amounts determined by the authority, provided, however, that the authority shall assure that a significant number of residential structures are included in the program; [and]

(iii) NO FEES OR PENALTIES SHALL BE CHARGED OR COLLECTED FOR PREPAYMENT OF ANY SUCH LOAN; AND

(IV) loans shall be at interest rates determined by the authority to be no higher than necessary to make the provision of the qualified energy efficiency services feasible.

In determining whether to make a loan, and the amount of any loan that is made, the authority is authorized to consider whether the applicant or borrower has received, or is eligible to receive, financial assistance and other incentives from any other source for the qualified energy efficiency services which would be the subject of the loan. IN DETERMINING WHETHER A LOAN WILL ACHIEVE A PAYBACK PERIOD OF FIFTEEN YEARS OR LESS PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE AUTHORITY MAY CONSIDER THE AMOUNT OF THE LOAN TO BE REDUCED BY THE AMOUNT OF ANY REBATES FOR QUALIFIED ENERGY EFFICIENCY SERVICES RECEIVED BY THE APPLICANT OR BY THE AUTHORITY ON BEHALF OF AN APPLICANT.

(c) Applications for financial assistance pursuant to this section shall be reviewed and evaluated by the authority or its designee pursuant to eligibility and qualification requirements and criteria established by the authority. The authority shall establish standards for (i) qualified energy efficiency services, and (ii) measurement and verification of energy savings. Such standards shall meet or exceed the standards used by the authority for similar programs in existence on the effective date of this section.

(d) The amount of a fee paid for an energy audit provided under section eighteen hundred ninety-five of this title may be added to the amount of a loan that is made under this section to finance the cost of

an eligible project conducted in response to such energy audit. In such a case, the amount of the fee may be reimbursed from the fund to the borrower.

(E) IN ESTABLISHING AN ON-BILL RECOVERY MECHANISM:

(I) THE COST-EFFECTIVENESS OF AN ELIGIBLE PROJECT SHALL BE EVALUATED SOLELY ON THE BASIS OF THE COSTS AND PROJECTED SAVINGS TO THE APPLYING CUSTOMER, USING STANDARD ENGINEERING ASSESSMENTS AND PRIOR BILLING DATA AND USAGE PATTERNS; PROVIDED HOWEVER THAT BASED UPON THE MOST RECENT CUSTOMER DATA AVAILABLE, ON AN ANNUALIZED BASIS, THE MONTHLY ON-BILL REPAYMENT AMOUNT FOR A PACKAGE OF MEASURES SHALL NOT EXCEED ONE-TWELFTH OF THE SAVINGS PROJECTED TO RESULT FROM THE INSTALLATION OF THE MEASURES PROVIDED FURTHER THAT NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT OR PREVENT CUSTOMERS WHOSE PRIMARY HEATING ENERGY SOURCE IS FROM DELIVERABLE FUELS FROM PARTICIPATING IN THE PROGRAM;

(II) THE AUTHORITY SHALL ESTABLISH A PROCESS FOR RECEIPT AND RESOLUTION OF CUSTOMER COMPLAINTS CONCERNING ON-BILL RECOVERY CHARGES AND FOR ADDRESSING DELAYS AND DEFAULTS IN CUSTOMER PAYMENTS; AND

(III) THE AUTHORITY MAY LIMIT THE AVAILABILITY OF LIGHTING MEASURES OR HOUSEHOLD APPLIANCES THAT ARE NOT PERMANENTLY AFFIXED TO REAL PROPERTY.

(F) PRIOR TO OR AT THE CLOSING OF EACH LOAN MADE PURSUANT TO THIS SECTION, THE AUTHORITY SHALL CAUSE A NOTICE TO BE PROVIDED TO EACH CUSTOMER RECEIVING SUCH LOAN STATING, IN CLEAR AND CONSPICUOUS TERMS:

(I) THE FINANCIAL AND LEGAL OBLIGATIONS AND RISKS OF ACCEPTING SUCH LOAN RESPONSIBILITIES, INCLUDING THE OBLIGATION TO PROVIDE OR CONSENT TO THE CUSTOMER'S UTILITY PROVIDING THE AUTHORITY INFORMATION ON THE SOURCES AND QUANTITIES OF ENERGY USED IN THE CUSTOMER'S PREMISES AND ANY IMPROVEMENTS OR MODIFICATIONS TO THE PREMISES, USE OF THE PREMISES OR ENERGY CONSUMING APPLIANCES OR EQUIPMENT OF ANY TYPE THAT MAY SIGNIFICANTLY AFFECT ENERGY USAGE;

(II) THAT THE ON-BILL RECOVERY CHARGE WILL BE BILLED BY SUCH CUSTOMER UTILITY COMPANY AND THAT FAILURE TO PAY SUCH ON-BILL RECOVERY CHARGE MAY RESULT IN THE CUSTOMER HAVING HIS OR HER ELECTRICITY AND/OR GAS TERMINATED FOR NON-PAYMENT, PROVIDED THAT SUCH UTILITY COMPANY FOLLOWS THE REQUIREMENTS OF ARTICLE TWO OF THE PUBLIC SERVICE LAW WITH RESPECT TO RESIDENTIAL CUSTOMERS;

(III) THAT INCURRING SUCH LOAN TO UNDERTAKE ENERGY-EFFICIENCY PROJECTS MAY NOT RESULT IN LOWER MONTHLY ENERGY COSTS OVER TIME, BASED ON ADDITIONAL FACTORS THAT CONTRIBUTE TO MONTHLY ENERGY COSTS;

(IV) THAT THE PROGRAM IS OPERATED BY THE AUTHORITY AND IT IS THE SOLE RESPONSIBILITY OF THE AUTHORITY TO HANDLE CONSUMER INQUIRIES AND COMPLAINTS RELATED TO THE OPERATION AND LENDING ASSOCIATED WITH THE PROGRAM, PROVIDED FURTHER THAT THE AUTHORITY SHALL PROVIDE A MECHANISM TO RECEIVE SUCH CONSUMER INQUIRIES AND COMPLAINTS.

(G) ANY PERSON ENTERING INTO A LOAN AGREEMENT PURSUANT TO THIS SECTION SHALL HAVE THE RIGHT TO CANCEL ANY SUCH LOAN AGREEMENT UNTIL MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING THE DAY ON WHICH SUCH PERSON SIGNS SUCH AGREEMENT PROVIDED THE LOAN PROCEEDS HAVE NOT YET BEEN DISBURSED.

3. THE AUTHORITY SHALL EVALUATE THE COST-EFFECTIVENESS OF THE ON-BILL RECOVERY MECHANISM ON AN ON-GOING BASIS. (A) IN CONDUCTING SUCH EVALUATION, THE AUTHORITY SHALL REQUEST EACH CUSTOMER TO PROVIDE:

(I) INFORMATION ON ENERGY USAGE AND/OR PERMISSION TO COLLECT INFORMATION ON ENERGY USAGE FROM UTILITIES AND OTHER RETAIL VENDORS, INCLUDING BUT NOT LIMITED TO INFORMATION REQUIRED TO BE FURNISHED TO CONSUMERS UNDER ARTICLE SEVENTEEN OF THE ENERGY LAW;

(II) INFORMATION ON OTHER SOURCES OF ENERGY USED IN THE CUSTOMER'S PREMISES; AND

(III) INFORMATION ON ANY IMPROVEMENTS OR MODIFICATIONS TO THE PREMISES THAT MAY SIGNIFICANTLY AFFECT ENERGY USAGE.

(B) AT A MINIMUM THE AUTHORITY SHALL COLLECT AND MAINTAIN INFORMATION FOR DATES PRIOR TO THE PERFORMANCE OF QUALIFIED ENERGY EFFICIENCY SERVICES, TO ESTABLISH A BASELINE, AND FOR DATES COVERING A SUBSEQUENT TIME PERIOD TO MEASURE THE EFFECTIVENESS OF SUCH MEASURES. SUCH DATA SHALL BE CORRELATED WITH INFORMATION FROM THE ENERGY AUDIT AND ANY OTHER RELEVANT INFORMATION, INCLUDING INFORMATION ON LOCAL WEATHER CONDITIONS, AND SHALL BE USED TO EVALUATE THE ON-BILL RECOVERY PROGRAM AND TO IMPROVE THE ACCURACY OF PROJECTIONS OF COST-EFFECTIVENESS ON AN ON-GOING BASIS. AN ANALYSIS OF SUCH DATA SHALL BE INCLUDED IN THE ANNUAL REPORT PREPARED PURSUANT TO SECTION EIGHTEEN HUNDRED NINETY-NINE OF THIS TITLE.

(C) ALL INFORMATION COLLECTED BY THE AUTHORITY SHALL BE CONFIDENTIAL AND SHALL BE USED EXCLUSIVELY FOR THE PURPOSES OF THIS SUBDIVISION.

4. (A) QUALIFIED ENERGY EFFICIENCY SERVICES REPAID THROUGH AN ON-BILL RECOVERY MECHANISM SHALL BE CONSIDERED A SPECIAL ENERGY PROJECT PURSUANT TO SECTION EIGHTEEN HUNDRED FIFTY-ONE OF THIS ARTICLE. THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY SHALL SECURE EVERY LOAN ISSUED FOR SUCH SERVICES THAT ARE TO BE REPAID THROUGH AN ON-BILL RECOVERY MECHANISM WITH A MORTGAGE UPON THE REAL PROPERTY THAT IS IMPROVED BY SUCH SERVICES. SUCH MORTGAGE SHALL BE RECORDED PURSUANT TO SECTION TWO HUNDRED NINETY-ONE-D OF THE REAL PROPERTY LAW.

(B) ALL TERMS AND PROVISIONS OF A GREEN JOBS-GREEN NEW YORK MORTGAGE PURSUANT TO THIS SUBDIVISION SHALL BE SUBJECT AND SUBORDINATE TO THE LIEN OF ANY MORTGAGE OR MORTGAGES ON SUCH PROPERTY. WHEN A SUBSEQUENT PURCHASER OF THE PROPERTY IS GRANTED A MORTGAGE, THE GREEN JOBS-GREEN NEW YORK MORTGAGE SHALL BE SUBORDINATE TO THE TERMS OF THAT MORTGAGE.

(C) THE MORTGAGEE SHALL NOT RETAIN ANY RIGHT TO ENFORCE PAYMENT OR FORECLOSE UPON THE PROPERTY.

S 9. Section 1897 of the public authorities law is amended by adding a new subdivision 7 to read as follows:

7. THE AUTHORITY SHALL PRESCRIBE CONDITIONS FOR TRAINING THAT WILL INCLUDE IDENTIFIABLE STANDARDS FOR ALL EDUCATION AND TRAINING ACTIVITIES AUTHORIZED UNDER THIS SECTION, AND WILL DESIGNATE A CERTIFICATE TO BE ISSUED TO ANY TRAINEE THAT SUCCESSFULLY MEETS SUCH STANDARDS AND COMPLETES THE REQUIRED EDUCATION AND TRAINING.

S 10. Subdivision 3 of section 1899 of the public authorities law, as added by chapter 487 of the laws of 2009, is amended to read as follows:

3. The status of the authority's activities and outcomes related to section eighteen hundred ninety-six of this title. Such report shall include, but not be limited to:

(a) the number of persons who have applied for and received financial assistance through the revolving loan fund;

(b) the revolving loan fund account balances;

(c) the number of loans in default; [and]

(d) the amount and nature of the costs incurred by the authority for the activities described in paragraph (c) of subdivision one of section eighteen hundred ninety-six of this title;

(E) THE AUTHORITY'S ACTIVITIES AND OUTCOMES RELATED TO ESTABLISHING AN ON-BILL RECOVERY MECHANISM, INCLUDING THE NUMBER OF PERSONS WHO HAVE APPLIED FOR AND WHO HAVE RECEIVED FINANCIAL ASSISTANCE THAT UTILIZES ON-BILL RECOVERY AND THE RESULTS OF THE EVALUATION PROGRAM PERFORMED PURSUANT TO SUBDIVISION THREE OF SECTION EIGHTEEN HUNDRED NINETY-SIX OF THIS TITLE;

(F) THE AMOUNT EXPENDED BY THE AUTHORITY IN SUPPORT OF THE PROGRAM AND THE PURPOSES FOR WHICH SUCH FUNDS HAVE BEEN EXPENDED;

(G) THE NUMBER OF CUSTOMERS PARTICIPATING IN THE PROGRAM, SEPARATELY STATING THE NUMBER OF RESIDENTIAL AND NON-RESIDENTIAL CUSTOMERS AND THE AMOUNTS FINANCED;

(H) THE NUMBER OF PROGRAM PARTICIPANTS WHO ARE IN ARREARS IN THEIR UTILITY ACCOUNTS FOR ELECTRIC AND/OR GAS SERVICE;

(I) THE NUMBER OF PROGRAM PARTICIPANTS WHO ARE IN ARREARS IN THEIR ON-BILL RECOVERY CHARGE PAYMENTS;

(J) THE NUMBER OF PROGRAM PARTICIPANTS WHOSE UTILITY SERVICE HAS BEEN TERMINATED FOR NON-PAYMENT;

(K) A DESCRIPTION OF THE GEOGRAPHIC DISTRIBUTION OF LOANS MADE;

(L) AN ESTIMATE OF THE ENERGY SAVINGS RESULTING FROM THIS PROGRAM;

(M) AN ESTIMATE OF THE AVERAGE PROJECT COST; AND

(N) IN CONSULTATION WITH THE DEPARTMENT OF LABOR, AN ESTIMATE OF THE NUMBER OF JOBS CREATED UNDER THE PROGRAM.

S 11. Section 242 of the real property law is amended by adding a new subdivision 4 to read as follows:

4. DISCLOSURE PRIOR TO THE SALE OF REAL PROPERTY TO WHICH A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE APPLIES. (A) ANY PERSON, FIRM, COMPANY, PARTNERSHIP OR CORPORATION OFFERING TO SELL REAL PROPERTY WHICH IS SUBJECT TO A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE PURSUANT TO TITLE NINE-A OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW SHALL PROVIDE WRITTEN NOTICE TO THE PROSPECTIVE PURCHASER OR THE PROSPECTIVE PURCHASER'S AGENT, STATING AS FOLLOWS: "THIS PROPERTY IS SUBJECT TO A GREEN JOBS-GREEN NEW YORK ON-BILL RECOVERY CHARGE". SUCH NOTICE SHALL ALSO STATE THE TOTAL AMOUNT OF THE ORIGINAL CHARGE, THE PAYMENT SCHEDULE AND THE APPROXIMATE REMAINING BALANCE, A DESCRIPTION OF THE ENERGY EFFICIENCY SERVICES PERFORMED, INCLUDING IMPROVEMENTS TO THE PROPERTY, AND AN EXPLANATION OF THE BENEFIT OF THE GREEN JOBS-GREEN NEW YORK QUALIFIED ENERGY EFFICIENCY SERVICES. SUCH NOTICE SHALL BE PROVIDED BY THE SELLER PRIOR TO ACCEPTING A PURCHASE OFFER.

(B) ANY PROSPECTIVE OR ACTUAL PURCHASER WHO HAS SUFFERED A LOSS DUE TO A VIOLATION OF THIS SUBDIVISION IS ENTITLED TO RECOVER ANY ACTUAL DAMAGES INCURRED FROM THE PERSON OFFERING TO SELL OR SELLING SAID REAL PROPERTY.

S 12. The public service law is amended by adding a new article 10 to read as follows:

ARTICLE 10

SITING OF MAJOR ELECTRIC GENERATING FACILITIES

SECTION 160. DEFINITIONS.
161. GENERAL PROVISIONS RELATING TO THE BOARD.
162. BOARD CERTIFICATE.
163. PRE-APPLICATION PROCEDURES.
164. APPLICATION FOR A CERTIFICATE.
165. HEARING SCHEDULE.
166. PARTIES TO A CERTIFICATION PROCEEDING.
167. CONDUCT OF HEARING.
168. BOARD DECISIONS.
169. OPINION TO BE ISSUED WITH DECISION.
170. REHEARING AND JUDICIAL REVIEW.
171. JURISDICTION OF COURTS.
172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.
173. APPLICABILITY TO PUBLIC AUTHORITIES.

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

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

2. "MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING FACILITY WITH A NAMEPLATE GENERATING CAPACITY OF TWENTY-FIVE THOUSAND KILOWATTS OR MORE, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAPTER.

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

4. "BOARD" MEANS THE NEW YORK STATE BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT, WHICH SHALL BE IN THE DEPARTMENT AND CONSIST OF SEVEN PERSONS: THE CHAIR OF THE DEPARTMENT, WHO SHALL SERVE AS CHAIR OF THE BOARD; THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; THE COMMISSIONER OF HEALTH; THE CHAIR OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY; THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND TWO AD HOC PUBLIC MEMBERS, BOTH OF WHOM SHALL RESIDE WITHIN THE MUNICIPALITY IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED, EXCEPT IF SUCH FACILITY IS PROPOSED TO BE LOCATED WITHIN THE CITY OF NEW YORK, THEN ALL AD HOC MEMBERS SHALL RESIDE WITHIN THE COMMUNITY DISTRICT IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED. ONE AD HOC MEMBER SHALL BE APPOINTED BY THE PRESIDENT PRO TEM OF THE SENATE AND ONE AD HOC MEMBER SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY, IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-ONE OF THIS ARTICLE. THE TERM OF THE AD HOC PUBLIC MEMBERS SHALL CONTINUE UNTIL A FINAL DETERMINATION IS MADE IN THE PARTICULAR PROCEEDING FOR WHICH THEY WERE APPOINTED.

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

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

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

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

9. "LOCAL PARTIES" SHALL MEAN PERSONS RESIDING IN A COMMUNITY WHO MAY BE AFFECTED BY THE PROPOSED MAJOR ELECTRIC GENERATING FACILITY WHO INDI-

VIDUALLY OR COLLECTIVELY SEEK INTERVENOR FUNDING PURSUANT TO SECTIONS ONE HUNDRED SIXTY-THREE AND ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE.

S 161. GENERAL PROVISIONS RELATING TO THE BOARD. 1. THE BOARD, EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE THE POWER TO ADOPT THE RULES AND REGULATIONS RELATING TO THE PROCEDURES TO BE USED IN CERTIFYING FACILITIES UNDER THE PROVISIONS OF THIS ARTICLE, INCLUDING THE SUSPENSION OR REVOCATION THEREOF, AND SHALL FURTHER HAVE THE POWER TO SEEK DELEGATION FROM THE FEDERAL GOVERNMENT PURSUANT TO FEDERAL REGULATORY PROGRAMS APPLICABLE TO THE SITING OF MAJOR ELECTRIC FACILITIES. THE CHAIRPERSON, AFTER CONSULTATION WITH THE OTHER MEMBERS OF THE BOARD EXCLUSIVE OF THE AD HOC MEMBERS, SHALL HAVE EXCLUSIVE JURISDICTION TO ISSUE DECLARATORY RULINGS REGARDING THE APPLICABILITY OF, OR ANY OTHER QUESTION UNDER, THIS ARTICLE AND RULES AND REGULATIONS ADOPTED HEREUNDER AND TO GRANT REQUESTS FOR EXTENSIONS OR AMENDMENTS TO OR TRANSFERS OF CERTIFICATE TERMS AND CONDITIONS, PROVIDED THAT NO PARTY TO THE PROCEEDING OPPOSES SUCH REQUEST FOR EXTENSIONS OR AMENDMENTS WITHIN THIRTY DAYS OF THE FILING OF SUCH REQUEST. REGULATIONS ADOPTED BY THE BOARD MAY PROVIDE FOR RENEWAL APPLICATIONS FOR POLLUTANT CONTROL PERMITS TO BE SUBMITTED TO AND ACTED UPON BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOLLOWING COMMERCIAL OPERATION OF A CERTIFIED FACILITY. THE BOARD SHALL NOT ACCEPT ANY PRE-APPLICATION PRELIMINARY SCOPING STATEMENT OR APPLICATION FOR A CERTIFICATE, OR EXERCISE ANY POWERS OR FUNCTIONS UNTIL THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS PROMULGATED RULES AND REGULATIONS REQUIRED BY PARAGRAPHS (F) AND (G) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE AND SECTION 19-0312 OF THE ENVIRONMENTAL CONSERVATION LAW; PROVIDED HOWEVER THAT THE BOARD SHALL BE AUTHORIZED TO ADOPT RULES AND REGULATIONS REQUIRED BY THIS ARTICLE.

2. UPON RECEIPT OF A PRE-APPLICATION PRELIMINARY SCOPING STATEMENT UNDER THIS ARTICLE, THE CHAIR SHALL PROMPTLY NOTIFY THE GOVERNOR, THE PRESIDENT PRO TEM OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE CHIEF EXECUTIVE OFFICERS REPRESENTING THE MUNICIPALITY AND THE COUNTY IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED, AND, IF SUCH FACILITY IS PROPOSED TO BE LOCATED WITHIN THE CITY OF NEW YORK, THE MAYOR OF THE CITY OF NEW YORK, AS WELL AS THE CHAIRPERSON OF THE COMMUNITY BOARD AND THE BOROUGH PRESIDENT REPRESENTING THE AREA IN WHICH THE FACILITY IS PROPOSED TO BE LOCATED. ONE AD HOC MEMBER SHALL BE APPOINTED BY THE PRESIDENT PRO TEM OF THE SENATE AND ONE AD HOC MEMBER SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY FROM A LIST OF CANDIDATES SUBMITTED TO THEM, IN THE FOLLOWING MANNER. IF SUCH FACILITY IS PROPOSED TO BE LOCATED OUTSIDE OF THE CITY OF NEW YORK, THE CHIEF EXECUTIVE OFFICER REPRESENTING THE MUNICIPALITY SHALL NOMINATE FOUR CANDIDATES AND THE CHIEF EXECUTIVE OFFICER REPRESENTING THE COUNTY SHALL NOMINATE FOUR CANDIDATES FOR CONSIDERATION. IF SUCH FACILITY IS PROPOSED TO BE LOCATED OUTSIDE OF THE CITY OF NEW YORK AND IN A VILLAGE LOCATED WITHIN A TOWN, THE CHIEF EXECUTIVE OFFICER REPRESENTING THE TOWN SHALL NOMINATE FOUR CANDIDATES, THE CHIEF EXECUTIVE OFFICER REPRESENTING THE COUNTY SHALL NOMINATE FOUR CANDIDATES, AND THE CHIEF EXECUTIVE OFFICER REPRESENTING THE VILLAGE SHALL NOMINATE FOUR CANDIDATES FOR CONSIDERATION. IF SUCH FACILITY IS PROPOSED TO BE LOCATED IN THE CITY OF NEW YORK, THE CHAIRPERSON OF THE COMMUNITY BOARD, THE BOROUGH PRESIDENT, AND THE MAYOR OF THE CITY OF NEW YORK SHALL EACH NOMINATE FOUR CANDIDATES FOR CONSIDERATION. NOMINATIONS SHALL BE SUBMITTED TO THE PRESIDENT PRO TEM OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY WITHIN FIFTEEN DAYS OF RECEIPT OF NOTIFICATION OF THE PRE-APPLICATION PRELIMINARY SCOPING STATEMENT. IN THE EVENT THAT THE PRESIDENT PRO TEM OF THE SENATE DOES NOT APPOINT ONE

OF THE CANDIDATES WITHIN THIRTY DAYS OF SUCH NOMINATIONS, THE GOVERNOR SHALL APPOINT THE AD HOC MEMBER FROM THE LIST OF CANDIDATES. IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY DOES NOT APPOINT ONE OF THE CANDIDATES WITHIN THIRTY DAYS OF SUCH NOMINATIONS, THE GOVERNOR SHALL APPOINT THE AD HOC MEMBER FROM THE LIST OF CANDIDATES. IN THE EVENT THAT ONE OR BOTH OF THE AD HOC PUBLIC MEMBERS HAVE NOT BEEN APPOINTED WITHIN FORTY-FIVE DAYS, A MAJORITY OF PERSONS NAMED TO THE BOARD SHALL CONSTITUTE A QUORUM.

3. IN ADDITION TO THE REQUIREMENTS OF THE PUBLIC OFFICERS LAW, NO PERSON SHALL BE ELIGIBLE TO BE AN APPOINTEE TO THE BOARD WHO HOLDS ANOTHER STATE OR LOCAL OFFICE. NO MEMBER OF THE BOARD MAY RETAIN OR HOLD ANY OFFICIAL RELATION TO, OR ANY SECURITIES OF AN ELECTRIC UTILITY CORPORATION OPERATING IN THE STATE OR PROPOSED FOR OPERATION IN THE STATE, ANY AFFILIATE THEREOF OR ANY OTHER COMPANY, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION OR JOINT-STOCK ASSOCIATION THAT MAY APPEAR BEFORE THE BOARD, NOR SHALL EITHER OF THE APPOINTEES HAVE BEEN A DIRECTOR, OFFICER OR, WITHIN THE PREVIOUS TEN YEARS, AN EMPLOYEE THEREOF. THE AD HOC APPOINTEES SHALL RECEIVE THE SUM OF TWO HUNDRED DOLLARS FOR EACH DAY IN WHICH THEY ARE ACTUALLY ENGAGED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS ARTICLE PLUS ACTUAL AND NECESSARY EXPENSES INCURRED BY THEM IN THE PERFORMANCE OF SUCH DUTIES. THE CHAIRPERSON SHALL PROVIDE SUCH PERSONNEL, HEARING EXAMINERS, SUBORDINATES AND EMPLOYEES AND SUCH LEGAL, TECHNOLOGICAL, SCIENTIFIC, ENGINEERING AND OTHER SERVICES AND SUCH MEETING ROOMS, HEARING ROOMS AND OTHER FACILITIES AS MAY BE REQUIRED IN PROCEEDINGS UNDER THIS ARTICLE. THE BOARD UNDER THE DIRECTION OF THE CHAIRPERSON, MAY PROVIDE FOR ITS OWN REPRESENTATION AND APPEARANCE IN ALL ACTIONS AND PROCEEDINGS INVOLVING ANY QUESTION UNDER THIS ARTICLE. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE ASSOCIATE HEARING EXAMINERS. EACH MEMBER OF THE BOARD OTHER THAN THE AD HOC APPOINTEES MAY DESIGNATE AN ALTERNATE TO SERVE INSTEAD OF THE MEMBER WITH RESPECT TO ALL PROCEEDINGS PURSUANT TO THIS ARTICLE. SUCH DESIGNATION SHALL BE IN WRITING AND FILED WITH THE CHAIRPERSON.

S 162. BOARD CERTIFICATE. 1. FOLLOWING THE PROMULGATION OF RULES AND REGULATIONS PURSUANT TO PARAGRAPHS (F) AND (G) OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, AND SECTION 19-0312 OF THE ENVIRONMENTAL CONSERVATION LAW, NO PERSON SHALL COMMENCE THE PREPARATION OF A SITE FOR, OR BEGIN THE CONSTRUCTION OF A MAJOR ELECTRIC GENERATING FACILITY IN THE STATE, OR INCREASE THE CAPACITY OF AN EXISTING ELECTRIC GENERATING FACILITY BY MORE THAN TWENTY-FIVE THOUSAND KILOWATTS WITHOUT HAVING FIRST OBTAINED A CERTIFICATE ISSUED WITH RESPECT TO SUCH FACILITY BY THE BOARD. ANY SUCH FACILITY WITH RESPECT TO WHICH A CERTIFICATE IS ISSUED SHALL NOT THEREAFTER BE BUILT, MAINTAINED OR OPERATED EXCEPT IN CONFORMITY WITH SUCH CERTIFICATE AND ANY TERMS, LIMITATIONS OR CONDITIONS CONTAINED THEREIN, PROVIDED THAT NOTHING HEREIN SHALL EXEMPT SUCH FACILITY FROM COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE. A CERTIFICATE FOR A MAJOR ELECTRIC GENERATING FACILITY, OR AN INCREASE IN THE CAPACITY OF AN EXISTING ELECTRIC GENERATING FACILITY BY MORE THAN TWENTY-FIVE THOUSAND KILOWATTS, MAY BE ISSUED ONLY PURSUANT TO THIS ARTICLE.

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

3. A CERTIFICATE ISSUED UNDER THIS ARTICLE MAY BE AMENDED PURSUANT TO THIS SECTION.

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

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

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

(D) TO A MAJOR ELECTRIC GENERATING FACILITY IF, ON OR BEFORE THE EFFECTIVE DATE OF THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE AND SECTION 19-0312 OF THE ENVIRONMENTAL CONSERVATION LAW, AN APPLICATION HAS BEEN MADE FOR A LICENSE, PERMIT, CERTIFICATE, CONSENT OR APPROVAL FROM ANY FEDERAL, STATE OR LOCAL COMMISSION, AGENCY, BOARD OR REGULATORY BODY, IN WHICH APPLICATION THE LOCATION OF THE MAJOR ELECTRIC GENERATING FACILITY HAS BEEN DESIGNATED BY THE APPLICANT; OR IF THE FACILITY IS UNDER CONSTRUCTION AT SUCH TIME.

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

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

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

(B) POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS RESULTING FROM THE CONSTRUCTION AND OPERATION OF THE PROPOSED FACILITY;

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

(D) MEASURES PROPOSED TO MINIMIZE ENVIRONMENTAL IMPACTS; AND

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

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

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

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

2. SUCH PERSON SHALL SERVE COPIES OF THE PRELIMINARY SCOPING STATEMENT ON PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE AND PROVIDE NOTICE OF SUCH STATEMENT AS PROVIDED IN PARAGRAPH (B) OF SUCH SUBDIVISION IN PLAIN LANGUAGE, IN ENGLISH AND IN ANY OTHER LANGUAGE SPOKEN AS DETERMINED BY THE BOARD BY A SIGNIFICANT PORTION OF THE POPULATION IN THE COMMUNITY, THAT DESCRIBES THE PROPOSED FACILITY AND ITS LOCATION, THE RANGE OF POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS OF EACH POLLUTANT, THE APPLICATION AND REVIEW PROCESS, AND A CONTACT PERSON, WITH PHONE NUMBER AND ADDRESS, FROM WHOM INFORMATION WILL BE AVAILABLE AS THE APPLICATION PROCEEDS.

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

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

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

5. AFTER MEETING THE REQUIREMENTS OF SUBDIVISIONS ONE THROUGH THREE OF THIS SECTION, AND AFTER PRE-APPLICATION INTERVENOR FUNDS HAVE BEEN ALLOCATED BY THE PRE-HEARING EXAMINER PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION, SUCH PERSON MAY CONSULT AND SEEK AGREEMENT WITH ANY INTERESTED PERSON, INCLUDING, BUT NOT LIMITED TO, THE STAFF OF THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH, AS APPROPRIATE, AS TO ANY ASPECT OF THE PRELIMI-

NARY SCOPING STATEMENT AND ANY STUDY OR PROGRAM OF STUDIES MADE OR TO BE MADE TO SUPPORT SUCH APPLICATION. THE STAFF OF THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH, THE PERSON PROPOSING TO FILE AN APPLICATION, AND ANY OTHER INTERESTED PERSON MAY ENTER INTO A STIPULATION SETTING FORTH AN AGREEMENT ON ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE STUDIES OR PROGRAM OF STUDIES TO BE CONDUCTED. ANY SUCH PERSON PROPOSING TO SUBMIT AN APPLICATION FOR A CERTIFICATE SHALL SERVE A COPY OF THE PROPOSED STIPULATION UPON ALL PERSONS ENUMERATED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, PROVIDE NOTICE OF SUCH STIPULATION TO THOSE PERSONS IDENTIFIED IN PARAGRAPH (B) OF SUCH SUBDIVISION, AND AFFORD THE PUBLIC A REASONABLE OPPORTUNITY TO SUBMIT COMMENTS ON THE STIPULATION BEFORE IT IS EXECUTED BY THE INTERESTED PARTIES. NOTHING IN THIS SECTION, HOWEVER, SHALL BAR ANY PARTY TO A HEARING ON AN APPLICATION, OTHER THAN ANY PARTY TO A PRE-APPLICATION STIPULATION, FROM TIMELY RAISING OBJECTIONS TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY STIPULATED STUDIES OR PROGRAM OF STUDIES IN ANY SUCH AGREEMENT. IN ORDER TO ATTEMPT TO RESOLVE ANY QUESTIONS THAT MAY ARISE AS A RESULT OF SUCH CONSULTATION, THE DEPARTMENT SHALL DESIGNATE A HEARING EXAMINER WHO SHALL OVERSEE THE PRE-APPLICATION PROCESS AND MEDIATE ANY ISSUE RELATING TO ANY ASPECT OF THE PRELIMINARY SCOPING STATEMENT AND THE METHODOLOGY AND SCOPE OF ANY SUCH STUDIES OR PROGRAMS OF STUDY. UPON COMPLETION OF THE NOTICE PROVISIONS PROVIDED IN THIS SECTION, SUCH HEARING EXAMINER SHALL, WITHIN SIXTY DAYS OF THE FILING OF A PRELIMINARY SCOPING STATEMENT, CONVENE A MEETING OF INTERESTED PARTIES IN ORDER TO INITIATE THE STIPULATION PROCESS.

S 164. APPLICATION FOR A CERTIFICATE. 1. AN APPLICANT FOR A CERTIFICATE SHALL FILE WITH THE BOARD AN APPLICATION, IN SUCH FORM AS THE BOARD MAY PRESCRIBE CONTAINING THE FOLLOWING INFORMATION AND MATERIALS:

(A) A DESCRIPTION OF THE SITE AND A DESCRIPTION OF THE FACILITY TO BE BUILT THEREON; INCLUDING AVAILABLE SITE INFORMATION, MAPS AND DESCRIPTIONS, PRESENT AND PROPOSED DEVELOPMENT, SOURCE AND VOLUME OF WATER REQUIRED FOR PLANT OPERATION AND COOLING, ANTICIPATED EMISSIONS TO AIR, INCLUDING BUT NOT LIMITED TO FEDERAL CRITERIA POLLUTANTS AND MERCURY, ANTICIPATED DISCHARGES TO WATER AND GROUNDWATER, POLLUTION CONTROL EQUIPMENT, AND, AS APPROPRIATE, GEOLOGICAL, VISUAL OR OTHER AESTHETIC, ECOLOGICAL, TSUNAMI, SEISMIC, BIOLOGICAL, WATER SUPPLY, POPULATION AND LOAD CENTER DATA;

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

LAWS, AND A STATEMENT WHY ANY VARIANCES OR EXCEPTIONS SHOULD BE GRANTED; (VI) WATER WITHDRAWALS FROM AND DISCHARGES TO THE WATERSHED; (VII) A DESCRIPTION OF THE FUEL INTERCONNECTION AND SUPPLY FOR THE PROJECT; AND (VIII) AN ELECTRIC INTERCONNECTION STUDY, CONSISTING GENERALLY OF A DESIGN STUDY AND A SYSTEM RELIABILITY IMPACT STUDY;

(C) SUCH EVIDENCE AS WILL ENABLE THE BOARD AND THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION TO EVALUATE THE FACILITY'S POLLUTION CONTROL SYSTEMS AND TO REACH A DETERMINATION TO ISSUE THEREFOR, SUBJECT TO APPROPRIATE CONDITIONS AND LIMITATIONS, PERMITS PURSUANT TO FEDERAL RECOGNITION OF STATE AUTHORITY IN ACCORDANCE WITH THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, AND PERMITS PURSUANT TO SECTION 15-1503 AND ARTICLE NINETEEN OF THE ENVIRONMENTAL CONSERVATION LAW;

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

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

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

(G) A CUMULATIVE IMPACT ANALYSIS OF AIR QUALITY WITHIN A HALF-MILE OF THE FACILITY, OR OTHER RADIUS AS DETERMINED BY STANDARDS ESTABLISHED BY DEPARTMENT OF ENVIRONMENTAL CONSERVATION REGULATIONS, THAT CONSIDERS AVAILABLE DATA ASSOCIATED WITH PROJECTED EMISSIONS OF AIR POLLUTANTS, INCLUDING BUT NOT LIMITED TO FEDERAL CRITERIA POLLUTANTS AND MERCURY, FROM SOURCES, INCLUDING, BUT NOT LIMITED TO, THE FACILITY, FACILITIES THAT HAVE BEEN PROPOSED UNDER THIS ARTICLE AND HAVE SUBMITTED AN APPLICATION DETERMINED TO BE IN COMPLIANCE BY THE BOARD, EXISTING SOURCES, AND SOURCES PERMITTED BUT NOT YET CONSTRUCTED THAT WERE PERMITTED SIXTY OR MORE DAYS PRIOR TO THE FILING OF THE APPLICATION UNDER TITLE V OF THE CLEAN AIR ACT, PROVIDED THAT SUCH ANALYSIS AND STANDARDS SHALL BE IN ACCORDANCE WITH RULES AND REGULATIONS THAT SHALL BE PROMULGATED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO THIS PARAGRAPH;

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

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

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

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

(L) A STATEMENT DEMONSTRATING THAT THE FACILITY IS REASONABLY CONSISTENT WITH THE MOST RECENT STATE ENERGY PLAN, INCLUDING, BUT NOT LIMITED TO, IMPACTS ON FUEL DIVERSITY, REGIONAL REQUIREMENTS FOR CAPACITY, ELECTRIC TRANSMISSION AND FUEL DELIVERY CONSTRAINTS AND OTHER ISSUES AS APPROPRIATE, INCLUDING THE COMPARATIVE ADVANTAGES AND DISADVANTAGES OF REASONABLE AND AVAILABLE ALTERNATE LOCATIONS OR PROPERTIES IDENTIFIED FOR POWER PLANT CONSTRUCTION, AND A STATEMENT OF THE REASONS WHY THE PROPOSED LOCATION AND SOURCE IS BEST SUITED, AMONG THE ALTERNATIVES IDENTIFIED, TO PROMOTE PUBLIC HEALTH AND WELFARE;

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

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

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

(II) EACH MEMBER OF THE BOARD;

(III) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

(IV) THE SECRETARY OF STATE;

(V) THE ATTORNEY GENERAL;

(VI) THE DEPARTMENT OF TRANSPORTATION;

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

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

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

(X) THE PUBLIC INFORMATION COORDINATOR FOR PLACEMENT ON THE WEBSITE OF THE DEPARTMENT; AND

(B) A NOTICE OF SUCH APPLICATION ON (I) PERSONS RESIDING IN MUNICIPALITIES ENTITLED TO RECEIVE A COPY OF THE APPLICATION UNDER SUBPARAGRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION. SUCH NOTICE SHALL BE GIVEN BY THE PUBLICATION OF A SUMMARY OF THE APPLICATION AND THE DATE ON OR ABOUT WHICH IT WILL BE FILED, TO BE PUBLISHED UNDER REGULATIONS TO BE PROMULGATED BY THE BOARD, IN SUCH FORM AND IN SUCH NEWSPAPER OR NEWSPAPERS, INCLUDING LOCAL COMMUNITY AND GENERAL CIRCULATION NEWSPAPERS, AS WILL SERVE SUBSTANTIALLY TO INFORM THE PUBLIC OF SUCH APPLICATION, IN PLAIN LANGUAGE, IN ENGLISH AND IN ANY OTHER LANGUAGE SPOKEN AS DETERMINED BY THE BOARD BY A SIGNIFICANT PORTION OF THE POPULATION IN THE COMMUNITY, THAT DESCRIBES THE PROPOSED FACILITY AND ITS LOCATION, THE RANGE OF POTENTIAL ENVIRONMENTAL AND HEALTH IMPACTS OF EACH POLLUTANT, THE APPLICATION AND REVIEW PROCESS, AND A CONTACT PERSON, WITH PHONE NUMBER AND ADDRESS, FROM WHOM INFORMATION WILL BE AVAILABLE AS THE APPLICATION PROCEEDS;

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

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

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

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

5. IF A REASONABLE AND AVAILABLE ALTERNATE LOCATION NOT LISTED IN THE APPLICATION IS PROPOSED IN THE CERTIFICATION PROCEEDING, NOTICE OF SUCH PROPOSED ALTERNATIVE SHALL BE GIVEN AS SET FORTH IN SUBDIVISION TWO OF THIS SECTION.

6. (A) EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT (I) EQUAL TO ONE THOUSAND DOLLARS FOR EACH THOUSAND KILOWATTS OF CAPACITY, BUT NO MORE THAN FOUR HUNDRED THOUSAND DOLLARS, (II) AND FOR FACILITIES THAT WILL REQUIRE STORAGE OR DISPOSAL OF FUEL WASTE BYPRODUCT AN ADDITIONAL FEE OF FIVE HUNDRED DOLLARS FOR EACH THOUSAND KILOWATT OF CAPACITY, BUT NO MORE THAN FIFTY THOUSAND DOLLARS SHALL BE DEPOSITED IN THE INTERVENOR ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-KKKK OF THE STATE FINANCE LAW, TO BE DISBURSED AT THE BOARD'S DIRECTION, TO DEFRAY EXPENSES INCURRED BY MUNICIPAL AND OTHER LOCAL PARTIES TO THE PROCEEDING (EXCEPT A MUNICIPALITY WHICH IS THE APPLICANT) FOR EXPERT WITNESS, CONSULTANT, ADMINISTRATIVE AND LEGAL FEES, PROVIDED, HOWEVER, SUCH EXPENSES SHALL NOT BE AVAILABLE FOR JUDICIAL REVIEW OR LITIGATION. IF AT ANY TIME SUBSEQUENT TO THE FILING OF THE APPLICATION, THE APPLICATION IS AMENDED IN A MANNER THAT WARRANTS SUBSTANTIAL ADDITIONAL SCRUTINY, THE BOARD MAY REQUIRE AN ADDITIONAL INTERVENOR FEE IN AN AMOUNT NOT TO EXCEED SEVENTY-FIVE THOUSAND DOLLARS. THE BOARD SHALL PROVIDE FOR NOTICES, FOR MUNICIPAL AND OTHER LOCAL PARTIES, IN ALL APPROPRIATE LANGUAGES. ANY MONEYS REMAINING IN THE INTERVENOR ACCOUNT AFTER THE

BOARD'S JURISDICTION OVER AN APPLICATION HAS CEASED SHALL BE RETURNED TO THE APPLICANT.

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

S 165. HEARING SCHEDULE. 1. AFTER THE RECEIPT OF AN APPLICATION FILED PURSUANT TO SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE CHAIR OF THE BOARD SHALL, WITHIN SIXTY DAYS OF SUCH RECEIPT, DETERMINE WHETHER THE APPLICATION COMPLIES WITH SUCH SECTION AND UPON FINDING THAT THE APPLICATION SO COMPLIES, FIX A DATE FOR THE COMMENCEMENT OF A PUBLIC HEARING. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL ADVISE THE BOARD WITHIN SAID SIXTY DAY PERIOD WHETHER AN APPLICATION FILED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION CONTAINS SUFFICIENT INFORMATION MEETING THE REQUIREMENTS SPECIFIED UNDER SUBPARAGRAPHS (I) THROUGH (IV) OF SUCH PARAGRAPH TO QUALIFY FOR THE EXPEDITED PROCEDURE PROVIDED FOR IN SUCH PARAGRAPH. NO LATER THAN THE DATE OF THE DETERMINATION THAT AN APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL INITIATE ITS REVIEW PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE CHAIR OF THE BOARD MAY REQUIRE THE FILING OF ANY ADDITIONAL INFORMATION NEEDED TO SUPPLEMENT AN APPLICATION BEFORE OR DURING THE HEARINGS.

2. WITHIN A REASONABLE TIME AFTER THE DATE HAS BEEN FIXED BY THE CHAIR FOR COMMENCEMENT OF A PUBLIC HEARING, THE PRESIDING EXAMINER SHALL HOLD A PREHEARING CONFERENCE TO EXPEDITE THE ORDERLY CONDUCT AND DISPOSITION OF THE HEARING, TO SPECIFY THE ISSUES, TO OBTAIN STIPULATIONS AS TO MATTERS NOT DISPUTED, AND TO DEAL WITH SUCH OTHER MATTERS AS THE PRESIDING EXAMINER MAY DEEM PROPER. THEREAFTER, THE PRESIDING EXAMINER SHALL ISSUE AN ORDER IDENTIFYING THE ISSUES TO BE ADDRESSED BY THE PARTIES PROVIDED, HOWEVER, THAT NO SUCH ORDER SHALL PRECLUDE CONSIDERATION OF ADDITIONAL ISSUES OR REQUESTS FOR ADDITIONAL SUBMISSIONS, DOCUMENTATION OR TESTIMONY AT A HEARING WHICH WARRANT CONSIDERATION IN ORDER TO DEVELOP AN ADEQUATE RECORD AS DETERMINED BY AN ORDER OF THE BOARD. THE PRESIDING EXAMINER SHALL BE PERMITTED A REASONABLE TIME TO RESPOND TO ANY AND ALL INTERLOCUTORY MOTIONS AND APPEALS, BUT IN NO CASE SHALL SUCH TIME EXTEND BEYOND FORTY-FIVE DAYS.

3. ALL PARTIES SHALL BE PREPARED TO PROCEED IN AN EXPEDITIOUS MANNER AT THE HEARING SO THAT IT MAY PROCEED REGULARLY UNTIL COMPLETION, EXCEPT THAT HEARINGS SHALL BE OF SUFFICIENT DURATION TO PROVIDE ADEQUATE OPPORTUNITY TO HEAR DIRECT EVIDENCE AND REBUTTAL EVIDENCE FROM RESIDENTS OF THE AREA AFFECTED BY THE PROPOSED MAJOR ELECTRIC GENERATING FACILITY. TO THE EXTENT PRACTICABLE, THE PLACE OF THE HEARING SHALL BE DESIGNATED BY THE PRESIDING EXAMINER AT A LOCATION WITHIN TWO MILES OF THE PROPOSED LOCATION OF THE FACILITY.

4. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, PROCEEDINGS ON AN APPLICATION SHALL BE COMPLETED IN ALL RESPECTS IN A

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

(B) PROCEEDINGS ON AN APPLICATION BY AN OWNER OF AN EXISTING MAJOR ELECTRIC GENERATING FACILITY TO MODIFY SUCH EXISTING FACILITY OR SITE A NEW MAJOR ELECTRIC GENERATING FACILITY ADJACENT OR CONTIGUOUS TO SUCH EXISTING FACILITY, SHALL BE COMPLETED IN ALL RESPECTS IN A MANNER CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, INCLUDING A FINAL DECISION BY THE BOARD, WITHIN SIX MONTHS FROM THE DATE OF A DETERMINATION BY THE CHAIR THAT SUCH APPLICATION COMPLIES WITH SECTION ONE HUNDRED SIXTY-FOUR OF THIS ARTICLE, WHENEVER SUCH APPLICATION DEMONSTRATES THAT THE OPERATION OF THE MODIFIED FACILITY, OR OF THE EXISTING FACILITY AND NEW FACILITY IN COMBINATION, WOULD RESULT IN:

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

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

(III) INTRODUCTION OF A NEW COOLING WATER INTAKE STRUCTURE WHERE SUCH STRUCTURE WITHDRAWS WATER AT A RATE EQUAL TO OR LESS THAN CLOSED-CYCLE COOLING; AND

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

THE APPLICANT SHALL SUPPLY THE DETAILS OF THE ANALYSIS IN THE APPLICATION AND SUCH SUPPORTING INFORMATION, AS MAY BE REQUESTED BY THE BOARD OR, IN THE EXERCISE OF FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NECESSARY TO SHOW COMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPHS (I) THROUGH (IV) OF THIS PARAGRAPH. THE BOARD MAY EXTEND THE DEADLINE IN

EXTRAORDINARY CIRCUMSTANCES BY NO MORE THAN THREE MONTHS IN ORDER TO GIVE CONSIDERATION TO SPECIFIC ISSUES NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE BOARD SHALL RENDER A FINAL DECISION ON THE APPLICATION BY THE AFOREMENTIONED DEADLINES UNLESS SUCH DEADLINES ARE WAIVED BY THE APPLICANT. IF, AT ANY TIME SUBSEQUENT TO THE COMMENCEMENT OF THE HEARING, THERE IS A MATERIAL AND SUBSTANTIAL AMENDMENT TO THE APPLICATION, THE DEADLINES MAY BE EXTENDED BY NO MORE THAN THREE MONTHS, UNLESS SUCH DEADLINE IS WAIVED BY THE APPLICANT, TO CONSIDER SUCH AMENDMENT.

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

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

(A) THE APPLICANT;

(B) THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

(C) THE DEPARTMENT OF ECONOMIC DEVELOPMENT;

(D) THE DEPARTMENT OF HEALTH;

(E) THE DEPARTMENT OF AGRICULTURE AND MARKETS;

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

(G) THE DEPARTMENT OF STATE;

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

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

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

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

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

(M) ANY OTHER MUNICIPALITY OR RESIDENT OF SUCH MUNICIPALITY LOCATED WITHIN A FIVE MILE RADIUS OF SUCH PROPOSED FACILITY, IF IT OR THE RESIDENT HAS FILED WITH THE BOARD A NOTICE OF INTENT TO BECOME A PARTY,

WITHIN FORTY-FIVE DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLICATION;

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

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

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

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

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

S 167. CONDUCT OF HEARING. 1. (A) THE HEARING SHALL BE CONDUCTED IN AN EXPEDITIOUS MANNER BY A PRESIDING EXAMINER APPOINTED BY THE DEPARTMENT. AN ASSOCIATE HEARING EXAMINER SHALL BE APPOINTED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PRIOR TO THE DATE SET FOR COMMENCEMENT OF THE PUBLIC HEARING. THE ASSOCIATE EXAMINER SHALL ATTEND ALL HEARINGS AS SCHEDULED BY THE PRESIDING EXAMINER AND SHALL ASSIST THE PRESIDING EXAMINER IN INQUIRING INTO AND CALLING FOR TESTIMONY CONCERNING RELEVANT AND MATERIAL MATTERS. THE CONCLUSIONS AND RECOMMENDATIONS OF THE ASSOCIATE EXAMINER SHALL BE INCORPORATED IN THE RECOMMENDED DECISION OF THE PRESIDING EXAMINER, UNLESS THE ASSOCIATE EXAMINER PREFERS TO SUBMIT A SEPARATE REPORT OF DISSENTING OR CONCURRING CONCLUSIONS AND RECOMMENDATIONS. IN THE EVENT THAT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION ISSUES PERMITS PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, OR SECTION 15-1503 AND ARTICLE NINETEEN OF THE ENVIRONMENTAL CONSERVATION LAW, THE RECORD IN THE PROCEEDING AND THE ASSOCIATE EXAMINER'S CONCLUSIONS AND RECOMMENDATIONS SHALL, INSOFAR AS IS CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY, PROVIDE THE BASIS FOR THE DECISION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WHETHER OR NOT TO ISSUE SUCH PERMITS.

(B) THE TESTIMONY PRESENTED AT A HEARING MAY BE PRESENTED IN WRITING. ORAL TESTIMONY MAY BE PRESENTED AT ANY PUBLIC STATEMENT HEARING CONDUCTED BY THE BOARD FOR THE TAKING OF UNSWORN STATEMENTS. THE BOARD MAY REQUIRE ANY STATE AGENCY TO PROVIDE EXPERT TESTIMONY ON SPECIFIC SUBJECTS WHERE ITS PERSONNEL HAVE THE REQUISITE EXPERTISE AND SUCH TESTIMONY IS CONSIDERED NECESSARY TO THE DEVELOPMENT OF AN ADEQUATE RECORD. ALL TESTIMONY AND INFORMATION PRESENTED BY THE APPLICANT, ANY STATE AGENCY OR OTHER PARTY SHALL BE SUBJECT TO DISCOVERY AND CROSS-EXA-

MINATION. A RECORD SHALL BE MADE OF THE HEARING AND OF ALL TESTIMONY TAKEN AND THE CROSS-EXAMINATIONS THEREON. THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS BEFORE A COURT SHALL NOT APPLY. THE PRESIDING EXAMINER MAY PROVIDE FOR THE CONSOLIDATION OF THE REPRESENTATION OF PARTIES, OTHER THAN GOVERNMENTAL BODIES OR AGENCIES, HAVING SIMILAR INTERESTS. IN THE CASE OF SUCH A CONSOLIDATION, THE RIGHT TO COUNSEL OF ITS OWN CHOOSING SHALL BE PRESERVED TO EACH PARTY TO THE PROCEEDING PROVIDED THAT THE CONSOLIDATED GROUP MAY BE REQUIRED TO BE HEARD THROUGH SUCH REASONABLE NUMBER OF COUNSEL AS THE PRESIDING EXAMINER SHALL DETERMINE. APPROPRIATE REGULATIONS SHALL BE ISSUED BY THE BOARD TO PROVIDE FOR PREHEARING DISCOVERY PROCEDURES BY PARTIES TO A PROCEEDING, CONSOLIDATION OF THE REPRESENTATION OF PARTIES, THE EXCLUSION OF IRRELEVANT, REPETITIVE, REDUNDANT OR IMMATERIAL EVIDENCE, AND THE REVIEW OF RULINGS BY PRESIDING EXAMINERS.

2. A COPY OF THE RECORD INCLUDING, BUT NOT LIMITED TO, TESTIMONY, BRIEFS AND HEARING TESTIMONY SHALL BE MADE AVAILABLE BY THE BOARD WITHIN THIRTY DAYS OF THE CLOSE OF THE EVIDENTIARY RECORD FOR EXAMINATION BY THE PUBLIC, AND SHALL BE MADE AVAILABLE ON THE DEPARTMENT'S WEBSITE.

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

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

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

S 168. BOARD DECISIONS. 1. THE BOARD SHALL MAKE THE FINAL DECISION ON AN APPLICATION UNDER THIS ARTICLE FOR A CERTIFICATE OR AMENDMENT THEREOF, UPON THE RECORD MADE BEFORE THE PRESIDING EXAMINER, INCLUDING ANY BRIEFS OR EXCEPTIONS TO ANY RECOMMENDED DECISION OF SUCH EXAMINER OR TO ANY REPORT OF THE ASSOCIATE EXAMINER, AND AFTER HEARING SUCH ORAL ARGUMENT AS THE BOARD SHALL DETERMINE. EXCEPT FOR GOOD CAUSE SHOWN TO THE SATISFACTION OF THE BOARD, A DETERMINATION UNDER SUBDIVISION FIVE OF

SECTION ONE HUNDRED SIXTY-SEVEN OF THIS ARTICLE THAT THE APPLICANT'S PROPOSAL IS PREFERABLE TO ALTERNATIVES SHALL BE FINAL. SUCH A DETERMINATION SHALL BE SUBJECT TO REHEARING AND REVIEW ONLY AFTER THE FINAL DECISION ON AN APPLICATION IS RENDERED.

2. THE BOARD SHALL NOT GRANT A CERTIFICATE OR AMENDMENT THEREOF FOR THE CONSTRUCTION OR OPERATION OF A FACILITY, EITHER AS PROPOSED OR AS MODIFIED BY THE BOARD, WITHOUT MAKING EXPLICIT FINDINGS REGARDING THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACTS OF THE CONSTRUCTION AND OPERATION OF THE FACILITY, INCLUDING THE CUMULATIVE ENVIRONMENTAL IMPACTS OF THE CONSTRUCTION AND OPERATION OF RELATED FACILITIES SUCH AS ELECTRIC LINES, GAS LINES, WATER SUPPLY LINES, WASTE WATER OR OTHER SEWAGE TREATMENT FACILITIES, COMMUNICATIONS AND RELAY FACILITIES, ACCESS ROADS, RAIL FACILITIES, OR STEAM LINES, INCLUDING IMPACTS ON:

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

(B) PUBLIC HEALTH AND SAFETY;

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

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

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

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

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

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

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

(D) IF THE BOARD FINDS THAT THE FACILITY RESULTS IN OR CONTRIBUTES TO A SIGNIFICANT AND ADVERSE DISPROPORTIONATE ENVIRONMENTAL IMPACT IN THE COMMUNITY IN WHICH THE FACILITY WOULD BE LOCATED, THE APPLICANT WILL AVOID, OFFSET OR MINIMIZE THE IMPACTS CAUSED BY THE FACILITY UPON THE LOCAL COMMUNITY FOR THE DURATION THAT THE CERTIFICATE IS ISSUED TO THE MAXIMUM EXTENT PRACTICABLE USING VERIFIABLE MEASURES; AND

(E) THE FACILITY IS DESIGNED TO OPERATE IN COMPLIANCE WITH APPLICABLE STATE AND LOCAL LAWS AND REGULATIONS ISSUED THEREUNDER CONCERNING, AMONG OTHER MATTERS, THE ENVIRONMENT, PUBLIC HEALTH AND SAFETY, ALL OF WHICH SHALL BE BINDING UPON THE APPLICANT, EXCEPT THAT THE BOARD MAY ELECT NOT TO APPLY, IN WHOLE OR IN PART, ANY LOCAL ORDINANCE, LAW, RESOLUTION OR OTHER ACTION OR ANY REGULATION ISSUED THEREUNDER OR ANY LOCAL STANDARD OR REQUIREMENT, INCLUDING, BUT NOT LIMITED TO, THOSE RELATING TO THE INTERCONNECTION TO AND USE OF WATER, ELECTRIC, SEWER, TELECOMMUNICATION, FUEL AND STEAM LINES IN PUBLIC RIGHTS OF WAY, WHICH WOULD BE OTHERWISE APPLICABLE IF IT FINDS THAT, AS APPLIED TO THE PROPOSED FACILITY, SUCH IS UNREASONABLY BURDENSOME IN VIEW OF THE EXISTING TECHNOLOGY OR THE NEEDS OF OR COSTS TO RATEPAYERS WHETHER LOCATED INSIDE OR OUTSIDE OF SUCH MUNICIPALITY. THE BOARD SHALL PROVIDE THE MUNICIPALITY AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF SUCH ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER LOCAL ACTION ISSUED THEREUNDER.

4. IN MAKING THE DETERMINATIONS REQUIRED IN SUBDIVISION THREE OF THIS SECTION, THE BOARD SHALL CONSIDER:

(A) THE STATE OF AVAILABLE TECHNOLOGY;

(B) THE NATURE AND ECONOMICS OF REASONABLE ALTERNATIVES;

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

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

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

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

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

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

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

7. FOLLOWING ANY REHEARING AND ANY JUDICIAL REVIEW OF THE BOARD'S DECISION, THE BOARD'S JURISDICTION OVER AN APPLICATION SHALL CEASE, PROVIDED, HOWEVER, THAT THE PERMANENT BOARD SHALL RETAIN JURISDICTION WITH RESPECT TO THE AMENDMENT, SUSPENSION OR REVOCATION OF A CERTIFICATE.

S 169. OPINION TO BE ISSUED WITH DECISION. IN RENDERING A DECISION ON AN APPLICATION FOR A CERTIFICATE, THE BOARD SHALL ISSUE AN OPINION STATING ITS REASONS FOR THE ACTION TAKEN. IF THE BOARD HAS FOUND THAT ANY LOCAL ORDINANCE, LAW, RESOLUTION, REGULATION OR OTHER ACTION ISSUED THEREUNDER OR ANY OTHER LOCAL STANDARD OR REQUIREMENT WHICH WOULD BE OTHERWISE APPLICABLE IS UNREASONABLY BURDENSOME PURSUANT TO PARAGRAPH (E) OF SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE, IT SHALL STATE IN ITS OPINION THE REASONS THEREFOR.

S 170. REHEARING AND JUDICIAL REVIEW. 1. ANY PARTY AGGRIEVED BY THE BOARD'S DECISION DENYING OR GRANTING A CERTIFICATE MAY APPLY TO THE BOARD FOR A REHEARING WITHIN THIRTY DAYS AFTER ISSUANCE OF THE AGGRIEVING DECISION. ANY SUCH APPLICATION SHALL BE CONSIDERED AND DECIDED BY THE BOARD AND ANY REHEARING SHALL BE COMPLETED AND A DECISION RENDERED THEREON WITHIN NINETY DAYS OF THE EXPIRATION OF THE PERIOD FOR FILING REHEARING PETITIONS, PROVIDED HOWEVER THAT THE BOARD MAY EXTEND THE DEADLINE BY NO MORE THAN NINETY DAYS WHERE A REHEARING IS REQUIRED IF NECESSARY TO DEVELOP AN ADEQUATE RECORD. THE APPLICANT MAY WAIVE SUCH DEADLINE. THEREAFTER SUCH A PARTY MAY OBTAIN JUDICIAL REVIEW OF SUCH DECISION AS PROVIDED IN THIS SECTION. A JUDICIAL PROCEEDING SHALL BE BROUGHT IN THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK IN THE JUDICIAL DEPARTMENT EMBRACING THE COUNTY WHEREIN THE FACILITY IS TO BE LOCATED OR, IF THE APPLICATION IS DENIED, THE COUNTY WHEREIN THE APPLICANT HAS PROPOSED TO LOCATE THE FACILITY. SUCH PROCEEDING SHALL BE INITIATED BY THE FILING OF A PETITION IN SUCH COURT WITHIN THIRTY DAYS AFTER THE ISSUANCE OF A FINAL DECISION BY THE BOARD UPON THE APPLICATION FOR REHEARING TOGETHER WITH PROOF OF SERVICE OF A DEMAND ON THE BOARD TO FILE WITH SAID COURT A COPY OF A WRITTEN TRANSCRIPT OF THE RECORD OF THE PROCEEDING AND A COPY OF THE BOARD'S DECISION AND OPINION.

THE BOARD'S COPY OF SAID TRANSCRIPT, DECISION AND OPINION, SHALL BE AVAILABLE AT ALL REASONABLE TIMES TO ALL PARTIES FOR EXAMINATION WITHOUT COST. UPON RECEIPT OF SUCH PETITION AND DEMAND THE BOARD SHALL FORTHWITH DELIVER TO THE COURT A COPY OF THE RECORD AND A COPY OF THE BOARD'S DECISION AND OPINION. THEREUPON, THE COURT SHALL HAVE JURISDICTION OF THE PROCEEDING AND SHALL HAVE THE POWER TO GRANT SUCH RELIEF AS IT DEEMS JUST AND PROPER, AND TO MAKE AND ENTER AN ORDER ENFORCING, MODIFYING AND ENFORCING AS SO MODIFIED, REMANDING FOR FURTHER SPECIFIC EVIDENCE OR FINDINGS OR SETTING ASIDE IN WHOLE OR IN PART SUCH DECISION. THE APPEAL SHALL BE HEARD ON THE RECORD, WITHOUT REQUIREMENT OF REPRODUCTION, AND UPON BRIEFS TO THE COURT. NO OBJECTION THAT HAS NOT BEEN URGED BY THE PARTY IN HIS OR HER APPLICATION FOR REHEARING BEFORE THE BOARD SHALL BE CONSIDERED BY THE COURT, UNLESS THE FAILURE OR NEGLECT TO URGE SUCH OBJECTION SHALL BE EXCUSED BECAUSE OF EXTRAORDINARY CIRCUMSTANCES. THE FINDINGS OF FACT ON WHICH SUCH DECISION IS BASED SHALL BE CONCLUSIVE IF SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE AND MATTERS OF JUDICIAL NOTICE SET FORTH IN THE OPINION. THE JURISDICTION OF THE APPELLATE DIVISION OF THE SUPREME COURT SHALL BE EXCLUSIVE AND ITS JUDGMENT AND ORDER SHALL BE FINAL, SUBJECT TO REVIEW BY THE COURT OF APPEALS IN THE SAME MANNER AND FORM AND WITH THE SAME EFFECT AS PROVIDED FOR APPEALS IN A SPECIAL PROCEEDING. ALL SUCH PROCEEDINGS SHALL BE HEARD AND DETERMINED BY THE APPELLATE DIVISION OF THE SUPREME COURT AND BY THE COURT OF APPEALS AS EXPEDITIOUSLY AS POSSIBLE AND WITH LAWFUL PRECEDENCE OVER ALL OTHER MATTERS.

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

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

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

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

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

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

(F) MADE PURSUANT TO A PROCESS THAT AFFORDED MEANINGFUL INVOLVEMENT OF CITIZENS AFFECTED BY THE FACILITY REGARDLESS OF AGE, RACE, COLOR, NATIONAL ORIGIN AND INCOME.

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

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

S 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO STATE AGENCY, MUNICIPALITY OR ANY AGENCY THEREOF MAY, EXCEPT AS EXPRESSLY AUTHORIZED UNDER THIS ARTICLE BY THE BOARD, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER CONDITION FOR THE CONSTRUCTION OR OPERATION OF A MAJOR ELECTRIC GENERATING FACILITY WITH RESPECT TO WHICH AN APPLICATION FOR A CERTIFICATE HEREUNDER HAS BEEN FILED, INCLUDING PURSUANT TO PARAGRAPH (E) OF SUBDIVISION THREE OF SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE, ANY

SUCH APPROVAL, CONSENT, PERMIT, CERTIFICATE OR CONDITION RELATING TO THE INTERCONNECTION TO OR USE OF WATER, ELECTRIC, SEWER, TELECOMMUNICATION, FUEL AND STEAM LINES IN PUBLIC RIGHTS OF WAY, PROVIDED THAT THIS ARTICLE SHALL NOT IMPAIR OR ABROGATE ANY FEDERAL, STATE OR LOCAL LABOR LAWS OR ANY OTHERWISE APPLICABLE STATE LAW FOR THE PROTECTION OF EMPLOYEES ENGAGED IN THE CONSTRUCTION AND OPERATION OF SUCH FACILITY; PROVIDED, HOWEVER, THAT IN THE CASE OF A MUNICIPALITY OR AN AGENCY THEREOF, SUCH MUNICIPALITY HAS RECEIVED NOTICE OF THE FILING OF THE APPLICATION THEREFOR; AND PROVIDED FURTHER, HOWEVER, THAT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL BE THE PERMITTING AGENCY FOR PERMITS ISSUED PURSUANT TO FEDERALLY DELEGATED OR APPROVED AUTHORITY UNDER THE FEDERAL CLEAN WATER ACT, THE FEDERAL CLEAN AIR ACT AND THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT. IN ISSUING SUCH PERMITS, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL FOLLOW PROCEDURES ESTABLISHED IN THIS ARTICLE TO THE EXTENT THAT THEY ARE CONSISTENT WITH FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMITTING AUTHORITY. THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL PROVIDE SUCH PERMITS TO THE BOARD PRIOR TO ITS DETERMINATION WHETHER OR NOT TO ISSUE A CERTIFICATE. THE ISSUANCE BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OF SUCH PERMITS SHALL IN NO WAY INTERFERE WITH THE REQUIRED REVIEW BY THE BOARD OF THE ANTICIPATED ENVIRONMENTAL AND HEALTH IMPACTS RELATING TO THE CONSTRUCTION AND OPERATION OF THE FACILITY AS PROPOSED, OR ITS AUTHORITY TO DENY AN APPLICATION FOR CERTIFICATION PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT OF THIS ARTICLE, AND, IN THE EVENT OF SUCH A DENIAL, ANY SUCH PERMITS SHALL BE DEEMED NULL AND VOID.

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

S 173. APPLICABILITY TO PUBLIC AUTHORITIES. THE POWER AUTHORITY OF THE STATE OF NEW YORK, THE GREEN ISLAND POWER AUTHORITY AND THE LONG ISLAND POWER AUTHORITY SHALL BE SUBJECT TO ALL PROVISIONS OF THIS ARTICLE FOR MAJOR ELECTRIC GENERATING FACILITIES WHICH ANY SUCH AUTHORITY BUILDS OR CAUSES TO BE BUILT. FOR GENERATING FACILITIES WHICH ARE NOT MAJOR ELECTRIC GENERATING FACILITIES, NONE OF THE ABOVE NAMED AUTHORITIES SHALL BE PERMITTED TO SERVE AS LEAD AGENCY FOR PURPOSES OF ENVIRONMENTAL REVIEW PURSUANT TO THE PROVISIONS OF THE ENVIRONMENTAL CONSERVATION LAW.

S 13. The opening paragraph and paragraph (b) of subdivision 5 of section 8-0111 of the environmental conservation law, as added by chapter 612 of the laws of 1975, are amended to read as follows:

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

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

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

S 17-0823. Power plant siting.

In the case of a major steam electric generating facility, as defined in section one hundred forty of the public service law, for the construction or operation of which a certificate is required under THE FORMER article eight of [such] THE PUBLIC SERVICE law, [an applicant shall apply for and obtain such certificate in lieu of filing an application and obtaining a permit under this article. Any reference in this article to a permit shall, in the case of such major steam electric

generating facility, be deemed for all purposes to refer to such certificate, provided that nothing] OR A MAJOR ELECTRIC GENERATING FACILITY AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THE PUBLIC SERVICE LAW, FOR THE CONSTRUCTION OR OPERATION OF WHICH A CERTIFICATE IS REQUIRED UNDER ARTICLE TEN OF THE PUBLIC SERVICE LAW, SUCH CERTIFICATE SHALL BE DEEMED A PERMIT UNDER THIS SECTION IF ISSUED BY THE STATE BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT PURSUANT TO FEDERALLY DELEGATED OR APPROVED ENVIRONMENTAL PERMIT AUTHORITY. NOTHING herein shall limit the authority of the [departments] DEPARTMENT of health and [environmental conservation] THE DEPARTMENT to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility OR MAJOR ELECTRIC GENERATING FACILITY and to enforce applicable provisions of the public health LAW and [environmental conservation laws] THIS ARTICLE and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation. In such case all powers, duties, obligations and privileges conferred upon the department by this article shall devolve upon the New York state board on electric generation siting and the environment. In considering the granting of permits, such board shall apply the provisions of this article and the Act.

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

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

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

(e) where land subject to a conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law or is required for a major steam electric generating facility which has received a certificate [or] OF environmental compatibility and public need pursuant

to THE FORMER article eight of the public service law, OR A MAJOR ELECTRIC GENERATING FACILITY OR REPOWERING PROJECT WHICH HAS RECEIVED A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED PURSUANT TO ARTICLE TEN OF THE PUBLIC SERVICE LAW, upon the filing of such certificate in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law or any other applicable provision of law, provided that such certificate contains a finding that the public interest in the conservation and protection of the natural resources, open spaces and scenic beauty of the Adirondack or Catskill parks has been considered.

S 17. Section 1014 of the public authorities law, as amended by chapter 446 of the laws of 1972, is amended to read as follows:

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

S 18. Paragraph c of subdivision 8 of section 1020-c of the public authorities law, as amended by chapter 7 of the laws of 1987, is amended to read as follows:

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

S 19. Section 1020-s of the public authorities law, as added by chapter 517 of the laws of 1986, is amended to read as follows:

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

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

S 20. The state finance law is amended by adding a new section 97-kkkk to read as follows:

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

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

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

S 21. The environmental conservation law is amended by adding a new section 19-0312 to read as follows:

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

1. DEFINITIONS. AS USED IN THIS SECTION:

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

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

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

3. NO LATER THAN TWELVE MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS TARGETING REDUCTIONS IN EMISSIONS OF CARBON DIOXIDE THAT WOULD APPLY TO MAJOR ELECTRIC GENERATING FACILITIES THAT COMMENCED CONSTRUCTION AFTER THE EFFECTIVE DATE OF THE REGULATIONS.

S 22. Study to Increase Generation from Photovoltaic Devices in New York. 1. Legislative Intent. The legislature hereby finds and declares that solar energy generation from photovoltaic devices in New York represents less than 0.01 percent of the State's electricity generation. While the current cost of electricity from photovoltaic devices is a premium above market price for electricity from most other fuels, the cost of installing such photovoltaic generation is declining and increasing solar energy generation represents a significant opportunity for the development of the State's clean energy economic sector and the creation of new high technology jobs in New York.

2. The New York state energy research and development authority, in consultation with the department of public service, is hereby authorized and directed to conduct a study with respect to increasing generation from photovoltaic devices in New York, including, but not limited to, the following:

a. Identify administrative and policy options that could be used in achieve goals of two thousand five hundred megawatts of generation from photovoltaic devices in New York by 2020 and five thousand megawatts by 2025.

b. Conduct a targeted analysis of the per megawatt cost of achieving increased generation from photovoltaic devices and the costs of achieving the goals specified in paragraph a of this subdivision using each of the options identified in the analysis conducted pursuant to such paragraph.

c. Conduct an analysis of the net economic and job creation benefits of achieving the goals specified in subdivision a of this section using each of the options identified in the analysis conducted pursuant to such subdivision.

d. Conduct an analysis of the environmental benefits of achieving the goals specified in paragraph a of this subdivision using each of the options identified in the analysis conducted pursuant to such paragraph.

3. The New York state energy research and development authority shall report to the governor and the legislature on the findings and recommendations of the study conducted pursuant to subdivision two of this section on or before January 31, 2012.

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

S 24. This act shall take effect immediately; provided that nothing in this act shall be construed to limit any administrative authority, with respect to matters included in this act, which authority existed prior to the effective date of this act. Within twelve months of the effective date of this act, all rules and regulations required pursuant to this act shall be adopted. Prior to the adoption of such rules and regulations by the New York state board on electric generation siting and the environment and the department of environmental conservation required under this act, nothing in this act shall affect the right to apply for a permit pursuant to the environmental conservation law including article 8 therein, or other applicable laws, to operate an electric generating facility with a nameplate generating capacity of twenty-five thousand kilowatts or more.