

1  
2 AN ACT to amend the public service law, in relation to the  
3 siting of clean economic power supply facilities;  
4 the state finance law, in relation to establishing  
5 an intervenor account; the environmental conservation  
6 law, in relation to an exclusion from environmental  
7 quality review for certain actions subject to the public  
8 service law and to make conforming amendments; and  
9 the public authorities law, in relation to the  
10 application of certain laws to public authorities  
11

12 The People of the State of New York, represented in Senate and Assembly, do enact as  
13 follows:

14 Section 1. Legislative findings. The legislature finds and declares:

15 1. The cost of energy is adversely affecting the economic well-being of residents and  
16 businesses throughout the state of New York and poses a serious threat to economic development  
17 and environmental quality.

18 2. New York must take steps to ensure that it has an adequate and reasonably priced supply of  
19 electric power to meet current and future energy demands. Such demands can be met by  
20 increasing power supplies. Additional power supplies will also promote effective wholesale  
21 competition in the marketplace and lower the cost of electric power. At the same time, the state  
22 must balance the need for additional power with the need to maintain a clean environment for the  
23 people of this state now and in the future.

24 3. It is in the public interest to have a predictable, coordinated and efficient administrative  
25 process that: (a) facilitates the development of new, modern, clean electric power supplies; (b)  
26 encourages the modernization and/or retirement of older, inefficient power supply facilities; (c)  
27 fosters effective competition in the electricity supply market; and (d) achieves these results while  
28 reducing environmental, public health and climate change impacts from power supply facilities

and ensuring that such facilities comply with applicable state and federal environmental laws.

4. This act accomplishes these goals by creating a power supply siting application process which is limited to proposals to: (a) repower existing facilities to achieve a reduction in total annual emissions of specific air contaminants produced by the existing facility of at least ten percent and limit the emission of carbon dioxide; (b) repower existing facilities or construct new power supply facilities located outside of densely populated areas and employ modern technologies to limit the emission of air contaminants, including carbon dioxide; and (c) construct wind powered electric generation facilities that produce no emissions. Proposed power supply projects that do not satisfy these and other relevant criteria would be ineligible for consideration under the administrative process created by this act.

§ 2. This act shall be known and may be cited as the “Clean Economic Power Supply Act”.

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

## ARTICLE X

### SITING OF CLEAN ECONOMIC POWER SUPPLY

#### Section

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7 § 160. Definitions

8 Where used in this article, the following terms, unless the context otherwise requires, shall  
9 have the following meanings:

10 1. "Applicant" means a person who has filed an application for a clean economic power  
11 supply siting certificate under this article.

12 2. "Attorney general" means the attorney general of the state of New York.

13 3. "Board" means the New York state clean economic power supply board created by this  
14 article.

15 4. "Board regulations" or "regulations of the board" means rules or regulations adopted by  
16 the permanent board.

17 5. "Certificate" means a clean economic power supply siting certificate authorizing the  
18 construction of a qualified facility issued by the board pursuant to this article.

19 6. "Clean repowering" means the modification or the entire or partial replacement of an  
20 existing electric generating facility, or the siting of an electric generating facility adjacent or  
21 contiguous to such existing facility, where such modified facility or existing and new facility in  
22 combination:

23

1 (a) will result in a decrease of not less than seventy-five percent in the rate of emission of  
2 each of the relevant siting air contaminants. For facilities that are partially replaced or modified,  
3 the percentage decrease shall be calculated by comparing (on a pounds-per-megawatt-hour basis)  
4 the potential to emit of each such contaminant of the existing unit that is to be modified or  
5 replaced as of the date of application under this article, to the future potential to emit each such  
6 contaminant of the modified or replacement unit as proposed in the application. For facilities  
7 that are sited adjacent or contiguous to an existing facility, the percentage decrease shall be  
8 calculated by comparing (on a pounds-per-megawatt-hour basis) the potential to emit of each  
9 such contaminant of the existing facility as of the date of application under this article, to the  
10 future potential to emit each such contaminant of the existing and new facility combined as  
11 proposed in the application;

12 (b) (i) for air contaminants other than carbon dioxide, employs air pollution control  
13 technology that achieves LAER, and (ii) for carbon dioxide, meets an emission rate of eight  
14 hundred fifty pounds per megawatt hour;

15 (c) when a cooling water intake structure is planned, installs closed-cycle cooling or some  
16 other technology that withdraws water at an amount equal to or less than closed-cycle cooling for  
17 the modified or for the combined existing and new facility; and

18 (d) replaces existing generating capacity with generating capacity that has a lower heat rate.

19 7. "Chairperson" means the chairperson of the New York state clean economic power supply  
20 board, who is also the chairperson of the New York state department of public service.

21 8. "Compliance determination" means a determination by the chairperson that an application  
22 (a) seeks a certificate for an electric generating facility that is a qualified facility under this  
23 article, and (b) complies with the requirements of section one hundred sixty-four of this article.

1        9. "Commission" means the New York state public service commission.

2        10. "Department" means the New York state department of public service.

3        11. "Department of environmental conservation" means the New York state department of  
4 environmental conservation, provided however that where the context or subject matter requires  
5 reference to the commissioner of environmental conservation, department of environmental  
6 conservation shall mean such commissioner.

7        12. "Determination of complete application" or "completeness determination" means a  
8 determination by the commissioner of environmental conservation that an application for an  
9 environmental permit which such commissioner or the department of environmental  
10 conservation is authorized to issue pursuant to this article is in an approved form and complete  
11 for the purpose of commencing review of such application.

12        13. "Environment" or "environmental" means the physical conditions that will be affected by  
13 a qualified facility, including land, air, climate, ground and surface water, minerals, flora, fauna,  
14 fish and other aquatic life, noise, resources of agricultural, archaeological, historic or aesthetic  
15 significance, existing patterns of population concentration, distribution or growth, existing  
16 community or neighborhood character and human health.

17        14. "Environmental permit" means: (a) a permit that is issued pursuant to a regulatory  
18 program administered by the department of environmental conservation pursuant to the laws of  
19 the state of New York; and (b) a permit that is issued by such department or the commissioner of  
20 environmental conservation pursuant to and in accordance with a program for which such  
21 department has received federally delegated or approved state authority, including but not  
22 limited to a permit issued under the federal Clean Water Act, the federal Clean Air Act, the

federal Resource Conservation and Recovery Act, the federal Endangered Species Act or the federal Toxic Substances Control Act.

15. "Intervenor account" means the account established pursuant to section ninety-seven-tt of the state finance law.

16. "Lowest achievable emission rate" or "LAER" means the most stringent emission limitation achieved in practice, or which can reasonably be expected to occur in practice for a category of emission sources taking into consideration each air contaminant which must be controlled. In no event shall the application of LAER authorize a qualified facility to emit any air contaminant in excess of the amount permitted under any applicable emission standard established under title 6 (environmental conservation) of the official compilation of the codes, rules and regulations of the state of New York or title forty of the code of federal regulations.

17. "Municipality" means a county, city, town or village located in this state.

18. "Notice of intent to file" means a written notice of intent to file an application for a certificate under this article.

19. "Permanent board" means the board exclusive of ad hoc members.

20. "Permit" means a permit, certificate, license, approval, condition or other authorization, or a variance, modification or renewal thereto, or reissuance thereof.

21. "Person" means any individual, corporation, limited liability company, public benefit corporation, political subdivision, governmental agency, municipality, partnership, co-operative association, trust or estate.

22. "Potential applicant" means a person who proposes to file an application for a certificate and has filed a request for pre-application consultation pursuant to this article.

1     23. “Potential to emit” means the maximum capacity of an electric generating facility to emit  
2     a relevant siting air contaminant under its physical and operational design. Any physical or  
3     operational limitation on the capacity of such facility to emit a relevant siting air contaminant,  
4     including air pollution control equipment and/or restrictions on the hours of operation, or on the  
5     type or amount of material combusted, stored or processed, shall be treated as part of the design  
6     if the limitation is enforceable by the commissioner of environmental conservation or the  
7     department of environmental conservation or the administrator of the United States  
8     environmental protection agency.

9     24. “Public involvement plan” means a series of coordinated activities as prescribed by the  
10    permanent board that: (a) provide a variety of meaningful opportunities through which comments  
11    and concerns of the public and other interested parties can be presented during the review and  
12    decision-making processes established by this article; (b) establish means of communication  
13    between an applicant and the public and other interested parties; and (c) inform the public and  
14    other interested parties about a specific project and this article.

15    25. “Qualified facility” means a wind powered facility, a qualified negative emission power  
16    supply facility, or a qualified positive emission power supply facility.

17    26. “Qualified negative emission power supply facility” or “negative emission facility”  
18    means an electric generating facility or combination of such facilities (and associated equipment)  
19    that generates and sells electricity for resale which is located on adjacent or contiguous parcels  
20    and is owned or operated by a single parent corporation or subsidiaries thereof, including but not  
21    limited to interconnection electric transmission lines and fuel gas transmission lines not subject  
22    to review under article seven of this chapter, access roads, appurtenant equipment and  
23    infrastructure, including facilities to provide or transmit water, waste water, steam, by-products

and communications, which is a clean repowering that will result in a reduction of the total annual emissions of each of the relevant siting air contaminants emitted by the existing facility of at least ten percent. 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.

27. “Qualified positive emission power supply facility” or “positive emission facility” means an electric generating facility or combination of such facilities (and associated equipment) that generates electricity for resale which is located on adjacent or contiguous parcels and owned or operated by a single parent corporation or subsidiaries thereof, including interconnection electric transmission lines and fuel gas transmission lines not subject to review under article seven of this chapter, access roads, appurtenant equipment and infrastructure, including facilities to provide or transmit water, waste water, steam, by-products and communications, which is or is proposed to be located on a site having a site population factor of three thousand or less, and (a)(i) for air contaminants other than carbon dioxide, employs air pollution control technology that achieves LAER; (ii) for carbon dioxide, meets an emission rate of eight hundred fifty pounds per megawatt hour; and (iii) when a cooling water intake structure is planned, installs closed-cycle cooling or some other technology that withdraws water at an amount equal to or less than closed-cycle cooling for the modified or for the combined existing and new facility; or (b) is a clean repowering that is not a qualified negative emission power supply facility.

28. “Relevant siting air contaminants” means (a) oxides of nitrogen, (b) sulfur dioxide, (c) particulate matter less than or equal to 10.0 microns in diameter, and (d) particulate matter less



1 than or equal to 2.5 microns in diameter. In no event shall the application of the relevant siting  
2 air contaminants for the purpose of determining whether a proposed electric generating facility is  
3 a qualified facility under this article authorize a qualified facility to emit any air contaminant in  
4 excess of the amount permitted under any applicable emission standard established under title 6  
5 (environmental conservation) of the official compilation of the codes, rules and regulations of the  
6 state of New York or title forty of the code of federal regulations.

7 29. "Site population factor" means the population within a one-mile radius of a proposed site  
8 of a qualified facility as of the date of the filing of an application for a certificate under this  
9 article using the most current census tract data available as of the date of the filing of the  
10 application.

11 30. "State agency" means any department, office, council, agency, public authority or officer  
12 of the state of New York.

13 31. "Wind powered facility" means an electric generating facility that will generate and sell  
14 electricity for resale that is comprised of one or more wind turbines (and associated equipment)  
15 that produce electricity by converting kinetic energy in wind into mechanical energy, including  
16 interconnection electrical transmission lines not subject to review under article seven of this  
17 chapter, appurtenant equipment and infrastructure, including access roads and communications  
18 facilities.

19 § 161. Chairperson and board

20 The board shall be in the department and consist of seven members: the chairperson of the  
21 department, who shall serve as chairperson of the board; the commissioner of environmental  
22 conservation; the commissioner of health; the secretary of state; the commissioner of economic  
23 development; and two ad hoc public members appointed by the governor as provided by this

1 article. At the time of their appointment, one ad hoc member shall be a resident of the city, town  
2 or village in which the facility as proposed is to be located, and one ad hoc member shall be a  
3 resident of a different city, town or village within the county in which the facility as proposed is  
4 to be located. The terms of the ad hoc members shall continue until a final determination is  
5 made in the particular proceeding for which they are appointed.

6 Upon receipt of a notice of intent to file under this article, the chairperson shall promptly  
7 notify the governor who shall, within sixty days of such notification, appoint the ad hoc members  
8 to the board. Five of the seven persons on the board shall constitute a quorum for the transaction  
9 of any business of the board, and the decision of four members of the board shall constitute  
10 action of the board. Four of the five members of the permanent board shall constitute a quorum  
11 for the transaction of any business of the permanent board, and the decision of three members of  
12 the permanent board shall constitute action of the board. The chairperson, after consultation with  
13 the other members of the permanent board, shall have exclusive jurisdiction to issue declaratory  
14 rulings regarding the applicability of, or any other question under, this article and any rules and  
15 regulations adopted pursuant to this article. Each permanent member of the board may designate  
16 an alternate to serve in his or her place with respect to all proceedings pursuant to this article.  
17 Such designation shall be in writing and filed with the chairperson and shall continue until  
18 revoked or amended in writing.

19 In addition to the requirements of the public officers law, no person shall be eligible to be an  
20 appointee of the governor to the board who holds another state or local office. No member of the  
21 board may retain or hold any official relation to, or any securities of, an electric utility  
22 corporation operating or proposed for operation in the state, any affiliate thereof, or any other  
23 company, firm, partnership, corporation, association, or joint-stock association that would likely

1 appear before the board, nor shall the appointee have been a director, officer, or, within the  
2 previous ten years, an employee thereof. Ad hoc members shall each receive the sum of three  
3 hundred dollars for each day in which they are engaged in the performance of their duties  
4 pursuant to this article plus actual and necessary expenses incurred by each such appointee in the  
5 performance of such duties.

6 The chairperson shall provide such personnel, hearing examiners, administrative law judges,  
7 subordinates, and employees, such legal, technological, scientific, engineering, and other  
8 services, and such meeting rooms, hearing rooms, and other facilities as may be required in  
9 proceedings under this article. The board may provide for its own representation and appearance  
10 in all actions and proceedings involving any question under this article. The department of  
11 environmental conservation shall provide associate hearing examiners.

12 The permanent board shall adopt and implement procedures that ensure meaningful  
13 opportunities for public involvement throughout the review process required by this article.  
14 Such procedures shall require an applicant to propose, and once approved by the chairperson, to  
15 adhere to, a public involvement plan that satisfies such requirements as the permanent board may  
16 prescribe. Such requirements shall include at least one pre-application public meeting on a  
17 proposed qualified facility, including any pre-application report that is filed, and one public  
18 statement hearing on an application for a certificate.

19 § 162. Board certificate; enforcement

20 1. No person shall commence the preparation of a site for, or begin the construction of, a  
21 qualified facility in the state without having first obtained a certificate issued by the board. A  
22 certificate for a qualified facility may be issued only pursuant to this article. Whenever there  
23 shall be a violation of this prohibition, the attorney general in the name of the people of the state

1 of New York, may bring an action or special proceeding in any court of competent jurisdiction to  
2 enjoin a violation of this provision and to seek other appropriate relief. Upon a proper showing,  
3 a temporary restraining order, a preliminary injunction, a permanent injunction and other  
4 appropriate relief shall be granted; provided, however, that state agencies shall retain jurisdiction  
5 to enforce compliance with any legal requirements within their regulatory authority. A qualified  
6 facility with respect to which a certificate is issued under this article shall not thereafter be  
7 constructed, built, maintained or operated, except (a) in conformity with such certificate and any  
8 terms, limitations or conditions contained therein, and (b) in compliance with any environmental  
9 permits and any other permits that are issued pursuant to the article; provided that nothing herein  
10 shall exempt such qualified facility from compliance with state law and regulations thereunder  
11 subsequently adopted or with municipal laws and regulations thereunder not inconsistent with  
12 the provisions of such certificate.

13 2. A certificate issued pursuant to this article may be transferred, subject to the approval of  
14 the permanent board as provided by this article and subject to any other requirements the  
15 permanent board may prescribe, to a person who agrees to comply with the terms, limitations,  
16 and conditions contained therein.

17 3. A certificate issued pursuant to this article may be amended as provided in this article.

18 4. This article shall not apply to:

19 (a) An electric generating facility that is not a qualified facility;

20 (b) A nuclear powered electric generating facility;

21 (c) An electric generating facility over which any agency or department of the federal  
22 government has exclusive jurisdiction, or has jurisdiction concurrent with that of the state and  
23 has exercised such jurisdiction, to the exclusion of regulation by the state;

1 (d) An electric generating facility proposed to be constructed and operated on a site  
2 dedicated to industrial uses, the output of which shall be used solely for industrial purposes on  
3 such site or adjacent or contiguous premises;

4 (e) An electric generating facility that generates electricity from the combustion or  
5 gasification of solid waste or from fuel derived from solid waste;

6 (f) An electric generating facility that is net metered pursuant to the public service law; and

7 (g) Repairs, maintenance, or modifications to a qualified facility the performance of which  
8 would not violate or require modification to a certificate issued pursuant to this article.

9 § 163. Pre-application proceedings

10 1. Pre-application consultation process. The chairperson, after consulting with the  
11 commissioner of environmental conservation, shall establish and administer procedures for a  
12 mandatory pre-application consultation process for all potential applicants under this article.

13 Such procedures shall accommodate the regulatory authority of the department, the department  
14 of environmental conservation and any other state agency that may have jurisdiction to issue a  
15 permit for a qualified facility as authorized by this article.

16 A request for a pre-application consultation shall be filed with the chairperson and be in such  
17 form and contain such information as the permanent board may prescribe. Upon receipt of such  
18 request, the chairperson shall promptly inform the department of environmental conservation,  
19 and any other state agency that may be required to issue a permit for a qualified facility pursuant  
20 to this article of such request. A request for pre-application consultation for a proposed qualified  
21 facility shall be made pursuant to the following schedule: (a) for a positive emission facility: not  
22 less than ninety days prior to the date of the filing of notice of intent to file under this article; and

1 (b) for a negative emission facility or a wind powered facility: not less than sixty days prior to  
2 the filing of a notice of intent to file under this article.

3 The pre-application consultation process shall allow potential applicants to consult informally  
4 with staff of the department, the department of environmental conservation, and any other  
5 appropriate state agency about the proposed facility and obtain information and guidance on the  
6 requirements of this article, including but not limited to the required content of any filings  
7 required by this article. The consultation process may provide for visits by state agency staff to  
8 potential sites of a proposed project; provided, however, that any such site visit shall not limit the  
9 chairperson, a hearing examiner or the board from requiring any other site visits or inspections in  
10 connection with the application review process and certification process pursuant to this article.

11 A request for pre-application consultation shall be accompanied by a draft public involvement  
12 plan in such form and containing such information as the permanent board may prescribe. The  
13 chairperson shall promptly determine whether the draft public involvement plan is adequate  
14 considering the nature of the proposed facility, its proposed location and other relevant  
15 considerations. The chairperson may receive a stipulation from a potential applicant that  
16 prescribes the content of a public involvement plan for the proposed facility. Notwithstanding  
17 any provision of law to the contrary, a determination by the chairperson as to the adequacy of a  
18 public involvement plan shall be final and non-appealable. A notice of intent to file shall not be  
19 filed under this article in the absence of a public involvement plan approved by the chairperson.

20 2. Notice of intent to file; pre-application report. A potential applicant who proposes to file  
21 an application for a certificate under this article shall file with the chairperson a notice of intent  
22 to file in such form and containing such information as the permanent board may prescribe,  
23 which shall be accompanied by the approved public involvement plan for the proposed project.

1 A potential applicant who proposes to file an application for a certificate for a positive  
2 emission facility or a negative emission facility shall file a pre-application report with the notice  
3 of intent to file. A potential applicant who proposes to file an application for a certificate for a  
4 wind powered facility may, at its option, file a pre-application report with the notice of intent to  
5 file and, upon such filing, shall be bound by the requirements of this article relating to pre-  
6 application reports.

7 Any pre-application report filed pursuant to this article shall contain such information as the  
8 permanent board may prescribe, which shall include a discussion of:

9 (a) The proposed facility and its environmental setting;

10 (b) Potential adverse environmental and health impacts from the construction and operation of  
11 the proposed facility, including any potential impacts identified in the course of the pre-  
12 application consultation process;

13 (c) Potential disproportionate adverse impacts from the construction and operation of the  
14 proposed facility on minority or low-income populations;

15 (d) Proposed studies or programs of studies designed to evaluate potential environmental and  
16 health impacts, including relevant existing information and proposed new information needed to  
17 address potential impacts;

18 (e) Any measures proposed to be undertaken to minimize any adverse environmental and  
19 health impacts and any disproportionate impacts on minority or low-income populations;

20 (f) Reasonable alternatives to the proposed facility, if any, as may be required by paragraph  
21 (e) of subdivision one of section one hundred sixty-four of this article;

22 (g) The electrical properties of the proposed project, the general location of any proposed  
23 transmission lines, and a description of the proposed point of interconnection of the facility with

1 the electric grid subject to the limitations described in subdivision two of section one hundred  
2 sixty-four of this article; and

3 (h) Such other information as the applicant may consider relevant or that may be prescribed by  
4 the permanent board.

5 A pre-application report may include proposed stipulations in such form as the permanent board  
6 may prescribe which may be addressed to any aspect of the methodology or scope of any study  
7 or program of studies proposed in the pre-application report, or any other issue determined by the  
8 permanent board to be appropriate.

9 A potential applicant shall serve copies of the notice of intent to file, and any pre-application  
10 report required by this subdivision, on the persons enumerated in paragraph (a) of subdivision  
11 three of section one hundred sixty-four of this article, and provide notice of such documents as  
12 provided in paragraph (b) of subdivision three of section one hundred sixty-four of this article.

13 3. Public meeting; stipulations. The department shall hold a public meeting on the proposed  
14 facility, including any pre-application report that was filed pursuant to this subdivision. The  
15 department shall assign an administrative law judge to preside over the public meeting and  
16 manage the pre-application proceedings. The public meeting shall be conducted in a manner so  
17 as to provide effective opportunities for the applicant and the department to inform the public  
18 and other interested persons about the proposed facility and to receive and respond to comments  
19 from such persons pertinent to the proposed facility and any pre-application report.

20 After the conclusion of the public meeting, a potential applicant who has filed a pre-  
21 application report may consult and seek agreement with any interested persons, including the  
22 staff of the department, the department of environmental conservation and any other appropriate  
23 state agency concerning any aspect of the methodology or scope of any study or program of



studies proposed in the pre-application report or any other issue as the assigned administrative law judge may determine to be appropriate. The assigned administrative law judge may hold a stipulation conference to facilitate agreement on such matters, resolve questions that may arise as a result of such consultation, mediate any disputes concerning such issues and receive any stipulations setting forth any agreements that are reached, as appropriate. The department of environmental conservation may, upon the request of the chairperson, appoint a mediator to assist the administrative law judge with such matters.

Within ten days of the conclusion of the stipulation conference, the applicant shall file an original and ten copies of any pre-application stipulation with the department, and serve a copy of any stipulation upon all persons enumerated in paragraph (a) of subdivision three of section one hundred sixty-four of this article, and provide notice of such stipulation as provided in paragraph (b) of such subdivision. Nothing in this section, however, shall bar any party to an adjudicatory hearing on an application for a qualified facility, other than any party to a pre-application stipulation, from timely raising objections to any aspect of the methodology or scope of any study or program of studies or other issue stipulated to in any such agreement.

4. All pre-application proceedings on the proposed facility and any pre-application report conducted after the filing of a notice of intent to file, including the filing of pre-application stipulations, shall be completed in all respects pursuant to the following schedule: (a) for a positive emission facility: within ninety days of the date of the filing of the notice of intent to file; (b) for a negative emission facility: within seventy-five days of the date of the filing of the notice of intent to file; and (c) for a wind powered facility: within sixty days of the filing of the notice of intent to file if a pre-application report has been filed, otherwise within forty-five days

of such date. The chairperson may extend such times by up to thirty days; provided, however,  
that such times shall not be extended more than once without the consent of the applicant.

§ 164. Application for a certificate

1. An applicant for a certificate shall file with the chairperson an application, in such form as  
the permanent board may prescribe, which shall include but not be limited to the following  
information and materials:

(a) Sufficient plans, specifications and data and such other information to demonstrate that  
the proposed facility is a qualified facility subject to review under this article;

(b) A description of the site of the proposed facility and surrounding areas, including land  
uses thereon;

(c) A description of the proposed facility, including site information, maps, and descriptions,  
present and proposed development at the site, source and volume of water required for facility  
operation and cooling; anticipated emissions to air and discharges to surface water and  
groundwater, proposed pollution control equipment and, as appropriate, geological, aesthetic,  
agricultural, historical, archeological, ecological, seismic, biological, water supply and local  
population data;

(d) A description of the nature of any impacts likely to result from the proposed facility,  
including the adverse and beneficial impacts on the environment, ecology, public health and  
safety, aesthetics, scenic, historic and recreational value, forests and parks, noise levels and  
traffic and transportation;

(e) A description and evaluation of reasonable alternative locations for the proposed facility,  
if any, including a description of the comparative advantages and disadvantages of each such  
location, and a statement of the reasons why the proposed location is best suited, among any

alternatives considered, to promote public health and welfare, provided that the information required pursuant to this paragraph shall be no more extensive than required under article eight of the environmental conservation law;

(f) Studies, identifying the author and date thereof, which have been made of the expected environmental and health impacts, and safety of the proposed facility, both during its construction and its operation, which studies are sufficient to identify: (i) the anticipated gaseous, liquid, and solid and hazardous wastes to be produced at the proposed facility, including their source, anticipated volumes, composition, and temperature, and such other attributes as the board may specify; (ii) the treatment processes to reduce wastes to be released to the environment, and the manner of disposal for wastes retained; (iii) the anticipated volumes of wastes to be released to the environment under any operating condition of the proposed facility, including such meteorological, hydrological, and other information needed to support such estimates; (iv) conceptual architectural and engineering plans indicating compatibility of the proposed facility with the environment; (v) how the construction and operation of the proposed facility, including transportation and disposal of wastes would comply with environmental and 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) the anticipated water withdrawals and discharges, and that an adequate source of non-potable water is available or reasons why the use of potable water is reasonable; (vii) a description of any potential disproportionate adverse environmental impacts on low-income or minority populations; (viii) the probable level of noise during construction and operation of the proposed facility and measures for noise abatement; and (ix) the cumulative effect of air emissions from (1) existing facilities, (2) facilities that have been granted a certificate pursuant to this article, (3) facilities that have submitted an application

1 pursuant to this article prior to sixty days before the filing of the application to be considered,  
2 and deemed by the chairperson to comply with section one hundred sixty-four of this article; and  
3 (4) facilities other than those subject to this article, that have submitted an application for a  
4 federal, state, or local permit for which the relevant agency has provided public notification of  
5 such application, with particular attention to facilities located in areas designated as  
6 nonattainment;

7 (g) A system reliability impact study;

8 (h) A description of the fuel interconnection supply for the proposed facility;

9 (i) A listing of the permits that would be required for the construction and operation of the  
10 proposed facility, and the state, municipality or other agency that would issue such permits,  
11 absent section one hundred seventy-two of this article;

12 (j) A complete consistency certification as required by the secretary of state pursuant to the  
13 federal Coastal Zone Management Act for a facility proposed to be located in the coastal area  
14 that requires federal coastal consistency.

15 (k) Comments received from the commissioner of parks, recreation and historic preservation  
16 as to potential impacts of the proposed facility on any properties listed on the national register or  
17 on the state register or that are determined to be eligible for the state register by such  
18 commissioner, as set forth in section 14.09 of the parks, recreation and historic preservation law,  
19 regardless of whether the proposed facility is being reviewed pursuant to section 106 of the  
20 National Historic Preservation Act of 1966, which comments shall be based upon an evaluation  
21 of a cultural resources survey undertaken by the applicant in consultation with the office of  
22 parks, recreation and historic preservation;

1 (l) Such information as is necessary and required under applicable laws and regulations to  
2 enable the department of environmental conservation to evaluate the proposed facility's pollution  
3 control systems and to reach a determination of whether or not to issue, subject to appropriate  
4 conditions and limitations, water quality certifications; environmental permits pursuant to  
5 federally delegated or approved state authority, in accordance with the federal law, and any other  
6 environmental permit which the department of environmental conservation is authorized to issue  
7 pursuant to this article;

8 (m) A plan for decommissioning any existing facilities that will be dismantled or removed  
9 from active service and disposal of any existing facilities;

10 (n) A plan for the security of the proposed facility during construction and operation, to be  
11 reviewed by the board for adequacy in consultation with the New York state office of homeland  
12 security;

13 (o) Responses to substantive and significant comments received in the course of the pre-  
14 application proceedings; and

15 (p) Such other information as the applicant may consider relevant, or that is required by the  
16 board regulations.

17 2. Ten printed copies of the complete application and one electronic copy of the application  
18 shall be filed with the board. The chairperson shall make copies of the application available for  
19 public inspection and post an electronic copy of the application on the website of the department  
20 for public viewing; provided, however, that the security plan shall remain confidential and not be  
21 available for public inspection and viewing, and critical infrastructure information and other  
22 information contained in the application that is excepted or otherwise protected from disclosure

1 pursuant to article six of the public officers law or any other law shall not be disclosed except in  
2 accordance with such law.

3 3. Each application shall be accompanied by proof of service, in such manner as the board  
4 shall prescribe, of:

5 (a) A copy of such application on (i) the chief executive officer of each municipality in which  
6 any portion of the proposed facility is to be located or in any alternative location listed;

7 (ii) each member of the board;

8 (iii) the attorney general;

9 (iv) the department of transportation;

10 (v) the office of parks, recreation and historic preservation;

11 (vi) a library serving the city, town or village, and another library serving the county, in  
12 which any portion of such facility is to be located as proposed or in any alternative location  
13 listed;

14 (vii) in the event that such the proposed facility or any portion thereof or any alternative  
15 location listed, is located within the Adirondack park, as defined in subdivision one of section 9-  
16 0101 of the environmental conservation law, the Adirondack park agency;

17 (viii) if the proposed facility or any portion thereof or any alternative is proposed to be  
18 located within the city of New York or the New York city watershed as described in department  
19 of health regulations, the New York city department of environmental protection; and

20 (ix) the health department of the county in which any portion of the proposed facility is to be  
21 located as proposed or in any alternative location listed; and

22 (b) A notice of such application on: (i) persons residing in municipalities entitled to receive a  
23 copy of the application under subparagraph (i) of paragraph (a) of this subdivision. Such notice

1 shall be given by the publication of a summary of the application in the manner specified in  
2 regulations of the board, in such form and in such newspaper or newspapers as will serve  
3 substantially to inform the public of such application, (ii) each member of the state legislature  
4 and the United States congress in whose district any portion of the proposed facility is to be  
5 located or in any alternative location listed, and (iii) persons who have filed a statement with the  
6 board within the past twelve months stating that they wish to receive all such notices concerning  
7 facilities in the area in which the proposed facility is to be located as proposed or in any  
8 alternative location listed.

9 4. Inadvertent failure of service on any of the persons named in subdivision three of this  
10 section shall not be jurisdictional and may be cured as the chairperson may direct to afford such  
11 persons adequate notice to enable them to participate effectively in the certification proceedings.  
12 In addition, the chairperson may require the applicant to serve notice of the application or copies  
13 thereof or both upon such other persons and file proof thereof as the board may deem  
14 appropriate.

15 5. If a reasonable alternative location that is not listed in the application is proposed in the  
16 certification proceeding, notice of such proposed alternative location shall be given by its  
17 proponent to all persons set forth in paragraphs (a) and (b) of subdivision three of this section.

18 6. An application for a certificate for a positive emission facility shall be accompanied by an  
19 application fee in an amount equal to one thousand dollars for each thousand kilowatts of  
20 generating capacity as proposed in the application; provided, however, that the total amount of  
21 such fee shall not be more than three hundred thousand dollars.

22 The application fee shall be deposited in the intervenor account, to be disbursed at the  
23 chairperson's direction, or at the direction of the presiding hearing examiner if the chairperson so

1 directs. The funds in the intervenor account shall be used to defray expenses incurred by local  
2 municipalities and other local parties to the proceeding (except a municipality which is the  
3 applicant) for expert witness, consultant and legal fees. If at any time subsequent to the filing of  
4 the application, the application is amended in a manner that warrants substantial additional  
5 scrutiny, and the proceedings on the amended application continue, the presiding examiner, after  
6 consultation with the chairperson, may require an additional intervenor fee in an amount not to  
7 exceed fifty percent of the amount of the original fee. Upon request of the board, the applicant,  
8 shall provide for transcripts, the reproduction and service of documents, and the publication of  
9 required notices, for all parties requesting copies of such.

10 Any monies remaining in the intervenor account, in the event an application has been  
11 withdrawn or dismissed, or after the board has issued its decision on an application under this  
12 article and the time for judicial review has expired, shall be returned to the applicant within sixty  
13 days.

14 Notwithstanding any other provision of law to the contrary, the permanent board shall  
15 prescribe standards for the management of the account and for disbursements from the account,  
16 which standards shall be consistent with the purpose of this section, provided, however, that such  
17 board shall assure that the purposes for which monies in the intervenor account will be expended  
18 will contribute to an informed decision as to the appropriateness of the site and facility and are  
19 made available on an equitable basis in a manner which facilitates broad public participation.

20 Notwithstanding any other provision of law to the contrary, absent a waiver from the board,  
21 an application shall be deemed withdrawn if: (a) the applicant fails to timely supplement the  
22 application as may be required by the board or in board regulations after receiving notice by the  
23 chairperson that the application does not comply with this section; (b) the chairperson determines



1 that the application complies with this section but the applicant fails to timely supplement the  
2 application in response to a request by the chairperson, the presiding examiner or the board to  
3 provide additional information; or (c) the applicant fails to diligently pursue certification after a  
4 compliance determination.

5 § 165. Hearings on an application

6 1. Within thirty days of the receipt of an application filed pursuant to section one hundred  
7 sixty-four of this article, the chairperson shall make a compliance determination, and the  
8 commissioner of environmental conservation shall make a completeness determination with  
9 respect to any applicable environmental permits. A compliance determination by the chairperson  
10 shall not be made in the absence of a completeness determination by the commissioner of  
11 environmental conservation. Upon a compliance determination, the department of  
12 environmental conservation may initiate review of any application for any environmental permit  
13 which it is authorized to issue pursuant to this article. Notwithstanding a compliance  
14 determination, the chairperson, an assigned hearing examiner or the board may require the filing  
15 of any additional information in order to develop an adequate record.

16 2. Within a reasonable time after the department makes a compliance determination, the  
17 department shall hold a public statement hearing on any application filed under this article. The  
18 department shall assign a hearing examiner to preside over the public statement hearing, manage  
19 the application review process and preside over any adjudicatory hearing conducted on the  
20 application. The public statement hearing shall be conducted in a manner so as to provide  
21 effective opportunities for the applicant and the department to inform the public and other  
22 interested persons about the proposed facility and to receive and respond to comments from such  
23 persons pertinent to the proposed facility and application.

1     3. Within a reasonable time after the conclusion of the public statement hearing, the  
2     presiding examiner shall hold a pre-hearing conference to determine, after consultation with the  
3     associate examiner, whether an adjudicatory hearing is necessary and, if so, to identify specific  
4     issues for any such hearing, obtain stipulations as to issues which are not disputed and address  
5     such other matters as the presiding examiner may deem appropriate. Thereafter, upon  
6     determining that an adjudicatory hearing is necessary, the presiding examiner shall issue an order  
7     identifying the issues to be addressed by the parties in the adjudicatory hearing; provided,  
8     however, that no such order shall preclude consideration of issues which warrant consideration in  
9     order to develop an adequate record as determined by the board.

10     4. All parties shall be prepared to proceed in an expeditious manner at any adjudicatory  
11     hearing so that such hearing may proceed regularly until completion. The place of the hearing  
12     shall be designated by the presiding examiner. Hearings shall be of sufficient duration to provide  
13     adequate opportunity to hear direct evidence and rebuttal evidence from residents of the area  
14     who could be affected by construction or operation of the qualified facility.

15     5. All proceedings conducted after the compliance determination through the close of the  
16     record in any adjudicatory hearing shall be completed pursuant to the following schedule: (a) for  
17     a positive emission facility: within two hundred ten days of the date of the compliance  
18     determination; (b) for a negative emission facility: within one hundred twenty days of the date of  
19     the compliance determination; and (c) for a wind powered facility: within ninety days of the date  
20     of the compliance determination. The presiding examiner, after consultation with the  
21     chairperson, may extend the time prescribed for the completion of such proceedings by up to  
22     sixty days in the case of a positive emission facility, up to forty-five days in the case of a  
23     negative emission facility, or up to thirty days in the case of a wind powered facility; provided,

1 however, the presiding examiner shall not extend the time prescribed for the completion of any  
2 such proceedings more than once without the consent of the applicant.

3 6. If at any time subsequent to the commencement of the adjudicatory hearing there is a  
4 material and substantial amendment to the application which is likely to result in any material  
5 increase in impacts of the proposed facility, the presiding examiner may, after consultation with  
6 the chairperson: (a) waive the time periods prescribed by this section for the completion of such  
7 proceedings; (b) require the applicant to recommence the administrative process provided by this  
8 article beginning with the filing of a revised or new notice of intent to file; or (c) deem the  
9 original application withdrawn.

10 7. The permanent board shall prescribe standards which shall establish the manner in which  
11 an application to amend a certificate issued pursuant to this article shall be reviewed under this  
12 article. If an amendment proposes a change to a qualified facility that is likely to result in any  
13 material increase in any environmental impact of such facility or a substantial change in the  
14 location of all or a portion of such facility, a hearing shall be held in the same manner as a  
15 hearing on an application for a certificate under this article.

16 § 166. Parties to a certification proceeding

17 1. The parties to the certification proceedings shall include:

18 (a) The applicant;

19 (b) The department of environmental conservation;

20 (c) The department of economic development;

21 (d) The department of health;

22 (e) The department of state;

23 (f) The office of parks, recreation and historic preservation;

1 (g) If the qualified facility or any portion thereof or any alternative is proposed to be located  
2 within the city of New York or the New York city watershed as described in department of  
3 health regulations, the New York city department of environmental protection or other  
4 designated New York city agency;

5 (h) If the qualified facility or any portion thereof or any alternative is proposed to be located  
6 within the Adirondack park, as defined in subdivision one of section 9-0101 of the  
7 environmental conservation law, the Adirondack park agency;

8 (i) A municipality entitled to receive a copy of the application under paragraph (a) of  
9 subdivision three of section one hundred sixty-four of this article, if it has filed with the board a  
10 notice of intent to be a party, within thirty days after the date given in the published notice as the  
11 date for the filing of the application; any municipality entitled to be a party pursuant to this  
12 section and seeking to enforce any local ordinance, law, resolution, or other action or regulation  
13 otherwise applicable shall present evidence in support thereof or shall be barred from the  
14 enforcement thereof;

15 (j) Any resident of a municipality entitled to receive a copy of the application under  
16 paragraph (a) of subdivision three of section one hundred sixty-four of this article if he or she has  
17 filed with the board a notice of intent to be a party, within thirty days after the date given in the  
18 published notice as the date for filing of the application;

19 (k) Any not-for-profit corporation or association, formed in whole or in part to promote  
20 conservation of natural beauty, to protect the environment, human health, or other biological  
21 values, to preserve historical sites, to promote consumer interests, to represent commercial and  
22 industrial groups or to promote the orderly development of any area in which the proposed

facility is to be located, if it has filed with the board a notice of intent to become a party, within thirty days after the date given in the published notice as the date for filing of the application;

(l) Any other municipality or resident of such municipality located within a five mile radius of the proposed facility, if it or the resident has filed with the board a notice of intent to become a party, within thirty 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 which the board in its discretion finds to have an interest in the proceeding because of the potential environmental or health 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 thirty 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

(n) 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 may designate members of its staff to participate as a party in proceedings under this article.

3. Any person may make a limited appearance in the proceeding by filing a statement in writing at any time prior to the commencement of the hearing of his or her intent to limit his or her appearance. 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 oral testimony or cross-examine witnesses or parties.

4. The board may, for good cause shown, permit a person that is entitled to become a party under subdivision one of this section, but that has failed to file the requisite notice of intent

1 within the time required, to become a party and to participate in subsequent stages of the  
2 proceeding.

3 § 167. Conduct of hearing

4 1. (a) The hearing shall be conducted in an expeditious manner by the presiding examiner  
5 appointed by the department. An associate hearing examiner shall be appointed by the  
6 department of environmental conservation prior to the date set for commencement of the  
7 adjudicatory hearing, who shall attend all hearings as scheduled by the presiding examiner and  
8 he or she shall assist the presiding examiner in inquiring into and calling for testimony  
9 concerning relevant and material matters. The conclusions and recommendations of the associate  
10 examiner shall be incorporated in the recommended decision of the presiding examiner, unless  
11 the associate examiner prefers to submit a separate report of dissenting or concurring conclusions  
12 and recommendations. In the event that the department of environmental conservation is  
13 required to determine whether to issue an environmental permit pursuant to federally delegated  
14 or approved state authority, the record in the proceedings and the associate examiner's  
15 conclusions and recommendations shall, insofar as is consistent with such delegated or approved  
16 state authority, provide sufficient information to enable the department of environmental  
17 conservation to determine whether or not to issue such permits; and in the event that the  
18 secretary of state is required to render a consistency determination pursuant to the federal Coastal  
19 Zone Management Act, such record, conclusions and recommendations shall, insofar as is  
20 consistent with such Act, provide sufficient information to enable the secretary of state to  
21 determine whether or not to concur with the applicant's certification.

22 (b) The testimony presented at a hearing may be presented in writing or orally. The presiding  
23 examiner may require any state agency to provide expert testimony on specific subjects where its

1 personnel have the requisite expertise and such testimony is considered necessary to the  
2 development of an adequate record. A record shall be made of the hearing and all testimony  
3 taken and the cross-examinations thereon. The rules of evidence applicable to proceedings before  
4 a court shall not apply. The presiding examiner may provide for the consolidation of the  
5 representation of parties, other than governmental bodies or agencies, having similar interests. In  
6 the case of such a consolidation, the right to counsel of its own choosing shall be preserved to  
7 each party to the proceeding; provided, however, that the consolidated group may be required to  
8 be heard through such reasonable number of counsel as the presiding examiner shall determine.

9 2. A copy of the record shall be made available by the presiding examiner at all reasonable  
10 times for examination by the public.

11 3. The chairperson of the board may enter into an agreement with an agency or department of  
12 the United States having concurrent jurisdiction over all or part of the location, construction, or  
13 operation of a qualified facility subject to this article with respect to providing for joint  
14 procedures and a joint hearing of common issues on a combined record; provided that such  
15 agreement shall not diminish the rights accorded to any party under this article.

16 4. The presiding examiner shall allow testimony to be received on reasonable and available  
17 alternative locations for the proposed qualified facility. Nevertheless, in its discretion, the board  
18 may thereafter cause to be considered other reasonable and available locations.

19 5. Notwithstanding the provisions of subdivision four of this section, the board may make a  
20 prompt determination on the sufficiency of the applicant's consideration and evaluation of  
21 reasonable alternatives to its qualified facility as proposed and its proposed location for that  
22 facility, as required pursuant to paragraph (e) of subdivision one of section one hundred sixty-  
23 four of this article, before resolution of other issues pertinent to a final decision on the

1 application; provided, however, that all interested parties have a reasonable opportunity to  
2 question and present evidence in support of or against the merits of the applicant's consideration  
3 and evaluation of such alternative locations, as required pursuant to paragraph (e) of subdivision  
4 one of section one hundred sixty-four of this article, so that the board is able to decide, in the  
5 first instance, whether or not the location proposed in the application is preferable to alternative  
6 locations, if any.

7 § 168. Board decision

8 1. The board shall make the final decision on an application under this article for a certificate,  
9 or amendment thereof as authorized by this article, upon the record made before the presiding  
10 examiner, after receiving briefs on exceptions to any recommended decision of such examiner  
11 and to the report of the associate examiner, and any briefs opposing exceptions, and after hearing  
12 any oral argument the board may determine to require. Any state agency that has issued a permit  
13 pursuant to this article shall provide such permit to the board, along with any supporting record  
14 not already in the board's possession, prior to the board's decision of whether or not to issue a  
15 certificate. Except for good cause shown to the satisfaction of the board, a determination under  
16 subdivision five of section one hundred sixty-seven of this article that the applicant's proposal is  
17 preferable to alternatives shall be final, and subject to judicial review only after the final decision  
18 on an application is rendered.

19 2. The board shall render a decision upon the record either to grant or deny the certificate on  
20 the application as filed or upon such terms and conditions of the construction or operation of  
21 such qualified facility as the board may deem appropriate. The board shall issue an order upon  
22 the decision, embodying in full the terms and conditions thereof. If the board decides to issue a  
23 certificate, the board shall issue such certificate, which shall include all of the terms and



1 conditions of the construction or operation of such qualified facility, simultaneously with such  
2 order. Such order shall be issued pursuant to the following schedule: (a) for a positive emission  
3 facility: within ninety days of the date of the close of the record for the adjudicatory hearing; and  
4 (b) for a negative emission facility or wind powered facility: within sixty days of the close of the  
5 record for the adjudicatory hearing; provided, however, where an application seeks one or more  
6 permits pursuant to federally delegated or approved state authority, the commencement of such  
7 time period shall begin to run from the date on which the board has received all such permits  
8 from the appropriate state agency. Following any rehearing and judicial review of the board's  
9 decision, the board's jurisdiction over an application shall cease; provided, however, that the  
10 permanent board shall retain jurisdiction over a qualified facility with respect to the amendment,  
11 suspension, or revocation of a certificate.

12 The department or the commission, as appropriate, shall monitor, enforce, and administer  
13 compliance with any terms and conditions set forth in the board's order and certificate; provided,  
14 however, that notwithstanding any provision of law to the contrary, the department of  
15 environmental conservation shall monitor, enforce, and administer compliance with (a) any term  
16 of the certificate which requires compliance with the environmental conservation law or such  
17 department's implementing regulations; (b) any term or condition of the certificate which, in the  
18 absence of subdivision one of section one hundred seventy-two of this article, would come  
19 within the department of environmental conservation's regulatory authority; (c) any  
20 environmental permit issued pursuant to federally delegated or approved state authority; and (d)  
21 any other environmental permit that the department of environmental conservation is authorized  
22 to issue pursuant to this article.

The board may not grant a certificate for the construction or operation of a qualified facility, either as proposed or as modified by the board, unless it shall first find and determine:

(a) The proposed facility will satisfy additional electric capacity needs or other electric system needs and/or further the purposes of the clean economic power supply act;

(b) The nature of the probable environmental impacts, including an evaluation of the predictable adverse and beneficial impacts on the environment and ecology, public health and safety, aesthetics, scenic, archeologic, historic and recreational value, forest and parks, fish and other aquatic life, wildlife, wildlife habitat, air, climate, ground and surface water, including cumulative effect of air emissions from (i) existing facilities, (ii) facilities that have been granted a certificate pursuant to this article, (iii) facilities that have submitted an application pursuant to this article prior to sixty days before the filing of the application to be considered, and deemed by the chairperson to comply with section one hundred sixty-four of this article, and (iv) facilities other than those subject to this article, that have submitted an application for a federal, state, or local permit for which the relevant agency has provided public notification of such application, with particular attention to facilities located in areas designated as severe nonattainment;

(c) The proposed facility: (i) minimizes adverse environmental impacts, considering the state of available technology, the nature and economics of such reasonable alternatives as are required to be examined pursuant to paragraph (e) of subdivision one of section one hundred sixty-four of this article, the interest of the state with respect to aesthetics, preservation of historic sites, forests and parks, fish and wildlife, viable agricultural lands, and other pertinent considerations; (ii) is compatible with public health and safety, (iii) will not be in contravention of water quality standards or be inconsistent with applicable regulations of the department of environmental conservation or, in case no classification has been made of the receiving waters associated with

such facility, will not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the state, and public health and public enjoyment of the receiving waters, and will utilize non-potable water as process water unless it is unreasonable under the circumstances to do so, (iv) will not emit any pollutants to the air that will be in contravention of applicable air emission control requirements or air quality standards, (v) will control the runoff and leachate from any solid waste disposal facility, (vi) will control the disposal of any hazardous substances or waste; (vii) minimizes any disproportionate adverse impacts on low-income or minority populations to the extent practicable; and (viii) limits carbon dioxide emissions pursuant to the laws and regulations of this state and the federal government;

(d) If a qualified facility is proposed to be located in the coastal area, that the action is consistent with applicable policies set forth in article forty-two of the executive law, or if such facility is proposed to be located in a municipality with a local waterfront revitalization program approved by the secretary of state, that the action is consistent to the maximum extent practicable with that local waterfront revitalization program; when the proposed project also requires consistency review under the federal Coastal Management Act, the board may, in its discretion, adopt the department of state's federal consistency decision as its state agency consistency determination and findings;

(e) That the proposed qualified facility avoids or mitigates the adverse impacts to historical, archeological, architectural and cultural resources of the state pursuant to Article 14 of the parks, recreation and historic preservation law and its implementing regulations.

(f) That the proposed qualified facility will operate reliably;

1       (g) That the proposed qualified facility is designed to operate in compliance with all  
2       applicable state and local laws and regulations issued thereunder concerning, among other  
3       matters, the environment, public health and safety, all of which shall be binding upon the  
4       applicant, except that the board may refuse to apply any local ordinance, law, resolution, or other  
5       action or any regulation issued thereunder or any local standard or requirement which would be  
6       otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably  
7       restrictive in view of the existing technology or the needs of or costs to ratepayers whether  
8       located inside or outside of such municipality. The board shall provide the municipality an  
9       opportunity to present evidence in support of such ordinance, law, resolution, regulation, or other  
10      local action issued thereunder; and

11      (h) That the construction and operation of the qualified facility is in the public interest,  
12      considering the environmental and health impacts of such facility and reasonable alternatives  
13      examined as required pursuant to paragraph (e) of subdivision one of section one hundred sixty-  
14      four of this article.

15      3. A copy of the board's decision and opinion and any certificate shall be served on each  
16      party personally or by mail and placed on the website of the department.

17      § 169. Opinion to be issued with decision

18      In rendering a decision on an application for a certificate, the board shall issue an opinion  
19      stating, in full, its reasons for the action taken. If the board has found that any local ordinance,  
20      law, resolution, regulation, or other action issued thereunder or any other local standard or  
21      requirement which would be otherwise applicable is unreasonably restrictive pursuant to  
22      paragraph (g) of subdivision two of section one hundred sixty-eight of this article, it shall state in  
23      its opinion the reasons therefor.

1     § 170. Rehearing; judicial review

2     1. Any party aggrieved by the board's decision denying or granting a certificate may apply to  
3 the board for a rehearing within thirty days after issuance of the decision and order. Any such  
4 application shall be considered and decided by the board, and any rehearing shall be completed  
5 and a decision rendered thereon within sixty days of the expiration of the period for filing  
6 rehearing petitions; provided, however, that the board may extend such time by up to sixty days  
7 where a rehearing is required and the board determines that such extension is necessary. The  
8 applicant may waive such deadline. Thereafter, any such party may obtain judicial review of  
9 such decision as provided in this section. A judicial proceeding shall be brought in the appellate  
10 division of the supreme court of the state of New York, third department. Such proceeding shall  
11 be initiated by the filing of a petition in such court within thirty days after the issuance of a final  
12 decision by the board upon the application for rehearing together with proof of service on the  
13 board of a demand that the board file with said court a copy of a written transcript of the record  
14 of the proceeding and a copy of the board's decision and opinion. Upon receipt of such demand,  
15 the board shall forthwith deliver to the court a copy of the written transcript of the record and a  
16 copy of the board's decision and opinion. The board's copy of said transcript, decision, opinion  
17 and any certificate shall be available at all reasonable times to all parties for examination without  
18 cost. Thereupon, the court shall have jurisdiction of the proceeding and shall have the power to  
19 grant such relief as it deems just and proper, and to make and enter an order enforcing,  
20 modifying and enforcing as so modified, remanding for further specific evidence or findings, or  
21 setting aside in whole or in part such decision. The appeal shall be heard on the record, without  
22 requirement of reproduction, and upon briefs to the court. No objection that has not been urged  
23 by the party in his or her application for rehearing before the board shall be considered by the

1 court, unless the failure or neglect to urge such objection shall be excused because of  
2 extraordinary circumstances. The findings of fact on which such decision is based shall be  
3 conclusive if supported by substantial evidence on the record considered as a whole and matters  
4 of official notice set forth in the opinion. The jurisdiction of the appellate division of the supreme  
5 court shall be exclusive, and its judgment and order shall be final, subject to review by the court  
6 of appeals in the same manner and from and with the same effect as provided for appeals in a  
7 special proceeding. All such proceedings shall be heard and determined by the appellate division  
8 of the supreme court and by the court of appeals as expeditiously as possible and with lawful  
9 precedence over all other matters.

10 2. The grounds for and scope of review of the court shall be limited to those set forth in  
11 section seven thousand eight hundred three of the civil practice law and rules.

12 3. Except as otherwise provided in this section, article seventy-eight of the civil practice law  
13 and rules shall apply to appeals taken pursuant to this section.

14 § 171. Jurisdiction of courts

15 Except as expressly set forth in section one hundred seventy of this article and except for  
16 review by the court of appeals of a decision of the appellate division of the supreme court as  
17 provided for therein, no court of this state shall have jurisdiction to hear or determine any matter,  
18 case, or controversy concerning any matter which was or could have been determined in a  
19 proceeding under this article or to stop or delay the construction or operation of a qualified  
20 facility, except to enforce compliance with this article or the terms and conditions issued  
21 thereunder.

22

23

1        § 172. Powers of municipalities and state agencies

2        1. Notwithstanding any other provision of law, no state agency or municipality or any agency  
3 thereof may, except as expressly authorized under this article, or by the board, require any permit  
4 for the construction or operation of a qualified facility with respect to which an application for a  
5 certificate pursuant to this article has been filed, other than those provided by otherwise  
6 applicable state law for the protection of employees engaged in the construction and operation of  
7 such facility; provided, however, that, in the case of a municipality or an agency thereof, such  
8 municipality has received notice of the filing of the application therefor; and provided further  
9 that the department of environmental conservation shall issue (a) water quality certifications, (b)  
10 environmental permits under federally delegated or approved state authority, and (c) any other  
11 environmental permit that it is authorized to issue pursuant to this article; and provided further  
12 that the secretary of state shall make consistency determinations pursuant to the federal Coastal  
13 Zone Management Act. In issuing such permits and determinations, the department of  
14 environmental conservation, and the secretary of state, respectively, shall follow procedures  
15 established in this article to the extent that such procedures are consistent with federally  
16 delegated or approved state authority and the federal Coastal Zone Management Act and any  
17 applicable implementing regulations thereof.

18        The department of environmental conservation and the secretary of state shall provide any  
19 such permits and determinations to the board prior to the board's determination of whether or not  
20 to issue a certificate. The issuance of such permits and determinations shall not prevent the  
21 board from denying an application under subdivision two of section one hundred sixty-eight of  
22 this article.

1        2. The Adirondack park agency shall not hold public hearings for a qualified facility with  
2        respect to which an application pursuant to this article is filed; provided that such agency has  
3        received notice of the filing of such application.

4        § 173. Rules and regulations

5        In addition to any other authority provided to the permanent board under this article, such  
6        board shall have the power to adopt rules and regulations necessary to implement this article,  
7        including but not limited to rules and regulations addressed to the following matters:

8        (a) the procedures to be used in granting a certificate to qualified facilities under this article;

9        (b) the acceptance, transfer, modification, suspension or revocation of a certificate issued  
10       pursuant to this article;

11       (c) the management of the intervenor account and disbursements from the account;

12       (d) the form and content of any notice, stipulation, report, application and other filing  
13       required by this article, and the manner of service of such documents, including procedures for  
14       the electronic service of such documents;

15       (e) the conduct of hearings, including discovery, presentation of proof, rules of evidence,  
16       review of rulings by administrative law judges and hearing examiners; and

17       (f) procedures governing applications and proceedings for rehearing under this article.

18       § 4. The state finance law is amended by adding a new section 97-tt to read as follows:

19       § 97-tt. Intervenor account. 1. There is hereby established in the joint custody of the state  
20       comptroller and the commissioner of taxation and finance an account to be known as the  
21       intervenor account.



1        2. Such account shall consist of all revenues from application fees received by the New York  
2        state clean economic power supply board pursuant to subdivision six of section one hundred  
3        sixty-four of the public service law.

4        3. Moneys of the account, following appropriation by the legislature, may be expended in  
5        accordance with the provisions of section one hundred sixty-four of the public service law.  
6        Moneys shall be paid out of the account on the audit and warrant of the state comptroller on  
7        vouchers certified or approved by the chairperson of the public service commission.

8        § 5. Paragraph (b) of subdivision 5 of section 8-0111 of the environmental conservation law,  
9        as added by chapter 612 of the laws of 1975, is amended to read as follows:

10       (b) Actions subject to the provisions requiring a certificate of environmental compatibility  
11       and public need in articles seven and eight of the public service law, and actions subject to the  
12       provisions requiring a clean economic power supply siting certificate in article ten of the public  
13       service law; or

14       § 6. Section 17-0701 of the environmental conservation law is amended by adding a new  
15       subdivision 8 to read as follows:

16       8. In the case of an electric generating facility that is a qualified facility as defined in section  
17       one hundred sixty of the public service law for the construction or operation of which a  
18       certificate is required under article ten of such law, an applicant shall apply for and obtain such  
19       certificate in lieu of filing plans and reports and obtaining a permit under this section. Any  
20       reference in this article to a permit under this section shall, in the case of such qualified facility,  
21       be deemed for all purposes to refer to such certificate, provided that nothing herein shall limit the  
22       authority of the department or the department of health to monitor the environmental and health  
23       impacts resulting from the operation of such qualified facility and to enforce applicable

provisions of this chapter and the public health law and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation.

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

§ 17-0823. Power plant siting.

1. 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 article eight of such 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 herein shall limit the authority of the [departments] department or the department of health [and environmental conservation] to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility and to enforce applicable provisions of this chapter and the public health [and environmental conservation laws] law 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.

2. In the case of an electric generating facility that is a qualified 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 such 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 qualified facility, be deemed for all purposes to refer to such certificate, provided that nothing herein shall limit the authority of the department or the department of health to monitor the environmental and health impacts resulting from the operation of such qualified facility and to enforce applicable provisions of this chapter and the public health law and the terms and conditions of the certificate governing the environmental and health impacts resulting from the operation of such qualified facility. In considering the granting of a certificate, the New York state clean economic power supply board shall apply the provisions of this article and the Act.

§ 8. Paragraph j of subdivision 2 of section 19-0305 of the environmental conservation law, as amended by section 1 of 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 or her pursuant to the rules of the department, and inspect the installation for compliance with the plans or specifications; provided that:

(i) in the case of a major steam electric generating facility, as defined in [either] section one hundred forty of the public service law, for which a certificate is required pursuant to [either] article eight of such law, such approval functions shall be performed by the state board on electric generation siting and the environment, as defined in such law, and such inspection functions shall be performed by the department; provided further that nothing herein shall limit the authority of the [departments] department and the department of health [and environmental conservation] to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility and to enforce applicable provisions of this chapter

1 and the public health [and the environmental conservation laws] law and the terms and  
2 conditions of the certificate governing the environmental and health impacts resulting from such  
3 operation; and

4 (ii) in the case of an electric generating facility that is a qualified facility as defined in  
5 section one hundred sixty of the public service law for which a certificate is required pursuant to  
6 article ten of such law, such approval functions shall be performed by the New York state clean  
7 economic power supply board, as defined in such law, and such inspection functions shall be  
8 performed by the department; provided further that nothing herein shall limit the authority of the  
9 department or the department of health to monitor the environmental and health impacts  
10 resulting from the operation of such qualified facility and to enforce any applicable provisions of  
11 this chapter and the public health law and the terms and conditions of the certificate governing  
12 the environmental and health impacts resulting from such operation.

13 § 9. Paragraph (d) of subdivision 2, paragraph (e) of subdivision 3, and subdivision 4 of  
14 section 49-0307 of the environmental conservation law, as added by chapter 292 of the laws of  
15 1984, are amended to read as follows:

16 (d) where land subject to a conservation easement or an interest in such land is required for a  
17 major utility transmission facility which has received a certificate of environmental compatibility  
18 and public need pursuant to article seven of the public service law, or is required for a major  
19 steam electric generating facility which has received a certificate of environmental compatibility  
20 and public need pursuant to article eight of the public service law, or is required for a qualified  
21 facility which has received a clean economic power supply siting certificate pursuant to article  
22 ten of the public service law, upon the filing of such certificate in a manner prescribed for

1 recording a conveyance of real property pursuant to section two hundred ninety-one of the real  
2 property law or any other applicable provision of law.

3 (e) where land subject to a conservation easement or an interest in such land is required for a  
4 major utility transmission facility which has received a certificate of environmental compatibility  
5 and public need pursuant to article seven of the public service law, or is required for a major  
6 steam electric generating facility which has received a certificate [or] of environmental  
7 compatibility and public need pursuant to article eight of the public service law, or is required for  
8 a qualified facility which has received a clean economic power supply siting certificate pursuant  
9 to article ten of the public service law, upon the filing of such certificate in a manner prescribed  
10 for recording a conveyance of real property pursuant to section two hundred ninety-one of the  
11 real property law or any other applicable provision of law, provided that such certificate contains  
12 a finding that the public interest in the conservation and protection of the natural resources, open  
13 spaces and scenic beauty of the Adirondack or Catskill parks has been considered.

14 4. Where a conservation easement is modified or extinguished pursuant to paragraph (d) of  
15 subdivision two or paragraph (e) of subdivision three of this section, such easement shall be  
16 modified or extinguished only to the minimum extent necessary to accommodate the facility  
17 which is the subject of the certificate of environmental compatibility and public need or the clean  
18 economic power supply siting certificate.

19 § 10. Section 1014 of the public authorities law, as amended by chapter 446 of the laws of  
20 1972, is amended to read as follows:

21 § 1014. Public service law not applicable to authority; inconsistent provisions in other acts  
22 superseded. The rates, services and practices relating to the generation, transmission, distribution  
23 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 qualified facility as defined therein, and except to the extent section eighteen-a of such 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 [conservation] department of environmental conservation 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.

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

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 ten of such law applies to the siting of a qualified facility as defined therein [eight 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.

§ 12. 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.

§ 13. This act shall take effect one hundred eighty days after it shall have become a law and shall apply to all electric generating facilities that are qualified facilities as defined in section three of this act and that have not as of the effective date of this act submitted a complete application for a license, permit, certificate, consent or approval from any federal, state, or local commission, agency, board or regulatory body for authority to construct or operate such facility; provided, however, that:

(a) effective immediately, the permanent members of the New York state clean economic power supply board as established in section three of this act, the department of public service, the department of environmental conservation and any other state agency are each authorized and directed to promulgate any rule or regulation or to take any other necessary action to ensure the timely implementation of this act on its effective date; and

(b) prior to the effective date of the promulgation of any rules and regulations by the permanent members of the New York state clean economic power supply board as established in section three of this act, the rules and regulations implementing article ten of the public service law as enacted by chapter 519, section six, of the laws of 1992 contained in subchapter A of chapter ten of title sixteen of the official compilation of codes, rules and regulations of the state

1 of New York may be applied by such permanent members of the board in lieu of such rules and  
2 regulations for the purpose of implementing article ten of the public service law established by  
3 section three of this act to the extent such rules and regulations are not inconsistent with the  
4 requirements of such article ten.