

STATE OF NEW YORK
BOARD ON
ELECTRIC GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State Board on Electric Generation Siting and the Environment held in the City of Albany on March 23, 2012, by a unanimous vote of its five members present

BOARD MEMBERS PRESENT:

Garry A. Brown, Chairman
New York State Public Service Commission

Joseph Martens, Commissioner
New York State Department of
Environmental Conservation

Nirav Shah, M.D., Commissioner
New York State Department of Health

Francis J. Murray, Jr., Acting Chairman
New York State Energy Research and Development Authority

Keith Corneau, Alternate for
Kenneth Adams, Commissioner
Empire State Development

CASE 12-F-0036 - In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities.

MEMORANDUM AND RESOLUTION INITIATING PROMULGATION
PROCESS FOR PROPOSED ARTICLE 10 REGULATIONS
AND ADOPTING NOTICE OF PROPOSED RULEMAKING

(Issued and Effective March 27, 2012)

BY THE BOARD:

INTRODUCTION

In this memorandum and resolution, the New York State Board on Electric Generation Siting and the Environment (Siting

Board) initiates the process for promulgating new regulations to implement Article 10 of the Public Service Law, enacted in Chapter 388 of the Laws of 2011. Article 10 empowers the Siting Board to issue Certificates of Environmental Compatibility and Public Need authorizing the construction and operation of major electric generating facilities. By this action, the Siting Board proposes draft regulations for adoption and also adopts a notice of proposed rulemaking seeking public comments on the proposed draft regulations.

BACKGROUND

The Legislature enacted Article 10 of the Public Service Law (PSL) to ensure that state and local regulatory certification regarding the construction and operation of major electric generating facilities would be determined in a unified manner. The statute requires certification proceedings to be conducted expeditiously and generally imposes a 12-month deadline on such proceedings. The statute mandates a pre-application consultation process to obtain early input from the public regarding proposed facilities, provides for active public involvement, and establishes requirements for intervenor funding to promote local participation in siting cases. The statute also empowers the Siting Board to promulgate regulations to implement Article 10.

MEMORANDUM

The key aim of the regulations being proposed is to strike the proper balance of all interested entities. By requiring applicants to provide a robust body of information up front in the process, the regulations enable parties and the public to effectively and promptly engage in the Article 10 hearing process, while not unduly burdening applicants that bear

the cost of preparing applications. It was important to require enough information in applications to allow the Siting Board to make the findings and determinations required by PSL Section 168, recognizing that additional information will be provided as the record of the certification proceeding is developed and also that final construction-type details are unnecessary and costly to provide prior to a determination by the Siting Board.

The draft regulations are designed to accommodate the state and local permitting requirements in a single regulatory process and to focus regulatory review on pertinent issues regarding impacts on the environment, health, safety, community character, environmental justice, infrastructure, and the state's electric generation capacity; compliance with state and local legal requirements; consistency with the energy policies and long-range energy planning objectives and strategies in the most recent state energy plan; and other social, economic and other public interest considerations; in light of available technology and the nature and economics of reasonable alternatives.

Another goal of the draft regulations is to ensure public involvement in a pre-application process. Experience has demonstrated that active and adequate public involvement can be critical to the success of an Article 10 review process if it engages stakeholders early enough in the process so that stakeholder concerns can be considered in the design phase of the proposal when the applicant has the most flexibility as to its plans. Early and informative engagement of stakeholders also minimizes later delays in the review process. Well-conducted public involvement programs by applicants tend to minimize misunderstandings and conflicts in Article 10 proceedings, whereas poorly-conducted public involvement programs by applicants tend to exacerbate differences and

conflicts. In that regard, the draft regulations contemplate that public involvement programs conducted by applicants, with input from Staff of the Department of Public Service (DPS), be made a mandatory component of the Article 10 process. The draft regulations create a specific process for DPS Staff to provide input into the adequacy of an intended public involvement program without being overly burdensome as to time or iterations.

In establishing deadlines for pre-application procedures, the draft regulations strike a balance between the time realistically needed to perform tasks and a desire to keep the process moving. It is difficult to gauge the need for stipulations and amount of time that will be needed to negotiate them, but the draft threads the most workable path through the various competing provisions of the statute. Applicants are encouraged to seek stipulations wherever possible based on DPS Staff experience that stipulations on the methodology and scope of studies create efficiencies for all parties regardless of perspective. Review of case history under former Article X demonstrates that many applicants, in the early stages of their projects, tend to focus on electric system and environmental issues and did not fully consider key issues regarding, among other topics, state laws, local laws, real property rights, and the interplay between the siting statute and other required approvals. Such shortcomings ultimately lead to delays in the review process or the later identification of flaws in a proposal after applicants and the stakeholders have expended considerable time and resources on the review of a proposal. The draft regulations would require applicants to address such issues as part of their preliminary planning.

The draft regulations require a consideration of environmental justice issues at the earliest stage possible. In

addition, the draft regulations provide for funds to be made available to municipalities and local parties (during both the pre-application and post-application phases of proceedings) on an equitable basis in relation to the potential for such funding to make an effective contribution to the proceedings.

DISCUSSION AND ANALYSIS OF
STAKEHOLDER RECOMMENDATIONS

Valuable contributions were made to the proposed regulations as a result of a stakeholder outreach process. A draft of Subchapter A of 16 NYCRR Chapter X (consisting of Parts 1000 through 1002) was provided to almost 100 individuals and organizations that volunteered to serve as representative stakeholders. The stakeholders were then contacted to get their input on the draft regulatory language. The individuals and organizations represented potential developers of nuclear, fossil and renewable generation, state agencies and authorities, municipalities, environmental and environmental justice groups, attorneys, consultants and other individuals likely to participate in certification proceedings.

Discussed below are the major issues raised by stakeholders during the outreach process. These are primarily issues of substance, such as the breadth and specificity of the information required in an Article 10 application. This discussion does not include the linguistic changes involving non-substantive matters.

Regulatory Definitions

Definitions were included in the regulations to incorporate the new terms provided in the statute and to provide clarification of definitions from the old Article X regulation. For example, a definition of Base Nameplate Generating Capacity was added to the definitions section in order to prevent

developers from circumventing the Article 10 procedure by installing a series of plant additions each individually less than 25 MW, but collectively above the 25 MW threshold.

Stakeholders generally had limited concern with the definitions section. The definition of Local Actions Not For the Construction or Operation of the Proposed Major Electric Generating Facility ("Local Actions") and thus not subject to Article 10 garnered attention from stakeholders. Some stakeholders objected to the inclusion of approvals for access roads and meteorological towers in the list of local actions that are not subject to Article 10, but may be subject to SEQRA, since they believed such actions would not be subject to SEQRA. As a result, reference to these two types of local actions was removed.

Some stakeholders complained that the proposed definition of Local Actions was too broad. Specifically, they complained that inclusion of withdrawal or consumption of water from a municipal supply and discharge of sewage or stormwater into a municipal system should not be included in the definition of actions falling outside of Article 10. This complaint was considered and dismissed on the basis that the Siting Board should view a municipality's water or sewage facility as it would view property belonging to a municipality. Article 10 does not authorize the Siting Board to direct municipalities to turn over property to applicants for purposes of building and operating a major electric generating facility. Likewise, a municipal water and sewage facility is the property of the municipality and the Siting Board does not have the power to direct the usage of this property. Moreover, the municipality is in the best position to judge the use and capacity of its facilities.

Stakeholders also commented that the definition of "Revision" did not properly reflect the realities of a wind project where the placement of wind turbines is likely to change. They wanted to be assured that the procedural requirements triggered when a change in a project is deemed a "Revision" did not attach to movement of the turbine. The draft regulations were modified so that a "Revision" would not be found where the movement of the turbine occurs within a 500 foot radius of the original location and the change does not significantly increase impacts on sensitive resources or decrease compliance with setback and similar requirements.

Content of Applications

The proposed regulations create an overall structure for applications that requires information to be presented in a series of organized exhibits. The structure is intended to give detailed guidance to applicants, to make it easier to ensure that required items are included, and to provide some uniformity so that reviewers can quickly locate information of particular interest. The content of the exhibits is designed to implement the mandates of the new Article 10 statute.

The regulations implementing former Article X of the PSL relied more heavily on the stipulations process to flesh out the scope and methodology of the information and studies that were to be required in applications. To implement the new Article 10 statute, these proposed regulations draw upon the Article X experience with stipulations by identifying the generic requirements that would likely be common to all stipulations and front-loading those requirements into the application. Exhibits, or portions thereof, that are not relevant to the particular application may be omitted. The stipulations process will continue to serve an important function of custom-tailoring the scope and methodology of the

information and studies to the circumstances of the particular application, but this approach is intended to significantly diminish the burden on parties participating in the stipulations process by eliminating the need to negotiate the base core of every application.

Level of Detail

Stakeholders generally accepted the overall approach outlined above. Many stakeholders, however, expressed a concern that the level of detail required for an application should not go so far as to require construction-level detail. According to these stakeholders, construction-level details are not necessary for the Board to make its required findings, such details have typically in the past been left to the post-certificate compliance phase, and requiring such details up-front will tend to make an applicant inflexible regarding necessary refinements. They note that there is a significant cost to preparing construction plans and that it would have a chilling effect to burden an applicant with those costs before the applicant has an approval justifying them. The concerns expressed have been heard and acted upon. The proposed regulations have been enhanced to make it clear that construction-level information is not required for an application; all that is required is preliminary design information that may be subject to later refinement as the application proceeds through the certification and compliance phases of the Article 10 proceeding. Construction-level details will be required in the compliance phase.

Study Area

Many stakeholders expressed concern about the breadth of the area off-site of the facility and interconnections that needs to be characterized or studied. Developers generally argued that it was too broad and burdensome, while resource

advocates argued that it was insufficiently narrow. In the case where interconnections are proposed to be located underground, some stakeholders could not understand why a broad study area would be necessary. Some stakeholders recommended that the breadth of the study area be determined in stipulations.

While the stipulations process may be used to further refine the study area, the regulations purposefully do not leave the definition of the study area entirely up to the stipulations process. It cannot be guaranteed that the parties will reach agreement on this issue. When it comes time to review a submitted application for compliance, there must be a minimum study area requirement on which to base the compliance determination.

In response to stakeholder input, the study area has been defined as an area generally related to the nature of the technology involved and the setting of the proposed site such that in highly urbanized areas, the study area may be limited to a one-mile radius from the property boundaries of the facility site, interconnections, and alternative location sites, but for large facilities or wind power facilities with components spread across a rural landscape, the study area shall generally include the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative location sites. For facilities in areas of significant resource concerns, the size of a study area shall be configured to address specific features or resource issues. As to undergrounding, while that approach usually minimizes visual impacts, it may create other impacts and a broad study area is necessary to determine the reasonableness of the chosen route and for the identification and consideration of alternative routes.

One of the burdens on an applicant of a broad study area is the degree of information that must be included in characterizing the study area. Numerous clarifications to the text of the proposed regulations were incorporated to ensure that the existing facilities to be characterized in the study area are limited where appropriate to major transmission and other facilities. In some instance it is required that related facilities that do not come under the jurisdiction of Article 10 be characterized. Such instances are required to ensure that the cumulative impacts of the proposed facility and the related facilities are considered when determining the environmental impact, similar to what is required for the review of cumulative impacts of facilities pursuant to the State Environmental Quality Review Act (SEQRA).

Confidential Information/Trade Secrets

Many stakeholders recommended that confidential information not be sought from applicants. Some were concerned about the disclosure of proprietary cost or trade secret information. Others were concerned about disclosing site security information that might compromise critical infrastructure.

The mandates of the Article 10 statute require that such information be provided. Article 10 provides for a public procedure where public involvement is a key component of the review process. In that context, almost all of the application information that relates to an essential Board finding or determination will have to be publicly available. Where there is a legitimate need demonstrated to prohibit broad disclosure of particular sensitive facts, the party required to submit the information has an opportunity to seek a determination of confidentiality under the Rules of Procedure of the Public Service Commission (contained in Subchapter A of Chapter I of 16

NYCRR), which will apply in Article 10 certification proceedings. Pursuant to these rules, the presiding examiner may, if needed, provide for sharing of such information with the parties under a protective order setting the limits on its disclosure.

Alternative Locations

In providing for consideration of alternatives, the regulations generally require the information regarding alternative locations to be equivalent to the assessment required under the SEQRA. With respect to alternative locations, SEQRA and its implementing regulations, in turn, allow private facility applicants (who do not have the power of eminent domain) to limit their description and evaluation of alternate locations to reasonably available parcels owned by, or under option to, such private facility applicants or their affiliates. The proposed regulations preserve this lesser obligation for private facility applicants premised on the notion that they do not have the power of eminent domain, either directly or indirectly. Enhancements were made to the regulations at the request of stakeholders to ensure that the language in that regard is consistent throughout.

Public authority stakeholders recommended clarification of what is meant by a private facility applicant having the power of eminent domain on an indirect basis. In response, the regulations were clarified to state that a generation facility developer partnering or intending to partner with an industrial development agency or public authority for the acquisition of any land for the facility or the interconnections has an indirect power of eminent domain, but a generation facility developer selling or intending to sell electric power, capacity or ancillary services to an industrial

development agency or public authority does not have an indirect power of eminent domain.

Alternative Sources

The proposed regulations require the information regarding alternative sources to be equivalent to the assessment required under SEQRA. All applicants are allowed to limit their description and evaluation of alternative sources to those that are reasonable alternatives to the proposed facility that are feasible considering the objectives and capabilities of the sponsor. Public authorities and distribution utilities will, however, have a broader obligation to consider alternative sources than will companies solely engaged in wholesale generation. The Board's consideration of alternatives may go beyond the scope of those alternatives the applicant is required to present (see PSL § 168). Further, the statute allows other parties to present alternatives in addition to those presented in the application (see PSL § 167(4)). The statute allows the Board to make a determination on the sufficiency of the applicant's consideration of alternatives before resolution of other issues pertinent to a final determination on the application so that the Board is able to decide, in the first instance, whether the applicant's proposal is preferable to alternatives (see PSL § 167(5)). Such a determination is likely to be made difficult by the short time period specified for the conclusion of certification proceedings. All applicants, including private facility applicants, are free to provide a broader presentation on alternative locations and sources if they desire.

Wind-Powered Electric Projects

Article 10's major difference from the former Article X is the reduction in the megawatt threshold for electric generating facilities to be considered under the

statute. By virtue of the lowering of this threshold to 25 MWS, many wind powered electric generating facilities will now be subject to Article 10. Prior to the passage of the statute, these projects underwent siting through a SEQRA process that was often conducted by the local municipality.

Through the stakeholder process several changes were made to the draft regulations to reflect the unique aspects of wind powered electric generating facilities that differ from those of fossil or nuclear powered electric generating facilities. For example, a general caveat was added at the beginning of the regulation to recognize that some application requirements would not suit wind powered facilities. Therefore, information such as air emissions analysis would not be required of wind developers. Other detailed information would be required only of wind developers, such as setback requirements of wind turbine manufacturers and data regarding wind conditions at the proposed facility site.

Deliverability

One of the findings the Siting Board must make in deciding whether to grant an Article 10 certificate is whether the proposed project would provide a beneficial addition of capacity. In general, the statute contemplates, in various sections, a review of the proposed project's impact on the electric system. To this end, the working draft of the regulations circulated for stakeholder comment included a requirement that the application include an energy deliverability study. A number of stakeholders expressed concern that the type of study required by the proposed regulation was generally only performed by the New York Independent System Operator (NYISO) after an application was deemed complete. As a consequence, if such a study were to be included in the application, the applicant, according to

stakeholders, would have to pay a significant amount of money to have a consultant perform the study. In addition, stakeholders noted that the type of information sought in the energy deliverability study could be obtained from two other studies required by the regulation in the electric system production modeling exhibit.

The stakeholders were correct. For general cases, the modeling required in the electric system production modeling will quantify and evaluate, among other things, the economic and physical impact of interconnecting the project to the electric system. This includes being able to estimate the effects of the proposed facility on the energy dispatch of existing must-run resources, such as wind, hydroelectric and nuclear facilities. With this information the Siting Board will be able to determine if granting an Article 10 certificate to a particular project could result in backing down other valuable resources. Therefore, an energy deliverability study was deleted from the application filing requirements.

Local Laws

As a general matter, PSL § 172(1) supplants all local procedural requirements applicable to the construction or operation of a proposed major electric generating facility (including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) unless the Board expressly authorizes the exercise of the procedural requirement by the local government. The default is that the local procedural requirement is supplanted and the Siting Board does not need to take any action or adopt any findings for that to happen. PSL § 172(1) also supplants all local procedural requirements applicable to the interconnection to or use of water, electric, sewer, telecommunication, fuel and steam lines in public rights

of way that the Siting Board elects not to apply, in whole or in part, pursuant to PSL §168(3)(e). The default is that the local procedural requirement is not supplanted unless the Siting Board elects to not apply it by finding that, as applied to the proposed facility, the requirement is "unreasonably burdensome" in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.

PSL § 172(1), however, does not supplant any local substantive requirements applicable to the construction or operation of a proposed major electric generating facility (includes interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL). Pursuant to PSL §168(3)(e), the Siting Board must find that the facility is designed to operate in compliance with all local substantive requirements, all of which shall be binding upon the applicant, unless the Siting Board elects to not apply them. The default is that the local substantive requirement is not supplanted unless the Siting Board elects to not apply it by finding that, as applied to the proposed facility, the requirement is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. In other words, unless the Siting Board finds a local ordinance to be unreasonably burdensome, the Siting Board itself applies the ordinance.

Some stakeholders requested that the determination of the Siting Board regarding the override of local laws be provided early on in the Article 10 process. They claimed that expending resources on intricate applications would be a waste without early assurance that the Siting Board would waive a local law that would preclude the project.

Article 10 and the draft regulations do not prohibit the Siting Board's consideration of applicant requests to override local laws at a point early on in the Article 10 process. That being said, however, applicants should consider that often the facts necessary for the Siting Board to determine whether to waive a local law will require the development of a record. Specifically, Article 10 expressly recognizes the ability of municipalities to defend their local laws; therefore, it will be likely that some level of evidence and litigation regarding the issue will be necessary prior to the Board rendering a determination.

As noted above, the draft regulations have been modified to reduce the detail required of applicants while still providing the Board with the information necessary to make its statutory findings and determinations. Given these changes, developers' costs associated with submitting an application have been reduced. Therefore, some stakeholders concerned with early waiver of local laws may be less concerned now that the level of detail required in the application has been reduced.

Intervenor Funding

Article 10 requires applicants to provide intervenor funding for municipal and local parties. The amount of funding is dependent upon the capacity of the proposed facility and the significance of any amendments later in the process. The draft regulations are designed to promote involvement by intervenors by prescribing clear rules for when and how an intervenor can apply for funding.

Some stakeholders expressed concern that funding would be used for studies conducted using unacceptable methodologies or performed by unqualified individuals, such that the results would hold little weight. In response the draft regulations would now require that intervenors provide, at a minimum, the

professional qualifications of the expert, the description of the methodology and timing of the proposed study, and a rationale in support of the methodology.

Noise

Major electric generating facilities and their ancillary substations contain components that have the potential to emit significant levels of noise and vibration. Significant noise and vibration is created by the operation of combustion turbines, wind turbine blades, diesel engines, superchargers, steam valves and piping, spinning generators, steam condenser pumps and piping, fans, gearboxes, fuel gas pumps and valves, electric transformers, blow-off and venting processes, water pumping, and other generation processes. Truck operations at power plants, including the loading and unloading of solid fuels such as coal or municipal solid waste, can also create significant noise and vibration. Construction activities are also a significant source of operations and transport noise and vibration. One stakeholder pointed out that industry experts and government regulators have given insufficient attention to noise impacts resulting in a rise in noise impacts, complaints, and opposition to new facilities. Opponents of noise and proponents of new facilities should be able to agree that they share an interest in a robust review of noise issues to ensure adequate protection against and mitigation of adverse impacts and to maintain the viability of future projects. The goal of the regulations is to ensure that sufficient information is provided so that the Siting Board can estimate the potential for sound generated by construction and operation of the proposed facility and evaluate the potential for adverse impacts of such sound emanating to receptors outside of the facility or property. When a sound level evaluation indicates that receptors may experience sound levels or characteristics that

produce significant noise impacts or impairment of property use, the information provided should also be sufficient for the Siting Board to consider the effectiveness and feasibility of measures to either eliminate or mitigate adverse noise effects.

In the stakeholder process many stakeholders recommended that the Modified CNR system DPS Staff had originally proposed is not adequately documented, is outdated, and has been replaced with other systems. Most stakeholders recommended that the DEC guidance on assessing and mitigating noise impacts be consulted, but many stakeholders also expressed concern that the DEC guidance document does not sufficiently address the need to filter ambient baseline measurements to eliminate seasonal/transient noise (like loud insects on hot nights) to prevent a too high mischaracterization of ambient conditions. DEC's guidance has been characterized as requiring the modeling of a "worst case scenario" and many stakeholders indicated that such a scenario is the appropriate way to provide a noise analysis. Many stakeholders representing individuals and municipalities concerned about wind noise also requested that modeling account for day and night scenarios, winter and summer scenarios, low frequency noise and infrasound, calm ground-level atmospheric conditions, and facility property line calculations in addition to receptor building location calculations (to protect undeveloped lands and outdoor enjoyment of one's property). The draft below relies heavily on the DEC guidance and attempts to satisfy most of the requests that were made. Some stakeholders representing individuals and municipalities concerned about wind noise requested a cap on overall noise level to be set at 35dBA at night. They argue that an overall cap is supported by the World Health Organization and would eliminate concerns about improperly characterizing baseline levels. Some stakeholders representing

wind developers appear to support a form of a cap on incremental noise under the DEC guidelines that would look for heightened scrutiny of any increase of 6dBA or more and elimination or mitigation of any increase of 10dBA or more. The draft below does not place either form of cap leaving limits to a case-by-case determination by the Siting Board. Many stakeholders representing individuals and municipalities concerned about wind noise requested the measurement and estimation of C-weighted/dBC sound levels as an aid to addressing their concerns about low frequency noise or infrasound. Many stakeholders representing wind developers opposed requiring the incorporation of C-weighted/dBC sound levels as an unnecessary expense because they believe that issues related to low frequency noise or infrasound can be analyzed adequately without such expenditure. The draft regulations would require applicants to provide an analysis of whether the facility will produce significant levels of low frequency noise or infrasound, without specifically requiring the measurement and estimation of C-weighted/dBC sound levels, but do not preclude a case-by-case determination requiring the measurement and estimation of C-weighted/dBC sound levels in a proceeding in an appropriate circumstance. Some stakeholders representing individuals and municipalities concerned about wind noise recommended that it would be appropriate to filter out wind-induced background noise when characterizing operational sound conditions at ground level while stakeholders representing wind developers believe such filtering is technically unsound and unfair. Because of the lack of technical consensus on the issue, the draft regulations do not resolve the issue and require the application to assume wind-induced background noise or stable atmospheric conditions, as appropriate.

STATE ENVIRONMENTAL QUALITY REVIEW

The repeal of existing Subchapter A of 16 NYCRR Chapter X (consisting of Parts 1000 through 1003) and the addition of a new Subchapter A is an unlisted action within the meaning of 6 NYCRR §617.2(ak). An Environmental Assessment Form has been prepared and a Notice of Determination of Significance, Negative Declaration was made by the Siting Board.

CONCLUSION

The views of all the stakeholders have been taken into account in developing the attached proposed draft regulations that will appropriately implement PSL Article 10. The resulting regulations, as set forth in the accompanying proposed resolution, are proposed for adoption.

RESOLVED:

1. That the process for promulgating new regulations to implement Article 10 of the Public Service Law, enacted in Chapter 388 of the Laws of 2011, is hereby initiated and the draft regulations are hereby proposed for adoption in accordance with the attached draft resolution.

2. That the Secretary to the Board is directed to issue the attached Notice of Proposed Rulemaking, substantially in the form provided.

3. That the Secretary to the Board is directed to transmit to the Department of State a Notice of Proposed Rulemaking for publication in the State Register, in substantial conformance with this resolution.

4. That this proceeding is continued.

By the New York State Board on
Electric Generation Siting and
the Environment

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
BOARD ON
ELECTRIC GENERATION SITING AND THE ENVIRONMENT

CASE 12-F-0036 - In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR, Chapter X, Certification of Major Electric Generating Facilities.

NOTICE OF PROPOSED RULEMAKING

(Issued March 27, 2012)

NOTICE is hereby given that the New York State Board on Electric Generation Siting and the Environment is considering the addition of a new Subchapter A to Chapter X of 16 NYCRR (consisting of Parts 1000 through 1002) and the repeal of existing Subchapter A of 16 NYCRR Chapter X (consisting of Parts 1000 through 1003). The addition is necessary to implement Article 10 of the Public Service Law. The text of the draft regulations is attached to this notice in the Appendix.

Persons wishing to make comments on the proposed draft regulations should submit them electronically by e-filing through the Document Matter and Management System (DMM)¹ or e-mailing them to the Secretary at secretary@dps.ny.gov. Those unable to submit comments electronically may mail or deliver them to the Hon. Jaclyn A. Brillling, Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350. All comments submitted are entered into the official case record and may be accessed for public viewing at the Siting Board webpage: <http://www.dps.ny.gov/SitingBoard/>.

Comments will be accepted until May 29, 2012. Those proposing a different balance among the competing considerations are strongly encouraged to file comments by April 25, 2012.

¹ http://www.dps.ny.gov/DMM_Registration.html

Persons wishing to receive email notification whenever comments are filed and entered into the case record should create a DMM account and subscribe as soon as possible to the service list for the case by following the on-line instructions to "Subscribe to Service List" found on the screen page for Case 12-F-0036.

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
BOARD ON
ELECTRIC GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State
Board on Electric Generation
Siting and the Environment held in
the City of _____ on _____,
_____, by a _____ vote of its
five members present

BOARD MEMBERS PRESENT:

CASE 12-F-0036 - In the Matter of the Rules and Regulations of
the Board on Electric Generation Siting and the
Environment, contained in 16 NYCRR, Chapter X,
Certification of Major Electric Generating
Facilities.

PROPOSED RESOLUTION BY THE BOARD

(Issued and Effective _____)

Statutory Authority

Public Service Law §§ 160(8), 161(1) and (3), 163(1)(h), (2) and
(4)(b), 164(1), (2), (3), (4) and (6)(b), 165(2), (4)(b) and
(5), and 167(1)(b) and (4)

RESOLVED:

1. That the provisions of §202(1) of the State
Administrative Procedure Act and §101-a(2) of the Executive Law
have been complied with.

2. The official Compilation of Codes, Rules and
Regulations of the State of New York, Title 16, Public Service,
is amended, effective upon publication of a Notice of Adoption

in the State Register, by the repeal of Subchapter A of Chapter X and the addition of a new Subchapter A to read as set forth in the Appendix attached hereto.

2. That the Secretary to the Board is directed to file a copy of this resolution with the Secretary of State.

By the New York State Board on
Electric Generation Siting and
the Environment

(SIGNED)

JACLYN A. BRILLING
Secretary

**CHAPTER X CERTIFICATION OF MAJOR ELECTRIC GENERATING FACILITIES SUBCHAPTER A
REGULATIONS IMPLEMENTING ARTICLE 10 OF THE PUBLIC SERVICE LAW AS ENACTED BY
CHAPTER 388, Section 12, OF THE LAWS OF 2011**

PART 1000 GENERAL PROCEDURES

(Statutory Authority: Public Service Law §§160(8), 161(1)and(3),
163(1)(h), (2)and(4)(b), 164(2),(3),(4) and (6)(B), 165(2),(4)(b)(5),
and 167(1)(b) and (4)

Sec.

- 1000.1 Purpose and Applicability
- 1000.2 Definitions
- 1000.3 Adoption of Procedures by Reference
- 1000.4 Public Involvement
- 1000.5 Pre-Application Procedures
- 1000.6 Filing and Service of an Application
- 1000.7 Publication and Content of Notices
- 1000.8 Water Quality and Coastal Certification Procedures
- 1000.9 Additional Information
- 1000.10 Fund for Municipal and Local Parties
- 1000.11 Assistance with Documents
- 1000.12 Evidence and Proof
- 1000.13 Amendment of an Application
- 1000.14 Dismissal of an Application
- 1000.15 Acceptance of a Certificate
- 1000.16 Amendment, Revocation and Suspension of a Certificate
- 1000.17 Transfer of a Certificate
- 1000.18 Counsel to the Board

1000.1 Purpose and Applicability

The purpose of this Subchapter A is to establish procedures for applications for Certificates and other matters affecting the construction or operation of major electric generating facilities pursuant to Article 10 of the Public Service Law. It also establishes procedures for matters affecting the construction or operation of major electric generating facilities pursuant to former Articles VIII and X of the Public Service Law.

For Certificate revisions, amendments, revocations, suspensions, transfers and compliance matters for major electric generating facilities having Certificates granted pursuant to former Articles VIII and X of the Public Service Law, the provisions of this Subchapter A will be applied in a manner that is consistent with former Article VIII of the Public Service Law remaining operative and continuing in full force and effect with regard to applications filed on or before December 31, 1978, and former Article X of the Public Service Law remaining operative and continuing in full force and effect with regard to applications filed on or before December 31, 2002, except that any such Certificate revisions, amendments, revocations, suspensions, transfers and compliance matters involving increase of capacity by more than 25 megawatts are subject to the procedures for applications for Certificates and other matters affecting the construction or operation of major electric generating facilities pursuant to Article 10 of the Public Service Law without regard to former Articles VIII and X of the Public Service Law.

1000.2 Definitions

In addition to the definitions referred to, and terms defined in Part 1 of Subchapter A of Chapter I of this Title, unless the context otherwise requires, the following terms have the meanings specified:

- (a) **Adjacent or Contiguous:** When used in the context of PSL §165(4)(b), located on the same parcel of real property, on separate parcels of real property sharing a common border, or on separate parcels of real property separated by no more than 500 feet.
- (b) **The New York State Adirondack Park Agency (APA).**
- (c) **Applicant:** Any person who is required to have submitted or who submits a Public Involvement Program plan to the DPS pursuant to Section 1000.4 of this Subchapter or who in fact submits an application for a Certificate to the Board under this Subchapter, or who holds a Certificate.
- (d) **Associate Examiner:** An administrative law judge appointed by DEC.
- (e) **Base Nameplate Generating Capacity:** (1) for generating facilities in commercial operation on or before August 4, 2012, their nameplate generating capacity as of August 4, 2012; (2) for generating facilities commencing commercial operations after August 4, 2012, their nameplate generating capacity as of the date of commencement of commercial operations; (3) for generating facilities that increased their nameplate generating capacity as a result, in whole or in part, of receiving a Certificate after August 4, 2012, their nameplate generating capacity as of the date of commencement of commercial operations of the increased capacity as a result of the Certificate. Incremental increases in generating capacity after August 4, 2012 not made as a result of receiving a Certificate shall not increase the Base Nameplate Generating Capacity.
- (f) **Board:** The New York State Board on Electric Generation Siting and the Environment.
- (g) **Certificate:** A certificate of environmental compatibility and public need authorizing the construction and operation of a major electric generating facility.
- (h) **Commission:** The New York State Public Service Commission.
- (i) **Compliance Filing:** A document prepared by or on behalf of an Applicant that describes how the Applicant will comply with the terms, conditions, limitations and modifications on the construction and operation of a facility granted a Certificate by the Board and which may, at the Applicant's option, consist of phased submissions.
- (j) **Ag&Mkts:** The New York State Department of Agriculture and Markets.
- (k) **DEC:** The New York State Department of Environmental Conservation.
- (l) **DOH:** The New York State Department of Health.
- (m) **DOS:** The New York State Department of State.
- (n) **DPS:** The New York State Department of Public Service.

(o) ECL: The Environmental Conservation Law.

(p) Fuel Waste Byproduct: Waste or combination of wastes produced as a byproduct of generating electricity from a major electric generating facility in an amount which requires storage or disposal and, because of its quantity, concentration, or physical, chemical or other characteristics, may pose a substantial present or potential hazard to human health or the environment.

(q) Interconnections: Offsite electric transmission lines, fuel gas transmission lines, fuel oil transmission lines, water supply lines, waste water lines, communications lines, steam lines, stormwater drainage lines, and appurtenances thereto, installed in New York State connecting to and servicing the site of a major electric generating facility, that are not subject to the Commission's jurisdiction under PSL Article VII, not including service lines designed and sized for household type usage such as for bathrooms or ordinary telephones.

(r) Local Actions Not for the Construction or Operation of the Proposed Major Electric Generating Facility: Local action requirements that remain subject to local approval processes outside of the Article 10 process and may or may not also require local agency compliance with the State Environmental Quality Review Act (SEQRA), including local approvals required for the subdivision of land; extensions of special improvement or benefit assessment districts; tax assessment or payments in lieu of taxes determinations; consents for the extension of utility franchises to provide station power, private water company service, or similar services to the affected property; the withdrawal or consumption of water from a municipal supply; the discharge of sewage or stormwater into a municipal system; the setting and payment of hook-in fees, water rates, sewer rents and similar capital and consumption charges; industrial development agency leases; the overt grant of property rights or other privileges that would require an affirmative action by a municipality; and other similar approvals.

(s) Local Party: Any person residing in a community who may be affected by the proposed major electric generating facility at the proposed location, or any alternative location identified, who is a party to the proceeding. For the purposes of this definition, the term "residing" shall include individuals having a dwelling within a community who may be affected.

(t) Local Procedural Requirements: County, city, town and village administrative process requirements, including application, hearing, and approval requirements regarding site plans, special zoning exceptions, electrical, plumbing, and building permits, wetlands, blasting, tree cutting, excavation, fill, historic preservation, flood damage prevention, storm water management, highway work, street opening, and traffic safety permits, and other similar requirements.

(u) Local Substantive Requirements: County, city, town and village substantive standards, including zoning use restrictions; zoning lot, setback, bulk, and height requirements; noise limits; electric, plumbing, building, and flood zone construction and materials codes; noise limits; historic preservation requirements; architectural style and color requirements; limits on construction activity times and duration; road weight limits; cut and fill limits; blasting practices requirements; tree preservation requirements; wetland preservation requirements; landscaping requirements; site waste/construction debris disposal/recycling requirements; traffic maintenance and safety requirements; storm water management

requirements; paving, curbing, and subgrade requirements; restrictions on date, time, duration and method of street openings; traffic maintenance and safety requirements; separation and depth of cover requirements; tap methods, materials, and sizing requirements; restoration requirements for road subgrade, base and pavement; and other similar requirements.

(v) Major Electric Generating Facility: An electric generating facility with a nameplate generating capacity of twenty-five megawatts or more, including electric transmission line and fuel gas transmission line interconnections that are not subject to review under Article VII of the PSL, and including ancillary features located on the facility site such as roads, railroads, switchyards, fuel or energy storage or regulation facilities, solid waste disposal areas, waste treatment and disposal facilities, and similar facilities.

(w) Map: A two-dimensional representation of a portion of the earth's surface, which may be in paper or digital form, provided that digital data used for map generation or geographic analysis, are made available (in an appropriate format) to parties upon request.

(x) Modification: An amendment of an application or Certificate that is not a revision; including the shifting of a wind turbine to a new location within a 500 foot radius of the original location provided such change does not significantly increase impacts on sensitive resources or decrease compliance with setback and similar requirements.

(y) Modify: When used in the context of PSL §165(4)(b), alterations that increase by more than 25 MW the Base Nameplate Generating Capacity of an existing electric generating facility already having a nameplate generating capacity of 25 MW or more.

(z) OPRHP: The New York State Office of Parks, Recreation and Historic Preservation.

(aa) Permanent Board: The New York State Board on Electric Generation Siting and the Environment, exclusive of ad hoc members.

(ab) Person: Any individual, corporation, public benefit corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust or estate.

(ac) Plain Language: Eighth grade reading level or language which is easily understandable to the lay public to the maximum extent possible.

(ad) Presiding Examiner: A presiding officer appointed by DPS.

(ae) Private Facility Applicant: An Applicant that does not have the power of eminent domain, either directly or indirectly; a generation facility developer partnering or intending to partner with an industrial development agency or public authority for the acquisition of any land for the facility or the Interconnections has an indirect power of eminent domain for the purposes of this definition; a generation facility developer selling or intending to sell electric power, capacity or ancillary services to an industrial development agency or public authority does not have an indirect power of eminent domain for the purposes of this definition.

(af) PSL: The Public Service Law.

(ag) Public Information Coordinator: An office created within DPS to ensure that the public and interested parties are fully assisted and advised in participating in the Article 10 process.

(ah) Public Involvement Program (PIP): A series of coordinated activities that provides a variety of effective public participation opportunities by which public concerns can be identified as early as possible throughout the various stages of the decision-making process, ensures communication between stakeholders and an applicant, and results in education of the public as to the specific proposal and the Article 10 process.

(ai) Public Rights of Way: The entire area within the property boundary lines of those strips of land held in county, city, town or village ownership for the use of all of the public upon which county, city, town or village roadways, highways or streets are built and maintained for the passage of motorized vehicles.

(aj) Related Facilities: The interconnections, all offsite ancillary facilities, and all onsite and offsite ancillary equipment, including mobile or movable equipment, associated with the Major Electric Generating Facility.

(ak) Revision: An amendment of an application or Certificate proposing or authorizing a change in the major electric generating facility likely to result in any significant increase in any environmental impact of such facility or a substantial change in the location of all or a portion of such facility as determined by the Board; not including the shifting of a wind turbine to a new location within a 500 foot radius of the original location provided such change does not significantly increase impacts on sensitive resources or decrease compliance with setback and similar requirements.

(al) Revocation: Termination of the rights granted in a Certificate.

(am) Secretary: The Secretary to the Commission.

(an) Stakeholders: Those persons who may be affected or concerned by any issues within the Board's jurisdiction relating to the proposed major electric generating facility and any decision being made about it.

(ao) State Actions Not for the Construction or Operation of the Proposed Major Electric Generating Facility: State action requirements that remain subject to state approval processes outside of the Article 10 process and may also require state agency compliance with the State Environmental Quality Review Act (SEQRA), including Commission approvals of incorporations and franchises, financings and transfers pursuant to PSL §§68, 69 & 70; the overt grant of property rights or other privileges that would require an affirmative action by a state agency or authority; approvals for the subdivision of land in the Adirondack Park where the APA has subdivision jurisdiction; and other similar approvals.

(ap) State Procedural Requirements: State agency or authority administrative process requirements, including application, hearing, permit approval, and other similar requirements.

(aq) State Substantive Requirements: State agency or authority substantive standards set by law or regulation, and other similar requirements, including, for the sake of an example, the wetlands weighing standards set forth in 6 NYCRR, Part 663.

(ar) Study Area: An area generally related to the nature of the technology and the setting of the proposed site. In highly urbanized areas, the study area may be limited to a one-mile radius from the property boundaries of the facility site, interconnections, and alternative location sites. For large facilities or wind power facilities with components spread across a rural landscape, the study area shall generally include the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative location sites. For facilities in areas of significant resource concerns, the size of a study area shall be configured to address specific features or resource issues.

(as) Suspension: Temporary deprivation of some or all of the rights granted in a Certificate.

1000.3 Adoption of Procedures by Reference

Unless a provision of PSL Article 10, Section 306 of the State Administrative Procedure Act, or this Part conflicts therewith, the Rules of Procedure of the Public Service Commission (contained in Subchapter A of Chapter I of this Title) that are in force on the effective date of this Part shall apply in connection with each certification proceeding under PSL Article 10. When such regulations indicate that the Commission is the decision maker, such reference shall be deemed to apply to the Board.

1000.4 Public Involvement

(a) To ensure throughout the Article 10 process that the Board is fully aware of the concerns of stakeholders and that the Board's consideration of an application is not delayed, it is the Board's policy to require applicants to actively seek public participation throughout the planning, pre-application, certification, compliance, and implementation process. It is also the Board's policy to encourage stakeholders to participate at the earliest opportunity in the review of the applicant's proposal so that their input can be considered.

(b) To ensure that the public and interested parties are fully assisted and advised in participating in the Article 10 process, an office of public information coordinator has been created within DPS. Public information coordination shall include:

(1) implementing measures that assure public participation in matters before the Board;

(2) responding to inquiries from the public for information on how to participate in matters before the Board;

(3) assisting the public in requesting records relating to matters before the Board;

(4) ensuring all interested persons are provided with a reasonable opportunity to participate at public meetings relating to matters before the Board;

(5) ensuring that all necessary or required documents are available for public access on the DPS website; and

(6) any other duties as may be prescribed by the Board, after consultation with DPS.

(c) Each Applicant shall conduct a Public Involvement Program that includes:

(1) consultation with the affected agencies and other stakeholders;

(2) pre-application activities to encourage stakeholders to participate at the earliest opportunity;

(3) activities designed to educate the public as to the specific proposal and the Article 10 review process, including the availability of funding for municipal and local parties;

(4) the establishment of a website to disseminate information to the public;

(5) notifications; and

(6) activities designed to encourage participation by stakeholders in the certification and compliance process.

(d) Applicants shall submit a proposed Public Involvement Program plan in writing to DPS for review as to its adequacy at least 150 days prior to the submittal of any preliminary scoping statement, except that for good cause

shown upon motion, the Secretary may reduce the minimum number of days to less than 150. An applicant's obligations regarding public involvement commence with this requirement. The plan shall indicate the steps the applicant commits to take to inform, engage, and solicit input from the local community, general public, and other stakeholders, including a schedule indicating when the steps will be taken. The plan shall also identify:

(1) any language other than English spoken according to United States Census data by 5,000 or more persons residing in any 5-digit Zip code postal zone in which any portion of such zone is located within the Study Area for the facility; and

(2) any language other than English spoken by a significant population of persons residing in close proximity to the proposed facility, alternative locations and interconnections not captured by paragraph (1) of this subdivision.

(e) DPS shall have 30 days after the date of the Applicant's submittal to make written comments on the adequacy of the Public Involvement Program plan. If deemed inadequate, DPS, in its comments, shall make specific written recommendations as to what measures are necessary to make the Public Involvement Program plan adequate. Thereafter, the Applicant shall within 30 days consider the measures recommended by DPS and, in a final written Public Involvement Program plan filed with the Secretary, shall as to each specific measure either revise the Public Involvement Program plan to incorporate the DPS recommendation, or provide a written explanation as to why the Applicant is not incorporating the DPS recommendation.

1000.5 Pre-Application Procedures

(a) This Section applies to the required preliminary scoping statement and any stipulation setting forth an agreement on any aspect of the preliminary scoping statement and/or the methodology or scope of the studies or program of studies to be conducted in support of the application. It provides for consultation between the Applicant, the public, affected agencies, and other stakeholders.

(b) Applicants are required to consult with the public, affected agencies, and other stakeholders (providing information to and effective opportunities for input from the public, affected agencies, and other stakeholders concerning the proposal).

(c) No less than 90 days before the date on which an Applicant files an application, the Applicant shall file an electronic copy and ten paper copies of a preliminary scoping statement with the Board by filing it with the Secretary at the Albany, New York Offices of the DPS and shall serve copies specifying thereon the date on or about which the preliminary scoping statement is to be filed, as follows:

(1) four paper copies on DEC at its central office and three paper copies on each affected DEC regional office;

(2) two paper copies each on the commissioner of health, the chair of the New York State Energy Research and Development Authority, and the commissioner of economic development;

(3) one paper copy each on the chief executive officer of each municipality in which any portion of such facility is to be located as proposed or in any alternative location listed;

(4) one paper copy each on Ag&Mkts, DOS, the attorney general, the department of transportation, and OPRHP;

(5) one paper copy each on a library serving the district of each member of the state legislature in whose district any portion of the facility is to be located as proposed or in any alternative location listed;

(6) one paper copy on the APA if such facility or any portion thereof as proposed or in any alternative location listed is located within the Adirondack park, as defined in subdivision one of section 9-0101 of the ECL;

(7) one electronic copy on the public information coordinator (for placement on the DPS website); and

(8) one paper copy on the chief executive officer of any other agency or municipality that would (absent PSL Article 10) have approval authority with respect to any aspect of the proposed facility or interconnections necessary to serve the proposed facility.

(d) No less than three days before the date on which an applicant files a preliminary scoping statement, notice shall be given by the applicant to all persons residing in each municipality in which any portion of the facility is proposed to be located and in which any alternative location identified is located, and each other municipality that would (absent PSL Article 10) have

approval authority with respect to any aspect of the proposed facility, interconnections or related facilities necessary to serve the proposed facility. Notice shall be given by the publication of a summary of the preliminary scoping statement in such newspaper or newspapers, including local community and general circulation newspapers, as will serve substantially to inform the public of such preliminary scoping statement and proposal, in plain language, in English and in any other language spoken according to the most recent United States Census data available by 5,000 or more persons residing in any 5-digit Zip code postal zone in which any portion of such zone is located within the Study Area for the facility. The notice and summary of the preliminary scoping statement shall describe:

- (1) the proposed facility and its location;
- (2) the range of potential environmental and health impacts of the construction and operation of the facility and of each pollutant that will be emitted or discharged by the facility;
- (3) the application and review process;
- (4) the amount of pre-application funds available for municipal and local parties; and
- (5) shall designate a contact person, with telephone number, e-mail address and mailing address, from whom information will be available on a going-forward basis as well as contact information for the public information coordinator and DPS website.

The notice and summary of the preliminary scoping statement shall also include a statement advising the public how and where persons wishing to receive all notices concerning the proposed facility can file a request with the Secretary to subscribe to receive such notices, including but not limited to notices regarding any proposed pre-application stipulations, and explaining how to utilize the DPS website to access electronic documents concerning the proposed facility.

(e) No less than three days before the date on which an applicant files a preliminary scoping statement, the applicant shall also serve a copy of the notice/summary of the preliminary scoping statement upon (1) each member of the state legislature in whose district any portion of such facility is proposed to be located or in which any alternative location identified is located, or in which any interconnections or related facilities necessary to serve the proposed facility are proposed to be located; (2) in New York City, upon the Borough President of any affected borough, and upon the Community Board of any affected areas served by a Community Board; and (3) persons who have filed a statement with the secretary within the past twelve months that they wish to receive all such notices concerning proposed or alternate facilities for a particular area or municipality.

(f) The filing of the preliminary scoping statement with the Secretary shall be accompanied by proof of (a) service of the required copies of the preliminary scoping statement on the persons and entities required to be served enumerated above; (b) service of the required notice of preliminary scoping statement on the persons and entities required to be served enumerated above; and (c) proof of publication of the required notice of preliminary scoping statement.

(g) Within 21 days after the filing of the preliminary scoping statement, any

person, agency or municipality may submit comments on the preliminary scoping statement by serving such comments on the applicant and filing a copy with the secretary. Within 21 days after the closing of the comment period, the applicant shall prepare a summary of the material comments and its reply thereto, and file and serve its summary of comments and its reply in the same manner as it files and serves the preliminary scoping statement pursuant to Subdivision (c) of this section.

(h) Upon the filing of a preliminary scoping statement, DPS shall designate a presiding examiner. DPS may also designate additional hearing examiners to assist the presiding examiner in all duties of the presiding examiner.

(i) The presiding examiner shall, among other duties, mediate any issue(s) relating to any aspect of the preliminary scoping statement and the methodology or scope of any study or program of studies concerning which agreement has not been reached and receive any stipulation setting forth any agreement that is reached. If the presiding examiner determines that any language other than English not captured by subdivision (d) of this section is spoken by a significant population of persons residing in close proximity to the proposed facility, alternative locations, interconnections and related facilities and that notice in such additional languages is warranted under the circumstances, the presiding examiner may require the applicant to publish the notice and summary of the preliminary scoping statement in such additional languages. The presiding examiner shall, within no less than 22 days but no more than 60 days of the filing of a preliminary scoping statement, convene a meeting of interested parties in order to initiate the stipulation process.

(j) After the presiding examiner has determined that funds to assure early and effective public involvement have been allocated to municipal and local parties, the applicant may commence stipulations consultations and seek agreement by stipulation with any interested person, agency or municipality including, but not limited to, the staff of DPS, DEC, and DOH, as appropriate, as to any aspect of the preliminary scoping statement and the methodology or scope of any study or program of studies made or to be made to support the application. Before any such stipulation is finalized:

(1) a copy of the proposed stipulation shall be served by the applicant on the presiding examiner and on the persons who participated in the stipulations consultation process, and shall be filed and served by the applicant in the same manner as it files and serves the preliminary scoping statement pursuant to Subdivision (c) of this section;

(2) the applicant shall serve a copy of a notice it has prepared summarizing the contents of the proposed stipulation upon:

(i) each member of the state legislature in whose district any portion of such facility is proposed to be located or in which any alternative location identified is located, or in which any interconnections or related facilities necessary to serve the proposed facility are proposed to be located; and

(ii) persons who have filed a statement with the secretary within the past twelve months that they wish to receive all such notices concerning facilities in the area in which any portion of such facility is proposed to be located or in which any alternative location identified is located, or in which any interconnections or related facilities necessary to serve the proposed facility are proposed to be

located;

(3) a copy of a proposed notice shall be prepared by the Applicant and served by the Applicant on the presiding examiner. Thereafter, the presiding examiner shall arrange for the public to be given notice and afforded a reasonable opportunity to submit comments on the stipulation before it may be executed by the interested parties.

(k) Any party that executed a pre-application stipulation may not raise objections at the hearing as to the methodology or scope of any study or program of studies performed in compliance with such stipulation. Any other party may timely raise objections at the hearing as to the methodology or scope of any study or program of studies performed in compliance with such stipulation.

(l) The preliminary scoping statement shall contain:

(1) as much information as is reasonably available concerning the proposed facility, generally in the form (though in less detail) that it will appear in the application;

(2) a preliminary scope of an environmental impact analysis containing a brief discussion, on the basis of reasonably available information, of the following items:

(i) a brief description of the proposed facility and its environmental setting;

(ii) potentially significant adverse environmental and health impacts resulting from the construction and operation of the proposed facility including also an identification of particular aspects of the environmental setting that may be affected, including any material impacts or effects identified in consultations by the public, affected agencies, and other stakeholders, and a responsive analysis by the Applicant as to those issues identified in consultations;

(iii) the extent and quality of information needed for the application to adequately address and evaluate each potentially significant adverse environmental and health impact, including existing and new information where required, and the methodologies and procedures for obtaining the new information;

(iv) for proposed wind-powered facilities, proposed or on-going studies during pre-construction activities and a proposed period of post-construction operations monitoring for potential impacts to avian and bat species;

(v) a description of how the applicant proposes to avoid adverse impacts to the environment and health;

(vi) for those adverse environmental and health impacts that cannot be reasonably avoided, an identification of measures proposed to mitigate such impacts;

(vii) where it is proposed to use petroleum or other back-up fuel for generating electricity, a discussion and/or study of the sufficiency of the proposed on-site fuel storage capacity and supply;

(viii) a description and evaluation of reasonable and available alternative locations for the proposed facility, including a description of the comparative advantages and disadvantages of the proposed and alternative locations, except that a private facility applicant may limit its description and evaluation of alternative locations to parcels owned by, or under option to, such private facility applicant or its affiliates;

(ix) If the proposed facility affects any land or water use or natural resource of the coastal area and federal authorization or funding is necessary, a preliminary analysis of the consistency of the proposed facility with the enforceable policies of the New York State coastal management program or, where the action is in an approved local waterfront revitalization program area, with the local program;

(x) a statement of the reasons why the primary proposed location and source, taking into account the potentially significant and adverse environmental impacts, is best suited, among the alternatives, including a "no action" alternative, to promote public health and welfare, including the recreational and other concurrent uses that the site may serve, except that a private facility applicant may limit its description and evaluation of alternative locations to parcels owned by, or under option to, such private facility applicant or its affiliates and its description and evaluation of alternative sources to those that are reasonable alternatives to the proposed facility that are feasible considering the objectives and capabilities of the sponsor;

(xi) a preliminary identification of the demographic, economic and physical attributes of the community in which the facility is proposed to be located and in which any alternative location identified is located, and a preliminary environmental justice evaluation of significant and adverse disproportionate environmental impacts of the proposed facility and any alternative facility identified that would result from construction and operation considering, among other things, the cumulative impact of existing sources of emissions of air pollutants and the projected emission of air pollutants from the proposed or alternative facility in a manner that is in accordance with any requirements for the contents of an Article 10 preliminary scoping statement contained in 6 NYCRR Part 487 promulgated by the DEC for the analysis of environmental justice issues; and

(xii) an identification of any other material issues raised by the public and affected agencies during any consultation and the response of the applicant to those issues.

(3) an identification of all other state and federal permits, certifications, or other authorizations needed for construction, operation or maintenance of the proposed facility;

(4) a list and description of all state laws and regulations issued thereunder applicable to the construction, operation or maintenance of the proposed facility and a statement demonstrating an ability to comply;

(5) a list and description of all local laws, and regulations issued thereunder, applicable to the construction, operation, or maintenance of the proposed facility and a statement either providing a preliminary assessment of an ability to comply or indicating specific provisions that the applicant will be requesting the Board to elect not to apply, in whole or in part, and

an explanation as to why the Board should elect not to apply the specific provisions as unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality;

(6) a description of the applicant, its formation, status, structure, holdings, affiliate relationships, powers (including whether it has or will seek to obtain the power of eminent domain, either directly or indirectly), franchises and consents;

(7) a description of the applicant's property rights and interests or those it proposes to acquire to all lands of the proposed facility and any private or public lands or private or public streets, highways or rights-of-way crossed by any interconnections necessary to serve the facility such as, but not limited to, electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines; and

(8) any other information that the Applicant may deem to be relevant.

1000.6 Filing and Service of an Application

(a) The Applicant shall file an electronic copy and ten paper copies of the application with the Board by filing it with the Secretary at the Albany, New York Offices of the DPS and shall serve copies specifying thereon the date on or about which the application is to be filed, as follows:

(1) four paper copies on DEC at its central office and three paper copies on each affected DEC regional office;

(2) two paper copies each on the commissioner of health; the chair of the New York State Energy Research and Development Authority, and the commissioner of economic development;

(3) one paper copy each on the chief executive officer of each municipality in which any portion of such facility is to be located as proposed or in any alternative location listed, and in New York City, upon the Borough President of any affected borough, and upon the Community Board of any affected areas served by a Community Board;

(4) one paper copy each on the Ag&Mkts, DOS, the attorney general, the department of transportation, and OPRHP;

(5) one paper copy each on a library serving the district of each member of the state legislature in whose district any portion of the facility is to be located as proposed or in any alternative location listed;

(6) one paper copy on the APA if such facility or any portion thereof as proposed or in any alternative location listed is located within the Adirondack park, as defined in subdivision one of section 9-0101 of the ECL;

(7) one electronic copy on the public information coordinator (for placement on the DPS website); and

(8) one paper copy on the chief executive officer of any other agency or municipality that would (absent PSL Article 10) have approval authority with respect to any aspect of the proposed facility or interconnections or related facilities necessary to serve the proposed facility.

(b) At the beginning of each section of the application, the applicant shall cite the applicable Section of Part 1001 or 1002 of this Subchapter that is addressed.

(c) The application shall be accompanied by:

(1) the testimony of each expert witness whom the applicant intends to offer at the hearing, or panels of witnesses) required by PSL Section 165, which testimony shall include the qualifications of the witness or panel and specify any portion of the application for which such witness or panel was responsible or supports;

(2) an affidavit of service showing that a copy of the application and accompanying documents were served on all those required to be served;

(3) a copy of the notice required pursuant to Section 1000.7(a) of this part;

(4) any appropriate motion; and

(5) a statement of the names, addresses, telephone numbers and E-mail addresses of the applicant and its attorney or other representative.

1000.7 Publication and Content of Notices

(a) Publication of required notices shall be satisfied by publication both in the newspaper(s) designated for publication of official notices of each municipality in which the proposed or any alternative location site required to be described in the application is located, and in the newspaper of largest circulation in the county(ies) in which the proposed or any such alternative location site is located, except that in the case of an amendment or transfer of a Certificate, the appropriate site is that of the authorized facility. If the notice is intended to fulfill notice requirements for permits to be issued by the DEC pursuant to Federal recognition of State authority, or pursuant to federally delegated or approved authority, in accordance with the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, and permits pursuant to Section 15-1503, Title 9 of Article 27, and Articles 17 and 19 of the ECL, DEC and the DEC regulations should be consulted for additional requirements.

(b) No less than three days before the date on which an applicant files the application, the applicant shall provide notice to:

(1) all persons residing in each municipality in which any portion of such facility is proposed to be located, and in which any alternative location identified is located, and each other municipality that would (absent PSL Article 10) have approval authority with respect to any aspect of the proposed facility, interconnections or related facilities necessary to serve the proposed facility, by the publication of a summary of the application, and the date on or about which it will be filed, in such newspaper or newspapers, including local community and general circulation newspapers, as will serve substantially to inform the public of such application, in plain language, in English and in any other language spoken according to United States Census data by 5,000 or more persons residing in any 5-digit Zip code postal zone in which any portion of such zone is located within the Study Area for the facility.

(2) each member of the state legislature in whose district any portion of the facility is to be located as proposed or in any alternative location listed; and

(3) persons who have filed a statement with the secretary within the past twelve months that they wish to receive all such notices concerning facilities in the area in which the facility is to be located as proposed or in any alternative location listed.

(c) If the presiding examiner determines that any language other than English not captured by paragraph (1) of subdivision (b) of this section is spoken by a significant population of persons residing in close proximity to the proposed facility, alternative locations, interconnections or related facilities and that notice in such additional languages is warranted under the circumstances, the presiding examiner may require the applicant to publish the notice and summary of the application in such additional languages.

(d) Notices shall be:

(1) in display format; and

(2) in no smaller than 10 point type or, if only smaller type is available, in the largest type that is available.

(e) The notice(s) shall include:

(1) a summary of the application describing the proposed facility, its location, and the range of potential environmental and health impacts of the construction and operation of the facility and of each pollutant that will be emitted or discharged by the facility;

(2) a map(s) at a size and level of detail appropriate to substantially inform the public of the location of the proposed site and any alternative location sites listed as reasonable and available in the application, unless the publishing newspaper determines that inclusion of a map is infeasible;

(3) the date on or about which the application will be filed;

(4) a statement that a copy of the application will be served on the Chief Executive Officer of each municipality in which any portion of a site required to be shown pursuant to Paragraph (2) hereof is located;

(5) a statement that the application, when filed, may be examined during normal business hours at the Offices of the DPS in Albany, New York, giving the address thereof, and at specified public locations in the vicinity of the proposed site;

(6) text explaining the application and review process including the funding process for municipal and local parties and the availability of funds for municipal and local parties;

(7) text informing the public how and where persons wishing to receive all notices concerning the proposed facility can file a statement with the secretary to subscribe to receive such notices;

(8) text explaining how to access from the DPS website electronic documents concerning the Board's review of the proposed facility;

(9) except where the applicant is a private applicant, a statement that PSL Article 10 permits the Board to authorize a location for the facility different from the location(s) described in the notice;

(10) the names, addresses, telephone numbers and E-mail addresses of a representative of the applicant and contact information for the public information coordinator and DPS website;

(11) if a water quality certification pursuant to Section 401 of the Federal Clean Water Act will be requested from the Board as part of the application, a brief explanation of the reasons for such request; and

(12) If a coastal consistency concurrence is required by Section 307 of the federal Coastal Zone Management Act, a brief explanation of the status of the applications for federal authorization and a DOS consistency determination.

(f) If an alternative to the applicant's proposal that was not listed as reasonable and available in the application is subsequently proposed by any party, the applicant shall give prompt notice of such alternative, unless the presiding examiner rules that such alternative is not reasonable and

available or that further notice is unnecessary to substantially inform the public of the location of the proposed alternative. The notice shall include text and a map(s) at a size and level of detail to substantially inform the public of the alternative (unless the publishing newspaper determines that inclusion of a map is infeasible) and the name, address, telephone number and the E-mail address of a representative of the party proposing such alternative from whom further information can be obtained.

(g) At any significant point in the certification process, the presiding examiner may require the applicant to publish a notice, as described in this Section, containing appropriate information, such as:

(1) a brief description of the significant events in the certification proceeding that have occurred and those that are expected to occur;

(2) a statement that the record of the proceeding may be examined during normal business hours at the Offices of the DPS in Albany, New York, giving the address thereof, and, where the presiding examiner has so required, at specified public locations in the vicinity of the proposed site; and

(3) a statement that any person may file comments for the Board's consideration.

(h) The Board, Secretary or Presiding Examiner may require an applicant to publish a notice of a public hearing or oral argument in such newspaper(s) and at such times as will serve to inform the general public of that hearing or oral argument.

(i) The applicant shall promptly notify the Presiding Examiner or the Secretary upon discovery of any inadvertent failure of publication or service of a notice or application under this Subchapter. The Presiding Examiner or the Secretary shall take such action as may be necessary to ensure fair treatment of a person aggrieved by such inadvertent failure.

(j) If the Presiding Examiner determines that any notice required in this Section was not sufficient to substantially inform potentially affected persons, the Presiding Examiner shall specify any additional steps that are necessary.

(k) Prior to the publication of any notice required by the Board, the Presiding Examiner, the Secretary, or these regulations, the applicant may submit a copy of its proposed notice to the Secretary or to the Presiding Examiner for approval.

(l) The applicant shall promptly file with the Secretary proof of the publication of any required notice.

1000.8 Water Quality and Coastal Certification Procedures

(a) In accordance with Section 401 of the Clean Water Act, if construction or operation of a proposed major electric generating facility, its interconnections, or related facilities would result in any discharge into the navigable water of the United States and require a federal license or permit, the applicant is required to request and obtain a Water Quality Certification indicating that the proposed activity will be in compliance with water quality standards.

- (1) Generally, the request for the Water Quality Certification shall be submitted accompanying the Article 10 application. However, in the event the related application for a federal license or permit has not been submitted on or before the date of submission of the Article 10 application, the request for the water quality certification shall be submitted to the Board when an application for a Federal license or permit is made. If the request does not accompany the Article 10 application, the applicant shall provide a statement describing its plan for making such a request, including a timetable.
- (2) A copy of all pertinent state and federal permit applications related to the Water Quality Certification shall be submitted along with the request for the Water Quality Certification.
- (3) In support of any request for a Water Quality Certification, an applicant shall demonstrate compliance with the provisions referenced in 6 NYCRR Section 608.9. A request for a Water Quality Certification will not be considered valid until the applicant files with the Secretary a copy of its related federal permit application.
- (4) Any applicant that applies for a federal license or permit that will require a Water Quality Certification shall provide the pertinent contact information for the district engineer of the U.S. Army Corps of Engineers or other federal lead agency to use in contacting the Board as to the applicable time period or any other issue.
- (5) When an applicant has requested both a Water Quality Certification from the Board and permits from the U.S. Army Corps of Engineers, the Board or a designee will provide information to the district engineer or other federal lead agency as to whether circumstances require a period of time longer than sixty days for the certifying agency to act on the request for certification in order to avoid a waiver. The Board shall issue, waive or deny such Certification within 60 days after the filing of the application, or other document in which the request is made, unless any federal agency from which the applicant or certificate holder has sought a license or permit to conduct any activity that may result in any discharge into the navigable waters has:
 - (i) advised the Board that such Certification must either be issued or denied within a specified shorter period or be waived; or
 - (ii) determined that such Certification may either be issued or denied within a specified longer period, not to exceed one year (based on information provided by a designee of the Board), or be waived.
- (6) If it appears that the review of a request for a Water Quality Certification cannot be completed within the applicable period

identified in subdivision (f) of this section, the Board or a designee will deny the Certification without prejudice to a later request for Certification.

- (7) The DPS Director of the Office of Energy Efficiency and the Environment is designated to act as the designee referenced in this section.
- (8) If the request for a Water Quality Certification does not accompany an application, it shall be filed and served and notice of it shall be given in the same manner as an application pursuant to sections 1000.6 and 1000.7 of this subchapter. If the request for a Water Quality Certification is filed after the issuance of the Article 10 Certificate, and such request proposes changes of a nature that litigated issues would need to be reopened, such request shall be treated as a request also for a revision of the Article 10 Certificate.

(b) If the proposed facility affects any land or water use or natural resource of the coastal area and federal authorization or funding is necessary, the applicant shall, contemporaneously with submitting the application, submit to DOS copies of the application, the applicant's coastal consistency certification and necessary data and information sufficient to initiate a review by DOS pursuant to the federal Coastal Zone Management Act and its regulations.

- (1) The hearing shall be used to elicit, and the hearing record in the proceedings shall provide, information on which the Secretary of State may base the determination of whether or not to concur with the applicant's coastal consistency certification.
- (2) The Secretary of State may use procedures established in the Article 10 proceeding to the extent that they are consistent with the federal Coastal Zone Management Act and its implementing regulations to facilitate the required concurrence. The Secretary of State is encouraged to provide such determination to the Board prior to its decision whether or not to issue a Certificate.

(c) If the proposed facility affects any land or water use or natural resource of the coastal areas and inland waterways, the Board invites DOS, pursuant to Article 42 of the Executive Law, to review, evaluate and issue recommendations and opinions to the Board concerning the potential for the proposal to affect such coastal areas and inland waterways, and policies related thereto.

1000.9 Additional Information

(a) Upon the request or direction of the Board, the Chairperson of the Board or the presiding examiner, the applicant shall submit such additional information as may be reasonably required to reach a decision on any specified issue.

(b) Upon the motion of any party, the applicant may be required to provide additional information relevant and material to the proceeding. A party making a motion under this subdivision shall:

- (1) clearly state the additional information sought;
- (2) establish its relevance and materiality;
- (3) to the best of its ability, demonstrate that the information can be obtained in a timely manner consistent with the need to conduct the proceeding in an expeditious fashion; and
- (4) set forth any other reasons why such information should be supplied by the applicant.

1000.10 Fund for Municipal and Local Parties(a) Pre-Application Provisions

- (1) Each pre-application preliminary scoping statement shall be accompanied by an intervenor fee in an amount equal to \$350.00 for each 1,000 kilowatts of generating capacity of the subject facility, but no more than \$200,000.00.
- (2) All intervenor fees submitted with each preliminary scoping statement and application, as well as any intervenor fee required to be submitted when a pre-application scoping statement or application is amended, shall be deposited in an intervenor account, established pursuant to Section 97-kkkk of the State Finance Law.
- (3) Following the filing of a preliminary scoping statement, the Presiding Examiner or the Secretary shall issue a notice of availability of pre-application intervenor funds providing a schedule and related information describing how interested members of the public may apply for pre-application funds. Requests for pre-application funds shall be submitted to the presiding examiner not later than 30 days after the issuance of the notice of the availability of pre-application intervenor funds.
- (4) An initial pre-application meeting to consider fund requests shall be convened within no less than 45 days but no more than 60 days of the filing of a preliminary scoping statement. At any pre-application meeting that may be held to consider fund requests, participants should be prepared to discuss their funding applications and the award of funds. Participants are encouraged to consider the consolidation of requests with similar funding proposals of other participants.
- (5) If the pre-application preliminary scoping statement is substantially modified or revised subsequent to its filing, the Board may require an additional pre-application intervenor fee in an amount not to exceed \$25,000.00. In such circumstances, the presiding examiner may make awards of the additional funds, on an equitable basis, in relation to the potential for such awards to make an effective contribution to review of the preliminary scoping statement, thereby providing early and effective public involvement.
- (6) Each request for pre-application funds shall be filed with the Secretary and submitted to the presiding examiner, with copies to other interested persons, as identified by the Secretary or presiding examiner.
- (7) The presiding examiner shall reserve at least 50% of the pre-application funds for potential awards to municipalities.
- (8) Following receipt of initial requests for pre-application funds, the presiding examiner shall expeditiously make an initial award of pre-application funds, and thereafter may

make additional awards of pre-application funds, in relation to the potential for such awards to make an effective contribution to review of the preliminary scoping statement, thereby encouraging early and effective public involvement.

- (9) The presiding examiner shall award funds on an equitable basis to participants during the pre-application phase whose requests comply with the provisions of this section, provided use of the funds will make an effective contribution to review of the preliminary scoping statement, and thereby provide early and effective public involvement.
- (10) Subject to the availability of funds, the presiding examiner may fix additional dates for submission of fund requests.
- (11) On a quarterly basis, unless otherwise required by the presiding examiner, any person receiving an award of funds shall submit to the presiding examiner, and file with the Secretary, a report:
 - (i) detailing an accounting of the monies that have been spent; and
 - (ii) showing:
 - (a) the results of any studies and a description of any activities conducted using such funds;
 - (b) whether the purpose for which the funds were awarded has been achieved; or
 - (c) if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being achieved and why further expenditures are warranted.
- (12) All disbursements from the pre-application intervenor account to any person shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed.

(b) Application Provisions

- (1) Each application shall be accompanied by an intervenor fee in an amount:
 - (i) equal to \$1,000 for each 1,000 kilowatts of capacity, but no more than \$400,000.00, and
 - (ii) for facilities that will require storage or disposal of fuel waste byproduct, an additional intervenor fee of \$500.00 for each 1,000 kilowatts of capacity, but no more than an additional \$50,000.00, shall be deposited in the intervenor account.

- (2) If an amendment of an application is determined by the Chairperson to be a revision as defined in this Part, the application will require substantial additional scrutiny and the applicant shall submit an additional intervenor fee, in the amount of \$75,000.00.
- (3) Following an applicant's publication of notice of filing a PSL Article 10 application, the presiding examiner or secretary shall issue a notice of availability of application intervenor funds providing a schedule and related information describing how municipal and local parties may apply for application funds. Requests for application funds shall be submitted to the presiding examiner within 30 days after the issuance of the notice of the availability of application intervenor funds.
- (4) The presiding examiner shall award funds during the application phase on an equitable basis to municipal and local parties whose requests comply with the provisions of this section, so long as use of the funds will contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility and will facilitate broad participation in the proceeding.
- (5) The presiding examiner shall reserve at least 50% of the intervenor funds for potential awards to municipalities.
- (6) Any municipality or local party (except an applicant) may request funds from the intervenor account to defray expenses for expert witness, consultant, administrative or legal fees (other than in connection with judicial review).
- (7) Each request for application funds shall be filed with the Secretary and submitted to the presiding examiner, with copies provided to all other parties.
- (8) At any pre-hearing conference that may be held to consider fund requests, the parties should be prepared to discuss their funding applications and the award of funds. Parties are encouraged to consider the consolidation of requests with similar funding proposals of other participants.
- (9) Subject to the availability of funds, the presiding examiner may fix additional dates for submission of fund requests.
- (10) On a quarterly basis, unless otherwise required by the presiding examiner, any party receiving an award of funds shall submit to the presiding examiner and file with the Secretary a report:
 - (i) detailing an accounting of the monies that have been spent; and
 - (ii) showing:
 - (a) the results of any studies and a description of any activities conducted using such funds;

- (b) whether the purpose for which the funds were awarded has been achieved; if the purpose for which the funds were awarded has not been achieved; whether reasonable progress toward the goal for which the funds were awarded is being achieved; and why further expenditures are warranted.

(11) Disbursement of Funds

- (i) All disbursements from the application intervenor account to any party shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed.
- (ii) All vouchers must be submitted for payment not later than six months after any withdrawal of an application or the Board's final decision on an application (including a decision on rehearing, if applicable).
- (iii) Following withdrawal or final Board decision on an application, any funds that have not been disbursed shall be returned to the applicant.

(c) General Provisions

(1) Each request for funds shall contain:

- (i) a statement of the number of persons and the nature of the interests the requesting party represents;
- (ii) a statement of the availability of funds from the resources of the requesting party and from other sources and of the efforts that have been made to obtain such funds;
- (iii) the amount of funds being sought;
- (iv) to the extent possible, the name and qualifications of each expert to be employed, or at a minimum, a statement of the necessary professional qualifications;
- (v) if known, the name of any other interested person or entity who may, or is intending to, employ such expert;
- (vi) a detailed statement of the services to be provided by expert witnesses, consultants, attorneys, or others (and the basis for the fees requested), including hourly fee, wage rate, and expenses, specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility;
- (vii) if a study is to be performed, a description of the purpose, methodology and timing of the study, including a statement of the rationale supporting the methodology and timing proposed, including a detailed justification for

any proposed methodology that is new or original explaining why pre-existing methodologies are insufficient or inappropriate;

- (viii) a statement as to the result of any effort made to encourage the applicant to perform any proposed studies or evaluations and the reason it is believed that an independent study is necessary; and
 - (ix) a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person.
- (2) If the matter has not been assigned to a presiding examiner, the Secretary shall act as an interim examiner until a presiding examiner has been assigned to the matter.

1000.11 Assistance with Documents

For good cause shown to the presiding examiner (or, if none, the Secretary), the Board will reproduce and serve documents filed by non-applicant municipal and local parties and provide such parties access to transcripts.

1000.12 Evidence and Proof

(a) Evidence

(1) The presiding examiner shall require parties proposing to litigate issues in the proceeding to provide a list of specific issues they propose to litigate, in advance of or at an issues conference, along with a sufficient explanation of why litigation is necessary for each such issue. All issues to be litigated must be relevant. Issues and evidence are relevant if they assist the Board in making the required findings pursuant to PSL Section 168(2) and the required determinations pursuant to PSL Section 168(3) including the considerations required by PSL Section 168(4).

(2) All evidence submitted must be relevant and material. Evidence is material if it has the reasonable potential to affect the outcome of the Board's findings or determinations under PSL Section 168.

(3) Although relevant, evidence may be excluded if its value as proof is substantially outweighed by a potential for unfair prejudice, confusion of the issues, undue delay, or it is needlessly repetitious or duplicative. The presiding examiner may also preclude irrelevant, repetitive, redundant or immaterial evidence and irrelevant or unduly repetitious cross-examination.

(4) All rules of privilege will be observed.

(5) Other rules of evidence need not be strictly applied. Hearsay evidence may be admitted if a reasonable degree of reliability is shown.

(6) Where a part of a document is offered as evidence by one party, any party may offer the entire document as evidence or the presiding examiner may require the entire document to be submitted as evidence.

(7) Any party may move that evidence, including records and documents, in the possession of the DPS, or other public records, be received in evidence in the form of copies or excerpts or by incorporation by reference.

(8) Records or documents incorporated by reference will be available for examination by the parties before being received in evidence.

(9) Briefs and other documents that attempt to persuade through argument are not evidence and may not be entered into the evidentiary record of a proceeding.

(10) Any party may move that official notice be taken of:

(i) facts of which judicial notice could be taken pursuant to Rule 4511 of the Civil Practice Law and Rules; and

(ii) other facts within the specialized knowledge of the Board.

(11) When official notice is taken of a material fact of which judicial notice could not be taken and that does not appear in the evidence in the record, every party will be given notice thereof and will, on timely request, be afforded an opportunity to dispute such fact or its materiality prior to a decision granting or denying a certificate.

(b) Burden of proof

(1) The applicant has the burden of proof to demonstrate that all findings and determinations required by Section 168 of the PSL can be made by the Board, and after the Board's jurisdiction has ceased, that all determinations required by the Commission may be made.

(2) The burden of proof to sustain a motion is on the party making the motion.

(c) Standard of proof.

Whenever factual matters are involved, the party bearing the burden of proof must sustain that burden by a preponderance of the evidence unless a higher standard has been established by statute or regulation.

1000.13 Amendment of an Application

(a) An amendment of an application warrants substantial additional scrutiny within the meaning of PSL Section 164(6)(a) if it is a revision.

(b) If an amendment of an application is determined by the Chairperson to be a revision as defined in this Part, the application will require substantial additional scrutiny and the applicant shall submit an additional intervenor fee, in the amount of \$75,000.00. Such additional fee shall be awarded and disbursed substantially in accordance with section 1000.10 of this Part.

1000.14 Dismissal of an Application

Whenever, in the absence of any genuine issue as to any material fact, it appears that the statutory requirements for a certificate cannot be met, the Board may dismiss the application seeking such certificate and terminate the proceeding in question upon the motion of any party or upon its own motion.

1000.15 Acceptance of a Certificate

(a) Upon issuance of a final decision by a Board granting a Certificate, an applicant shall, within 30 days after the issuance of such decision, file either a written unqualified acceptance of the Certificate or a petition for rehearing, but not both.

(b) If a petition for rehearing has been granted, an applicant shall, within 30 days after the issuance of the decision on rehearing, file either a written unqualified acceptance of the certificate (as modified by such decision) or a petition for judicial review, but not both.

(c) If judicial review has been obtained, an applicant shall file a written unqualified acceptance of the certificate within 30 days after either:

(1) the expiration of the time for judicial review of the court order:

(i) enforcing the Board's decision; or

(ii) modifying the Board's decision and enforcing it as so modified; or

(2) any final decision by a Board upon remand for further specific evidence or findings.

(d) A certificate will be vacated unless an applicant has filed a written acceptance in accordance with subdivision (a), (b) or (c) of this section, as the case may be.

(e) Upon the filing of a written acceptance of a certificate following a final decision on an application, rehearing, judicial review or remittal, as the case may be, a Board's jurisdiction with respect to such certificate will cease provided, however, that the permanent Board will retain jurisdiction with respect to the amendment, suspension or revocation of the certificate.

1000.16 Amendment, Revocation and Suspension of a Certificate

(a) To determine whether a proposed amendment is a revision:

(1) the criteria for determining significance set forth in 6 NYCRR 617.7(c) will apply; and

(2) as appropriate, the staffs of the DPS, the DEC and the DOH shall be consulted.

(b) A certificate holder seeking the amendment of a certificate shall file with the Secretary an electronic copy and ten paper copies of a petition for approval of the amendment of the certificate, together with the accompanying documents described in this subdivision. The certificate holder shall contemporaneously serve four paper copies of the petition and accompanying documents on DEC at its central office and three paper copies on each affected DEC regional office and two paper copies each on the commissioner of health, the chair of the New York State Energy Research and Development Authority, and the commissioner of economic development. The following requirements apply:

(1) The petition shall describe the amendments proposed and the relevant engineering design, performance or operational changes proposed, with supporting documentation to describe the nature of the changes caused by or related to the amendment.

(2) To the extent appropriate, the certificate holder shall submit the data and information required by this Subchapter that would otherwise be necessary to support an application for a certificate.

(3) Notice of such petition shall be given to, and copies of such petition shall be served on, any person, municipality or agency entitled by law to be given notice, or to receive a copy, of the application for the original certificate;

(4) A copy of such petition shall also be served on any other party to the proceeding in which the original certificate was granted and all property-owners affected by the proposed amendment; and

(5) The notice shall:

(i) briefly describe the proposed amendment and state the reasons therefor;

(ii) give the name, address, telephone number and E-mail address of an employee or representative of the petitioner/applicant from whom further information, including a copy of the petition, may be obtained;

(iii) state that those, in addition to parties to the original certification proceeding, who wish to participate in the proceeding on the amendment must so advise the Secretary within ten days after the giving of such notice; and

(iv) state that any comments on the petition must be received by the Secretary no later than 30 days after the date on which the notice was given.

(6) The petition shall be accompanied by an affidavit of publication and service showing that the required publication and service of documents was accomplished.

(c) If the Secretary determines that a proposed amendment is a revision as defined in this Part, the Board will hold a hearing following the procedures set forth in this Subchapter for applications.

(d) Any commenting party shall file one electronic copy of its comments with the Secretary.

(e) The Permanent Board may, following the procedures in subdivisions (f) and (g) of this section, amend or suspend a certificate and may, at any time before the date on which the final compliance filing in connection with the authorized facility is deemed approved, revoke a certificate on grounds including, but not limited to:

(1) discovery of materially false or inaccurate statements in the application or supporting documents;

(2) noncompliance with a material term or condition of the certificate or with a provision of the PSL or of this Subchapter; or

(3) discovery of material information that the applicant withheld or misrepresented at the time of the certification proceeding.

(f) If the Permanent Board on its own motion is considering the amendment, revocation or suspension of a certificate, it will, in an Order to Show Cause, set forth the alleged facts that appear to warrant the intended action. The time within which responses may be filed shall not exceed 30 days after the issuance of such Order. Such Order will be served on all parties to the certification proceeding. Any responding party shall, within the time specified in such order:

(1) file an electronic copy of its comments with the Secretary;

(2) serve a copy of its comments on all parties to the certification proceeding; and

(3) file with the Secretary an affidavit showing that service was made.

(g) Notwithstanding the provisions of subdivision (f):

(1) the permanent Board will hold an evidentiary hearing after issuing the Order to Show Cause, if a revision, suspension or revocation is being considered; and

(2) as permitted by Section 401(3) of the State Administrative Procedure Act, the Permanent Board may summarily suspend a Certificate if it finds that public health, safety, or welfare imperatively requires emergency action, and it incorporates such finding in an Order. The summary suspension will be effective on the date specified in such Order or upon service of a certified copy of such Order on the certificate holder, whichever shall be later, pending proceedings for revocation or other action, which proceedings will be promptly instituted and determined.

(h) Upon the complaint of any interested person, DPS shall investigate such complaint and, if the material facts and other available evidence indicate that action may be warranted, forward the complaint with its assessment to the permanent Board for action under subdivisions (f) and (g) of this Section.

1000.17 Transfer of a Certificate

(a) A certificate may only be transferred to a person who agrees to comply with the terms, limitations, or conditions contained therein and in every subsequent Order issued thereunder. A change in the ownership of a certificate holder without a transfer of the responsibility to comply with the terms, limitations, and conditions contained in the certificate is not a transfer of the certificate that requires approval pursuant to this section; however, the certificate holder shall file written notice of any such change of ownership with the Secretary within 7 days of such change and a verified statement that the change will not adversely affect the ability of the certificate holder to comply with such terms, limitations, or conditions.

(b) A certificate holder seeking the transfer of a certificate shall file with the Secretary an electronic copy and ten paper copies of a petition for approval of the transfer of the certificate, together with the accompanying documents described in this subdivision. The certificate holder shall contemporaneously serve four paper copies of the petition and accompanying documents on DEC at its central office and three paper copies on each affected DEC regional office and two paper copies each on the commissioner of health, the chair of the New York State Energy Research and Development Authority, and the commissioner of economic development. The petition shall:

- (1) state the reasons supporting the transfer;
- (2) show that the transferee is qualified to carry out the provisions of the certificate and any Orders issued thereunder;
- (3) be verified by all parties to the proposed transfer;
- (4) if required by the Chairperson, be accompanied by a copy of any proposed transfer agreement;
- (5) be accompanied by an affidavit of service of a copy of the petition on each of the parties to the certification proceeding; and
- (6) be accompanied by an affidavit of publication of a notice concerning the petition and service of such notice on all property owners that have executed agreements to convey property rights to the applicant and all other persons, municipalities or agencies entitled by law to be given notice of, or to be served with a copy of, any application to construct a major electric generating facility, which notice shall:
 - (i) briefly describe the proposed transfer and state the reasons therefor;
 - (ii) give the name, address, telephone number and E-mail address of an employee or representative of the petitioner from whom further information, including a copy of the petition, may be obtained; and
 - (iii) state that any comments on the petition must be received by the Secretary no later than 30 days after the date on which the notice was given.

(c) If no party to the proceeding opposes such petition within the time

for filing comments, the Chairperson, after consultation with the other members of the Permanent Board, shall have exclusive jurisdiction without further notice to grant or deny the petition, grant the petition upon such terms and conditions as deemed appropriate, or conduct such further investigation as deemed necessary.

(d) If a party to the proceeding opposes such petition within the time for filing comments, the Board, or the Permanent Board after the Board's jurisdiction has ceased, shall have jurisdiction without further notice to grant or deny the petition, grant the petition upon such terms and conditions as it deems appropriate, or conduct such further investigation as it deems necessary.

1000.18 Counsel to the Board

The counsel to the Commission shall be counsel to the Board for all purposes, unless the Board determines otherwise.

PART 1001 CONTENT OF AN APPLICATION

(Statutory Authority: Public Service Law §164(1))

Sec.

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1001.1 General Requirements

(a) Each application for a certificate shall contain the exhibits described by this Part as relevant to the proposed major electric generating facility technology and site and such additional exhibits and information as the Applicant may consider relevant or as may be required by the Board or the Presiding Examiner. Exhibits that are not relevant to the particular application may be omitted.

(b) Each exhibit shall contain a title page showing:

- (1) the applicant's name;
- (2) the title of the exhibit; and
- (3) the proper designation of the exhibit.

(c) Each exhibit consisting of 10 or more pages of text shall contain a table of contents citing by page and section number or subdivision the component elements or matters contained in the exhibit.

(d) In collecting, compiling and reporting data required by this Part, the applicant shall establish a basis for a statistical comparison with data which shall subsequently be obtained under any program of post-certification monitoring.

(e) If the same information is required for more than one exhibit, it may be supplied in a single exhibit and referenced in the other exhibit(s) where it is also required.

(f) Exhibit 1 shall contain:

- (1) the name, address, telephone number, facsimile number, and E-mail address of the applicant;
- (2) the address of a website established by the applicant to disseminate information to the public regarding the application;
- (3) the name, address, telephone number, facsimile number, and E-mail address of a person provided by the applicant that the public may contact for more information regarding the application;
- (4) the name, business address, telephone number, facsimile number, and E-mail address of the principal officer of the applicant;
- (5) if the applicant desires service of documents or other correspondence upon an agent, the name, business address, telephone number, facsimile number, and E-mail address of the agent;
- (6) a brief explanation of the type of business entity that the applicant is, including its date and location of formation and the name and address of any parent entities; and
- (7) if the facility is to be owned by a corporation, a certified copy of

the charter of such corporation; if the facility is not to be owned by a corporation, a copy of the certificate or other documents of formation.

1001.2 Exhibit 2: Overview and Public Involvement

Exhibit 2 shall not exceed 15 pages of text, except that for good cause shown, the Secretary may increase the page limit. Exhibit 2 shall contain:

- (a) A brief description of the major components of the proposed facility, interconnections and related facilities.
- (b) A brief summary of the contents of the application.
- (c) A brief description of the public involvement program conducted by the applicant prior to submission of the application and an identification of significant issues raised by the public and affected agencies during such program and the response of the applicant to those issues including a summary of changes made to the proposal as a result of the public involvement program.
- (d) A brief description of the public involvement program to be conducted by the applicant after submission of the application.
- (e) A brief, clearly and concisely written overall analysis in plain language that assembles and presents relevant and material facts regarding the proposed project upon which the applicant proposes that the Board make its decision. The analysis shall be analytical and not encyclopedic and shall specifically address each required finding, determination and consideration the Board must make or consider in its decision pursuant to Section 168 of the PSL and explain why the applicant believes that the requested Certificate can be granted.

1001.3 Exhibit 3: Location of Facilities

Exhibit 3 shall contain:

Maps, drawings and explanations showing the location of the proposed major electric generating facility, all interconnections, and all ancillary features not located on the facility site such as roads, railroads, switchyards, fuel or energy storage or regulation facilities, solid waste disposal areas, waste treatment and disposal facilities, and similar facilities, in relation to municipalities (county, city, town and village) and taxing jurisdictions associated with any part of the overall development proposal. Such maps, drawings and explanations shall include:

(a) New York State Department of Transportation or USGS maps (1:24,000 topographic edition), showing:

(1) the proposed location of the major electric generating facility and any reasonable and available alternative location sites required to be identified, including electric transmission line and fuel gas transmission line interconnections that are not subject to review under Article VII of the PSL, and including ancillary features located on the facility site such as roads, railroads, switchyards, fuel or energy storage or regulation facilities, solid waste disposal areas, waste treatment and disposal facilities, and similar facilities;

(2) the proposed location of any interconnections, including all offsite electric transmission lines, fuel gas transmission lines, fuel oil transmission lines, water supply lines, wastewater lines, communications lines, steam lines, stormwater drainage lines, and appurtenances thereto, to be installed in New York State connecting to and servicing the site of a major electric generating facility that are not subject to the Commission's jurisdiction under PSL Article VII;

(3) the location of all proposed ancillary features not located on the facility site such as roads, railroads, switchyards, fuel or energy storage or regulation facilities, solid waste disposal areas, waste treatment and disposal facilities, and similar facilities, that are not subject to the Board's jurisdiction under PSL Article 10;

(4) the proposed location of any electric transmission line and fuel gas transmission line interconnections that are subject to review under Article VII of the PSL and that are not subject to the Board's jurisdiction under PSL Article 10; and

(5) A study area for the proposed facility generally related to the nature of the technology and the setting of the proposed site. In highly urbanized areas, the study area may be limited to a one-mile radius from the property boundaries of the facility site, interconnections, and alternative location sites. For large facilities or wind power facilities with components spread across a rural landscape, the study area shall include the area within a radius of at least five miles from all facility components, interconnections and related facilities and alternative location sites. For facilities in areas of significant resource concerns, the size of a study area shall be configured to address specific features or resource issues.

(b) Maps clearly showing the location of the proposed facility site, any reasonable and available alternative location sites required to be identified, the interconnections, and all ancillary features not located on the facility site in relation to municipal boundaries, taxing jurisdictions, designated neighborhoods or community districts, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.

(c) Written descriptions explaining the relation of the location of the proposed facility site, any reasonable and available alternative location sites required to be identified, the interconnections, and all ancillary features not located on the facility site to the affected municipalities, taxing jurisdictions, designated neighborhoods or community districts.

1001.4 Exhibit 4: Land Use

Exhibit 4 shall contain:

- (a) A map showing existing land uses within the study area.
- (b) A map of any existing overhead and underground major facilities for electric, gas or telecommunications transmission within the study area.
- (c) Except for wind power facilities, a map of all properties upon which any component of the major electric generating facility or the related facilities would be located, and all properties adjoining such properties, that shows the current land use, tax parcel number and owner of record of each property, and any proposed land use plans for any of these parcels. For wind power facilities, a map of all properties upon which any component of the major electric generating facility or the related facilities would be located, and all properties within 2,000 feet of such properties, that shows the current land use, tax parcel number and owner of record of each property, and any proposed land use plans for any of these parcels.
- (d) A map of existing zoning districts, and proposed zoning districts within the study area, including a description of the permitted and the prohibited uses within each zone.
- (e) A statement as to whether the municipality has an adopted comprehensive plan and whether the proposed land use is consistent with such comprehensive plan. If the municipality's comprehensive plan is posted on a website, the exhibit shall contain the address of the internet site where the plan is posted.
- (f) A map of all publicly known proposed land uses within the study area, gleaned from interviews with state and local planning officials, from the public involvement process, or from other sources.
- (g) Maps showing designated coastal areas, inland waterways and local waterfront revitalization program areas; groundwater management zones; designated agricultural districts; flood-prone areas; and critical environmental areas designated pursuant to the State Environmental Quality Review Act.
- (h) Maps showing recreational and other land uses within the study area that might be affected by the sight, sound or odor of the construction or operation of the facility, interconnections and related facilities, including Wild, Scenic and Recreational River Corridors, open space, and any known archaeological, geologic, historical or scenic area, park, designated wilderness, forest preserve lands, scenic vistas specifically indentified in the Adirondack Park State Land Master Plan, conservation easement lands, scenic byways designated by the federal or state governments, nature preserves, designated trails, and public-access fishing areas; major communication and utility uses and infrastructure; and institutional, community and municipal uses and facilities; including a summary describing the nature of the probable environmental impact of facility and interconnection construction and operation on such uses, including an identification of how such impact is avoided or, if unavoidable, minimized or mitigated. Given the provisions of §304 of the National Historic Preservation Act, 9 NYCRR §427.8, and §15 of the Public Service Law, information about the location, character, or ownership of a cultural

resource shall not be disclosed to the public, and shall only be disclosed to the parties to a proceeding pursuant to an appropriate protective order if a determination is made that disclosure may:

- (1) cause a significant invasion of privacy;
- (2) risk harm to the affected cultural resource; or
- (3) impede the use of a traditional religious site by practitioners.

(i) A qualitative assessment of the compatibility of the facility and any interconnection, including any off-site staging and storage areas, with existing, proposed and allowed land uses, and local and regional land use plans, within a 1-mile radius of the facility site and any interconnection route. The qualitative assessment shall include an evaluation of the short- and long-term effects of facility-generated noise, odor, traffic and visual impacts on the use and enjoyment of those areas for the current and planned uses. The assessment shall identify the nearby land uses of particular concern to the community, and shall address the land use impacts of the facility on residential areas, schools, civic facilities, recreational facilities, and commercial areas.

(j) A qualitative assessment of the compatibility of above-ground interconnections and related facilities with existing, potential, and proposed land uses within the study area.

(k) A qualitative assessment of the compatibility of underground interconnections and related facilities with existing, potential, and proposed land uses within 300 feet from the centerline of such interconnections or related facilities.

(l) For projects at locations within designated coastal areas, or in direct proximity of designated inland waterways, provide an analysis of conformance with relevant provisions of the Coastal Zone Management Act, and proposed or adopted plans for inland waterways and local waterfront revitalization areas.

(m) Aerial photographs of all properties within the study area of such scale and detail to enable discrimination and identification of all natural and cultural features.

(n) Overlays on aerial photographs which clearly identify the facility site and any interconnection route, the limits of proposed clearing or other changes to the topography, vegetation or man-made structures, and the location of access and maintenance routes.

(o) All aerial photographs shall reflect the current situation. All aerial photographs shall indicate the photographer and the date photographs were taken.

(p) A description of community character in the area of the proposed facility, an analysis of impacts of facility construction and operation on community character, and identification of avoidance or mitigation measures that will minimize adverse impacts on community character. For the purposes of this paragraph, community character includes defining features and interactions of the natural, built and social environment, and how those features are used and appreciated in the community.

1001.5 Exhibit 5: Electric System Effects

Exhibit 5 shall contain:

(a) A system reliability impact study, performed in accordance with the open access transmission tariff of the New York Independent System Operator, Inc. (NYISO) approved by the Federal Energy Regulatory Commission, that shows expected flows on the system under normal, peak and emergency conditions and effects on stability of the interconnected system, including the necessary technical analyses (Thermal, Voltage, Short Circuit and Stability) to evaluate the impact of the interconnection. The study shall include the new electric interconnection between the facility and the point of interconnection, as well as any other system upgrades required.

(b) An evaluation of the potential significant impacts of the facility and its interconnection to transmission system reliability at a level of detail that reflects the magnitude of the impacts.

(c) A discussion of the benefits and detriments of the facility on ancillary services and the electric transmission system, including impacts associated with reinforcements and new construction necessary as a result of the facility.

(d) An analysis of any reasonable alternatives that would mitigate adverse reliability impacts and maintain voltage, stability, thermal limitations, and short circuit capability at adequate levels.

(e) An estimate of the increase or decrease in the total transfer capacity across each affected interface, and if a forecasted reduction in transfer capability across affected interfaces violates reliability requirements, an evaluation of reasonable corrective measures that could be employed to mitigate or eliminate said reduction.

(f) A description of criteria, plans, and protocols for generation and ancillary facilities design, construction, commissioning, and operation, including as appropriate to generation technology:

- (1) engineering codes, standards, guidelines and practices that apply;
- (2) generation facility type certification;
- (3) procedures and controls for facility inspection, testing and commissioning; and
- (4) maintenance and management plans, procedures and criteria.

(g) If there is a thermal component to the facility the applicant is to provide heat balance diagrams at various load levels and generation configurations demonstrating that the facility is utilizing the best use of heat from the facility.

(h) For wind power and other facilities where it is contemplated that a portion of a new interconnection substation to be built will be transferred to the transmission owner:

- (1) describe the substation facilities to be transferred and the contemplated future transaction, including a timetable for the future

transfer;

(2) describe how the substation-interconnection design will meet the transmission owner's requirements; and

(3) define the operational and maintenance responsibilities for the substation and how they will meet the transmission owner's standards.

(i) Facility maintenance and management plans, procedures and criteria, specifically addressing the following topics:

(1) turbine maintenance, safety inspections, and tower integrity; and

(2) electric transmission, gathering and interconnect line inspections, maintenance, and repairs, including:

(i) vegetation clearance requirements;

(ii) vegetation management plans and procedures;

(iii) inspection and maintenance schedules;

(iv) notification and public relations for work in public right-of-way; and

(v) minimization of interference with electric and communications distribution systems.

(j) Vegetation management practices for switchyard and substation yards, and for danger trees (trees that due to location and condition are a particular threat to fall on and damage electrical equipment) around stations, specifications for clearances, inspection and treatment schedules, and environmental controls to avoid off-site effects.

(k) If the applicant will entertain proposals for sharing above ground facilities with other utilities (communications, cable, phone, cell phone relays, and similar facilities), criteria and procedures for review of such proposals.

(l) A status report on equipment availability and expected delivery dates for major components including heat recovery steam generators, towers, turbines, transformers, and related major equipment.

(m) A description of the generating facility's black start capabilities, if any.

1001.6 Exhibit 6: Wind Power Facilities

If the Applicant's proposal is for a wind power facility, Exhibit 6 shall contain:

(a) A statement of all setback requirements and/or setback recommendations for turbines from roads, occupied structures (dwellings, commercial, industrial, and institutional), barns and unoccupied structures, areas of public gathering, and electric transmission lines, explaining the rationale for the setback distances for each type, as required or recommended by:

- (1) the manufacturer's specifications;
- (2) the Applicant; and
- (3) any local ordinance or law.

(b) A detailed explanation of the degree to which the Applicant has accommodated in the facility layout the required and/or recommended turbine setbacks required to be stated in subdivision (a) of this section.

(c) Documentation regarding the status and results of third-party review and certification (type and project) of wind turbines proposed for construction and operation at the electric plant.

(d) Wind meteorological analyses demonstrating adequate wind conditions supporting the estimated capacity factor for the facility.

1001.7 Exhibit 7: Natural Gas Power Facilities

If the applicant's proposal is for a gas power facility, Exhibit 7 shall contain:

- (a) An estimate of the monthly and hourly gas usage by the facility.
- (b) A statement of the gas pressure required for the gas turbines and how the pressure will be regulated or increased.

1001.8 Exhibit 8: Electric System Production Modeling

Prior to preparing this exhibit, the Applicant shall consult with DPS and DEC to develop an acceptable input data set, including modeling for the Applicant's proposed facility and inputs for the emissions analysis, to be used in the simulation analyses.

Exhibit 8 shall contain:

(a) The following analyses that shall be developed using GEMAPS, PROMOD or a similar computer-based modeling tool:

- (1) estimated statewide levels of SO₂, NO_x and CO₂ emissions, both with, and without the proposed facility;
- (2) estimated minimum, maximum, and average annual spot prices representative of all NYISO Zones within the New York Control Area, both with and without the proposed facility;
- (3) an estimated capacity factor for the facility;
- (4) estimated annual and monthly, on peak, shoulder and off-peak MW output capability factors for the facility;
- (5) estimated average annual and monthly production output for the facility in MWhs;
- (6) an estimated production curve for the facility over an average year;
- (7) an estimated production duration curve for the facility over an average year; and
- (8) estimated effects of the proposed facility on the energy dispatch of existing must-run resources, defined for this purpose as existing wind, hydroelectric and nuclear facilities, as well as co-generation facilities to the extent they are obligated to output their available energy because of their steam hosts.

(b) Digital copies of all inputs used in the simulations required in subdivision (a) of this section.

1001.9 Exhibit 9: Alternatives

Exhibit 9 shall contain:

(a) an identification and description of reasonable and available alternate location sites for the proposed facility, except that a private facility applicant may limit its identification and description to sites owned by, or under option to, such private facility applicant or its affiliates;

(b) for each alternative location identified, an evaluation of the comparative advantages and disadvantages of the proposed and alternative locations at a level of detail sufficient to permit a comparative assessment of the alternatives discussed considering:

- (1) the environmental setting;
- (2) the recreational, cultural and other concurrent uses that the site may serve;
- (3) engineering feasibility, including fuel availability, wind availability (if applicable), and interconnections;
- (4) reliability and electric system effects;
- (5) environmental impacts, including an assessment of climate change impacts (whether proposed energy use contributes to global temperature increase);
- (6) economic considerations;
- (7) environmental justice considerations;
- (8) security, public safety and emergency planning considerations;
- (9) public health considerations;
- (10) the site's vulnerability to potential seismic disturbances and current and anticipated climate change impacts, such as sea-level rise, precipitation changes, and extreme weather events; and
- (11) the objectives and capabilities of the applicant;

(c) a description and evaluation of reasonable alternatives to the proposed facility at the primary proposed location including alternatives regarding:

- (1) general arrangement and design;
- (2) technology, including alternative power block technologies, air emissions control systems, stack configurations (single flue vs. combined flues), cooling technologies, and alternatives to any proposed use of aqueous ammonia;
- (3) scale or magnitude;
- (4) for wind power facilities, alternative layouts of the turbines within the site location; and

(5) timing of the proposed in-service date for the facility in relation to other planned additions, withdrawals, or other capacity, transmission or demand reduction changes to the electric system;

(d) a statement of the reasons why the primary proposed location is best suited, among the alternative locations required to be identified, to promote public health and welfare, including the recreational, cultural and other concurrent uses which the site and affected areas may serve.

(e) a statement of the advantages and disadvantages of the alternatives and the reasons why the primary proposed design technology, scale or magnitude, and timing are best suited, among the alternatives, to promote public health and welfare, including the recreational, cultural and other concurrent uses that the site may serve.

(f) a description and evaluation of the no action/no build alternative at the primary proposed location including a statement of the reasons why the proposed facility is better suited to promote public health and welfare including the recreational, cultural and other concurrent uses that the site may serve.

(g) an identification and description of reasonable energy supply source alternatives including but not limited to alternatives to the proposed facility consisting of renewable generation, distributed generation, transmission, and demand-reducing alternatives, except that an applicant may limit its identification and description to alternatives that are feasible considering the objectives and capabilities of the sponsor or its affiliates;

(h) for each source and demand-reducing alternative identified, an evaluation of the comparative advantages and disadvantages of the proposed facility and the alternatives at a level of detail sufficient to permit a comparative assessment of the alternatives discussed considering:

- (1) engineering feasibility;
- (2) reliability and electric system effects;
- (3) environmental impacts, including an assessment of climate change impacts(whether proposed energy use contributes to global temperature increase);
- (4) economic considerations;
- (5) environmental justice considerations;
- (6) security, public safety and emergency planning considerations;
- (7) public health considerations; and
- (8) the objectives and capabilities of the applicant;

(i) a statement of the reasons why the proposed facility is best suited, among the alternative sources and measures, to promote public health and welfare, including the recreational, cultural, and other concurrent uses that the site and affected areas may serve.

1001.10 Exhibit 10: Consistency with Energy Planning Objectives

Exhibit 10 shall contain:

- (a) a statement demonstrating the degree of consistency of the construction and operation of the facility with the energy policies and long range energy planning objectives and strategies contained in the most recent state energy plan including consideration of the information required by subdivisions (b) through (i) in this section;
- (b) a description of the impact the proposed facility would have on reliability in the state;
- (c) a description of the impact the proposed facility would have on fuel diversity in the state;
- (d) a description of the impact the proposed facility would have on regional requirements for capacity;
- (e) a description of the impact the proposed facility would have on electric transmission constraints;
- (f) a description of the impact the proposed facility would have on fuel delivery constraints;
- (g) a description of the impact the proposed facility would have in relation to any other energy policy or long range energy planning objective or strategy contained in the most recent state energy plan;
- (h) an analysis of the comparative advantages and disadvantages of reasonable and available alternative locations or properties identified for construction of the proposed facility; and
- (i) a statement of the reasons why the proposed location and source is best suited, among the alternatives identified, to promote public health and welfare, including minimizing the public health and environmental impacts related to climate change.

1001.11 Exhibit 11: Preliminary Design Drawings

The preliminary design drawings to be submitted pursuant to this section shall be prepared by a Professional Engineer, Architect or Landscape Architect, as appropriate, licensed and registered in New York State, whose name shall be clearly printed on the drawings. All such drawings may be labeled "preliminary" or "not for construction purposes" to indicate their preliminary status. All such drawings are to be drawn to scale, or to an exaggerated scale, as appropriate. All such drawings are to be drawn using computer graphics or computer-aided design software; hand-drawn sketches and drawings may not be used.

Exhibit 11 shall contain:

- (a) A site plan showing all buildings, structures, driveways, parking areas, emergency access lanes, sidewalks, access ways and other improvements at the facility site, depicting the proposed site in relation to adjoining properties, and depicting the layout of onsite facilities and ancillary features. Additional drawings shall be included depicting the layout of all offsite facilities and ancillary features.
- (b) A construction operations plan indicating all materials lay-down areas, construction preparation areas, major excavation and soil storage areas, and construction equipment and worker parking areas.
- (c) Grading and erosion control plans indicating soil types, depth to bedrock, general areas of cut and fill, retaining walls, initial and proposed contours, and permanent stormwater retention areas.
- (d) A landscaping plan indicating areas of trees to be retained, removed, or restored; berms, walls, fences and other landscaping improvements, and areas for snow removal storage.
- (e) A lighting plan showing type and location of exterior lighting fixtures and indicating measures to be taken to prevent unnecessary light trespass beyond the facility property line.
- (f) Architectural drawings including building and structure arrangements and exterior elevations for all buildings and structures, indicating the length, width, height, material of construction, color and finish of all buildings, structures, and fixed equipment.
- (g) Typical design detail drawings of all underground facilities indicating proposed depth and level of cover, and all overhead facilities indicating height above grade, including descriptions and specifications of all major components including piping, conductors, cooling towers, exhaust stacks, wind turbine towers and blades, and other structures.
- (h) For interconnection facilities, the plans and drawings required by subsections (a) through (g) of this Section for the proposed interconnection facilities and a profile of the centerline of the interconnection facilities at exaggerated vertical scale.
- (i) A list of engineering codes, standards, guidelines and practices that the applicant intends to conform with when planning, designing, constructing, operating and maintaining the generating facility power plant, wind turbines, electric collection system, substation, transmission line, inter-connection,

and associated buildings and structures.

1001.12 Exhibit 12: Construction

Exhibit 12 shall contain:

(a) A Quality Assurance and Control plan, including staffing positions and qualifications necessary, demonstrating how applicant will monitor and assure conformance of facility installation with all applicable design, engineering and installation standards and criteria.

(b) A statement from a responsible company official that:

(1) that applicant and its contractors will conform to the requirements for protection of underground facilities contained in Public Service Law §119-b, as implemented by 16 NYCRR Part 753; and

(2) the applicant will comply with pole numbering and marking requirements, as implemented by 16 NYCRR Part 217.

(c) Preliminary plans and descriptions indicating design, location and construction controls to avoid interference with existing utility transmission and distribution systems, indicating locations and typical separations of proposed facilities from existing electric, gas, and communications infrastructure and measures to minimize interferences where avoidances cannot be reasonably achieved.

(d) Specification of commitments for addressing public complaints, and procedures for dispute resolution during facility construction and operation.

1001.13 Exhibit 13: Real Property

Exhibit 13 shall contain:

(a) A survey of the facility site showing property boundaries with tax map sheet, block and lot numbers; the owner of record of all parcels included in the site and for all adjacent properties; easements, grants and related encumbrances on the site parcels; public and private roads on or adjoining or planned for use as access to the site; zoning and related designations applicable to the site and adjoining properties, except that for wind facilities a map may be used instead of a survey to fulfill this requirement.

(b) A property/right-of-way map of all proposed interconnection facilities and off-property/right-of-way access drives and construction lay-down or preparation areas for such interconnections.

(c) A demonstration that the applicant has obtained title to or a leasehold interest in the facility site, including ingress and egress access to a public street, or is under binding contract or option to obtain such title or leasehold interest, or can obtain such title or leasehold interest.

(d) A statement that the applicant has obtained, or can obtain, such deeds, easements, leases, licenses, or other real property rights or privileges as are necessary for all interconnections for the facility.

(e) An identification of any improvement district extensions necessary for the facility and a demonstration that the applicant has obtained, or can obtain, such improvement district extensions.

1001.14 Exhibit 14: Cost of Facilities

Exhibit 14 shall contain:

(a) A detailed estimate of the total capital costs of the proposed facility, including a separately stated estimate for each interconnection, broken down in a rational manner by the Applicant into major cost components appropriate to the facility.

(b) A brief statement of the source of the information used as the basis for the estimates required by subdivision (a) of this section.

(c) Upon the demand of any party or of DPS, the applicant shall supply the work papers from which the estimates required by subdivision (a) of this section were made.

1001.15 Exhibit 15: Public Health and Safety

Exhibit 15 shall contain:

A statement and evaluation that identifies, describes, and discusses all potential significant adverse impacts of the construction and operation of the facility, the interconnections, and related facilities on the environment, public health, and safety, at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence, identifies the current applicable statutory and regulatory framework, and also addresses:

- (a) the anticipated gaseous, liquid and solid wastes to be produced at the facility during construction and under representative operating conditions of the facility, including their source, anticipated volumes, composition and temperature, and such meteorological, hydrological and other information needed to support such estimates and any studies, identifying the author and date thereof, used in the analysis;
- (b) the anticipated volumes of such wastes to be released to the environment during construction and under any operating condition of the facility;
- (c) the treatment processes to eliminate or minimize wastes to be released to the environment;
- (d) the manner of collection, handling, storage, transport and disposal for wastes retained and not released at the site, or to be disposed of;
- (e) for wind power facilities, impacts due to blade throw, tower collapse, audible frequency noise, low-frequency noise, ice throw and shadow flicker;
- (f) maps of the study area and analysis showing relation of the proposed facility site to public water supply resources; community emergency response resources and facilities including police, fire and emergency medical response facilities and plans; emergency communications facilities; hospitals and emergency medical facilities; designated evacuation routes; existing known hazard risks including flood hazard zones, storm surge zones, areas of coastal erosion hazard, landslide hazard areas, areas of geologic, geomorphic or hydrologic hazard; dams, bridges and related infrastructure; explosive or flammable materials transportation or storage facilities; contaminated sites; and other local risk factors;
- (g) all significant impacts on the environment, public health, and safety associated with the information required to be identified pursuant to subdivisions a through f of this section, including all reasonably related short-term and long-term effects;
- (h) any adverse impact on the environment, public health, and safety that cannot be avoided should the proposed facility be constructed and operated, and measures for monitoring and measuring such impacts;
- (i) any irreversible and irretrievable commitment of resources that would be involved in the construction and operation of the facility;

- (j) any measures proposed by the applicant to minimize such impacts;
- (k) any measures proposed by the applicant to mitigate or offset such impacts; and
- (l) any monitoring of such impacts proposed by the applicant.

1001.16 Exhibit 16: Pollution Control Facilities

(a) If applicable, Exhibit 16 shall contain:

(1) Copies of completed applications for permits to be issued by the DEC pursuant to Federal recognition of State authority, or pursuant to federally delegated or approved authority, in accordance with the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, and permits pursuant to Section 15-1503, Title 9 of Article 27, and Articles 17 and 19 of the ECL.

(2) Such evidence as shall enable the Commissioner of DEC to evaluate the facility's pollution control technologies and to reach a determination to issue, subject to appropriate conditions and limitations, permits for such technologies.

(3) Such evidence as shall enable the Board to evaluate the facility's pollution control technologies and to make the findings and determinations required by PSL Section 168.

(4) A representation and description of all fuel waste byproducts to be produced as a result of construction and operation of the facility and its interconnections and related facilities, including a description and plan as appropriate for the handling, storage and disposal of all fuel waste byproducts. Ash produced from the combustion or gasification of coal, wood, biomass, municipal solid waste or similar fuels shall be included in the definition of fuel waste byproduct for the purposes of this subdivision.

(b) Following commercial operation of a certified Major Electric Generating Facility, renewal applications for permits to be issued by the DEC pursuant to Federal recognition of State authority, or pursuant to federally delegated or approved authority, in accordance with the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, and permits pursuant to Section 15-1503, Title 9 of Article 27, and Articles 17 and 19 of the ECL, will be submitted to and acted upon by the DEC without copies being submitted to the Board or findings and determinations being made by the Board.

1001.17 Exhibit 17: Air Emissions

Exhibit 17 shall contain:

(a) A demonstration of the facility's compliance with applicable federal, state, and local regulatory requirements regarding air emissions.

(b) An assessment of existing ambient air quality levels and air quality trends for pollutants in the region surrounding the facility, including air quality levels and trends taken from regional air quality summaries and air quality trend reports.

(c) For emissions of the following substances by combustion sources at the facility, a table demonstrating the rate and amount of emissions with the name of the substance in the first column, the hourly emission rate in the second column, and the annual potential to emit in the third column:

- (1) sulfur dioxide (SO₂);
- (2) oxides of nitrogen (NO_x);
- (3) carbon dioxide (CO₂);
- (4) carbon monoxide (CO);
- (5) particulate matter (PM 2.5, PM 10, total PM));
- (6) volatile organic compounds (VOCs);
- (7) elemental lead;
- (8) mercury; and
- (9) a set of non-criteria (i.e. toxic) pollutants to be emitted from the proposed facility as determined in consultation with DOH and DEC.

(d) An assessment of the potential impacts to ambient air quality that may result from pollutant emissions from the facility, including:

- (1) an estimation of the maximum potential air concentrations (short-term and long-term) of appropriate pollutants determined in consultation with DOH and DEC;
- (2) a comparison of the maximum predicted air concentrations to ambient air quality standards and guidelines and ambient background concentrations for non-criteria pollutants for both short-term and long-term exposures for any appropriate pollutant determined in consultation with DOH and DEC;
- (3) where warranted as determined in consultation with DOH and DEC, cumulative source impact analyses for any appropriate pollutant in accordance with air permitting requirements and 6 NYCRR Part 487; and

(e) An offsite consequence analysis for any ammonia that shall be stored onsite, including an analysis of an accidental release scenario for ammonia

performed to meet the requirements of the U.S. Environmental Protection Agency's regulations implementing Section 112(r) of the Clean Air Act.

1001.18 Exhibit 18: Safety and Security

Exhibit 18 shall contain:

(a) A plan for site security of the proposed facility during construction of such facility, including site plans and descriptions of the following site security features:

- (1) access controls including fences, gates, bollards and other structural limitations;
- (2) electronic security and surveillance facilities;
- (3) security lighting, including specifications for lighting and controls to address work-site safety requirements and to avoid off-site light trespass; and
- (4) setback considerations for facility components which may present hazards to public safety.

(b) A plan for site security of the proposed facility during operation of such facility, including site plans and descriptions of the following site security features:

- (1) access controls including fences, gates, bollards and other structural limitations;
- (2) electronic security and surveillance facilities;
- (3) security lighting, including specifications for lighting and controls to address work-site safety requirements and to avoid off-site light trespass;
- (4) lighting of facility components to ensure aircraft safety;
- (5) setback considerations for facility components which may present hazards to public safety, and
- (6) a description of a cyber security program for the protection of digital computer and communication systems and networks that support the facility demonstrating compliance with current standards issued by a standards setting body generally recognized in the information technology industry, including, but not limited to, the federal Department of Commerce's National Institute of Standards and Technology, the North American Electric Reliability Corporation, or the International Organization for Standardization, and providing for periodic validation of compliance with the applicable standard by an independent auditor.

(c) A safety response plan to ensure the safety and security of the local community, including:

- (1) an identification of contingencies that would constitute a safety or security emergency;
- (2) emergency response measures by contingency;

(3) evacuation control measures by contingency; and

(4) community notification procedures by contingency.

(d) A statement that the applicant has provided a copy of the plans required in subdivisions (a), (b), and (c) of this section to, and requested review of such plans and comment by, the New York State Division of Homeland Security and Emergency Services.

(e) If the facility is to be located within any part of a city with a population over one million, a statement that the applicant has provided a copy of the plans required in subdivisions (a), (b), and (c) of this section to, and requested review of such plans and comment by, the local office of emergency management.

(f) A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies and hazardous substance incidents.

(g) A description of all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident.

1001.19 Exhibit 19: Noise and Vibration

Exhibit 19 shall contain:

A study of the noise impacts of the construction and operation of the facility, related facilities and ancillary equipment. The name and qualifications to perform such analyses of the preparer of the study shall be stated. If the results of the study are certified in any manner by a member of a relevant professional society, the details of such certification shall be stated. If any noise assessment methodology standards are applied in the preparation of the study, an identification and description of such standards shall be stated. The study shall include:

- (a) A map of the study area showing the location of sensitive sound receptors in relation to the facility, related facilities and ancillary equipment (including any related substations). The sensitive sound receptors shown shall include residences, outdoor public facilities and areas, hospitals, schools and other noise-sensitive receptors.
- (b) An evaluation of ambient pre-construction baseline noise conditions, including A-weighted/dBA sound levels, prominent discrete (pure) tones, at representative potentially impacted noise receptors, using actual measurement data recorded in winter and summer and during day and night as a function of time and frequency using a suitable and suitably calibrated sound level meter (SLM) and octave band frequency spectrum analyzer, or similar equipment. The ambient pre-construction baseline sound level should be filtered to exclude seasonal and intermittent noise.
- (c) An evaluation of future noise levels during construction of the facility and related facilities including predicted A-weighted/dBA sound levels, prominent discrete (pure) tones, and amplitude modulated sound at potentially impacted and representative noise receptors, using computer noise modeling.
- (d) An estimate of the noise level to be produced by operation of the facility, related facilities and ancillary equipment assuming wind-induced background noise or stable atmospheric conditions, as appropriate, and not assuming any attenuation of sound that transiently occurs due to weather or temperature.
- (e) An evaluation of future noise levels during operation of the facility, related facilities and ancillary equipment including predicted A-weighted/dBA sound levels, prominent discrete (pure) tones, and amplitude modulated sound, at potentially impacted and representative noise receptors, using computer noise modeling, and an analysis of whether the facility will produce significant levels of low frequency noise or infrasound.
- (f) A statement in tabular form of the A-weighted/dBA sound levels indicated by measurements and computer noise modeling at the representative external property boundary lines of the facility and related facilities and ancillary equipment sites, and at the representative nearest and average noise receptors, for the following scenarios:
 - (1) Daytime ambient noise level - a single value of sound level equivalent to the level of sound exceeded for 90% of the time during the daytime hours (7 am - 10 pm) of a year (L_{90}).

- (2) Summer nighttime ambient noise level - a single value of sound level equivalent to the level of sound exceeded for 90% of the time during the nighttime hours (10 pm - 7 am) during the summer (L_{90}).
- (3) Winter nighttime ambient noise level - a single value of sound level equivalent to the level of sound exceeded for 90% of the time during the nighttime hours (10 pm - 7 am) during the winter (L_{90}).
- (4) Worst case future noise level during the daytime period - the daytime ambient noise level (L_{90}), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of sound exceeded for 10% of the time by such sources under normal operating conditions by such sources in a year (L_{10}).
- (5) Worst case future noise level during the summer nighttime period - the summer nighttime ambient noise level (L_{90}), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of sound exceeded for 10% of the time by such sources under normal operating conditions by such sources in a year (L_{10}).
- (6) Worst case future noise level during the winter nighttime period - the winter nighttime ambient noise level (L_{90}), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of sound exceeded for 10% of the time by such sources under normal operating conditions by such sources in a year (L_{10}).
- (g) A description of the noise standards applicable to the facility, including any local requirements, and noise design goals for the facility at representative potentially impacted noise receptors, including residences, outdoor public facilities and areas, hospitals, schools, other noise-sensitive receptors, and at representative external property boundary lines of the facility and related facilities and ancillary equipment sites.
- (h) A tabular comparison of the noise standards applicable to the facility, including any local requirements, and noise design goals for the facility, and the degree of compliance indicated by computer noise modeling at the representative external property boundary lines of the facility and related facilities and ancillary equipment sites, and at the representative nearest and average noise receptors.
- (i) An identification and evaluation of reasonable noise abatement measures for construction activities, including a description of a complaint-handling procedure that shall be provided during the construction period.
- (j) An identification and evaluation of reasonable noise abatement measures for the final design and operation of the facility including the use of alternative technologies, alternative designs, and alternative facility arrangements.
- (k) An evaluation of the following potential community noise impacts: hearing damage (as addressed by applicable Occupational Safety and Health Administration standards); indoor and outdoor speech interference; interference in the use of outdoor public facilities and areas; community

complaint potential; the potential for structural damage; and the potential for interference with technological, industrial or medical activities that are sensitive to vibration or infrasound.

- (l) A description of post-construction noise evaluation studies that shall be performed to establish conformance with operational noise design goals.
- (m) An identification of practicable post-construction operational controls and other mitigation measures that will be available to address reasonable complaints, including a description of a complaint-handling procedure that shall be provided during periods of operation.
- (n) The computer noise modeling values used for the major noise-producing components of the facility shall fairly match the unique operational noise characteristics of the particular equipment models and configurations proposed for the facility. The software input parameters, assumptions, and associated data used for the computer modeling shall be provided.

1001.20 Exhibit 20: Cultural Resources

Exhibit 20 shall contain:

(a) A study of the impacts of the construction and operation of the facility, interconnections and related facilities on archeological resources, including:

- (1) a summary of the nature of the probable impact on any archeological/cultural resources identified addressing how those impacts shall be avoided or minimized;
- (2) a Phase IA archeological/cultural resources study for the Area of Potential Effect (APE) for the facility site and any areas to be used for interconnections or related facilities, including a description of the methodology used for such study;
- (3) a Phase IB study, if required, as determined in consultation with OPRHP;
- (4) where warranted based on Phase I study results as determined in consultation with OPRHP, a Phase II study based on intensive archaeological field investigations shall be conducted to assess the boundaries, integrity and significance of cultural resources identified in Phase I studies. Phase II shall be designed to obtain detailed information on the integrity, limits, structure, function, and cultural/historic context of an archaeological site, as feasible, sufficient to evaluate its potential eligibility for listing on the State or National Register of Historic Places. The need for and scope of work for such investigations shall be determined in consultation with OPRHP and DPS;
- (5) a statement demonstrating that all archaeological materials recovered during the facility cultural resources investigation shall be cleaned, catalogued, inventoried and curated according to New York Archaeological Council standards; that to the extent possible, recovered artifacts shall be identified as to material, temporal or cultural/chronological associations, style and function; and that the facility archaeologists shall provide temporary storage for artifacts until a permanent curatorial facility is identified; and
- (6) an Unanticipated Discovery Plan that shall identify the actions to be taken in the unexpected event that resources of cultural, historical, or archaeological importance are encountered during the excavation process. This plan shall include a provision for work stoppage upon the discovery of possible archaeological or human remains. In addition, the plan shall specify the degree to which the methodology used to assess any discoveries follows the most recent Standards for Cultural Resource Investigations and Curation of Archaeological Collections in New York State. Such an assessment, if warranted, shall be conducted by a professional archaeologist, qualified according to the standards of the New York State Archaeological Council.

(b) A study of the impacts of the construction and operation of the facility and the interconnections and related facilities on historic resources, including the results of field inspections and consultation with local historic preservation groups to identify sites or structures listed or

eligible for listing on the State or National Register of Historic Places within the viewshed of the facility and within the study area, including an analysis of potential impact on any standing structures which appear to be at least 50 years old and potentially eligible for listing in the State or National Register of Historic Places, based on an assessment by a person qualified pursuant to federal regulation (36 C.F.R. 61).

1001.21 Exhibit 21: Geology, Seismology and Soils

Exhibit 21 shall contain:

A study of the geology, seismology, and soils impacts of the facility consisting of the identification and mapping of existing conditions, an impact analysis, and proposed impact avoidance and mitigation measures, including:

- (a) a map delineating existing slopes (0-3%, 3-8%, 8-15%, 15-25%, 25-35%, 35% and over) on and within the drainage area potentially influenced by the facility site and interconnections;
- (b) a proposed site plan showing existing and proposed contours at two-foot intervals, for the facility site and interconnections, at a scale sufficient to show all proposed buildings, structures, paved and vegetative areas, and construction areas;
- (c) a description and preliminary calculation of the quantity of cut and fill necessary to construct the facility, including separate calculations for topsoil, sub-soil and rock, and including a plan to identify the presence of invasive species in spoil material and to prevent the introduction and/or spread of invasive species by the transport of fill material to or from the site of the facility or interconnections;
- (d) a description and preliminary calculation of the amount of fill, gravel, asphalt, and surface treatment material to be brought in to the facility site and interconnections;
- (e) a description and preliminary calculation of the proposed type and amount of cut material or spoil to be removed from the facility site and interconnections;
- (f) a description of excavation techniques to be employed;
- (g) a delineation of temporary cut or fill storage areas to be employed;
- (h) a description of the characteristics and suitability for construction purposes of the material excavated for the facility and of the deposits found at foundation level, including factors such as soil corrosivity, bedrock competence, and subsurface hydrologic characteristics;
- (i) a preliminary plan describing all blasting operations including location, minimum blasting contractor qualifications, hours of blasting operations, estimates of amounts of rock to be blasted, warning measures, measures to ensure safe transportation, storage and handling of explosives, use of blasting mats, conduct of a pre-blasting condition survey of nearby buildings and improvements, and coordination with local safety officials;
- (j) an assessment of potential impacts of blasting to environmental features, above-ground structures and below-ground structures such as pipelines and wells;
- (k) an identification and evaluation of reasonable mitigation measures regarding blasting impacts, including the use of alternative technologies and/or location of structures, and including a plan for securing compensation for damages that may occur due to blasting;

- (l) a description of the regional geology, tectonic setting and seismology of the facility vicinity.
- (m) an analysis of the expected impacts of construction and operation of the facility with respect to regional geology, if such can be determined;
- (n) an analysis of the impacts of typical seismic activity experienced in the facility area based on current seismic hazards maps, on the location and operation of the facility identifying potential receptors in the event of failure, and if the facility is proposed to be located near a young fault or a fault that has had displacement in Holocene time, demonstration of a suitable setback from such fault;
- (o) a map delineating soil types on the facility and interconnections sites;
- (p) a description of the characteristics and suitability for construction purposes of each soil type identified above, including a description of the soil structure, texture, percentage of organic matter, and recharge/infiltration capacity of each soil type and a discussion of any de-watering that may be necessary during construction and whether the facility shall contain any facilities below grade that would require continuous de-watering;
- (q) maps, figures, and analyses delineating depth to bedrock and underlying bedrock types, including vertical profiles showing soils, bedrock, water table, seasonal high groundwater, and typical foundation depths on the facility site, and any area to be disturbed for roadways to be constructed and all off-site interconnections required to serve the facility, including an evaluation for potential impacts due to facility construction and operation, including any on-site wastewater disposal system, based on information to be obtained from available published maps and scientific literature, review of technical studies conducted on and in the vicinity of the facility, and on-site field observations, test pits and/or borings as available;
- (r) an evaluation to determine suitable building and equipment foundations, including:
 - (1) an engineering assessment to determine the types and locations of foundations to be employed. The assessment shall investigate the suitability of such foundation types as spread footings, caissons, or piles, including a statement that all such techniques conform to applicable building codes or industry standards;
 - (2) if piles are to be used, a description and preliminary calculation of the number and length of piles to be driven, the daily and overall total number of hours of pile driving work to be undertaken to construct the facility, and an assessment of pile driving impacts on surrounding properties and structures due to vibration; and
 - (3) identification of mitigation measures regarding pile driving impacts, if applicable, including a plan for securing compensation for damages that may occur due to pile driving; and
- (s) an evaluation of the vulnerability of the facility site and the operation of the facility to an earthquake event and a tsunami event.

1001.22 Exhibit 22: Terrestrial Ecology and Wetlands

Exhibit 22 shall contain:

(a) An identification and description of the type of plant communities present on the facility site, the interconnections, and adjacent properties based upon field observations and data collection consistent with the nature of the site.

(b) An analysis of the temporary and permanent impact of the construction and operation of the facility and the interconnections on the vegetation identified, including a mapped depiction of the vegetation areas showing the areas to be removed or disturbed, and including a plan to identify the presence of invasive species and to prevent the introduction and/or spread of invasive species.

(c) An identification and evaluation of reasonable avoidance measures or, where impacts are unavoidable, mitigation measures, including the use of alternative technologies, regarding vegetation impacts identified.

(d) A characterization of the facility site and any areas to be disturbed for interconnections as to the vegetation, wildlife (including mammals, birds, amphibians, terrestrial invertebrates, and reptiles) and wildlife habitats, that occur in, on, or in the vicinity, based on reconnaissance or multi-season surveys and data collection appropriate to the nature of the site, supplemented by available data from the New York Natural Heritage Program, New York State (NYS) Amphibian and Reptile Atlas Project, the NYS Breeding Bird Atlas and range maps, Breeding Bird Survey Routes, Christmas Bird Counts and other similar reference sources, including an identification and depiction of any Significant Coastal Fish and Wildlife Habitat Areas designated by DOS/DEC and any unusual habitats or significant natural communities that could support state or federally listed endangered or threatened species or species of special concern.

(e) A list of the species of mammals, birds, amphibians, terrestrial invertebrates, and reptiles reasonably likely to occur on, or in the vicinity of the facility site and areas to be disturbed for interconnections based on site observations and supplemented by publicly available sources.

(f) An analysis of the impact of the construction and operation, including air emissions if any, of the facility and interconnections on vegetation, wildlife, wildlife habitats, and wildlife travel corridors, including a detailed assessment of direct and indirect impacts and identification and evaluation of the expected environmental impacts of the facility on declining species, Species of Greatest Conservation Need (SGCN), and species protected by State and Federal law and the habitats of such species. Given the provisions of §3-0301(2)(r) of the Environmental Conservation Law and §15 of the Public Service Law, information that identifies the locations of habitats of such species or any other species or unique combination of species of flora or fauna where the destruction of such habitat or the removal of such species there from would impair their ability to survive, shall not be disclosed to the public, and shall only be disclosed to the parties to a proceeding pursuant to an appropriate protective order.

(g) An identification and evaluation of reasonable avoidance measures or, where impacts are unavoidable, mitigation measures, including the use of alternative technologies, regarding impacts to vegetation, wildlife and

wildlife habitat.

(h) For proposed wind-powered facilities:

- (1) an identification and evaluation of the expected environmental impacts of the facility on avian and bat species and the habitats that support them based on information gathered during pre-construction studies conducted at the proposed site and other nearby sites, analysis of known or predicted species and species migration corridors present on site, and including a description of the extent, methodology and results of all such pre-construction studies;
- (2) an identification and description of a period of post-construction operations monitoring for potential direct and indirect impacts to avian and bat species and habitats, including a description of the extent, methodology and timing of such post-construction operations monitoring; and
- (3) a plan to avoid or, where unavoidable, minimize and mitigate any such impacts during construction and operation of the facility based on existing information, the results of pre- and post-construction monitoring, and any known post-construction impacts that may occur.

(i) A map showing delineated boundaries based on on-site identification of all federal, state and locally regulated wetlands present on the facility site, the interconnections, and adjacent properties within 100 feet. For sites without accessibility, initial surveys may be based on remote-sensing data, interpretation of published wetlands and soils mapping and aerial photography.

(j) A description of the characteristics of all federal, state and locally regulated wetlands identified above, including the Cowardin classification, and a description of the vegetation, soils, and hydrology data collected for each of wetland sites identified, based on actual on-site wetland observations.

(k) A qualitative and descriptive wetland functional assessment, including seasonal variations, for all wetlands identified above for groundwater recharge/discharge, floodflow alteration, fish and shellfish habitat, sediment/toxicant retention, nutrient removal, sediment/shoreline stabilization, wildlife habitat, recreation, uniqueness/heritage, visual quality/aesthetics, and protected species habitat.

(l) An analysis of all off-site wetlands that may be hydrologically or ecologically influenced by development of the facility site and the wetlands identified above, observed in the field where accessible to determine their general characteristics and relationship, if any, to wetlands identified above.

(m) An identification of all temporary and permanent impacts on the wetlands or adjacent areas.

(n) An identification and evaluation of reasonable avoidance measures or, where impacts are unavoidable mitigation measures to be employed regarding the wetlands and adjacent areas impacts, including the use of alternative technologies and control of potential phosphorus and nitrogen sources from the facility. When appropriate, mitigation shall include plans for compensatory mitigation. Such plans shall contain sections on grading,

planting, and monitoring for success.

(o) An identification of state and federal endangered or threatened species on the facility site or that could be subject to impacts from facility construction, operation, or maintenance, including incidental takings, and an endangered or threatened species mitigation plan.

(p) An invasive species prevention and management plan indicating the presence of invasive species and measures that will be implemented to minimize the introduction of new invasive species and spread of existing invasive species during soil disturbance, vegetation management, transport of materials, and landscaping/revegetation.

(q) An analysis of the temporary and permanent impacts of the construction and operation of the facility and the interconnections on agricultural resources, including the acres of agricultural land temporarily impacted, the number of acres of agricultural land that will be permanently converted to nonagricultural use, and mitigation measures to minimize the impact to agricultural resources.

1001.23 Exhibit 23: Water Resources and Aquatic Ecology

Exhibit 23 shall contain the following with regard to:

(a) Groundwater:

- (1) Hydrologic information reporting depths to high groundwater and bedrock, including a site map showing depth to high groundwater and bedrock in increments appropriate for the facility site.
- (2) A map based on publicly available information showing all areas within the study area delineating all groundwater aquifers and groundwater recharge areas, and identifying groundwater flow direction, groundwater quality, and the location, depth, yield and use of all public and private groundwater wells or other points of extraction of groundwater, and including delineation of well head and aquifer protection zones.
- (3) An analysis and evaluation of potential impacts (during normal and drought conditions) from the construction and/or operation of the facility on drinking water supplies, groundwater quality and quantity in the facility area, including potential impacts on public and private water supplies, including private wells within a one mile radius of the facility site, and wellhead and aquifer protection zones.

(b) Surface Water:

- (1) A map and identification of all surface waters, including intermittent streams, within the study area.
- (2) A description of the New York State listed Water Classification and Standards physical water quality parameters, flow, biological aquatic resource characteristics (including species, habitat, and presence of aquatic invasive species) and other characteristics of such surface waters, including intermittent streams, within the study area.
- (3) An identification of any downstream surface water drinking-water supply intakes within one mile, or if none within one mile, an identification of the nearest one (giving location of the intakes by longitude and latitude) that could potentially be affected by the facility or interconnections, including characterization of the type, nature, and extent of service provided from the identified source.
- (4) An analysis of the impact of the construction and operation of the facility and interconnections on such surface waters, including impacts to drinking water supplies, and an identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, mitigation measures regarding impacts on such surface waters, including the precautions that will be taken to avoid or minimize dredging.
- (5) An identification and evaluation of reasonable avoidance measures, and where impacts are unavoidable, mitigation measures, including the use of water storage, stormwater reuse, and offsetting water conservation, regarding groundwater impacts.

(c) Stormwater:

- (1) A Stormwater Pollution Prevention Plan (SWPPP) for the collection and

management of stormwater discharges from the project prepared in accordance with the applicable SPDES General Permit for Stormwater Discharges from Construction Activity (SPDES General Permit) and the most current version of the New York State Standards and Specifications for Erosion and Sediment Control. If the project is not eligible for coverage under the SPDES General Permit, a completed application for a State Pollutant Discharge Elimination System (SPDES) Permit for the collection and management of stormwater discharges from the project.

- (2) To the extent not covered in paragraph (1) above, a preliminary plan, prepared in accordance with the most current version of the New York State Standards and Specifications for Erosion and Sediment Control, that identifies the post construction erosion and sediment practices that will be used to manage stormwater runoff from the developed project site. This can include runoff reduction/green infrastructure practices, water quality treatment practices, and practices that control the volume and rate of runoff.

(d) Chemical and Petroleum Bulk Storage:

- (1) description of the spill prevention and control measures to be in place for ammonia storage, fuel oil storage, wastewater storage, and other chemical, petroleum or hazardous substances stored on site, including an evaluation of alternatives and mitigation measures. A
- (2) An identification whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum or hazardous substances, or disposal of solid wastes on site is subject to regulation under the State of New York's chemical and petroleum bulk storage programs, and if so, a demonstration of compliance with such regulations.
- (3) An identification whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum or hazardous substances on site is subject to regulation under local law (County, City, Town or Village), and if so, a demonstration of the degree of compliance with such local laws.

(e) Aquatic Species and Invasive Species:

- (1) An analysis of the impact of the construction and operation of the facility on biological aquatic resources, including species listed as endangered, threatened, or species of special concern in 6 NYCRR Part 182, and including the potential for introducing and/or spreading invasive species.
- (2) An identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, mitigation measures regarding impacts on such biological aquatic resources, including species and invasive species impacts (if any) and assure compliance with applicable water quality standards (6 NYCRR Part 703).

(f) Cooling Water:

- (1) a description of the proposed cooling water system, including the selected cooling technology, the source of cooling water, the cooling water intake structure location and design, the daily maximum cooling water design flow and all the anticipated construction and operational costs of the cooling water system;

- (2) a description of the volume and location of the cooling water discharge, the anticipated maximum discharge temperature and maximum delta T, and a description of the anticipated thermal plume; and
- (3) a description of the practices that will be employed to avoid pathogen growth (including legionella), an assessment of whether such practices conform to recommendations of the Cooling Tower Institute, and the identification of any potential biocides to be used in the cooling water system.
- (4) A description of the taxonomic identification and life history information of all species and life stages of fish and shellfish potentially susceptible to impingement and entrainment by the proposed cooling water intake structure including the estimated number of all species and life stages to be impinged and entrained.
- (5) An identification and evaluation of mitigation measures taken to minimize adverse environmental impacts to aquatic life as a result of the location, design, construction, and capacity of the cooling water intake structure.

1001.24 Exhibit 24: Visual Impacts

Exhibit 24 shall contain:

(a) A visual impact assessment (VIA) to determine the extent and assess the significance of facility visibility. The components of the VIA shall include identification of visually sensitive resources, viewshed mapping, confirmatory visual assessment fieldwork, visual simulations (photographic overlays), cumulative visual impact analysis, and proposed visual impact mitigation. The VIA shall address the following issues:

- (1) the character and visual quality of the existing landscape;
- (2) visibility of the facility, including visibility of facility operational characteristics, such as visible plumes from the exhaust stacks;
- (3) visibility of all above-ground interconnections and roadways to be constructed within the facility study area as determined by the viewshed analysis;
- (4) appearance of the facility upon completion, including building/structure size, architectural design, facade colors and texture, and site lighting;
- (5) lighting (including lumens, location and direction of lights for facility area and/or task use, and safety including worker safety and tall structure marking requirements) and similar features;
- (6) representative views (photographic overlays) of the facility, including front, side and rear views, indicating approximate elevations;
- (7) nature and degree of visual change resulting from construction of the facility and above-ground interconnections;
- (8) nature and degree of visual change resulting from operation of the facility;
- (9) analysis and description of related operational effects of the facility such as visible plumes, shading, glare, and shadow flicker;
- (10) proposed mitigation and mitigation alternatives based on an assessment of mitigation strategies, including screening (landscaping), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, alternative technologies, facility color and design, lighting options for work areas and safety requirements, and lighting options for stack lighting if required by the Federal Aviation Administration; and
- (11) a description of all visual resources that would be affected by the facility.

(b) The viewshed analysis component of the VIA shall be conducted as follows:

- (1) Viewshed maps depicting areas of project visibility within the facility study area shall be prepared and presented on a 1:24,000 scale recent edition topographic base map. A line of sight profile shall also be

done for resources of statewide concern located within the VIA study area. The viewshed maps shall provide an indication of areas of potential visibility based on topography and vegetation and the highest elevation of facility structures. The potential screening effects of vegetation shall also be shown. The map(s) shall be divided into foreground, midground and background areas based on visibility distinction and distance zone criteria. Visually-sensitive sites, cultural and historical resources, representative viewpoints, photograph locations, and public vantage points within the viewshed study area shall be included on the map(s) or an overlay. An overlay indicating landscape similarity zones shall be included.

- (2) The VIA shall include a detailed description of the methodology used to develop the viewshed maps, including software, baseline information, and sources of data.
- (3) The viewshed mapping shall be used to determine the sensitive viewing areas and locations of viewer groups in the facility vicinity. These shall include recreational areas, residences, businesses, historic sites (listed or eligible for listing on the State or National Register of Historic Places), and travelers (interstate and other highway users).
- (4) The applicant shall confer with municipal planning representatives, DPS, DEC, OPRHP, and where appropriate, APA in its selection of important or representative viewpoints. Viewpoint selection is based upon the following criteria:
 - (i) representative or typical views from unobstructed or direct line-of-sight views;
 - (ii) significance of viewpoints, designated scenic resources, areas or features (which features typically include, but are not limited to: landmark landscapes; wild, scenic or recreational rivers administered respectively by either the DEC or the APA pursuant to ECL Article 15 or Department of Interior pursuant to 16 USC Section 1271; forest preserve lands, scenic vistas specifically identified in the Adirondack Park State Land Master Plan, conservation easement lands, scenic byways designated by the federal or state governments; Scenic districts and scenic roads, designated by the Commissioner of Environmental Conservation pursuant to ECL Article 49 scenic districts; Scenic Areas of Statewide Significance; state parks or historic sites; sites listed on National or State Registers of Historic Places; areas covered by scenic easements, public parks or recreation areas; locally designated historic or scenic districts and scenic overlooks; and high-use public areas;
 - (iii) level of viewer exposure, i.e., frequency of viewers or relative numbers, including residential areas, or high volume roadways;
 - (iv) proposed land uses;
 - (v) input from local public sources; and
 - (vi) building/Structure data collected for each potentially eligible property prepared in a format acceptable to OPRHP and DPS and submitted to OPRHP and DPS for review prior to completing the viewpoint selection.

- (5) Photographic simulations of the facility and interconnections shall be prepared from the representative viewpoints to demonstrate the post-construction appearance of the facility. Where vegetation screening is relied on for project mitigation, leaf-off and leaf-on simulation shall be provided. Representative viewpoints shall be established in consultation with DEC, DPS, OPRHP, and APA where appropriate.
- (6) Additional revised simulations illustrating mitigation shall be prepared for those observation points for which mitigation is proposed in the application.
- (7) Each set of existing and simulated views of the facility shall be compared and rated and the results of the visual impact assessment shall be summarized. Documentation of the steps followed in the rating and assessment methodology shall be provided including results of rating impact panels and a description of the qualifications of the individuals serving on the panels. Where visual impacts from the proposed facility are identified, potential mitigation measures shall be outlined, and the extent to which they effectively minimize such impact shall be discussed.
- (8) As applicable to the proposed facility technology, the analysis shall include analyses of overall appearance and operational characteristics of the facility and related facilities, including stack and cooling tower plume visibility, shading, glare, shadow flicker, or related visible effects of facility operation, including an assessment of the predicted extent, frequency, and duration of any such visible effects created by the facility.

1001.25 Exhibit 25: Effect on Transportation

Exhibit 25 shall contain:

(a) A conceptual site plan, drawn at an appropriate scale, depicting all facility site driveway and roadway intersections, showing:

- (1) for generation facility sites other than for wind turbines, horizontal and vertical geometry, the number of approach lanes, the lane widths, shoulder widths, traffic control devices by approaches, and sight distances;
- (2) for wind turbine sites, access road locations and widths, including characterizations of road intersection suitability.

(b) A description of the pre-construction characteristics of the roadways in the vicinity of the facility, including:

- (1) a review of existing data on vehicle traffic, use levels and accidents;
- (2) a review of transit facilities and routes, including areas of school bus service;
- (3) an identification of potential approach and departure routes to and from the facility site for police, fire, ambulance and other emergency vehicles;
- (4) a review of available load bearing and structural rating information for expected facility traffic routes; and
- (5) in congested urbanized areas, the results of twenty-four hour traffic volume counts and peak turning movement counts for typical weekday morning, weekday afternoon, and Saturday peaks, at representative critical intersections.

(c) An estimate of the trip generation characteristics of the facility during both construction and operation, including:

- (1) for each major phase of construction, and for the operation phase, an estimate of the number and frequency of vehicle trips, including time of day and day of week arrival and departure distribution, by size, weight and type of vehicle;
- (2) an identification of approach and departure routes to and from the facility site out to a 5-mile distance for vehicles carrying water, fuel oil, bulk fuels (including wood, biomass, coal and municipal solid waste), chemicals or hazardous materials for construction or operation of the facility;
- (3) for major cut or fill activity (spoil removal or deposition at the facility site and affected interconnection areas), a separate estimate of the number and frequency of vehicle trips, including time of day and day of week arrival and departure distribution, and including a delineation of approach and departure routes, by size, weight and type of vehicle; and

- (4) an identification of approach and departure routes to and from the facility site for construction workers and employees of the facility.
- (d) An analysis and evaluation of the traffic and transportation impacts of the facility, including:
- (1) a comparison of projected future traffic conditions with and without the proposed facility, the analysis to be conducted separately for the peak construction impacts of the facility and for the typical operations of the completed facility, including in congested urbanized areas a calculation and comparison of the level of service for each representative intersection, giving detail for each turning movement;
 - (2) an evaluation of the adequacy of the road system to accommodate the projected traffic, the analysis to be conducted separately for the peak construction impacts of the facility and for the typical operations of the completed facility, the analysis to also include an identification of the extent and duration of traffic interferences during construction of the facility and any interconnections;
 - (3) an assessment of over-size load deliveries, and the adequacy of roadway systems to accommodate oversize and over-weight vehicles; improvements necessary to accommodate oversize or overweight deliveries; impacts associated with such improvements; and mitigation measures appropriate to minimize such impacts;
 - (4) an identification and evaluation of reasonable mitigation measures regarding traffic and transportation impacts, including time restrictions, the use of alternative technologies, the construction of physical roadway improvements, the installation of new traffic control devices, and the repair of local roads due to damage by heavy equipment or construction activities during construction or operation of the facility; and
 - (5) a description of all road use and restoration agreements between the applicant and landowners, municipalities, or other entities, regarding repair of local roads damaged by heavy equipment or construction activities during construction or operation of the facility.
- (e) An analysis and evaluation of the impacts of the facility on airports and airstrips, railroads, subways, buses and any other mass transit systems in the vicinity of the facility.

1001.26 Exhibit 26: Effect on Communications

Exhibit 26 shall contain:

(a) An identification of all existing broadcast communication sources within a two-mile radius of the facility and the electric interconnection between the facility and the point of interconnection, including:

- (1) AM radio;
- (2) FM radio;
- (3) Television;
- (4) telephone;
- (5) microwave transmission;
- (6) emergency services;
- (7) municipal/school district services;
- (8) public utility services;
- (9) Doppler/weather radar;
- (10) air traffic control;
- (11) armed forces;
- (12) GPS;
- (13) LORAN; and
- (14) amateur radio licenses registered to users.

(b) An identification of all existing underground cable and fiber optic major transmission telecommunication lines within a two-mile radius of the facility and the electric interconnection between the facility and the point of interconnection.

(c) A statement describing the anticipated effects of the proposed facility and the electric interconnection between the facility and the point of interconnection on the communications systems required to be identified pursuant to subdivision (a) and (b) of this section, including the potential for:

- (1) structures to interfere with broadcast patterns by re-radiating the broadcasts in other directions;
- (2) structures to block necessary lines-of-sight;
- (3) physical disturbance by construction activities;
- (4) adverse impacts to co-located lines due to unintended bonding; and

(5) any other potential for interference.

(d) An evaluation of the design configuration of the proposed facility and electric interconnection between the facility and the point of interconnection demonstrating that there shall be no adverse effects on the communications systems required to be identified pursuant to subdivision (a) and (b) of this section.

(e) A description of post-construction activities that shall be undertaken to identify and mitigate any adverse effects on the communications systems required to be identified pursuant to subdivision (a) and (b) of this section that occur despite the design configuration of the proposed facility and electric interconnection between the facility and the point of interconnection.

(f) For wind power facilities, an evaluation of the design configuration of the proposed facility and electric interconnection between the facility and the point of interconnection demonstrating that there shall be no adverse effects on or interference with radar systems used for air traffic control.

1001.27 Exhibit 27: Socioeconomic Effects

Exhibit 27 shall contain:

- (a) An estimate of the average construction work force, by discipline, for each quarter, during the period of construction; and an estimate of the peak construction employment level.
- (b) An estimate of the annual construction payroll, by trade, for each year of construction and an estimate of annual direct non-payroll expenditures likely to be made in the vicinity of the facility (materials, services, rentals, and similar categories) during the period of construction.
- (c) An estimate of the annual secondary employment and economic activity likely to be generated in the vicinity of the facility by the construction of the plant. This analysis shall state the basis of any economic multiplier factor or other assumption used.
- (d) An estimate of the number of jobs and the on-site payroll, by discipline, during a typical year once the plant is in operation, and an estimate of other expenditures likely to be made in the vicinity of the facility during a typical year of operation.
- (e) An estimate of the annual secondary employment and economic activity likely to be generated in the vicinity of the facility by its operation.
- (f) An estimate of incremental school district operating and infrastructure costs due to the construction and operation of the facility, this estimate to be made after consultation with the affected school districts.
- (g) An estimate of incremental municipal, public authority, or utility operating and infrastructure costs that will be incurred for police, fire, emergency, water, sewer, solid waste disposal, highway maintenance and other municipal, public authority, or utility services during the construction and operation phases of the facility (this estimate to be made after consultation with the affected municipalities, public authorities, and utilities).
- (h) An identification of all jurisdictions (including benefit assessment districts and user fee jurisdictions) that levy real property taxes or benefit assessments or user fees upon the facility site, its improvements and appurtenances and any entity from which payments in lieu of taxes will or may be negotiated.
- (i) For each jurisdiction, an estimate of the incremental amount of annual taxes (and payments in lieu of taxes, benefit charges and user charges) it is projected would be levied against the post-construction facility site, its improvements and appurtenances.
- (j) For each jurisdiction, a comparison of the fiscal costs to the jurisdiction that are expected to result from the construction and operation of the facility to the expected tax revenues (and payments in lieu of taxes, benefit charge revenues and user charge revenues) generated by the facility.
- (k) An analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local

emergency response capacity (this analysis to be made after consultation with the affected local emergency response organizations).

(1) A detailed statement indicating how the proposed facility and interconnections are consistent with each of the state smart growth public infrastructure criteria specified in ECL 6-0107, or why compliance would be impracticable.

1001.28 Exhibit 28: Environmental Justice

Exhibit 28 shall contain:

(a) An identification and evaluation of significant and adverse disproportionate environmental impacts of the proposed facility, if any, resulting from its construction and operation, including any studies which were used in the evaluation identifying the author and dates thereof, in a manner that is in accordance with any requirements for the contents of an Article 10 application contained in 6 NYCRR Part 487.

(b) Separately stated for all significant and adverse disproportionate environmental impacts of the proposed facility resulting from its construction and operation required to be identified pursuant to subdivision (a) of this section, a description of:

- (1) The specific measures the applicant proposes to take to avoid such impacts to the maximum extent practicable for the duration that the Certificate is granted, including a description of the manner in which such impact avoidance measures will be verified and a statement of the cost of such measures.
- (2) If such impacts cannot be avoided, measures the applicant proposes to take to minimize such impacts to the maximum extent practicable for the duration that the Certificate is granted, including a description of the manner in which such impact mitigation measures will be verified and a statement of the cost of such measures.
- (3) If such impacts cannot be avoided or minimized, the specific measures the applicant proposes to take to offset such impacts to the maximum extent practicable for the duration that the Certificate is in effect, including a description of the manner in which such impact offset measures will be verified and a statement of the cost of such measures.

(c) A qualitative and where possible quantitative analysis demonstrating that the scope of avoidance, mitigation and offset measures is appropriate given the scope of significant and adverse disproportionate environmental impacts of the proposed facility resulting from its construction and operation.

1001.29 Exhibit 29: Site Restoration and Decommissioning

Exhibit 29 shall contain:

(a) A statement of the performance criteria proposed for site restoration in the event the facility cannot be completed and for decommissioning of the facility, including a discussion of why the performance criteria are appropriate. Among other things, the statement shall address:

- (1) safety and the removal of hazardous conditions;
- (2) environmental impacts;
- (3) aesthetics;
- (4) salvage and recycling;
- (5) potential future uses for the site; and
- (6) the useful life of the facility

(b) A plan for the decommissioning and restoration of the facility site including how such decommissioning and restoration shall be funded and a schedule for the conduct of decommissioning and site restoration activities.

(c) For wind-powered generation facilities and other facilities to be located on lands owned by another, a description of all site restoration, decommissioning and guaranty/security agreements between the applicant and landowner, municipality, or other entity, including provisions for turbines, foundations, and electrical collection, transmission, and interconnection facilities.

(d) For nuclear power facilities, a plan for a trust fund to ensure:

- (1) sufficient funding will be available to decommission the non-radiological portions of the facility and restore the site assuming a reasonable life expectancy for the facility and the commencement of decommissioning upon the cessation of operation of the facility; and
- (2) segregation of funds such that radiological decommissioning and site restoration activities do not exhaust funds needed to decommission the non-radiological portions of the facility and to restore the site.

1001.30 Exhibit 30: Nuclear Facilities

(a) If the applicant's proposal is for a nuclear power facility, it shall (contemporaneously with the filing of its Article 10 application) file with the Secretary one electronic and two paper copies and shall serve on the Commissioner of DEC one paper copy of its combined license application (including environmental report and preliminary safety analysis report) filed or to be filed with the U.S. Nuclear Regulatory Commission (NRC). If the NRC application is not available at the time the applicant files its Article 10 application, the applicant shall file and serve it as soon as it is available. On a continuing basis, the applicant shall file with the secretary a copy of:

(1) any filing it makes with the NRC;

(2) any filing it makes with any other governmental entity with respect to its NRC application;

(3) if the filings referenced in paragraphs (1) and (2) of this subdivision were made in response to requests for additional information, such requests; and

(4) any decisions of the NRC with respect to its NRC application.

(b) The applicant shall periodically notify the Secretary and each party of the status of its NRC application.

(c) If a nuclear power facility is proposed, Exhibit 30 shall contain:

Information assessing the impacts on public health, public safety and the environment from radiation or radiological contamination attributable to testing, operation and decommissioning of the nuclear facility or on-site temporary or permanent storage of spent nuclear fuel and other related radioactive wastes or residue, as well as information assessing emergency planning, except the provision of this information shall not result in litigation in the Article 10 proceeding of any issue solely within the jurisdiction of the NRC.

1001.31 Exhibit 31: Local Laws and Ordinances

Before preparing the exhibit required by this section, the Applicant shall consult with the municipalities or other local agencies whose requirements are the subject of the exhibit to determine whether the Applicant has correctly identified all such requirements and to determine whether any potential request by the Applicant that the Board elect to not apply any such local requirement could be obviated by design changes to the proposed facility, or otherwise.

As the information to be included in the application pursuant to this section will be used by parties to determine their positions in the issues conference and the remainder of the hearing phase of the proceeding, the lists should be created with care so as not to cause any party to needlessly expend resources due to a misclassification. For local procedural requirements supplanted by PSL §172, the Applicant shall not request that the Board elect not to apply them. Misclassification of items or the inclusion of unnecessary or inappropriate items may be grounds for finding the application not in compliance. Applicants must carefully screen their lists to correctly reflect local actions not for the construction or operation of the proposed major electric generating facility.

Exhibit 31 shall contain:

(a) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction or operation of the proposed major electric generating facility (includes interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) that are of a procedural nature. These local procedural requirements are supplanted by PSL Article 10 unless the Board expressly authorizes the exercise of the procedural requirement by the local municipality or agency.

(b) A list of all local procedural requirements required to be identified pursuant to subdivision (a) of this section for which the Applicant requests that the Board expressly authorize the exercise of the procedural requirement by the local municipality or agency, including a statement why such local exercise would be desirable or appropriate.

(c) Identification of the city, town, village, county, or State agency qualified by the Secretary of State that shall review and approve the building plans, inspect the construction work, and certify compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical, plumbing or building code. If no other arrangement can be made, the Department of State should be identified. The statement of identification shall include a description of the preliminary arrangement made between the Applicant and the entity that shall perform the review, approval, inspection, and compliance certification, including arrangements made to pay for the costs thereof including the costs for any consultant services necessary due to the complex nature of such facilities. If the applicable city, town or village has adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into its local electric, plumbing and building codes, the Applicant may make a request pursuant to subdivision (b) of this section that

the Board expressly authorize the exercise of the electric, plumbing and building permit application, inspection and certification processes by such city, town or village.

(d) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the construction or operation of the proposed major electric generating facility (includes interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) that are of a substantive nature, together with a statement that the location of the facility as proposed conforms to all such local substantive requirements, except any that the applicant requests that the Board elect to not apply. Copies of zoning, flood plain and similar maps, tables and/or documents shall be included in the exhibit when such are referenced in such local substantive requirements. Pursuant to PSL §168(3)(e), the Board must find that the facility is designed to operate in compliance with these local substantive requirements, all of which shall be binding upon the applicant, unless the Board elects to not apply them by finding that, as applied to the proposed facility such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.

(e) A list of all local substantive requirements required to be identified pursuant to subdivision (d) of this section for which the Applicant requests that the Board elect to not apply them by finding that, as applied to the proposed facility such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. For each local substantive requirement identified, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. The statement shall include a demonstration:

- (1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable;
- (2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local substantive requirement outweigh the benefits of applying such provision; and
- (3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the local substantive requirement.

(f) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the interconnection to or use of water, sewer, telecommunication and steam lines in public rights of way that are of a procedural nature. These local procedural requirements are not supplanted unless the Board elects to not apply them by finding that, as applied to the proposed facility interconnections such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether

located inside or outside of such municipality.

(g) A list of all local ordinances, laws, resolutions, regulations, standards and other requirements applicable to the interconnection to or use of water, sewer, telecommunication and steam lines in public rights of way that are of a substantive nature. These local substantive requirements are not supplanted unless the Board elects to not apply them by finding that, as applied to the proposed facility interconnections such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.

(h) A list of all local procedural or substantive requirements required to be identified pursuant to subdivisions (f) and (g) of this section for which the Applicant requests that the Board elect to not apply them by finding that, as applied to the proposed facility interconnections such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. For each local procedural or substantive requirement identified, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable. The statement shall include a demonstration:

- (1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable;
- (2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local substantive requirement outweigh the benefits of applying such provision; and
- (3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the local substantive requirement.

(i) A summary table of all local substantive requirements required to be identified pursuant to subdivisions (d) and (g) of this section in two columns listing the provisions in the first column and a discussion or other showing demonstrating the degree of compliance with the substantive provision in the second column.

(j) An identification of the zoning designation or classification of all lands constituting the site of the proposed facility and a statement of the language in the zoning ordinance or local law by which it is indicated that the proposed facility is a permitted use at the proposed site. If the language of the zoning ordinance or local law indicates that the proposed facility is a permitted use at the proposed site subject to the grant of a special exception, a statement of the criteria in the zoning ordinance or local law by which qualification for such a special exception is to be determined.

1001.32 Exhibit 32: State Laws and Regulations

Before preparing the exhibit required by this section, the Applicant shall consult with the state agencies and authorities whose requirements are the subject of the exhibit to determine whether the Applicant has correctly identified all such requirements.

As the information to be included in the application pursuant to this section will be used by parties to determine their positions in the issues conference and the remainder of the hearing phase of the proceeding, the lists should be created with care so as not to cause any party to needlessly expend resources due to a misclassification. Misclassification of items or the inclusion of unnecessary or inappropriate items may be grounds for finding the application not in compliance. Applicants must carefully screen their lists to correctly reflect state actions not for the construction or operation of the proposed major electric generating facility.

Exhibit 32 shall contain:

(a) A list of all state approvals, consents, permits, certificates, or other conditions for the construction or operation of the proposed major electric generating facility (including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) of a procedural nature. These state procedural requirements are supplanted by PSL Article 10, except for permits to be issued by the DEC pursuant to Federal recognition of State authority, or pursuant to federally delegated or approved authority, in accordance with the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, and permits pursuant to Section 15-1503, Title 9 of Article 27, and Articles 17 and 19 of the ECL, unless the Board expressly authorizes the exercise of such authority by the state agency.

(b) A list of all state procedural requirements required to be identified pursuant to subdivision (a) of this section for which the Applicant requests that the Board expressly authorize the exercise of such authority by the state agency, including a statement why such exercise would be desirable or appropriate.

(c) A list of all state approvals, consents, permits, certificates, or other conditions for the construction or operation of the proposed major electric generating facility (including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) of a substantive nature, together with a statement that the facility as proposed conforms to all such state substantive requirements. Pursuant to PSL §168(3)(e), the Board must find that the facility is designed to operate in compliance with these state substantive requirements, all of which shall be binding upon the applicant.

(d) A summary table of all state substantive requirements required to be identified pursuant to subdivision (c) of this section in two columns listing the provisions in the first column and a discussion or other showing demonstrating the degree of compliance with the substantive provision in the second column.

(e) A list of all state approvals, consents, permits, certificates, or other

conditions for the construction or operation of any proposed offsite interconnections and ancillary features that are not encompassed within the definition of Major Electric Generating Facility. These state actions not for the construction or operation of the proposed major electric generating facility are not supplanted by PSL Article 10 and may be state procedural requirements or state substantive requirements.

1001.33 Exhibit 33: Other Applications and Filings

Exhibit 33 shall contain:

(a) A statement whether the applicant has pending, or knows of others who have pending, with the Commission or with any other governmental department, agency or court of competent jurisdiction (State or Federal), any application or filing which concerns the subject matter of the proceeding before the Board. If any such applications or filings are pending, the applicant shall state, for each such application or filing, whether the granting of any such application or filing will have any effect on the grant or denial of a Certificate, and whether the grant or denial of a certificate will have any effect upon the grant or denial of any such other application or filing. The applicant shall notify the Secretary, presiding examiner and each party of any significant change in the status of each such application or filing.

(b) The application shall identify any Federal permit, consent, approval or license that will be required for the construction or operation of the facility. The application shall specify the date on which an application for any such approval was made or the estimated date on which it will be made. The applicant shall notify the Secretary, presiding examiner and each party of any significant change in the status of each such application.

1001.34 Exhibit 34: Electric Interconnection

Exhibit 34 shall contain:

A detailed description of the proposed electric interconnection including:

- (a) the design voltage and voltage of initial operation;
- (b) the type, size, number and materials of conductors;
- (c) the insulator design;
- (d) the length of the transmission line;
- (e) the typical dimensions and construction materials of the towers;
- (f) the design standards for each type of tower and tower foundation;
- (g) for underground construction, the type of cable system to be used and the design standards for that system;
- (h) for underground construction, indicate on a profile of the line the depth of the cable and the location of any oil pumping stations and manholes;
- (i) equipment to be installed in any proposed switching station or substation including an explanation of the necessity for any such switching station or substation;
- (j) any terminal facility; and
- (k) the need for cathodic protection measures.

1001.35 Exhibit 35: Electric and Magnetic Fields

Exhibit 35 shall contain:

(a) For the entire right-of-way of the proposed power line providing the electrical interconnection between the proposed facility and the existing electric transmission and distribution system, identify every right-of-way segment having unique electric and magnetic field (EMF) characteristics due to structure types and average heights, rights-of-way widths, and co-location of other transmission facilities in the right-of-way.

(b) For each identified right-of-way segment, provide both "base case" and "proposed" cross-sections to scale showing:

- (1) all overhead electric transmission, sub-transmission and distribution facilities including the proposed facility showing structural details and dimensions and identifying phase spacing, phasing, and any other characteristics affecting EMF emissions;
- (2) all underground electric transmission, sub-transmission and distribution facilities;
- (3) all underground gas transmission facilities;
- (4) all right-of-way boundaries; and
- (5) structural details and dimensions for all structures (dimensions, phase spacing, phasing, and similar categories) and include a Station number identifying the location.

(c) A set of the aerial photos/drawings enhanced by showing the exact location of each:

- (1) identified right-of-way segment;
- (2) cross-section; and
- (3) nearest residence or occupied non-residential building in each identified right-of-way segment with a stated measurement of the distance between the edge of right-of-way and the nearest edge of the residence or building.

(d) An EMF study with calculation tables and field strength graphs for each identified right-of-way segment cross-section, as follows:

- (1) the study must be signed and stamped/sealed by a licensed professional engineer registered and in good standing in the State of New York;
- (2) provide the name of the computer software program used to model the facilities and make the calculations;
- (3) regarding electric fields, model the circuits at rated voltage and provide electric field calculation tables and field strength graphs calculated at one meter above ground level with 5 foot measurement intervals depicting the width of the entire right-of-way and out to 500

- feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations;
- (4) regarding magnetic fields, model the circuit phase currents equal to the summer normal, summer short term emergency (STE Sum), winter-normal, and winter short term emergency (STE Win) loading conditions and provide magnetic field calculation tables and field strength graphs calculated at one meter above ground level with 5 foot measurement intervals depicting the width of the entire right-of-way and out to 500 feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations;
 - (5) regarding magnetic fields, also model the circuit phase currents equal to the maximum average annual load estimated to be occurring on the power lines within ten years after the proposed Facility is put in operation and provide magnetic field calculation tables and field strength graphs calculated at one meter above ground level with 5 foot measurement intervals depicting the width of the entire right-of-way and out to 500 feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations; and
 - (6) regarding magnetic fields, also model a "base case" with the circuit phase currents equal to the maximum average annual load currently estimated to be occurring on the existing power lines within the right-of-way (without construction or operation of the proposed Facility) and provide magnetic field calculation tables and field strength graphs calculated at one meter above ground level with 5 foot measurement intervals depicting the width of the entire right-of-way and out to 500 feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations.

1001.36 Exhibit 36: Gas Interconnection

If a gas interconnection is proposed for the facility, Exhibit 36 shall contain:

- (a) A study of gas supply options, capacity, and system impact, including:
- (1) A detailed description of the proposed gas pipeline interconnection, including all interconnecting facilities, pipeline route, size, operating pressure, volume of gas required to serve the facility, the need for new on-site compression, and identifying who shall construct, own and operate the pipeline facilities.
 - (2) An analysis demonstrating that there shall be sufficient gas supply and gas transmission capacity to support the requirements of the facility.
 - (3) An estimate of the peak hour, peak day, seasonal and annual natural gas requirements of the facility.
 - (4) An identification of the nature and extent of the natural gas capacity and transportation service as firm, interruptible, or both.
 - (5) An evaluation of the potential impacts of the facility on the gas distribution system of the Local Distribution Company (LDC).
 - (6) A discussion of the impact of the facility use of gas on wholesale supplies and prices in the region using the same transmission facilities as the facility.
- (b) A description and preliminary design details for the gas interconnection including:
- (1) class criteria for the interconnection pipeline location;
 - (2) location and design of valves;
 - (3) a plan for pressure testing of the station piping facilities, indicating applicable code, standards and procedures for testing and release of test medium; and
 - (4) the need for cathodic protection measures.

1001.37 Exhibit 37: Back-Up Fuel

If a back-up fuel is proposed for the facility, Exhibit 37 shall contain:

(a) A description of the circumstances under which fuel oil shall be burned in the facility and a description of all onsite facilities and interconnections required for the transportation, storage and combustion of fuel oil, including:

- (1) A chemical analysis of the back-up fuel;
- (2) an estimate of the rate of fuel oil consumption at full power output;
- (3) a description of any fuel oil storage tank(s), including the storage capacity of the tank(s) and a description of any secondary containment structures proposed to be constructed around the tank and off loading areas and any other facilities or measures proposed to prevent, contain or clean up oil spills;
- (4) an estimate of the maximum period that the plant could burn oil without refueling;
- (5) a description of the proposed method of oil delivery and on site oil delivery infrastructure or offsite interconnections and an estimate of the maximum rate of delivery, given the transportation methods and facilities proposed;
- (6) an estimate of the expected frequency and duration of oil firing of the facility and a discussion of the assumptions and analyses used to arrive at this estimate; and
- (7) a statement of the number of days of back-up fuel supply to be maintained including a discussion as to whether such number will be sufficient to conform to Commission policies on minimum back-up fuel supply quantities.

(b) If it is proposed to store more than 400,000 gallons of fuel oil at the facility site:

- (1) a copy of any Spill Prevention, Countermeasures and Control (SPCC) Plan required pursuant to federal regulations;
- (2) an application for a Major Petroleum Facility License pursuant to Article 12 of the Navigation Law, Section 174 (licenses), 17 NYCRR Part 30 (Oil Spill Prevention and Control- Licensing of Major Facilities), 6 NYCRR Part 610 (Certification of Onshore Major Facilities), and 6 NYCRR Parts 612 through 614 (Petroleum Bulk Storage Regulations).

(c) An identification and evaluation of reasonable alternatives to the use of fuel oil as a back-up fuel, including the feasibility of not having fuel oil back-up capability.

(d) A discussion of the impact of the facility use of fuel oil on wholesale supplies and prices in the affected region.

(e) If it is proposed to use a back-up fuel other than fuel oil, an

identification of the proposed back-up fuel and such information for the identified back-up fuel as is required for fuel oil as a back-up fuel pursuant to subdivisions (a) through (d) of this section, to the degree such information is applicable.

1001.38 Exhibit 38: Water Interconnection

If a water interconnection is proposed for the facility, Exhibit 38 shall contain:

(a) An estimate of the hourly and daily peak, and the hourly and daily average water supply needs and consumptive water losses of the facility, in gallons, for each day of a typical year, broken down by power production and domestic uses, with daily, monthly and annual totals.

(b) An estimate of the daily peak, daily average, and fire suppression peak and average flow rate needs of the facility in gallons per minute and a demonstration that an adequate water supply is available (both quantity and pressure) for fire protection during both normal and drought periods.

(c) A description of the methodology used (i.e., estimate, comparison, data, calculation) to prepare the water supply needs and minimum and maximum flow rate estimates stating all factors used.

(d) A description of the water chemistry requirements for water to be supplied to the facility, indicating any requirements that are more stringent than New York State standards for potable water, and describing any additional water treatment that shall be necessary to obtain the desired chemistry.

(e) An identification of the public water supply source or sources, including an identification of the well field(s) in the localized zone, proposed to be used by the facility, including:

- (1) studies to assess the available capacity of the water supply source and an analysis of the impacts, in terms of quantity, quality, and pressure during both normal and drought periods of the facility's water use on the water supply system, including an identification of the well field(s) in the localized zone;
- (2) an identification of all infrastructure requirements necessary to serve the facility including treatment requirements;
- (3) the impact of the facility on excess infrastructure capacity, including distribution piping, mains, pumps, storage, or additional supply during both normal and maximum system demands;
- (4) if use of surface water or an on-site well is proposed for water supply for the facility, a qualitative analysis of the water balance and an assessment of the impacts of the removal of the maximum daily withdrawal for the facility, particularly during drought periods, on stream flows and the ecological balance of waterbodies, including hydrogeological studies to clearly demonstrate the effect of this withdrawal on any contaminant plumes that have the potential to be influenced by the proposed well. These studies must state all methods used to promote that this withdrawal will not adversely affect any public or private wells.
- (5) if new surface water withdrawal is proposed for water supply for the facility, an identification and description of any water treatment facilities and intake structures including a demonstration that each facility represents Best Technology Available, if applicable; and

(6) an identification and description of any facility water treatment facilities.

(f) A detailed description of the proposed water interconnection, including all interconnecting facilities, line route, size, functions, design details, and operating characteristics.

(g) A description of the status of negotiations, and a copy of agreements that have been executed, with municipalities, public authorities, companies or individuals for providing water to the facility, including permitting implications/modification requirements and restrictions, if any, imposed by the provider, and a preliminary description of how the interconnection and any necessary system upgrades are to be installed, owned, maintained and funded.

(h) An identification and evaluation of other reasonable water supply alternatives and mitigation measures to avoid or minimize water supply impacts, including a contingency plan, if required, for water use curtailment during times of drought or water emergency, describing thresholds for water use curtailment.

(i) A description and evaluation of compliance with any requirements regarding water withdrawals contained in applicable state regulations, the Great Lakes Compact, or any requirements of the Susquehanna and Delaware River Basin Commissions.

1001.39 Exhibit 39: Wastewater Interconnection

The information provided in this exhibit shall be presented in a manner that distinguishes between sanitary wastewater, process wastewater, and intermingled sanitary and process wastewater. If a sanitary or process wastewater sewer interconnection is proposed for the facility, Exhibit 39 shall contain:

(a) A detailed description of the proposed wastewater sewer interconnection, including all interconnecting facilities, line route, size, functions, and operating characteristics.

(b) A separate water balance diagram for hourly and daily peak and hourly and daily average water use operating conditions for the facility that shows in detail all water sources, plant water uses, water treatment facilities, wastewater treatment facilities, wastewater discharges and which effluents shall be discharged, and where, including information on the characteristics (e.g. volume, temperature, constituent concentrations) of each water withdrawal and discharge under all operating conditions.

(c) An identification and evaluation of reasonable mitigation measures regarding wastewater generation and disposal impacts, including the use of on-site subsurface disposal.

(d) An identification and description of all reasonable discharge or disposal methods for wastewater generated from the facility, including a review of options for discharging to municipal sewer systems, aquifer recharge areas, in-ground discharges, or other process wastewater disposal, as well as, where applicable, an analysis of the impacts on water quality and quantity in affected groundwater and surface water resources, and an analysis of the impacts of any out-of-aquifer transfers.

(e) A description of available capacity and any limitations on wastewater disposal capacity.

(f) If a municipal or private sewage treatment system is proposed to be used, a description of the status of negotiations, or a copy of agreements that have been executed, with municipalities, companies or individuals for receiving wastewater from the facility including any restrictions or conditions of approval placed on the facility for wastewater disposal, if any, imposed by the provider, and a description of how the interconnection and any necessary system upgrades will be installed, owned, maintained and funded.

(g) For each proposed discharge, an identification and description of any facility wastewater treatment facilities and discharge structures, including a demonstration that each facility and/or effluent discharge will meet all applicable effluent limitations or pretreatment standards, as well as all applicable New York State water quality standards, during construction and operation.

(h) A completed application for the State Pollutant Discharge Elimination System (SPDES) Permit and a demonstration that the discharge complies with all applicable technology-based and/or water-quality based effluent limits.

1001.40 Exhibit 40: Telecommunications Interconnection

If a telecommunications interconnection is proposed for the facility, Exhibit 40 shall contain:

(a) A detailed description of the proposed telecommunications interconnection, including all interconnecting facilities, line route, design details, size, functions, and operating characteristics.

(b) An analysis demonstrating that there will be sufficient capacity to support the requirements of the facility.

(c) A description of the status of negotiations, or a copy of agreements that have been executed, with companies or individuals for providing the communications interconnection including any restrictions or conditions of approval placed on the facility imposed by the provider, and a description of how the interconnection and any necessary system upgrades will be installed, owned, maintained and funded.

1001.41 Exhibit 41: Applications to Modify or Build Adjacent

If the applicant is claiming that its application qualifies for treatment pursuant to PSL §165(4)(b), Exhibit 41 shall contain:

(a) A statement whether the application is to:

- (1) modify by an increase of more than 25 MW the nameplate capacity of an existing electric generating facility already having a nameplate generating capacity of 25 MW or more; or
- (2) construct a new facility adjacent or contiguous to an existing facility.

(b) A statement that the applicant is the owner of the affected existing major electric generating facility.

(c) For applications to modify existing facilities, a statement that after the modification the applicant will be the owner of the modified existing major electric generating facility.

(d) For applications to construct new facilities adjacent or contiguous to an existing facility, a statement that after the new construction the applicant will be the owner of both the existing facility and the new major electric generating facility.

(e) For applications to construct new facilities adjacent or contiguous to an existing facility, a map drawn to scale demonstrating that the new facility is proposed to be located on the same parcel of real property as the existing facility, on a separate parcel of real property sharing a common border with the parcel of the existing facility, or on separate parcels of real property separated by no more than 500 feet from the parcel of the existing facility.

(f) For emissions of the following substances, a table demonstrating a decrease in the rate of emissions with the name of the substance in the first column, the current hourly emission rate in the second column, the future hourly emission rate in the third column, and the percentage decrease in the rate of emission in the fourth column:

- (1) sulfur dioxide (SO₂);
- (2) oxides of nitrogen (NO_x);
- (3) carbon dioxide (CO₂);
- (4) carbon monoxide (CO);
- (5) particulate matter (PM 2.5, PM 10 and total PM);
- (6) volatile organic compounds (VOCs);
- (7) elemental lead; and
- (8) mercury.

For facilities that are partially replaced or modified, the percentage decrease shall be calculated by comparing the potential to emit of each such

contaminant of the existing unit that is to be modified or replaced as of the date of application to the future potential to emit each such contaminant of the modified or replacement unit as proposed in the application. For facilities that are sited physically adjacent or contiguous to an existing facility, the percentage decrease shall be calculated by comparing the potential to emit of each such contaminant of the existing facility as of the date of application to the future potential to emit each such contaminant of the existing and new facility combined as proposed in the application.

(g) For emissions of the following substances, a table demonstrating a decrease in the total annual emissions on a pounds-per-year basis with the name of the substance in the first column, the current actual three-year average annual emissions in the second column, the future annual potential to emit in the third column, and the percentage decrease in the annual amount of emissions in the fourth column:

- (1) sulfur dioxide (SO₂);
- (2) oxides of nitrogen (NO_x);
- (3) carbon dioxide (CO₂);
- (4) carbon monoxide (CO);
- (5) particulate matter (PM 2.5, PM 10 and total PM);
- (6) volatile organic compounds (VOCs);
- (7) elemental lead; and
- (8) mercury.

The percentage reduction shall be calculated by comparing the past actual emissions of each of the relevant contaminants emitted by the existing facility averaged over the three years preceding the date of application, 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.

(h) Information sufficient to demonstrate the introduction of a new cooling water intake structure where such structure withdraws water at a rate equal to or less than closed-cycle cooling would for the modified or replacement unit, or the existing and new facility combined, whichever is applicable.

(i) A table demonstrating a decrease in the heat rate with the current actual heat rate of the existing facility in the first column, the future heat rate for the modified or replacement unit, or the existing and new facility combined, whichever is applicable, in the second column, and the percentage decrease in the heat rate in the third column.

PART 1002 COMPLIANCE FILINGS

(Statutory authority: Public Service Law, § 161(1))

Sec.

1002.1 Purpose.

1002.2 General Procedures.

1002.3 General Requirements.

1002.4 Reporting and Inspections.

PART 1002 COMPLIANCE FILINGS

Section 1002.1 Purpose.

This Part establishes procedures and requirements for assuring that the applicant will comply with the terms, conditions, limitations, or modifications of the construction and operation of the facility authorized in the certificate.

1002.2 General Procedures.

- (a) The applicant may not commence construction of the facility or interconnections until the applicant has accepted the Certificate in accordance with Section 1000.14 of this subchapter.
- (b) The applicant may not commence construction of all or any portion of the facility or interconnections for which the Board has required approval of a compliance filing as a condition precedent to such construction until the applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased.
- (c) The applicant shall file an electronic copy and ten paper copies of any compliance filing with the Board, or the Commission after the Board's jurisdiction has ceased, by filing it with the Secretary at the Albany, New York Offices of the DPS and shall serve copies as follows:
- (1) one paper copy on the DEC project manager;
 - (2) one paper copy on each affected DEC regional office;
 - (3) three paper copies on the DEC at its central office;
 - (4) one paper copy on any other party specified in the certificate or order requiring the compliance filing; and
 - (5) an electronic copy on every party to the proceeding.
- (d) Any interested person or party may file comments regarding any compliance filing within 21 days of the filing and service of such compliance filing done in accordance with subdivision (c) of this section.
- (e) A compliance filing may not be used to request an amendment to a Certificate. If the Secretary determines that a request in a compliance filing is a request for an amendment to a Certificate, the Secretary shall issue a letter denying further processing of such request as a compliance filing.
- (f) Compliance filings will not be effective until approved by the Board or by the Commission after the Board's jurisdiction has ceased.
- (g) Approval may be made subject to specified terms, conditions, limitations, or modifications.
- (h) Decisions on compliance filings will generally be made at the next available session of the Board or the Commission, as the case may be,

provided the compliance filing is received sufficiently in advance of such sessions that there is adequate time in the circumstances to receive comments and process the matter, unless additional information is required to make the determination or the nature of the compliance filing warrants additional time for deliberation or analysis.

(i) The standard of review for compliance filings shall be whether the compliance filing reasonably assures compliance with the Certificate.

(j) After a compliance filing is approved, an applicant may request a change in what was so approved as a result of a compliance filing by requesting either a major change or a minor change. Requests for a major change in what was so approved as a result of a compliance filing shall be filed, served and reviewed in the same manner as an original compliance filing pursuant to subdivisions (c) through (i) of this section. Requests for a change in what was approved as a result of a compliance filing in which there is no discernable potential for increased adverse environmental impact and in which there will be no change in the specified terms, conditions, limitations, or modifications applicable to a prior approval shall be deemed a minor change. A minor change may be requested by filing an electronic copy with the Secretary at the Albany, New York Offices of the DPS and serving an electronic copy on the DEC project manager. The Secretary shall determine whether DPS or the DEC project manager have an objection to the proposed minor change. If there is such an objection, the Secretary shall issue a letter denying further processing of such request as a minor change. If there is no such objection, the Secretary shall issue a letter stating that the minor change may be implemented.

1002.3 General Requirements.

The compliance filing shall contain:

(a) a description of and citation to the requirement in a certificate or an order for which compliance is to be demonstrated;

(b) a description of how the applicant will comply with the requirements of the certificate or order; and

(c) final maps, plans, diagrams, drawings, studies, reports or other documents demonstrating compliance.

1002.4 Reporting and Inspections.

(a) The Board, or the Commission after the Board's jurisdiction has ceased, may require the applicant to file written information reports on the construction or operation and the facility and the interconnections. Unlike compliance filings, the information reports are not submitted for approval or action by the Board or the Commission. The applicant shall file an electronic copy with the Board, or the Commission after the Board's jurisdiction has ceased, by filing it with the Secretary at the Albany, New York Offices of the DPS and shall serve electronic copies on all parties to the proceeding, except that access must be provided in hard copy to any party upon request.

(b) The site and all construction records shall be open to inspection by representatives of the Chairperson of the Board, or the Commission after the Board's jurisdiction has ceased, during normal working hours. Information requested by such representatives shall be provided in a timely fashion and,

in all cases, at least 10 days prior to the initiation of any activity with regard to which the information is requested. If any activity on which information is requested has already been initiated, such information shall be provided within three business days of the request.