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 December 10, 1997

BOARD MEMBERS PRESENT:

Lawrence G. Malone, Alternate for
John F. O'Mara, Chairman
New York State Public Service Commission

Peter Bergen, Alternate for
John P. Cahill, Commissioner
New York State Department of
Environmental Conservation

John K. Hawley, Alternate for
Barbara DeBuono, Commissioner
New York State Department of Health

Gregory A. Caito, Alternate for
Charles D. Gargano, Commissioner
Empire State Development

CASE 97-F-0809 - In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR -- Addition of a new Chapter X, Subchapter A, to implement Article X of the Public Service Law.

MEMORANDUM AND RESOLUTION
ADOPTING ARTICLE X REGULATIONS

(Issued and Effective December 16, 1997)

BY THE BOARD:

INTRODUCTION

On July 22, 1997, we issued for comment a Notice of Proposed Rulemaking proposing the repeal of the existing Chapter VIII (including Subchapter A and Parts 800 through 815) of 16 NYCRR (the Article X regulations) and the addition to it of a new Chapter X (consisting of Subchapter A and Parts 1000 through 1003). The addition is required to implement Article X

of the Public Service Law (PSL), enacted July 24, 1992. Article X supersedes Article VIII of the PSL, which had applied to applications filed on or before December 31, 1988.

Eleven organizations commented on the proposed rules.[1/] A description and analysis of their major substantive comments are provided herein. The rules we are adopting, set forth in the attached resolution, incorporate a number of their recommendations as well as changes advocated by the agencies designated to implement the regulations.

DISCUSSION AND ANALYSIS OF COMMENTS

Streamlining of Regulations

Rens. EMC comments that the proposed regulations are insufficiently detailed. We disagree. The Article VIII regulations attempted to address every plausible situation and imposed many specific requirements on utility applicants. The present regulations, in contrast, attempt to establish a cohesive framework for addressing the various situations that may arise, and we expect that applicants, agencies, municipalities, and other organizations will work cooperatively in identifying the specific details that are necessary in individual proceedings.

As part of our streamlining effort, we proposed to adopt by reference the Public Commission's Rules of Procedure, including provisions regarding party status and intervention contained in 16 NYCRR §4.3. We see no need at this time to adopt specific rules that differ from those of the Commission in this regard because we believe that presiding examiners, mindful of the statutory deadline for completing a certification proceeding, will generally exercise their authority to ensure

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[1/] The Town of Athens, Consolidated Edison Company of New York, Inc. (Con Ed), Independent Power Producers of New York, Inc., Multiple Intervenors, Natural Resources Defense Council (NRDC), New York Power Pool (NYPP), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation (NMPC), Rensselaer Environmental Management Council (Rens. EMC), Rochester Gas and Electric Corporation (RG&E) and US Generating Company (U.S. GenCo).

that active party status is accorded to those who have an interest in the proceeding, are likely to contribute to a complete record, and intervene early enough to make a meaningful contribution.

NYPP and NYSEG argue that we may not repeal the Article VIII regulations because both enactments of PSL Article VIII[1/] contain savings clauses providing that their provisions remain operative after their respective expiration dates with respect to applications filed while such Articles were in force. But those clauses do not bar our repeal of the regulations, for they refer to statutory, rather than regulatory, provisions. Moreover, NYPP and NYSEG admit that the one certificate affected contains specific provisions regarding such matters as how that certificate may be amended; and the Board can take action regarding that certificate in accordance with the statute, even without the regulations in place. Therefore, the existing Article VIII Regulations are superfluous and will be repealed.

Public Involvement Program (§1000.3)

This section, as drafted, encourages the applicant to seek public input in the development of its application and makes the applicant responsible for actively seeking the participation of interested parties in the certification and compliance filing process. In addition, the applicant may submit its proposed Public Involvement Program (PIP) to staff for review as to its adequacy.

NYPP, NMPC, Con Ed, NRDC and U.S. GenCo seek modification. U.S. GenCo seeks specific guidance from the Board concerning the PIP process. It suggests that if specified consultation and notice requirements are met an applicant should, essentially, be deemed by the Board to have satisfied its obligations to secure public involvement. Con Ed would take the U.S. GenCo proposal a step further and require parties to "sincerely participate in PIP." In contrast, the NYPP advocates

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[1/] L. 1992, c. 385; L. 1978, c. 708.

elimination of the PIP process on the grounds that for the public has ample opportunity to participate in the application process. If the PIP process is not eliminated, NYPP requests that its approval by staff be made a requirement rather than an option. NMPC requests that the time for staff's response to an applicant's PIP be specified in the regulations. Finally, NRDC requests that the regulations specify the minimum steps the applicant must take to ensure public participation.

In a competitive environment, it is not necessary to spell out in detail the nature of the public involvement process or to make staff approval mandatory. But an effective and timely public involvement process is critical if the stringent time requirements of Article X are to be met, some timing requirements will be adopted. First, to secure review of a PIP, the proposed plan must be submitted at least 150 days prior to the submittal of the pre-application report. This will allow time for staff to suggest desirable revisions and to assure that the PIP process is not truncated. (The 150-day retrieval is based on the experience of U.S. GenCo, which began the PIP process in May and filed its pre-application report in September.) Second, if an applicant desires approval, staff will be required to review a PIP plan within 30 days of its submittal.

Pre-application Process (§1000.4)

U.S. GenCo, NMPC, Con Ed and Rens. EMC suggest changes to Section 1000.4, which governs the pre-application process.

U.S. GenCo seeks to expand the authority of the hearing examiner in the pre-application process by giving him or her the power to direct outcomes rather than merely mediating disputes among the parties. In addition, U.S. GenCo would bar a party to a pre-application agreement from raising objections to the scope of any study or program of studies in such agreement.

The role of the hearing examiner in the pre-application process, as defined in PSL §163(2), is "to mediate any issue relating to the methodology and scope of any such studies or programs of study to which [various parties] cannot agree."

There is no evidence that the Legislature intended to empower the examiner to arbitrate and resolve disputes as to the scope of studies, and the arrogation of that power appears to be impermissible. Furthermore, adoption of a provision authorizing the examiner to arbitrate might well discourage parties from participating in the pre-application process, particularly if they would be thereafter barred from raising objections to a study or programs of study, as U.S. GenCo suggests. That suggestion itself, however, is consistent with PSL §162(3), which bars a party to a stipulation from raising objections to the method and scope of any stipulated studies, and will adopt it.

NMPC seeks to amend §1000.4(d) to specify time limits for comments on pre-application reports and for responses to those comments.

Con Ed seeks to establish the scope of the applicant's environmental studies by the onset of the proceeding to lessen the potential for delay. It would require any party seeking to adjudicate the scope of studies to participate in the pre-application process and would preclude parties not so participating from thereafter challenging the scope of studies.

Rens. EMC seeks to ensure that local and municipal parties effectively participate in the pre-application process and are given the opportunity to comment on any stipulations that are entered into regarding the scope of studies.

A schedule will be established, as suggested by NMPC and Con Ed, encompassing the pre-application process. Specifically, the pre-application report must be filed not later than three months prior to the date any applicant engaging in pre-application consultation plans to file its application, to allow for amendment of the scope of proposed environmental studies proposed in such report. As for Rens. EMC's apparent concern, we are constrained by the statutory provision that requires a fee to be submitted with, not before the filing of, an application. We will, however, clarify Section 1000.9 to state that an applicant may agree to provide funds to parties during the pre-application process, though the fee accompanying the

application may not thereby be reduced; we urge applicants to consider making such agreements to attempt to assure the effective participation of stakeholders in the preapplication report and the expeditious proceeding of Article X applications.

Fund for Parties (§1000.9)

PSL §164(6) requires that each application be accompanied by a fee equal to $1,000 per 1,000 kW of capacity, not to exceed $150,000, to be disbursed by the Board to defray expenses incurred by municipal and local parties for expert witnesses and consultants.

NYPP and RG&E object to this requirement. RG&E acknowledges that the statute mandates collection of a fee and distribution of the amount collected to municipal and local parties, but it argues, nevertheless, that such a requirement is incompatible with the Commission's desire to foster competition.

NYPP, which seems not to understand that the fund to be established will arise from the filing fee, argues that no fund should exist. NYPP also objects to the likely distribution of the fund between municipalities and local parties because it "would create an incentive for . . . local parties to sprout up and take advantage of the funding."[1/]

Based on the requirements of State Finance Law §97-tt, various aspects of §1000.9 have been modified to assure compliance with the Comptroller's requirements. In addition, §1000.9 has been clarified so that, consistent with PSL §164(6)(b), at least 50% of the fund shall be allocated to municipal parties. Since the arguments of RG&E and NYPP are inconsistent with the statutory mandate, they are rejected.

Amendment, Revocation and Suspension (§1000.15)

The proposed regulations provided that a change in a certification is not material or substantial if such change results in an environmental impact exceeding the originally

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[1/] NYPP's Comments, p. 4.

projected impact (in numerical terms) by less than 20% or if a change in the location of certain facility components is less than 500 feet. The regulations also provided that in the event the Board were considering amendment, revocation, or suspension of a certificate, the Board would issue an order to show cause. A hearing would be held if revocation were contemplated, but not in the case of suspension.

U.S. GenCo and NRDC offer substantive changes. NRDC objects to the arbitrary establishment of a 20% increment in environmental impact or a 500-foot relocation as changes that will not result in any material increase in environmental impact. NRDC proposes instead that, as in regulations implementing Article 8 of the Environmental Conservation Law, (The State Environmental Quality Review Act) criteria be developed to determine the environmental impact of certificate amendments. Pursuant to NRDC's comments, the regulations have been modified to eliminate the use of thresholds to establish whether a certificate change will result in material environmental impact. Instead, the significance of a change will be determined by reference to 6 NYCRR 617.7(c). (One of the Regulatory provisions implemented by the SEQRA.)

U.S. GenCo notes that the regulations, provide for a hearing if a revision or revocation is being considered, but not necessarily in the event of a proposed suspension. U.S. GenCo argues that except in the case of emergency suspensions, certificate holders should be entitled to a hearing if suspension is being contemplated. U.S. GenCo's proposal is reasonable and is adopted.

Private Applicants (§1001.2

The regulations distinguish between a private applicant and other applicants. A private applicant, defined in §1000.2 as one lacking the power of eminent domain, is not required to address demand reducing energy measures or site alternatives unless it owns, or has options on, other parcels.

NRDC argues that since the vast majority of applications are likely to emanate from private applicants, adoption of the proposed regulations will effectively defeat the statute's expectation that demand reducing measures be addressed. It contends that a private applicant has little, if any, incentive to implement such measures in lieu of constructing a generation facility.

U.S. GenCo, in contrast, considers the definition of private applicant to be too narrow. It suggests that this definition would fail to exempt non-utility applicants that enter into partnership with regulated utilities, or rely upon financing by means of Industrial Development Authorities, which do possess the power of eminent domain.

There is no need to amend the definition of private applicant. The distinction between private applicants and others is based on PSL §164(1)(b), which provides that the information to be submitted on alternatives is to be no more extensive than that required under Article 8 of the Environmental Conservation Law, and on the holding of Horn v. IBM, 110 A.D.2d 87 (2d Dept, 1985), that applicants without the power of eminent domain need not consider the site alternatives unless they own or have options on such sites.

As for NRDC's concern, regulated utilities (specifically transmission and distribution companies) presumably will, through the system benefits charge, continue to fund and help develop demand reducing measures. To the extent the existence of those measures should be considered by the Board, there is no reason that staff, such utilities, or other interested parties in a certification proceeding cannot make the information available to the record.

Approved Procurement Process (§1001.5)

An "Approved Procurement Process is defined in the proposed regulation by reference to PSL §66-i, which, in turn, authorizes the Commission "to require each electric corporation to conduct competitive bidding auctions or other procurement

programs (underscoring added) for the purpose of satisfying electric capacity needs . . . ."

U.S. GenCo argues that the definition of Approved Procurement Process should be expanded to recognize the Commission's actions to deregulate the electric industry and to create a competitive environment in the electric generation market. Unless the definition is expanded, U.S. GenCo contends, "it may have to submit more information than necessary, even though the additional information has no relevance or applicability to the Board's decision to certify the facility."[1/] Specifically, U.S. GenCo complains that although as a "private applicant," it would likely be exempted from the requirement that it address alternative sites or demand reducing measures, it would be subject to addressing costs, need and alternative filing requirements.

U.S. GenCo asserts that in a competitive environment the production of economic and cost data is unnecessary because ratepayers are not at risk if a generating facility is uneconomic to operate and undesirable because public disclosure of sensitive cost and economic data is antithetical to competition.[2/] According to U.S. GenCo, disclosure of such data could compromise an applicant's negotiating position with equipment vendors and contractors, load serving entities (those who arrange for the ultimate delivery of energy to end users), and other competitors, all to the detriment of a competitive market. Finally, U.S. GenCo argues that its proposal is consistent with the energy policy of the State and its most recent energy plan.

The question of whether a proposed facility qualifies under the Approved Procurement Process rubric is a matter for the Commission to resolve pursuant to PSL §160(7). Accordingly, the definition contained in the proposed regulations will not be adopted.

[1/] U.S. GenCo's comments, p. 12.

[2/] NYSEG makes a similar argument.

U.S. GenCo has stated that absent a favorable ruling from the Board, it will, in the case of its projected application, request a declaratory ruling from the Commission. If it does so, a far greater number of parties will have the opportunity to comment and the Commission will have additional experience available to it, stemming from the ongoing process of increasing competition, which will enable it to make a more reasoned judgment. Deferral of this issue to the Commission is proper since PSL §160(7) specifies the Commission as the relevant decision maker.

Estimated Cost Information (§1001.4)

Section 1001.4 specifies that applications involving facilities not selected pursuant to an Approved Procurement Process must contain estimated cost information. NYPP, RG&E, and NYSEG urge that this provision be deleted, while Rens. EMC comments that cost information concerning alternatives should also be required.

Section 1001.4 is included to implement PSL §164(1)(d), which specifically requires certain applications to contain such information. Applicants required to submit this information, or other confidential commercial information, may do so pursuant to §89(5) of the Public Officers Law and the regulations that implement it (16 NYCRR Subpart 6-1).

STATE ENVIRONMENTAL QUALITY REVIEW

In 16 NYCRR §7.2(a)(1), part of the Commission's Rules of Procedure that we proposed to adopt by reference, the adoption of Rules of Procedure (including filing requirements applicable to applications for authority) are specified as Type II actions, that is -- actions previously determined not to have a significant adverse environmental impact. Moreover, we conclude, as did the Public Service Commission, that regulations setting forth certification procedures are filing requirements that will not have a significant adverse effect on the environment. Such regulations will not change the applicable substantive law, and

the decisionmaking process they contemplate will ensure that the adverse environmental impacts of proposed facilities will be carefully considered.

CONCLUSION

The views of all the commentors have been taken into account in developing regulations that will appropriately implement PSL Article X. The resulting regulations, as set forth in the accompanying resolution, are adopted.

By the New York State Board on
Electric Generation Siting and
the Environment - Case 97-M-0809

(SIGNED) JOHN C. CRARY
Secretary

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

RESOLUTION BY THE BOARD

Statutory Authority

Public Service Law Sections 161, 164(1)(g), (6)(b), 165(5),

State Administrative Procedure Act 306(2)(4)

CASE 97-F-0809 - In the Matter of the Rules and Regulations of the Board on Electric Generation Siting and the Environment, contained in 16 NYCRR -- Addition of a new Chapter X, Subchapter A, to implement Article X of the Public Service Law.

At a session of the Board on Electric Generation Siting and the Environment held in the City of Albany on December 10, 1997, the Board, by a unanimous vote of its members present, R E S O L V E D:

1. That the provisions of Section 202 (1) of the State Administrative Procedure Act and Section 101-a (2) of the Executive Law having been complied with, Title 16 of the official compilation of Codes, Rules, and Regulations of the State of New York is amended, effective upon publication of a Notice of Adoption in the State Register, by the repeal of existing Chapter VIII (including Sub-Chapter A and Parts 800 through 815) and the addition of a new Chapter X (including a new Subchapter A and new Parts 1000 through 1001) to read as shown on the following 32 pages.

CHAPTER X

CERTIFICATION OF MAJOR ELECTRIC GENERATING FACILITIES

SUBCHAPTER A REGULATIONS IMPLEMENTING ARTICLE X

OF THE PUBLIC SERVICE LAW

AS ENACTED BY CHAPTER 519, Section 6, OF THE LAWS OF 1992

PART 1000

GENERAL PROCEDURES

(Statutory Authority: Public Service Law §161, 164(6)(B), 165(5), State Administrative Procedure Act §306(2)(4))

Sec.

Section 1000.1 Adoption of Procedures by Reference.

Unless a provision of PSL Article X, 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 X. When such regulations indicate that the Commission is the decision maker, such reference shall be deemed to apply to the Board.

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) **Applicant:** any person who proposes to submit or who in fact submits an application for a certificate to the Board under this part;

(b) **Associate Examiner:** an administrative law judge appointed by DEC;

(c) **Commission:** The New York State Public Service Commission;

(d) **DEC:** The New York State Department of Environmental Conservation;

(e) **DPS:** The New York State Department of Public Service;

(f) **ECL:** The Environmental Conservation Law;

(g) **Map:** a flat representation of a portion of the earth's surface, which may be in hard copy 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;

(h) **Modification:** an amendment of an application or Certificate which is not a revision;

(i) **Offsite Electrical Facilities.** Part of a major electric generating facility consisting of all equipment needed for the transmission of the output of such facility, including transmission and distribution lines (whether or not needed for construction or back-up service), substations, switching stations and transformers that are: (1) not subject to the Commission's jurisdiction under PSL Article VII; and (2) installed in New York State for the integration of such facility with the electric system grid;

(j) **Onsite Facilities:** Part of a major electric generating facility consisting of ancillary features located on the facility site such as roads, railroads, switchyards, fuel storage areas, solid waste disposal areas, waste treatment and disposal facilities, etc.;

(k) **Other Local Party:** Any non-governmental party which represents the interests of persons in the vicinity of the proposed or any alternative site listed as reasonable in an application;

(l) **Permanent Board:** the Board on Electric Generation Siting and the Environment, exclusive of ad hoc members;

(m) **Plain Language:** eighth grade reading level or easily understandable to the lay public to the maximum extent possible;

(n) **Presiding Examiner:** a presiding officer appointed by DPS;

(o) **Private Applicant:** an applicant that does not have the power of eminent domain;

(p) **PSL:** the Public Service Law;

(q) **Public Involvement Program (PIP):** a series of coordinated activities that provides a variety of meaningful public participation opportunities by which public concerns can be identified as early as possible in (and throughout) the various stages of the decision-making process, establishes communication between stakeholders and an applicant, and results in education of the public as to the specific project and the Article X process;

(r) **Revision:** an amendment of an application or Certificate proposing or authorizing a change in the facility likely to result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility as determined by the Board;

(s) **Revocation:** termination of the rights granted in a Certificate;

(t) **Stakeholders:** those persons who may be affected or concerned by any issues within the Board's jurisdiction relating to the project and any decision being made about it; and

(u) **Suspension:** temporary deprivation of some or all of the rights granted in a Certificate.

1000.3 Public Involvement Program (PIP). (a) To ensure throughout the Article X 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 and to "encourage" stakeholders to participate at the earliest opportunity in the applicant's proposed project so that their input can be considered.

(b) A Public Involvement Program includes but will not be limited to:

(1) Consultation with the affected agencies and other stakeholders pursuant to Section 1000.4(b).

(2) Activities required by Section 1000.4(c) and (d), and

(3) Notification pursuant to Sections 1000.5 and 1000.6.

(4) Activities designed to encourage participation by stakeholders in the certification and compliance process.

(c) An applicant may submit a proposed PIP plan to DPS staff for review as to its adequacy. If an applicant does desire such review, it must submit its proposed PIP plan for review at least 150 days prior to the submittal of any pre-application report. DPS staff will determine whether the PIP plan is adequate within 30 days of the date of the applicant’s submittal.

1000.4 Pre-Application Procedures.

(a) This Section applies whenever an applicant decides to consult and seek agreement as to the methodology and scope of any study or program of studies in support of its application. It discusses informal consultation and specifies the process for formal consultation applicable where applicants choose to engage in such consultation.

(b) An applicant is encouraged to consult informally and formally with affected agencies and other stakeholders (providing information and meaningful opportunities for input to stakeholders concerning the project).

(c) An applicant engaging in pre-application consultation shall initiate the formal consultation process by filing with the Secretary, Department of Public Service, Three Empire State Plaza, Albany, New York 12223-1350, no less than three months before the date on which it plans to file an application, an

original and ten copies of a pre-application report consisting of:

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

(2) a draft scope of an environmental impact analysis containing:

(i) a brief description of the proposed project;

(ii) the potentially significant adverse impacts identified both by the applicant and as a result of any informal consultation with involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be affected;

(iii) the extent and quality of information needed for the applicant to adequately address each impact, including an identification of relevant existing information, and required new information, including the required methodology(ies) for obtaining new information;

(iv) an initial identification of mitigation measures;

(v) any reasonable alternatives to be considered; and

(vi) an identification of significant issues raised by the public and involved agencies during any informal consultation and the applicants' response to those issues.

(d) At the time it files the pre-application report with the Secretary, the applicant shall serve ten copies of the report on DEC, two copies each on the other Board member agencies and a copy on the Chief Executive Officer of each agency and municipality listed in PSL Section 164(2) and of any other agency that would (absent PSL Article X) have approval authority with respect to the facility. Such municipalities and agencies, as well as any other persons served with a copy of the pre-application report, should serve on the applicant any

comments on such report within 21 days after service of such report. The applicant shall file and serve any such comments and any replies thereto, in the same manner as it files and serves the pre-application report, within one month after the filing of such report.

(e) In order to attempt to resolve any questions that may arise in the consultation process initiated pursuant to Subdivision (c) hereof, the Board shall designate a presiding examiner, who shall mediate any issue(s) relating to the methodology or scope of any study or program of studies concerning which agreement cannot be reached and receive any stipulation setting forth any agreement that is reached. An original and ten copies of any such stipulation shall be filed with the presiding examiner and a copy shall be served contemporaneously on the Chief Executive Officer of each agency and municipality listed in PSL Section 164 (2) and on any other person who participated in the consultation process after having been notified thereof as a part of the public involvement program discussed in Section 1000.3 of this Part or otherwise. Any party to a hearing on an application, other than one that signed a stipulation, may timely raise objections at the hearing as to the methodology or scope of any study or program of studies described in such stipulation.

(f) The presiding examiner is authorized to alter the deadlines established in Sections 1000.3 and 1000.4 of this Part.

1000.5 Filing and Service of an Application. (a) The applicant shall file with the Chairman (addressed to the attention of the Secretary) an original and ten copies of its application including maps in a readily reproducible form and the accompanying documents specified in this Section. The applicant shall contemporaneously serve ten copies of the application and accompanying documents on DEC, two copies each on the other Board member agencies and one copy on:

(1) the Chief Executive Officer of each agency and municipality listed in PSL Section 164(2);

(2) any other person who participated actively in the pre-application consultation process and has requested such copy; and

(3) local public library(ies) or other locations accessible to the public in the area likely to be affected by the project including those specified in PSL Section 164(2)(a)(vii).

(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 required by PSL Section 165, which testimony shall include the qualifications of the witness and specify any portion of the application for which such witness was responsible or supports;

(2) an affidavit showing that a copy of the application and accompanying documents were, or will contemporaneously be, sent to all those required to be served;

(3) the notice required pursuant to Section 1000.6(a) of this part;

(4) a request for a water quality certification pursuant to Section 401 of the Federal Clean Water Act, if such certification is required, and justification therefor;

(5) any appropriate motion; and

(6) a statement of the names, addresses, telephone numbers and (if available) E-mail addresses and telecopier machine numbers of the applicant and its attorney or other representative.

1000.6 Publication and Service 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 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 site is located, except that in cases of amendment or transfer of certificates, the appropriate site is that of the authorized facility.

(b) Notices shall be:

(1) in plain language and written in any language that is the primary language of more than 20% of the public in the affected area;

(2) in display format in a prominent location in the newspaper; and

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

(c) The applicant shall give notice of its application by serving a copy of such notice as required by PSL Section 164(2), serving a copy on the Chief Executive Officer of any other agency that would (absent PSL Article X) have approval authority with respect to the facility and publishing a notice(s) as described in Subdivision (a) hereof contemporaneously with the filing of the application. The notice(s) shall include:

(1) a summary of the application;

(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 sites listed as reasonable 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 or was filed;

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

(5) a statement that the application, when filed, may be examined during normal business hours at the offices of the DPS at Three Empire State Plaza, Albany, New York, and at specified public locations in the project vicinity;

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

(7) the names, addresses, telephone numbers and (if available) E-mail addresses and telecopier machine numbers of a representative of the applicant and a member of DPS staff who may be contacted for information or assistance; and

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

(d) If an alternative to the applicant’s proposal that was not listed as reasonable in the application is subsequently proposed by any party, the applicant shall give prompt notice of such alternative (as described in this Section), unless the presiding examiner rules that such alternative is not reasonable (as described in Section 1001.2 of this subchapter) 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 (if available) the E-mail address and telecopier machine number of a

representative of the party proposing such alternative from whom further information can be obtained.

(e) 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 at Three Empire State Plaza, Albany, New York and, where the presiding examiner has so required, at specified public locations in the project vicinity; and

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

(f) 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.

(g) The applicant shall promptly notify the presiding examiner (or, if none, the Secretary) upon discovery of any inadvertent failure of publication or service of a notice or application under this Section or Section 1000.5 of this Part. The presiding examiner (or, if none, the Secretary) shall take such action as may be necessary to ensure fair treatment of a person aggrieved by such inadvertent failure.

(h) 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.

(i) Prior to the publication of any notice required by the Board, the presiding examiner or these regulations, the applicant

may submit a copy of its proposed notice to the Secretary or to the presiding examiner for approval.

(j) The applicant shall promptly file proof of the publication of any required notice.

1000.7 Water Quality Certification Procedures.

(a) If construction or operation of a proposed major electric generating facility would require a federal permit and result in any discharge into the navigable waters of the United States, a Section 401 Certification is needed.

(b) If an applicant or certificate holder has requested a Water Quality Certification, the Board or a designee will 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:

(1) advised the Board that such Certification must either be issued or denied within a specified shorter period or be waived; or

(2) 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 staff), or be waived.

(c) If it appears that the review of a request for a Water Quality Certification cannot be completed within the applicable period specified in subdivision (b) of this Section, the Board or a designee will deny the Certification without prejudice to a later request for Certification.

(d) An applicant, after filing its application, or a certificate holder that requests a Water Quality Certification shall:

(1) file an original and ten copies of its request and supporting information;
(2) serve a copy of such documents on each party to the proceeding and affected landowners;
(3) publish or serve a notice of such request as would be required if it had been made in an application; and
(4) state in the notice that such request and supporting information are available at a specified location(s) such as a library(ies), and that interested persons have the opportunity to be heard by filing comments (within 30 days after the filing of the request) with the Secretary.

(e) In support of any request for a Water Quality Certification, an applicant or certificate holder shall demonstrate compliance with the provisions referenced in 6 NYCRR Section 608.9.

1000.8 Additional information. (a) Upon the request or direction of the Board, the Chairman or the presiding examiner, the applicant shall submit such additional information as may be reasonably required to reach a decision on any specified issue including onsite monitoring activity, or shall explain why it is not considered reasonable that it be required to supply such information or otherwise contest the request or direction. Such information may include onsite monitoring data, design parameters and other detailed information.

(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.

1000.9 Fund for Municipal and Local Parties.

(a) Any municipality (except an applicant) or other local party may request funds to defray expenses for expert witness and consultant fees. Requests for funds shall be submitted to the presiding examiner not later than 15 days after the issuance of a notice of the initial prehearing conference.

(b) Subject to the availability of funds, the presiding examiner may fix additional dates for submission of fund requests.

(c) Each request for funds shall be submitted to the presiding examiner, with copies to the other parties to the proceeding, and contain:

(1) the number of persons and the interests and goals the requesting party represents;

(2) a statement of the availability of funds from requesting parties own resources and from other sources and of the efforts which have been made to obtain such funds;

(3) the location of the requesting party with respect to the proposed site and any alternative site listed as reasonable in the application;

(4) to the extent possible, the name and qualifications of each expert to be employed;

(5) if known, the name of any other party who may or is intending to employ such expert;

(6) a detailed statement of the services to be provided by experts and consultants (and the basis for their fees), specifying how such services will contribute to the development of an adequate record;

(7) a statement as to the result of any effort made to encourage the applicant to perform the proposed studies or evaluations or the reason it is believed that an independent study is necessary; and

(8) a copy of any contract or agreement or proposed contract or agreement with each expert and consultant.

(d) At the initial prehearing conference, or at any other conference held to consider fund requests, the presiding examiner shall discuss the award of funds and encourage the consolidation of requests.

(e) Not later than 15 days after the close of the initial prehearing conference, the presiding examiner shall make an initial award, and from time to time thereafter may make additional awards, of funds in relation to the potential for such awards to make a contribution to the development of an adequate record. The presiding examiner shall ensure that the funds are awarded on an equitable basis in a manner which facilitates broad public participation in the proceeding, and that a fair portion is awarded to municipal and other local parties from the area of the applicant's proposed site. At least 50% of the funds deposited in the intervenor account shall be awarded to municipalities and up to 50% to other local parties.

(f) The fee submitted with each application shall be deposited in an intervenor account, established pursuant to Section 97-tt of the State Finance Law.

(g) On a quarterly basis, unless otherwise required by the presiding examiner, any municipality or other local party receiving an award of funds shall:

(1) provide an accounting of the monies which have been spent; and

(2) submit a report to the presiding examiner showing:

(i) that the purpose for which the funds were awarded has been achieved and the results of any studies conducted using such funds;

(ii) that reasonable progress toward the goal for which the funds were allocated is being achieved; or

(iii) why further expenditures are warranted.

(h) Where it appears warranted, the presiding examiner may incorporate the reports referred to in subdivision (g) of this section into the hearing record as public statements.

(i) Disbursements from the intervenor account to municipal and other local parties shall be made by the DPS upon audit and warrant of the Comptroller of the State on vouchers approved by the Board. Any funds which have not been disbursed shall be returned to the applicant after the time for applying for judicial review of a Board's decision has expired. If an application has been withdrawn or dismissed, any funds remaining shall be returned within a reasonable time.

(j) During the pre-application process, an applicant may agree to defray expenses incurred by a municipality or other local party for expert witness or consultant fees. Such party may agree that it will pay the money advanced by the applicant if it receives a disbursement in accordance with subdivision (i) of this section. Such agreement shall not bind the presiding examiner to award funds in any particular manner.

1000.10 Service of documents.

(a) Parties, other than the staffs of the permanent Board member agencies (which shall be served with all documents), shall request of the Secretary those documents they desire to receive during the proceeding. Unless such a party makes such a request, it will be served only with official notices, rulings, decisions and orders.

(b) The Secretary or presiding examiner shall send to all parties a list containing the name and address of each person who has become a party to the proceeding, indicating the extent of each party's request, if any. During the course of a proceeding the Secretary or the presiding examiner may send to all parties a

revised list to indicate that particular documents (other than official notices, rulings and orders) need not be served on inactive parties.

(c) The service of any document (including a notice, order or opinion of the Board) on a party may be by personal service, or prepaid express, or first class mail. Service upon the attorney or other representative of a party shall be deemed proper service upon the party. Documents shall be served on each active party in the same manner as on other active parties.

(d) Unless otherwise provided by the Board, Secretary or presiding examiner, a party filing a written motion, interlocutory appeal, brief or reply to such documents shall (at the time of the filing with the Secretary) submit proof of service of a copy of the document on the required parties.

(e) If the last day for filing or service falls on a day when State offices are not normally open for the conduct of regular business, filing or service shall be completed by the close of business on the next regular business day.

(f) Any order, opinion or other document issued by the Board will be filed in the Albany office of the DPS. A copy of each such document will be served upon each party.

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

1000.11 Incorporation by Reference and Official Notice.

(a) 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.

(b) A party making a motion under subdivision (a) of this Section shall:

(1) clearly identify the record or document to be incorporated;

(2) explain why such record or document is considered material to the proceeding;

(3) provide, upon the request of the Board or presiding examiner, a certified copy of any public record; and

(4) provide, upon the request of the Board or presiding examiner, additional copies of the record or document sought to be incorporated by reference.

(c) Briefs and other documents that attempt to persuade through argument may not be incorporated by reference into the evidentiary record of a proceeding.

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

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

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

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

(f) A party making a motion under subdivision (e) hereof shall:

(1) clearly identify the fact(s) of which official notice is sought; and

(2) explain why official notice should be taken of such fact(s).

(g) 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 prior to a decision granting or denying a certificate to dispute such fact or its materiality.

1000.12 Amendment of an Application.

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

(b) If an amendment of an application is a revision, the Board may require the applicant to submit an additional intervenor fee, in an amount determined by the Board, which shall not exceed fifty thousand dollars. Such additional fee shall be awarded and disbursed substantially in accordance with Section 1000.9 of this Part.

1000.13 Dismissal of an Application. Whenever it shall appear in the absence of any genuine issue as to any material fact 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.

1000.14 Acceptance of a Certificate. (a) On completion of a proceeding and issuance of a final decision by a Board, an applicant shall, within 30 days after the issuance of such decision, file either a written 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 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 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 remand, 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.

1000.15 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 Department of Health shall be consulted.

(b) A certificate holder shall petition the permanent Board if it desires an amendment of its certificate. An original and seven copies of the petition and accompanying documents shall be filed with the Secretary. The certificate holder shall contemporaneously serve seven copies of the application and accompanying documents on DEC and two copies each on the other Board member agencies. The following requirements apply:

(1) The petition shall describe the amendment(s) proposed and the engineering design.

(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 (if available) E-mail address and telecopier machine number 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 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 by sending a written document (to the appropriate address) to be received within ten days after the giving of such notice; and

(6) An affidavit showing that publication or service of the required notice or copies of the application was accomplished shall accompany the application filed with the Secretary.

(c) If the permanent Board determines that a proposed change is a revision, other than as provided for in the certificate, the Board will hold a hearing following the procedures set forth in this Subchapter.

(d) In the case of a proposed modification, the permanent Board shall establish a reasonable time period (not to exceed 30 days) for interested parties to submit written comments on the proposed modification, and the Secretary shall so notify the persons on whom the petition was served as well as anyone who timely indicated a desire to participate. Any commenting party shall file an original and seven copies of its comments with the Secretary and shall contemporaneously serve seven copies on DEC and two copies each on other Board member agencies.

(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 compliance filing in connection with the authorized facility is deemed approved, revoke a certificate on grounds such as:

(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 original and seven copies of its comments with the Secretary; and contemporary serve seven copies on DEC and two copies on the other Board member agencies;

(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 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, the DPS staff 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.

1000.16 Transfer of a Certificate.

(a) A certificate may be transferred (subject to the approval of the existing Board or permanent Board, as the case may be) to a person who agrees to comply with the terms, limitations or conditions contained therein and in every subsequent Order issued thereunder. The change of ownership of a certificate without an assignment of the responsibility to comply with the terms, limitations, and conditions contained therein is not a transfer that is subject to the approval of the board;

however, the certificate holder shall give written notice to the Secretary of any such change of ownership.

(b) A certificate holder seeking the transfer of a certificate shall file with the Secretary an original and seven 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 a copy of the petition and accompanying documents on the other Board member agencies. 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) 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 (if available) E-mail address and telecopier machine number 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 an original and seven copies of any comments on the petition must be sent to the Secretary (with seven copies being sent to DEC and two copies each on the other Board member agencies) to be received by the Secretary no later than 30 days after the date on which the notice was given.

(c) After the time for filing comments has expired, the Board may, without further notice, 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.

1000.17 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)(g),(7))

Section 1001.1 Description of Proposed Site and Facility.

The application shall contain a description of the proposed site and facility to be built thereon, consistent with PSL Section 164(1)(a). Such description shall include:

(a) a discussion of the environmental setting of all relevant resources for an area of sufficient size to enable comparison of the present environment to the environment that will likely exist following the construction and operation of the proposed facility;

(b) an assessment, giving supporting details, of the reliability and feasibility of the preferred source(s) of power; and

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

1001.2 Description and Evaluation of Reasonable Alternatives.

(a) The application shall contain a description and evaluation including an environmental comparison of reasonable alternatives to the proposed facility, if any, consistent with PSL Section 164(1)(b), in sufficient detail to permit the Board to make the findings required by PSL Section 168(2)(c) and (e).

(b) With respect to a facility that has not been selected pursuant to an approved procurement process, the application shall contain a description and evaluation of reasonable energy supply source alternatives and, where appropriate, demand-reducing measures to the proposed facility, consistent with PSL Section 164(1)(b); the description shall include an assessment, giving supporting details, of economic considerations, reliability and feasibility of alternative sources of power that might reasonably be expected for all or a substantial portion of the proposed facility.

(c) The description and evaluation (referred to in Subdivision (a)) shall also take into account the objectives and capabilities of the applicant and be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no-action alternative. The no-action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed facility.

(d) For a private applicant:

(1) mandatory consideration of demand reducing measures to the proposed facility is inappropriate; and

(2) site alternatives may be limited to parcels owned by, or under option to, such applicant;

(e) The range of alternatives shall also include, where appropriate, alternative:

(1) sites;

(2) technology;

(3) scale or magnitude;
(4) design;
(5) timing;
(6) use; and
(7) types of action.

1001.3 Studies of the Expected Environmental Impact of the Facility and its Compatibility with Public Health and Safety.

(a) The application shall contain studies of the expected environmental impact of the facility and of the compatibility of the facility with public health and safety, consistent with PSL Section 164(1)(c), in sufficient detail for the Board to make the findings required by PSL Section 168(2)(b), (c)(i) and (ii), (d) and (e).

(b) The format for this Section of the application may be flexible, but must include:

(1) a statement and evaluation of the potential significant adverse impacts 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, that identifies and discusses:

(i) land uses -- existing and approved residential, commercial, industrial, institutional, noise-sensitive, conservation, recreational, agricultural and agricultural districts;

(ii) significant ecosystem resources -- highly erodible soils, wetlands, flood plains, streams, mapped springs used for potable water supplies, wells, unique old-growth forests, trees listed in the Registry of Big Trees in New York State, populations of critical aquatic and terrestrial organisms, habitats with documented extant occurrences of rare, threatened or endangered species, forest stands or tree farms managed for timber production and active or developing sugarbushes;

(iii) visual resources -- local, regional, state or federally 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 Department of Environmental Conservation or the Adirondack Park Agency pursuant to ECL Article 15 or Department of Interior pursuant to 16 USC Section 1271; Adirondack Park scenic districts, designated by the Adirondack Park Agency identified on the private land use and development plan map and listed in the State Land Master Plan for the Adirondack Park pursuant to Article 27 of the Executive Law; 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; and scenic overlooks);

(iv) cultural resources -- identified historic, community and archeological resources listed, or eligible to be listed, in the National or State Registers of Historic Places;

(v) air quality and meteorology, geology and seismology, solid, liquid, gaseous and hazardous wastes, noise, surface and groundwater quality and quantity;

(2) An evaluation of the resources listed in the preceding paragraph in relation to:

(i) reasonably related short-term and long-term effects;

(ii) any adverse impact on the environment, public health and safety that cannot be avoided should the proposed facility be constructed;

(iii) any irreversible and irretrievable commitment of resources that would be involved in the construction and operation of the facility; and

(iv) mitigation measures proposed to minimize

impact on the environment, public health and safety associated with items (i) through (iii) above.

(c) The application shall contain a precise citation to any substantive local legal provision that the applicant believes is unreasonably restrictive in view of factors set forth in PSL Section 168(2)(d), together with an explanation of its belief.

1001.4 Estimated Cost Information.

The application, consistent with PSL Section 164(1)(d), shall contain estimated cost information, if the facility was not selected pursuant to an approved procurement process.

1001.5 Statement Concerning Demonstration of Consistency with Energy Planning Objectives.

(a) The application shall contain a statement demonstrating that construction of the proposed facility is reasonably consistent with the energy policies and long range energy planning objectives and strategies contained in the most recent state energy plan adopted pursuant to Article 6 of the energy law or that the proposed facility was selected pursuant to an electric capacity procurement process approved by the Commission as reasonably consistent with the most recent state energy plan.

(b) The statement referred to in Subdivision (a) shall contain sufficient detail to permit the Board to make the finding required by PSL Section 168(2)(a).

1001.6 Evidence to Enable the Board to Evaluate the Facility's Pollution Control Systems.

(a) The application, consistent with PSL Section 164(1)(f), shall contain evidence to enable the Board to evaluate the facility's pollution control systems and be in sufficient detail to make the findings and determinations required by PSL Section 168(2)(c)(iii), (iv), (v), (vi) and (3).

(b) The term of any permits issued as part of a certificate shall be five years, unless otherwise specified by the Board.

1001.7 Additional Information Required.

(a) The application shall identify any permit, consent, approval or license which 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.

(b) The application shall:

(1) describe any security fund and any insurance in place or to be obtained;

(2) describe the financial resources available to the applicant to restore any disturbed area(s):

(i) in the event the project cannot be completed; and

(ii) after decommissioning of the facility; and

(3) include a decommissioning plan.

(c) The application shall describe the public involvement program conducted by the applicant to date, setting forth the issues raised by stakeholders.

(d) The application shall contain an analysis that need not reiterate information contained elsewhere in the application, but shall be used as the vehicle for including information not provided elsewhere and for analyzing or synthesizing the information provided in the application.

The analysis must assemble relevant and material facts upon which the Board’s decision is to be made. It must analyze the significant adverse impacts and evaluate all

reasonable alternatives consistent with Section 1001.2 of this Part. The analysis must be analytical and not encyclopedic.

The analysis must be clearly and concisely written in plain language that can be read and understood by the public, and limited to those potential significant adverse environmental impacts that can reasonably be anticipated and/or those which have been identified previously by stakeholders or the general public. Highly technical material should be summarized and if it must be included in its entirety, should be referenced in the analysis and included in appendices.

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

1001.8 Adoption of Requirements by Reference.

In connection with the content of applications, the substantive requirements of the ECL and implementing regulations that are applicable to air, solid waste, hazardous waste, terrestrial and water resources, which are potentially affected by a proposed facility, shall apply in connection with a certification proceeding under PSL Article X.

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