Part 1100 of Title 16 is repealed, and a new Part 1100 is added to read as follows:

**Chapter XI, Title 16 of NYCRR Part 1100 General Procedures**

**Subpart 1100-1. General Provisions.**

**Section 1100-1.1. Purpose and applicability.**

(a) The purpose of this Chapter is to establish procedural and substantive requirements for permits for major renewable energy facilities (as defined in section 1100-1.2(bc) of this Part) and major electric transmission facilities (as defined in section 1100-1.2(az) of this Part) issued by the Office of Renewable Energy Siting and Electric Transmission pursuant to article VIII of the New York State Public Service Law. Except as otherwise provided, the provisions of this Chapter supersede any conflicting provisions of this Title, including 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 Chapter.

(b) All applications for a major renewable energy facility siting permit pending before the former Office of Renewable Energy Siting established pursuant to Executive Law former section 94-c on April 20, 2024, are considered and treated as applications pursuant to this Chapter as of the date of filing of such applications.

(c) All permits issued by the former Office of Renewable Energy Siting, established pursuant to Executive Law former section 94-c, and all certificates of environmental compatibility and public need issued by the Public Service Commission pursuant to Public Service Law article VII are considered for all legal purposes to be permits issued by the Office of Renewable Energy Siting and Electric Transmission.

(d) This Chapter shall not apply to the following:

(1) to a major renewable energy facility (as defined in section 1100-1.2(bc) of this Part), or a major electric transmission facility (as defined in section 1100-1.2(az) of this Part), or any portion thereof, over which any Federal agency or department has exclusive siting jurisdiction, or has siting jurisdiction concurrent with that of the State and has exercised such jurisdiction to the exclusion of regulation of such facility by

the State. However, nothing herein shall be construed to expand federal jurisdiction;

(2) to normal repairs, maintenance, replacements, non-material modifications, and improvements of a major renewable energy facility (as defined in section 1100-1.2(bc) of this Part) or a major electric transmission facility (as defined in section 1100-1.2(az) of this Part), whenever built, which are performed in the ordinary course of business and which do not constitute a violation of any applicable existing permit, including permits issued pursuant to this Chapter;

(3) to a major renewable energy facility (as defined in section 1100-1.2(bc) of this Part) if, on or before the effective date of article VIII of the New York State Public Service Law, an application has been made or granted for a license, permit certificate, consent or approval from any Federal, State or local commission, agency, board or regulatory body, including the submission of a pre-application public involvement program plan under article 10 of the New York State Public Service Law, in which the location of the major renewable energy facility has been designated by the applicant, except where an applicant elects to be subject to this Chapter as authorized by Public Service Law section 162;

(4) to a major electric transmission facility (as defined in section 1100-1.2(az) of this Part) for which an application pursuant to article VII of the New York State Public Service Law and its implementing regulations is submitted on or before the establishment of the uniform standards and conditions required pursuant to Public Service Law article VIII; and

(5) any stand-alone battery energy storage system.

**Section 1100-1.2. Definitions.**

Whenever used in this Chapter, unless otherwise expressly stated, the following terms shall have the meanings indicated below.

(a) *Adjudicatory hearing* means a hearing held pursuant to article VIII of the New York State Public Service Law, this Part or article 3 of the New York State Administrative Procedure Act, where parties may

present evidence on issues of fact, and argument on issues of law and fact prior to the executive director (as defined in subdivision (ab) of this section) or their designee rendering a decision on the merits, but shall not include public comment hearings.

(b) *Administrative law judge* or *ALJ* means the designated representative authorized by the executive director (as defined in subdivision (ab) of this section) to conduct hearings pursuant to this Part.

(c) *Amicus* means a person who is not otherwise eligible for party status, but who is allowed to introduce written argument upon one or more specific issues.

(d) *APA* means the New York State Adirondack Park Agency.

(e) *Applicant* means a person (as defined in subdivision (bz) of this section) filing appropriate applications and supporting materials for the purpose of obtaining a siting permit from the Office of Renewable Energy Siting and Electric Transmission.

(f) *Argument* means opinions or viewpoints, as distinguished from evidence.

(g) *Certificate of completion* or *COC* shall have the same meaning as set forth in 6 NYCRR Part 375.

(h) *Chief executive officer* means: for a county outside of a city, the executive of a county elected or appointed on a county-wide basis or, if there be none, the chairman of the board of supervisors of legislature; for a city, the mayor; for a village, the mayor; and for a town, the supervisor; or the highest elected or appointed official therein.

(i) *CLCPA targets* means the public policies established in the Climate Leadership and Community Protection Act enacted in chapter 106 of the Laws of 2019, including the requirement that a minimum of 70 percent of the statewide electric generation be produced by renewable energy systems by 2030, that by the year 2040 the statewide electrical demand system will generate zero emissions and the procurement of at least nine gigawatts of offshore wind electricity generation by 2035, six gigawatts of photovoltaic solar generation by 2025 and to support three gigawatts of statewide energy storage capacity by 2030.

(j) *Coastal area* shall have the same meaning as defined in Executive Law section 911(3).

(k) *Coastal waters* or *coastal waterbody* means lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill von Kull and Arthur Kill, Long Island sound and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows and marshes.

(l) *Co-located infrastructure* means electric, gas, telecommunication, water, wastewater, sewer, and steam infrastructure and appurtenant facilities and associated equipment, whether above ground, below ground, or submerged that (1) are located within the approved limits of disturbance, and (2) are either owned by a State agency or municipality, or a subdivision thereof, or owned or operated for public utility purposes by a regulated electric, gas, telecommunication, water, wastewater, sewer, or steam service provider. Co-located infrastructure does not include railways, highways, roads, streets, or avenues.

(m) *Commencement of commercial operation* or *commercial operation date* is defined as the date on which the major renewable energy facility (as defined in subdivision (bc) of this section) as a whole first commences generating or transmitting electricity for sale, excluding electricity generated or transmitted during the period of on-site test operations and commissioning of the facility.

(n) *Commence construction* or *commencement of construction* means the beginning of ground disturbance, site preparation, and grading activities related to installation of the facility. Commencement of construction does not include soils or groundwater testing, surveying, and similar pre-construction activities to determine the adequacy of the site for construction and the preparation of filings pursuant to the permit. Commencement of construction also does not include other activities, such as limited staging and limited tree cutting, which are required to perform such pre-construction activities.

(o) *Community intervenor* means a potential community intervenor (as defined in subdivision (cb) of this section) who has been granted party status pursuant to section 1100-8.3 of this Part.

(p) *Complete application* or *completeness of an application* means an

application for a permit that is determined by the Office of Renewable Energy Siting and Electric Transmission, by issuance of a notice of complete application, to be sufficient for the purpose of preparing draft permit conditions, but which may need to be supplemented during the course of review in order to enable the Office of Renewable Energy Siting and Electric Transmission to make the findings and determinations required by law. Applications deemed compliant with section 164 of the New York State Public Service Law by the Chair of the New York State Board on Electric Generation Siting and the Environment shall be considered complete upon filing of a transfer application (as defined in subdivision (di) of this section) pursuant to this Part.

(q) *Converter station* means a type of substation which converts electricity from direct current to alternating current or the reverse.

(r) *CPLR* means the New York State Civil Practice Law and Rules.

(s) *Delegated permit* means a permit issued by the New York State Department of Environmental Conservation which substitutes for a comparable permit required by Federal law and is recognized by the Federal agency responsible for administering the Federal program.

(t) *Department of Public Service* or *Department* means the New York State Department of Public Service.

(u) *Disadvantaged communities* or *DACs* means areas of New York State identified by the New York Climate Justice Working Group (CJWG) where communities bear burdens of negative public health effects, environmental pollution, and impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to section 75-0111 of the Climate Act.

(v) *Disclosure* means the disclosure of facts, documents, or other things that are known by or in the possession of a person and that are material and necessary in the prosecution or defense of the proceeding regardless of the burden of proof.

(w) *Draft permit* means a document prepared by the Office of Renewable Energy Siting and Electric Transmission which contains terms and conditions staff find necessary for a proposed major renewable energy facility (as defined in subdivision (bc) of this

section) or a proposed major electric transmission facility (as defined in subdivision (az) of this section) to meet all legal requirements associated with such a permit, but is subject to modification as a result of public comments or an adjudicatory hearing.

(x) *Dormant electric generation site* means a site at which one or more electric generating facilities produced electricity but has permanently ceased operating.

(y) *ECL* means the New York State Environmental Conservation Law.

(z) *Electronically stored information* or *ESI* means any information that is created, stored, or utilized with computer technology of any type. ESI includes, but is not limited to, word-processing files, audio files, video files, spreadsheets, images, emails, and other electronic messaging information that are stored electronically.

(aa) *Environmental justice area* or *EJ area* means a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from the siting of a major renewable energy facility or major electric transmission facility as defined in 6 NYCRR Part 487.

(ab) *Executive director* or *director* means the executive director of the Office of Renewable Energy Siting and Electric Transmission.

(ac) *Executive Law* or *EL* means the New York State Executive Law.

(ad) *Evidence* means sworn or affirmed testimony of witnesses, and physical objects, documents, records or photographs that tend to prove or disprove the existence of an alleged fact.

(ae) *Facility centerline* means an imaginary line running through the exact center of the transmission facility.

(af) *Facility corridor* means, for facilities or segments proposed substantially within existing electric transmission rights-of-way, the limits of the proposed right-of-way occupied or to be occupied by electric transmission facilities. For new terrestrial facilities or segments outside of existing electric transmission rights-of-way and new in-water facilities or segments, an area up to 500 feet on either side of a proposed centerline. For new projects proposed within existing roadways, the width of the roadway.

(ag) *Feature dataset* means a collection of geographic information

system (as defined in subdivision (ak) of this section) feature classes stored together that share a spatial reference (i.e., coordinate system) and a common geographic area.

(ah) *FHWA* means the Federal Highway Administration.

(ai) *Geodatabase* means a database or file structure used primarily to store, query, and manipulate spatial data. Geodatabases store geometry, a spatial reference (i.e., coordinate system), attributes, and behavioral rules for geographic information system (as defined in subdivision (ak) of this section) data.

(aj) *Geographic information system* or *GIS* means an integrated collection of computer software and data used to view and manage information about geographic places, analyze spatial relationships, and model spatial processes.

(ak) *Good utility practice* means any of the practices, methods, or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4) (16 U.S.C. section 824*o*[a][4]).

(al) *Hearsay* means a statement, other than one made by a sworn witness testifying at the hearing, offered into evidence to prove the truth of the matter asserted.

(am) *Host community benefit* means a payment or other incentive for the benefit of the host community, as determined by the Public Service Commission pursuant to section eight of part JJJ of chapter 58 of the Laws of 2020, or such other payment or incentive as determined by the Office of Renewable Energy Siting and Electric Transmission, or as subsequently agreed to between the applicant and the host community.

(an) *Indigenous nation* means any state- or federally-recognized

indigenous nations whose ancestral territories (as indicated on the New York State Office of Parks, Recreation and Historic Preservation "Indian Nation Areas of Interest" dated January 2024), nation-owned parcels, current reservation boundaries, or lands held in trust by the Federal government for that indigenous nation that fall within the facility study area (as defined in subdivision (dd) of this section) or facility corridor (as defined in subdivision (af) of this section).

(ao) *Inland waterways* means the inland waterways listed in Executive Law section 911(4).

(ap) *In-service date* means the date upon which the electric transmission facility is energized and available to provide transmission service.

(aq) *Interconnections* means off-site electric transmission lines less than ten (10) miles in length, 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 renewable generating facility, that are not subject to the Public Service Commission's jurisdiction under article VII of the New York State Public Service Law or the office's jurisdiction under article VIII of the New York State Public Service Law, not including service lines designed and sized for household type usage such as for bathrooms or ordinary telephones.

(ar) *In-water facility* means any electric transmission facility installed within the Marine and Coastal District, coastal waterbodies, inland waterways, canal lands, or other freshwater waterbodies, except where such installations are limited to aerial or trenchless crossings of such waterbodies.

(as) *In-water sidecasting* means to remove sediment from one area of the bed of a waterbody and intentionally depositing it onto the bed of a waterbody in an alternate location(s).

(at) *Landowner* means the holder of any ownership right, title, or interest in real property subject to a proposed site or right of way as identified from the most recent tax roll of the appropriate municipality.

(au) *Land used in agricultural production* means all lands involved in the production of crops, livestock, and livestock products for three

(3) of the last five (5) years.

(av) *Limits of disturbance* or *LOD* means the geographical boundaries within which project construction activities, including access and staging areas, are authorized.

(aw) *Local agency account* or *account* means the account established by the Office of Renewable Energy Siting and Electric Transmission and maintained by the New York State Energy Research and Development Authority pursuant to article VIII of the Public Service Law for local agencies and potential community intervenors which meet the eligibility and procedural requirements of this Part to participate in public comment periods or hearings.

(ax) *Local agency* means any local agency, board, district, commission, or governing body, including municipalities, and other political subdivision of the State.

(ay) *Major amendment* means a change in a siting permit application likely to result in any material increase in any identified adverse environmental impacts, any significant adverse environmental impact not previously identified, or any new site-specific standards and conditions.

(az) *Major electric transmission facility* means an electric transmission line of a design capacity of 125 kilovolts or more extending a distance of one mile or more, or of 100 kilovolts or more and less than 125 kilovolts, extending a distance of 10 miles or more, including associated equipment, but shall not include any such transmission line located wholly underground in a city with a population in excess of 125,000 or a primary transmission line approved by the Federal Energy Regulatory Commission in connection with a hydro-electric facility.

(ba) *Major electric transmission facility siting permit* means the siting permit issued to a major electric transmission facility by the executive director pursuant to article VIII of the Public Service Law, and this Chapter.

(bb) *Major modification* means a change to an existing permit standard or condition likely to result in any material increase in any identified adverse environmental impact or any significant adverse environmental impact not previously addressed by uniform or site-specific standards or conditions or otherwise involves a substantial change to an existing permit standard or condition.

(bc) *Major renewable energy facility* means any renewable energy system, as such term is defined in section 66(p) of the New York State Public Service Law, with a nameplate generating capacity of 25,000 kilowatts or more, and any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission system, including all associated appurtenances to electric plants as defined under section 2 of the New York State Public Service Law, including electric transmission facilities less than ten (10) miles in length in order to provide access to load and to integrate such facilities into the state's bulk electrical transmission system.

(bd) *Major renewable energy facility siting permit* means the siting permit issued to a major renewable energy facility by the executive director pursuant to article VIII of the Public Service Law, and this Chapter.

(be) *Minor amendment* means a change in an application or draft permit condition that is not a major amendment.

(bf) *Minor modification* means a change in an existing permit condition or an approved compliance filing that is not a major modification.

(bg) *Motion* means a request for a ruling or an order.

(bh) *Municipality* means a county, city, town, or village.

(bi) *Nameplate generating capacity* means, starting from the initial installation of a major renewable energy facility, the maximum electrical generating output that the facility is capable of production on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings) as specified by the manufacture of the generating units.

(bj) *No further action determination* means a written determination by the New York State Department of Environmental Conservation that a parcel of real property has been remediated to the NYSDEC's satisfaction.

(bk) *Non-participating property* means a parcel of real property owned by a person (as defined in subdivision (bz) of this section) who has not executed an agreement with the applicant related to the facility.

(bl) *NYSAGM* means the New York State Department of Agriculture and

Markets.

(bm) *NYSDEC* means the New York State Department of Environmental Conservation.

(bn) *NYSERDA* means the New York State Energy Research and Development Authority.

(bo) *NYSDOH* means the New York State Department of Health.

(bp) *NYSDOS* means the New York State Department of State.

(bq) *NYSDOT* means the New York State Department of Transportation.

(br) *NYSDPS* means the New York State Department of Public Service.

(bs) *OPRHP* means the New York State Office of Parks, Recreation and Historic Preservation.

(bt) *Office* or *ORES* means the Office of Renewable Energy Siting and Electric Transmission within the Department of Public Service and established pursuant to article VIII of the Public Service Law.

(bu) *Office of hearings* means the office within ORES principally responsible for conducting adjudicatory hearings pursuant to this Part.

(bv) *Office staff* means those office personnel participating in a hearing, but does not include the executive director, or their designee, the ALJ or those personnel in the Office of Hearings advising or consulting with the executive director, or their designee, or the ALJ.

(bw) *Participating property* means a parcel of real property owned by a person who has executed a lease, easement or other agreement with the applicant related to a major renewable energy facility.

(bx) *Party* means any person granted full party status or *amicus* status in the adjudicatory portion of the hearing according to the procedures and standards set forth in this Part but does not include the ALJ, the Office of Hearings, or the executive director (or their designee).

(by) *Pending article 10 facility* means a major renewable energy facility, which on or before the effective date of former section 94-c of the Executive Law, had submitted a draft public involvement program plan to the New York State Board on Electric Generation

Siting and the Environment pursuant to article 10 of the PSL and its implementing regulations.

(bz) *Person* means any individual, public, or private corporation, public benefit corporation, limited liability company, multi-state authority, political subdivision, government agency, department, or bureau of the State, federally/state recognized Indian Nation, municipality, industry partnership, association, firm, trust, estate or any legal entity whatsoever.

(ca) *Plain language* means an eighth-grade reading level or language which is easily understandable to the lay public.

(cb) *Potential community intervenor* means any person who owns property or resides within a municipality within which a major renewable electric generating facility or major electric transmission facility is proposed, or who owns property or resides outside the municipality within which the facility is proposed, but within one (1) mile of a proposed solar facility (as defined in subdivision (cz) of this section) or a major electric transmission facility (as defined in subdivision (az) of this section), or five (5) miles of a proposed wind facility (as defined in subdivision (dl) of this section), or any non-profit organization that can demonstrate a concrete and localized interest that may be affected by a proposed facility and that such interest has a significant nexus to their mission.

(cc) *Potential party* means any person who intends to file or has filed a petition for party status whose petition has not received either final denial or acceptance.

(cd) *Project* means the physical activity or undertaking for which a siting permit is required from the office.

(ce) *Project area* or *facility site* means the area in which the permittee is authorized to construct, operate, maintain, repair, and decommission the facility, including any laydown yards and staging areas, pursuant to any permanent or temporary easements, leases, licenses, right-of-way (ROW) agreements, or other land use authorizations the permittee receives. The permittee shall confine construction, operation, maintenance, repair, and decommissioning activities to the project area or facility site.

(cf) *Project impact area* means the geographic area or areas within which the proposed undertaking may cause any change, beneficial or

adverse, in the character or use of an identified archaeological site, historic resource or cultural property.

(cg) *Prominent tones* means tones defined by using the constant level differences listed under ANSI/ASA S12.9-2005/Part 4 Annex C (sounds with tonal content) (see section 1100-15.1(a)(1)(iii) of this Part).

(ch) *Protected wetland* means any wetland regulated under articles 24 and 25 of the Environmental Conservation Law.

(ci) *Protected waterbody* means any stream or waterbody regulated under article 15 of the Environmental Conservation Law.

(cj) *Protective order* means an order denying, limiting, conditioning, or regulating the use of material requested through disclosure.

(ck) *Public comment hearing* means the portion of the hearing process during which unsworn statements are received from the host municipalities, the public, and the parties.

(cl) *Public Service Commission* or *PSC* means the New York State Public Service Commission.

(cm) *Public Service Law* or *PSL* means the New York State Public Service Law.

(cn) *Recommended decision and hearing report* means the ALJ's summary of the proceeding, including the ALJ’s findings of fact, conclusions of law, and recommendations for the executive director’s (or their designee) consideration.

(co) *Regulated adjacent area* or *adjacent area* means the 100-foot adjacent area associated with freshwater wetlands; the 150-foot (or less due to the presence of a qualifying structure or contour as defined by 6 NYCRR section 661.4) adjacent area associated with tidal wetlands within the boundaries of New York City; and the 300-foot (or less due to the presence of a qualifying structure or contour as defined by 6 NYCRR section 661.4) adjacent area associated with tidal wetlands outside the boundaries of New York City.

(cp) *Relevant* means tending to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable.

(cq) *Repurposed site* means an existing or abandoned commercial or industrial use property, including without limitation, brownfields,

landfills, dormant electric generating or other previously disturbed location.

(cr) *Resources of statewide concern* means wild, scenic, or recreational rivers administered respectively by either the NYSDEC or the APA pursuant to ECL article 15 or the Department of Interior pursuant to 16 USC section 1271; forest preserve lands; scenic vistas specifically identified in the Adirondack Park State Land Master Plan; 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 areas of statewide significance; National Natural Landmarks; NYS and National Heritage Areas; State and National parks and historic sites; and properties listed or eligible for listing on the National or State Registers of Historic Places.

(cs) *Right-of-way* means:

(1) real property that is used or authorized to be used for electric utility purposes; or

(2) real property owned or controlled by or under the jurisdiction of the State, a distribution utility, or a State public authority including by means of ownership, lease or easement, that is used or authorized to be used for transportation or canal purposes.

(ct) *SAPA* means the New York State Administrative Procedure Act.

(cu) *Secretary* means the Secretary to the Public Service Commission.

(cv) *Service* means the delivery of a document to a person by authorized means and, where applicable, the filing of a document with the ALJ, the Office of Hearings or the executive director (or their designee).

(cw) *SHPO* means the New York State Historic Preservation Office.

(cx) *Significant adverse environmental impact* means an impact that meets any of the criteria for significance provided for in section 617.7(c) of Title 6.

(cy) *Siting permit* or *permit* means authorization to construct and operate a major renewable energy facility or a major electric transmission facility issued by the office pursuant to article VIII of the Public Service Law and this Chapter.

(cz) *Solar facility* means a solar-powered major renewable energy facility.

(da) *Spatial data* means any data that can be mapped to a geographic location, including shapes of geographic features (such as points, lines, and polygons).

(db) *Statement of intent to deny* means a document prepared by office staff which identifies the reasons why the siting permit for the project may not be issued as proposed or conditionally.

(dc) *Stipulation* means an agreement between two or more parties to a proceeding, and entered into the hearing record, concerning one or more issues of fact or law that are the subject of the proceeding.

(dd) *Study area* means, with respect to a major renewable energy facility, the area generally related to the nature of the technology and the setting of the proposed site. Unless otherwise provided in this Chapter, in highly urbanized areas, the study area is a minimum one (1)-mile radius from the property boundaries of the facility site, interconnections and related facilities, and for facilities with components spread across a rural landscape, the study area shall at a minimum include the area within a radius of at least five (5) miles from all generating facility components, interconnections and related facilities.

(de) *Subpoena* means a legal document that requires a person to appear at a hearing and testify, to produce documents or physical objects, or both.

(df) *Substantially within existing electric transmission right-of-way* or *existing electric transmission right-of-way* means a major electric transmission facility occupying existing terrestrial electric transmission rights-of-way and any additional rights-of-way for existing facility upgrades that are required under applicable safety and reliability standards for the construction and operation of the proposed facility.

(dg) *Substation* means an electrical station within which electricity flow is directed and voltage is either increased or decreased.

(dh) *Switchyard* means an electrical station within which electricity flow is directed and voltage remains unchanged.

(di) *Transfer application* means an application submitted for a siting permit for an opt-in renewable energy facility current undergoing an alternative permitting process or a pending article 10 facility.

(dj) *USACE* means the United States Army Corps of Engineers.

(dk) *Wetland delineation* or *waterbody delineation* means the precise demarcation of a freshwater wetland, tidal wetland, regulated adjacent area, stream, or waterbody boundary using a field methodology prescribed by the NYSDEC, APA, or United States Army Corps of Engineers.

(dl) *Wind facility* means a land-based, wind-powered major renewable energy facility.

**Section 1100-1.3. Pre-application procedures.**

(a) *Consultation with local agencies*. No less than sixty (60) days before the date on which an applicant files an application for a major renewable energy facility, or files a transfer application other than for a pending article 10 facility for which the article 10 application has been deemed complete, the applicant shall conduct pre-application meeting(s) with the chief executive officer of the municipality(ies) in which the proposed facility will be located and any local agencies of such municipalities identified by the chief executive officer. No less than sixty (60) days before the date on which an applicant files an application for a major electric transmission facility, the applicant shall offer to conduct pre-application meeting(s) with the chief executive officer(s) of the municipality(ies) in which the proposed facility will be located and, if requested, shall conduct such meeting with the chief executive officer(s) and any local agencies of such municipalities identified by the chief executive officer. During such pre-application meeting(s), the applicant shall provide:

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

(2) a map of the proposed facility showing project components located in the municipality(ies) and regulatory boundaries as they pertain to substantive law relevant to the proposed facility;

(3) a summary of the substantive provisions of local laws

applicable to the construction, operation, maintenance, and, for a major renewable energy facility, decommissioning of the proposed facility;

(4) an identification of such substantive local law provisions for which the applicant will request that the office make a finding that compliance therewith would be unreasonably burdensome;

(5) an explanation of all efforts by the applicant to comply with such substantive local law provisions through the consideration of design changes to the proposed facility, or otherwise;

(6) an identification of any potential adverse impacts of the facility for which consultation with the municipality(ies) is required to inform the preparation of the exhibits to the application (including, but not necessarily limited to, transportation and visual resources);

(7) a designated contact person, with telephone number, email address and mailing address, from whom information will be available on a going-forward basis, as well as a proposed project website to disseminate information to the public; and

(8) an anticipated application date and information regarding the future availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

(b) *Meeting with community members.* No less than sixty (60) days before the date on which an applicant files an application for a major renewable energy facility or a major electric transmission facility, and following the meeting(s) held pursuant to subdivision (a) of this section, the applicant shall conduct at least one meeting

for community members who may be adversely impacted by the siting of the facility. Consistent with guidance issued by the office, the purpose of the meeting is to educate the public about the proposed project, including the anticipated application date and information regarding the future availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding. The applicant shall provide notice of the meeting no sooner than thirty (30) days and no later than fourteen (14) days prior to the meeting in accordance with the publication requirements of section 1100-1.6(c) of this Part.

(1) Where a disadvantaged community is identified within the study area as provided for in section 1.2(dd) or the facility corridor as provided for in section 1.2(af) of this Part, at least one meeting shall be conducted in such community.

(c) *Consultation with indigenous nations.*

(1) No less than sixty (60) days before the date on which an applicant files an application for a major renewable energy facility or a major electric transmission facility, and prior to publication of the 60-day notice required by subdivision (e) of this section, the applicant shall provide each indigenous nation within the study area as provided for in section 1.2(dd) or the facility corridor as provided for in section 1.2(af) of this Part with the following information:

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

(ii) a map of the proposed facility showing project components and regulatory boundaries;

(iii)any potential impacts from the siting, construction, and operation of the facility which may have a reasonably foreseeable or ascertainable effect on environmental or cultural resources of significance to any indigenous nations, with whom the applicant is required to consult to inform the preparation of the exhibits to the application;

(iv) an anticipated application date, a brief overview of Parts 1101 or 1102 of this Title, as applicable, and instructions and timeline for filing a petition for party status pursuant to sections 1100-8.3 and 1100-8.4 of this Part. The overview and instructions required by this subparagraph shall be consistent with guidance issued by the office;

(v) the applicant's designated contact person, with a telephone number, email address, and mailing address, from whom information will be available on a going-forward basis, as well as the project website; and

(vi) the ORES designated contact person, with a telephone number, email address, and mailing address, to whom comments may be provided during the pre-application and application review phases, as well as the ORES application website.

(2) The applicant shall provide as part of the application copies of all correspondence with indigenous nations, including meeting minutes and notes as applicable. The applicant shall determine, in consultation with any such indigenous nations, whether copies of such correspondence shall be submitted with a request for confidential treatment.

(d) The applicant shall consider any comments provided by indigenous nations and address such comments within the applicable application exhibit(s).

(e) *Landowner notification for major electric transmission facilities.*

(1) No less than sixty (60) days before the date on which an applicant files an application for a major electric transmission facility, the applicant shall serve by first class mail notice to the landowners identified herein that the landowner's property may be impacted by the proposed facility. Landowners that must be noticed are: (i) landowners of land on which any portion of the proposed facility will be located; (ii) landowners of land on which any portion of the proposed facility will be located as identified in any alternative route that will be presented in the application; and (iii) landowners of land that directly abuts any land identified pursuant to (i) and (ii) immediately preceding.

(2) The notice to landowners shall include:

(i) a brief description of the proposed facility;

(ii) a designated contact person for the applicant, with telephone number, email address, and mailing address; and if the applicant maintains a webpage to disseminate information to the public, the address of that webpage; and

(iii) an anticipated application date and information regarding the availability of local agency account funding and the process for obtaining such funding as set forth in Subpart 1100-5 of this Part.

(f) *Documentation.* The applicant shall provide as part of the application information and documentation demonstrating compliance with the pre-application requirements set forth in this section including: copies of transcripts of any presentations, presentation materials, and a summary of questions raised and responses provided during the pre-application meeting(s). In the event the applicant is unable to secure a meeting with a municipality, or effectuate service on any landowner if required, the application shall contain a detailed explanation of all of applicant's best efforts and reasonable attempts to secure such meeting or effectuate any required service, including, but not limited to, all written communications between the applicant and the municipality.

(g) *Notice.*

(1) At least sixty (60) days before the date an applicant files

an application, and following conclusion of the pre-application procedures required pursuant to section 1100-1.3 of this Part and completion of the pre-application requirements set forth in section 1101-1.1 of Part 1101 of this Title or section 1102-1.1 of Part 1102 of this Title, as applicable, the applicant shall publish a 60-day notice of intent to file an application in accordance with the publication requirements of section 1100-1.6(c) of this Part and provide a copy thereof to the office, and to all local agencies in attendance at the pre-application meeting(s). The 60-day notice of intent to file an application may be included as part of the notice requirement of subdivision (b) of this section. The notice shall contain, at a minimum, the following:

(i) a brief summary of the proposed facility and location;

(ii) a designated contact person, with telephone number, email address and mailing address, from whom information will be available on a going-forward basis, as well as a proposed project website to disseminate information to the public; and

(iii) a statement of future availability of local agency account funds, citing to the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding.

(2) Failure of the applicant to file an application sixty (60) days after publication of the 60-day notice of intent required by this subdivision will result in the notice being deemed withdrawn without prejudice pursuant to the following procedures:

(i) if the applicant fails to file an application sixty (60) days after publication of the 60-day notice of intent required by this subdivision, the office may send a notice

requesting that the applicant publish the notice of application required by section 1.6(c) of this Part and file and serve the application pursuant to section 1.6(a) of this Part within thirty (30) days; and

(ii) if the applicant fails to respond to the notice issued by the office pursuant to subparagraph (i) of this paragraph within thirty (30) days, the office will treat the 60-day notice as withdrawn without prejudice. The office shall publish a notice of withdrawal of the 60-day notice on the office's website and shall serve the notice upon the applicant; the chief executive officer of each municipality in which any portion of the proposed facility is to be located, via electronic mail and, if requested, by regular mail; and any person who has previously expressed in writing an interest in receiving such notification, via the method of service requested by such person.

(h) *Consultation with the office.*

(1) *Major electric transmission facility applications.* At the earliest point possible in the applicant's preliminary project planning, including for projects proposed to be located substantially within existing electric transmission rights-of-way, and in any event no less than six (6) months before the date on which an applicant files an application, the applicant shall consult with the office regarding the preferred and reasonable alternative routes proposed to be included for analysis in the application. For projects proposed to be located substantially within existing electric transmission rights-of-way, the applicant shall consult with the office regarding the application exhibits from which applicant seeks to relieved, in whole or in part.

(i) After consultation with other relevant State agencies, the office may require an alternative route be included for analysis in the application.

(2) Applicants seeking a siting permit for a major renewable energy facility other than a solar facility or a wind facility shall consult with the office at least one (1) year prior to

submitting an application in order to determine which exhibits the office will require, as well as any site-specific permit application requirements.

(3) At any time, the office may require a pre-application meeting(s) with the applicant. Any applicant may request a pre-application meeting with the office, which request shall be granted or denied at the discretion of the office.

**Section 1100-1.4. General requirements for applications.**

(a) Each application for a major renewable energy facility siting permit or a major electric transmission facility siting permit shall:

(1) include a properly completed ORES application form;

(2) contain the exhibits required pursuant to Subpart 1100-2 of this Part;

(3) provide a website through which the applicant will disseminate information to the public, which shall include at least the following:

(i) a copy of the application and the executive summary as required in Parts 1101 and 1102 of this Title, as applicable;

(ii) a map(s) at a size and level of detail appropriate to substantially inform the public of the location of the proposed facility, including the location(s) of all components of the facility;

(iii) a statement that the application, when filed, may be examined during normal business hours at the Office of Renewable Energy Siting and Electric Transmission, and the local library(ies) served in accordance with section 1100-1.6(a)(6) of this Part, and the addresses thereof;

(iv) an explanation of the application review process, including information regarding the availability of local agency account funds, citing the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial

funding within thirty (30) days of the date of application filing or an earlier date as otherwise provided in this Chapter, and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding;

(v) information as to how and where persons wishing to receive all notices concerning the application can file a request with the office to subscribe to receive such notices;

(vi) information as to how to access relevant documents from the ORES website;

(vii) copies of all notices required pursuant to this Part; and

(viii) the names, addresses, telephone numbers and e-mail addresses of a representative of the applicant and relevant ORES staff;

(4) identify any information that the applicant asserts is critical infrastructure information or trade secrets pursuant to article 6 of the New York State Public Officers Law, or other applicable State or Federal laws, which the applicant requests the office not to disclose and reasons why such information should be excepted from disclosure. Such information shall clearly be marked as trade secret or critical infrastructure information and only included in applications filed with the Office. All other copies of the application served pursuant to section 1100-1.6(a) of this Part shall contain information noting the location of redacted information that the applicant is asserting is critical infrastructure information or trade secrets. Application materials subject to this paragraph include, but are not limited to:

(i) the Site Security Plan required by section 1101-2.6(b) of Part 1101 of this Title and sections 1102-2.8(b) and 1102-3.3(e) of Part 1102 of this Title;

(ii) any system reliability impacts study required by

section 1101-2.21(b) and section 1101-3.5(e)(2) of Part 1101 of this Title; and

(iii)any system impact study required by section 1102-2.25(b) and section 1102-3.5(b)(2) of Part 1102 of this Title;

(5) in compliance with the provisions of section 304 of the National Historic Preservation Act, and 9 NYCRR section 427.8, information about the location, character, or ownership of a cultural resource shall not be disclosed to the public, and shall only be disclosed pursuant to an appropriate protective order. Such information shall clearly be marked and only included in applications filed with the office. All other copies of the application served pursuant to section 1100-1.6(a) of this Part shall contain information noting the location of information redacted in accordance with section 304 of the National Historic Preservation Act, and 9 NYCRR section 427.8. Application materials subject to this paragraph include, but are not limited to:

(i) those portions of application exhibit 9 prepared pursuant to section 1101-2.9 of Part 1101 of this Title or application exhibit 11 prepared pursuant to section 1102-2.11 of Part 1102 of this Title that contain confidential cultural resource information;

(ii) archaeological studies, reports, and plans prepared pursuant to section 1101-1.1(d)(3) of Part 1101 of this Title, and section 1102-1.1(c)(2) of Part 1102 of this Title (e.g., Phase IA, Phase IB, Phase II, Phase III, Site Avoidance Plan(s));

(iii) Areas Proposed for Archaeological Survey figure prepared pursuant to section 1102-1.1(c)(3)(v) of Part 1102 this Title;

(iv) descriptions of archaeological resources, site locations, or summaries of reports containing such information included in application exhibits 9 (generation) or 11 (transmission) or other application exhibits;

(v) the Cultural Resources Avoidance, Minimization, and Mitigation Plan (CRAMMP) prepared pursuant to section 1101-3.4(u) of Part 1101 of this Title, or section 1102-4.3 of

Part 1102 of this Title;

(vi) correspondence with the OPRHP or SHPO when such correspondence contains protected information; and

(vii)correspondence with indigenous nations when such correspondence contains protected information, or upon the nation's request;

(6) in compliance with the provisions of section 3-0301(r) of the Environmental Conservation Law and 6 NYCRR section 182.5, information about the location of New York State threatened or endangered species (T&E species) or their habitat (confidential T&E information) shall not be disclosed to the public, and shall only be disclosed pursuant to an appropriate protective order. Such information shall be clearly marked and only included in applications filed with the office. All other copies of the application served pursuant to section 1100-1.6(a) of this Part shall contain information noting the location of confidential T&E information redacted in accordance with section 3-0301(r) of the Environmental Conservation Law and 6 NYCRR section 182.5. Application materials subject to this paragraph include, but are not limited to:

(i) wildlife site characterization, pre-construction T&E species habitat assessment plans, and pre-construction T&E species/species of special concern survey plans required by section 1101-1.3(g) of Part 1101 of this Title, or section 1102-1.1(b) of Part 1102 of this Title;

(ii) those portions of application exhibits 11 (Terrestrial Ecology), 12 (NYS Threatened or Endangered Species), and 14 (Wetlands) as provided for in Part 1101 of this Title, or exhibits 13 (Terrestrial Ecology), 14 (NYS Threatened or Endangered Species), and 16 (Wetlands) as provided for in Part 1102 of this Title that contain confidential T&E information. Such information includes the net conservation benefit plan (NCBP) prepared pursuant to section 1101-2.13 of Part 1101 of this Title, or section 1102-2.14 of Part 1102 of this Title; and any T&E species jurisdictional letter prepared pursuant to section 1101-2.13(c) of Part 1101 of this Title, or section 1102-2.14(c) of Part 1102 of this Title; and

(iii) those portions of pre-construction compliance filings, including the final NCBP prepared pursuant to section 1101-3.4(o) and Subpart 1101-4 of Part 1101 of this Title, or section 1102-3.4(w) and Subpart 1102-4 of Part 1102 of this Title that contains confidential T&E information;

(7) include an affidavit of service showing that a copy of the application and accompanying documents were served on all those required by section 1100-1.6(a) of this Part;

(8) be accompanied by a fee to be deposited in the local agency account in an amount equal to the following, which may be adjusted from time to time by the Office to account for inflation:

(i) for a major renewable energy facility, $1,000 dollars for each 1,000 kilowatts of capacity;

(ii) for a major electric transmission facility of 125 kilovolts or more extending a distance of over 100 miles, $450,000;

(iii)for a major electric transmission facility of 125 kilovolts or more extending a distance of over 50 miles to 100 miles, $350,000;

(iv) for a major electric transmission facility requiring a new right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $100,000; and

(v) for a major electric transmission facility utilizing an existing right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $50,000;

(9) be accompanied by the ORES fee required pursuant to section 1100-1.5 of this Part; and

(10) if requested of the applicant by the office, include any additional information that may be required to enable the office to make the findings and determinations required by law.

(b) *Certification by a responsible official.* Any application, report, or compliance filing submitted pursuant to this Part and Parts 1101 and 1102 of this Title shall contain certification of

truth, accuracy, and completeness by a responsible official. This certification shall be in a form acceptable to the office and state that, based on information and belief formed after reasonable inquiry, the statements and information in the filing are true, accurate, and complete.

(c) *Certification by a professional engineer.* Any application, report, or compliance filing submitted pursuant to this Part and Parts 1101 and 1102 of this Title that pertains to the practice of engineering shall contain certification of truth, accuracy, and completeness by a professional engineer. This certification shall be in a form acceptable to the office and state that the application, report, or compliance filing was prepared under the general supervision of a person licensed to practice professional engineering in the State of New York and, based on information and belief formed after reasonable inquiry, the statements and information in the filing are true, accurate, and complete.

**Section 1100-1.5. Office of Renewable Energy Siting and Electric Transmission review fee.**

(a) The office shall charge a fee to the applicant in order to recover the costs of reviewing and processing an application in an amount equal to the following, which shall be due at the time of application filing:

(1) for a major renewable energy facility, $1,000 for each 1,000 kilowatts of capacity;

(2) for a major electric transmission facility of 125 kilovolts or more extending a distance of over 100 miles, $450,000;

(3) for a major electric transmission facility of 125 kilovolts or more extending a distance of over 50 miles to 100 miles, $350,000;

(4) for a major electric transmission facility requiring a new right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $100,000;

(5) for a major electric transmission facility utilizing an existing right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $50,000;

(6) for a major electric transmission facility of 125 kilovolts

or more extending a distance of one (1) mile or more and less than 10 miles, $50,000; and

(7) for a major electric transmission facility of 100 kilovolts or more and less than 125 kilovolts extending 10 miles or more, $100,000.

(b) Public utilities that are subject to section 18-a of the Public Service Law are not subject to the review fee established by this section.

**Section 1100-1.6. Filing, service, and publication of an application.**

(a) The applicant shall file an electronic copy and one (1) paper copy each of the public and confidential versions of the application with the Office of Renewable Energy Siting and Electric Transmission, Attention: Applicant Review, at the Albany, New York office and an electronic copy of the public and confidential versions of the application with the secretary pursuant to subdivisions (a) through (d) of section 3.5 of this Title. The application shall be deemed filed when complete copies of the electronic versions of the application are received by the office in a format that meets all filing guidelines established by the secretary. The applicant shall concurrently serve the public version of the application on the following, as specified:

(1) an electronic copy on the NYSDEC at its central office and an electronic copy on each affected NYSDEC regional office;

(2) unless otherwise directed, an electronic copy on the commissioners of the NYSAGM, NYSDOH, NYSDOT, and OPRHP;

(3) unless otherwise directed, an electronic copy on the Secretary of State if any portion of the proposed facility would have a reasonably foreseeable effect on any land or water use or natural resource of the coastal area and Federal authorization is required or Federal funding is requested;

(4) an electronic copy on the chief executive officer of each municipality in which any portion of the proposed facility is to be located; and in New York City, an electronic copy upon the borough president of any affected borough, and upon the community board of any affected areas served by a community board;

(5) an electronic copy on a library serving the district of each member of the State Legislature in whose district any portion of the proposed facility is to be located or could be adversely impacted by the proposed facility;

(6) an electronic copy on the chief executive officer of any other agency, or local agency that would (absent article VIII of the Public Service Law) have permitting or approval authority with respect to any aspect of the proposed facility;

(7) an electronic copy on the APA if any portion of the proposed facility is located within the Adirondack Park, as defined in subdivision (1) of section 9-0101 of the ECL; and

(8) an electronic copy on the Tug Hill Commission if any portion of the proposed facility is located within the Tug Hill region, as defined in section 847-b of the Executive Law.

(b) Upon request from any of the entities set forth in paragraphs (a)(1)-(8) of this section, the applicant shall provide up to two (2) additional paper copies of the public version of the application within five (5) business days of receipt of the request.

(c) In addition to the above, the applicant shall publish notice of the application no less than three (3) days before the date on which an applicant intends to file the application with the office, in compliance with the following:

(1) provide a copy of the notice to the office;

(2) publish notice in newspapers designated for publication of official notices of each municipality in which the proposed facility is to be located, in the newspaper of largest circulation in the county(ies) in which the proposed facility is to be located and, if any are available, in a free newspaper publication that services the area in which the proposed facility is to be located;

(3) for major renewable energy facilities, provide written notice by first class mail to all persons residing within one (1) mile of the proposed solar facility or within five (5) miles of the proposed wind facility;

(4) for major electric transmission facilities, provide written notice by first class mail to (i) each landowner of land on

which any portion of the proposed facility is to be located, or lands abutting parcels on which any portion of the proposed facility is to be located, explaining that the landowner's property may be impacted by the facility and provide instructions on how to participate in the hearing process under Subpart 1100-8 of this Part, and (ii) all persons residing in any disadvantaged community within the facility corridor as provided for in section 1.2(af) of this Part;

(5) provide written notice to each member of the State Legislature in whose district any portion of the proposed facility is to be located; and

(6) provide written notice to each indigenous nation in whose ancestral territories any portion of the proposed facility is to be located or could be potentially affected by the proposed facility.

(d) Notices required pursuant to subdivision (c) of this section shall serve substantially to inform the public of such application and availability of local agency account funding as follows:

(1) contain a summary of the application and a website link which shall contain such a summary;

(2) contain the date on or about which the application will be filed with the office;

(3) contain a statement of availability of local agency account funds, including the date the notice of intent to file an application required pursuant to section 1100-1.3(d) of this Part was published, citing to the requirements set forth in Subpart 1100-5 of this Part, including, but not limited to, the requirement that any local agency or potential community intervenor shall submit a request for initial funding within thirty (30) days of the date of application filing and that such request be made to the Office of Renewable Energy Siting and Electric Transmission, at the Albany, New York office, Attention: Request for Local Agency Account Funding; and

(4) shall be in plain language, in English and in any other language spoken according to the United States Census data by five thousand (5,000) or more persons residing in any five (5)-digit zip code for the proposed facility. Notices published in

languages other than English shall be published in newspapers, if any are available, servicing the appropriate language community.

(e) If the office determines that any language not captured in paragraph (d)(4) of this section is spoken by a significant population of persons residing in close proximity to the proposed facility, interconnections or related facilities necessary to serve the proposed facility, the office shall direct the applicant to provide notice and summary of the application in the appropriate language and method.

**Subpart 1100-2. Application Exhibits.**

**Section 1100-2.1. Filing instructions.**

(a) Each application for a siting permit shall contain the exhibits described in Parts 1101 or 1102 of this Title as relevant to the proposed facility and such additional information as the applicant may consider relevant or as may be required by the office. Exhibits that are not relevant to the particular facility’s technology or proposed location may be omitted from the application.

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

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

(e) If the same information is required for more than one exhibit, it may be supplied in a single exhibit and cross-referenced in the

other exhibit(s) where it is also required.

(f) If maps are requested, the applicant shall provide both hard copy and digital files, including appropriate GIS shapefiles and/or CAD, etc.

**Subpart 1100-3. Transfer Applications from PSL Article VII or 10 Proceedings.**

**Section 1100-3.1. Transfer applications for pending PSL article VII facilities.**

(a) After the effective date of this section, any person intending to construct a major electric transmission facility excluded from this section pursuant to section 1100-1.1(d)(4) of this Part may elect to become subject to the provisions of this Chapter by filing an application for a major electric transmission facility siting permit pursuant to this Chapter.

(b) Applicants for a pending Public Service Law article VII facilities shall provide the following:

(1) written notice to ORES at least fourteen (14) days in advance of filing;

(2) a copy of the written notice to the secretary of the PSC advising of the applicant’s election to be subject to Public Service Law article VIII;

(3) a completed transfer of application form;

(4) the exhibits set forth in Subpart 1102-2 of Part 1102 of this Title;

(5) copies of documentation identifying those matters and issues that have been identified and resolved in the PSL article VII process;

(6) any additional information that may be required in order to enable the office to make the findings and determinations required by law;

(7) the fee, which may be adjusted from time to time by the office to account for inflation, to be deposited in the local agency account in an amount equal to the following:

(i) for a facility of 125 kilovolts or more extending a distance of over 100 miles, $450,000;

(ii) for a facility of 125 kilovolts or more extending a distance of over 50 miles to 100 miles, $350,000;

(iii) for a facility requiring a new right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $100,000; and

(iv) for a facility utilizing an existing right-of-way and 125 kilovolts or more extending a distance of 10 miles to 50 miles, $50,000; and

(8) the ORES fee to recover the costs of reviewing and processing an application provided for in section 1100-1.5 of this Part.

(c) To the extent an applicant submitted intervenor funds pursuant to PSL article VII, any amounts held in an intervenor account established pursuant to PSL article VII for that project shall be applied to the intervenor account established by this Chapter.

(d) For any matters and issues that have been identified and resolved in the Public Service Law article VII process, the siting permit will reflect such resolution and those provisions will not be the subject of any adjudicatory hearing conducted pursuant to Subpart 1100-8 of this Part.

(e) The applicant shall comply with requirements for filing, service, and publication of the application pursuant to section 1100-1.6 of this Part.

**Section 1100-3.2. Transfer applications for pending PSL article 10 facilities.**

(a) For pending article 10 facilities for which a completeness determination has been issued pursuant to PSL article 10:

(1) The applicant shall provide the following:

(i) written notice to ORES at least fourteen (14) days in advance of filing;

(ii) a copy of the written notice to the secretary of the PSC advising of the applicant’s election to be subject to

Public Service Law article VIII;

(iii)a completed transfer of application form;

(iv) a copy of the application materials submitted pursuant to the PSL article 10; and, to the extent the applicant wishes to be subject to a uniform standard or condition set forth in Subpart 1101-3 of Part 1101 of this Title, an explanation as to how the PSL article 10 application materials demonstrate compliance with such permit condition;

(v) copies of documentation identifying those matters and issues that have been identified and resolved in the PSL article 10 proceeding;

(vi) any additional information that may be required in order to enable the office to make the findings and determinations required by law;

(vii)the fee to be deposited in the local agency account in an amount equal to $1,000 for each 1,000 kilowatts of capacity, which may be adjusted from time to time by the Office to account for inflation; and

(viii) the ORES fee to recover the costs of reviewing and processing an application in an amount equal to $1,000 for each 1,000 kilowatts of capacity.

(2) Such applications shall be deemed complete upon filing; provided, however, that if the office determines that the applicant has not demonstrated compliance with the uniform standards and conditions set forth in Subpart 1101-3 of Part 1101 of this Title, the office will develop the necessary site-specific conditions to avoid, minimize, and mitigate significant adverse environmental impacts to the maximum extent practicable, including requirements for additional compliance filings beyond those set forth in Subpart 1101-4 of Part 1101 this Title, as necessary.

(b) Applicants for pending article 10 facilities for which the application has been filed, but has not yet been deemed to be in compliance with article 10 application requirements, shall provide the following:

(1) written notice to ORES at least fourteen (14) days in advance of filing;

(2) a copy of the written notice to the secretary of the PSC of applicant's intent to become subject to Public Service Law article VIII;

(3) a completed transfer of application form;

(4) the exhibits required in Subpart 1101-2 of Part 1101 of this Title;

(5) copies of documentation identifying those matters and issues that have been identified and resolved in the PSL article 10 process;

(6) any additional information that may be required in order to enable the office to make the findings and determinations required by law;

(7) the fee to be deposited in the local agency account in an amount equal to $1,000 for each 1,000 kilowatts of capacity, which may be adjusted from time to time by the office to account for inflation; and

(8) the ORES fee to recover the costs of reviewing and processing an application in an amount equal to $1,000 for each 1,000 kilowatts of capacity.

(c) To the extent an applicant submitted intervenor funds pursuant to PSL article 10, any amounts held in an intervenor account established pursuant to PSL article 10 for that project shall be applied to the intervenor account established by this Chapter.

(d) For any matters and issues that have been identified and resolved in the PSL article 10 process, the siting permit will reflect such resolution and those provisions will not be the subject of any adjudicatory hearing conducted pursuant to Subpart 1100-8 of this Part.

(e) The applicant shall comply with requirements for filing, service, and publication of the application pursuant to section 1100-1.6 of this Part.

**Subpart 1100-4. Processing of Applications.**

**Section 1100-4.1. Office of Renewable Energy Siting and Electric Transmission action on applications.**

(a) Applications shall be filed with the office pursuant to section 1100-1.6(a) of this Part for initiation of review and a determination of completeness. It is the responsibility of the applicant to ensure the office is notified of all address changes.

(b) The office reserves the right in its sole discretion to elect to inspect the site(s) and during an inspection, among other things, measurements may be made, physical characteristics of the site may be analyzed, including without limitation soils and vegetation, and photographs may be taken. Ordinarily, such site visit shall occur between 7:00 a.m. and 8:00 p.m. Monday through Friday. An applicant's failure to allow access to the site can be grounds for, and may result in, a notice of incomplete application or statement of intent to deny.

(c) The office shall make its determination of completeness or incompleteness on or before sixty (60) days of receipt of an application for a major renewable energy facility siting permit, or on or before one hundred twenty (120) days of receipt of an application for a major electric transmission facility permit, and provide notice of such determination to the applicant via electronic mail and, if requested by the applicant, by regular mail.

(d) If the application is determined to be incomplete, the notice shall include a listing of all identified areas of incompleteness and a description of the specific deficiencies.

(e) Applications shall remain incomplete until all requested items are received by the office in a format that meets all filing guidelines established by the secretary. A partial submission of the requested material shall not change the incomplete status. The office shall notify the applicant for a major renewable energy facility siting permit of the application status within sixty (60) days of receipt of all requested material. The office shall notify the applicant for a major electric transmission facility siting permit of the application status within one hundred twenty (120) days of receipt of all requested material.

(f) Failure of the applicant to respond in writing to the office's notice of incomplete application will result in the application being deemed withdrawn without prejudice pursuant to the following

procedures:

(1) if the applicant fails to respond to a notice of incomplete application within ninety (90) days, the office may send a follow-up notice of incomplete application requesting that the necessary items for a complete application be provided within thirty (30) days; and

(2) if the applicant fails to respond to such follow-up notice of incomplete application within thirty (30) days, the office will treat the application as withdrawn without prejudice, and shall so notify the applicant.

(g) If the application is determined to be complete by the office, the ffice shall publish a notice of complete application on the office's website and serve the notice upon:

(1) the applicant, as directed in subdivision (c) of this section;

(2) the chief executive officer of each municipality in which any portion of the proposed facility is to be located, via electronic mail and, if requested, by regular mail; and

(3) any person who has previously expressed in writing an interest in receiving such notification, via the method of service requested by such person.

(h) If the office fails to provide notice of its determination of completeness or incompleteness within the time period set forth in subdivision (c) of this section, the application shall be deemed complete; provided, however, that no application may be complete without proof of consultation with the municipality or political subdivision where the project is proposed to be located, or an agency thereof, prior to submission of an application to ORES, related to procedural and substantive requirements of local law. Nothing in this section waives any applicable statutory requirements to obtain other permits that may be required, including, but not limited to, Federal and federally-delegated permits, or precludes the office from requesting additional information as set forth in this Part.

(i) Time frames and deadlines set forth in this Chapter are calculated in accordance with General Construction Law section 20, where day one is the day after a pertinent time-sensitive event, such as date of receipt or day of publication, and General Construction

Law section 25-a (Public holiday, Saturday or Sunday). Unless indicated otherwise, days are calculated as calendar days.

(j) Unless otherwise specified in this Part, the applicant and office may extend the time periods for a completeness determination or final determination on the application by mutual consent.

**Subpart 1100-5.**

**Section 1100-5.1. Local agency account.**

(a) Except as otherwise provided in this Chapter, local agencies and potential community intervenors seeking funds from the local agency account shall serve and file a request to the office, as set forth in subdivision (h) of this section, within thirty (30) days after the date on which a siting permit application has been filed by the applicant pursuant to section 1100-1.6 of this Part.

(b) Except as otherwise provided in this Chapter, within thirty (30) days after the deadline for requests for funds from the local agency account, the ALJ shall award local agency funds, to local agencies and potential community intervenors whose requests comply with the provisions of subdivision (h) of this section, so long as use of the funds will contribute to a complete record leading to an informed permit decision as to the appropriateness of the site and the facility, and for local agencies, shall include the use of funds to determine whether a proposed facility is designed to be sited, constructed, and operated in compliance with applicable local laws and regulations.

(c) A local agency or potential community intervenor (except an applicant) may request funds from the local agency account to defray expenses for experts.

(d) Local agencies and potential community intervenors are encouraged to consider the consolidation of requests with similar funding proposals.

(e) Subject to the availability of funds in the local agency account, the office may fix additional dates for submission of fund requests.

(f) At the time vouchers are filed or as otherwise required by the office, any local agency or potential community intervenor receiving

an award of funds shall serve and file with the office a report:

(1) detailing an accounting of the monies that have been spent; and

(2) showing:

(i) the results of any studies and a description of any activities conducted using such funds; and

(ii) 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 if applicable, why further expenditures are warranted.

*(g) Disbursement of funds from the local agency account.*

(1) All disbursements from the local agency account to any local agency or potential community intervenor shall be made by NYSERDA, at the direction of the office, on vouchers approved by the office.

(2) The office shall reserve at least seventy-five (75) percent of the local agency account funds for each project for potential awards to local agencies.

(3) All vouchers shall be submitted for payment no later than the following:

(i) For local agency awardees, no later than six (6) months after the withdrawal of a permit application, the filing of a host community benefit agreement, or the issuance of the final notice to proceed, whichever event occurs first.

(ii) For community intervenor awardees, no later than six (6) months after the withdrawal of a permit application or the Office’s final determination on the application.

(4) Any funds that have not been disbursed after the expiration of time for final voucher submittals pursuant to paragraph (3) of this subdivision shall be returned to the applicant.

(h) Each request for funds from the local agency account shall be

completed on an ORES-approved form and contain:

(1) a statement that the facility falls within the local agency's jurisdiction or that a permit or approval from the local agency would have been required in the absence of article VIII of the Public Service Law;

(2) for individual potential community intervenors, a statement of the number of persons and the nature of the interests the requesting person represents, and proof of residency (e.g., a New York State driver's license, permit or non-driver identification card, a recent bank statement, a recent pay stub or a recent utility bill);

(3) for any non-profit organization potential community intervenors, a statement of a concrete and localized interest that may be affected by a proposed facility and that such interest has a significant nexus to its mission;

(4) a statement of the availability of funds from the resources of the local agency or potential community intervenor and of the efforts that have been made to obtain such funds;

(5) the amount of funds being sought;

(6) 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;

(7) if known, the name of any other local agency, potential community intervenor or entity who may, or is intending to, employ such expert;

(8) 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;

(9) 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;

(10) a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person; and

(11) a completed authorization form for electronic Automated Clearing House payment, or payment instructions for payments by check.

**Subpart 1100-6.** Reserved.

**Subpart 1100-7.**

**Section 1100-7.1. Amendment of an application.**

(a) Pending applications may only be amended prior to issuance of a notice of complete application. In addition, any amendment to the application may only be filed with the express written permission of the office, as set forth in this section.

(b) *Requests for permission to submit an amendment.*

(1) An applicant wishing to amend a pending application shall file a written request to the office, setting forth:

(i) the proposed change to the application;

(ii) a justification as to why such changes are required;

(iii)the applicant's assessment as to whether the amendment is minor or major; and

(iv) an anticipated timeframe for resubmission.

(2) The office shall review the request and, within fifteen (15) days of receipt thereof, inform the permittee in writing as to its determination as to whether such changes constitute a minor amendment to be processed by the office or a major amendment subject to subdivision (c) of this section. If the amendment is determined to be a minor amendment, the office shall continue to process the application forthwith.

(c) *Submission of a major amendment to an application.*

(1) An applicant shall submit only those application materials

that reflect changes from the original submission, including a redlined version of the relevant materials.

(2) If the applicant for a major renewable energy facility siting permit proposes to increase the nameplate capacity of the facility, the applicant shall submit any additional required payment to the local agency account simultaneously with its request for a major amendment.

(3) If the applicant for a major electric transmission facility proposes to increase the length of the facility such that the project falls within a higher category pursuant to section 1100-1.4(a)(9) of this Part, the applicant shall submit any additional required payment to the local agency account simultaneously with its request for a major amendment.

(4) The applicant shall publish notice of the major amendment, clearly identifying the changes from the original application and notice thereof, in accordance with section 1100-1.6 of this Part.

(d) The time for the office to make its completeness determination on the original application shall be suspended while ORES is reviewing a request to amend a pending application.

(e) All applicable statutory time frames for completeness determination, publication of draft permit conditions, and final determination on the application shall run from the submission of the entire major amendment application in accordance with subdivision (c) of this section.

**Subpart 1100-8. Hearing Process.**

**Section 1100-8.1. Publication and notice of draft siting permit.**

(a) No later than sixty (60) days following the date upon which an application has been deemed complete, and following consultation with any relevant State agency or authority, ORES shall publish on the office and NYSDPS website draft permit conditions prepared by the office, or a statement of intent to deny.

(b) No later than sixty (60) days following the date upon which an application has been deemed complete, ORES shall publish on the

office and NYDPS website a combined notice of the availability of draft permit conditions or statement of intent to deny, public comment period and public comment hearing, and issues conference, as defined in section 1100-8.2(d) of this Part.

**Section 1100-8.2. Hearing notices.**

(a) *General requirements.* Unless otherwise provided by statute or regulation, the office of hearings shall publish notices required under this Subpart on both the office and the NYSDPS website, and shall provide copies of all such notices to the applicant and to all persons and entities on the party list for the proceeding. Where newspaper publication is required under this Subpart, the applicant shall provide for and bear the cost of publication in the newspapers specified in section 1100-1.6(c)(2) of this Part. Notices of public comment or adjudicatory hearing shall be published not less than twenty-one (21) days prior to the date of the public comment or adjudicatory hearing. These requirements are minimums and the assigned ALJ shall direct the applicant to provide additional notice or to provide the notice further in advance of a hearing where the ALJ finds it necessary to adequately inform the potentially affected public about the hearing. Where the ALJ finds that a large segment of the potentially affected public has a principal language other than English, the ALJ shall direct the publication of the notice in a foreign language newspaper(s) serving such persons. Nothing herein shall authorize the ALJ to delay the commencement of the hearing beyond the deadlines established in this Part without the applicant's consent.

(b) *Required contents.* All notices required under this Subpart shall be in the form specified by the office of hearings and shall contain the following information:

(1) the date of issuance of the notice of hearing, the date of the notice of complete application, and the date of publication of the draft siting permit conditions or statement of intent to deny;

(2) a functional link to the ORES website;

(3) the date, time, location and purpose of the hearing and any pre-hearing conference, if scheduled. The location of the hearing shall be as follows:

(i) for a major renewable energy facility, the location of any hearing required under this Subpart shall be in a town, village, or city in which any part of the project is located, or as reasonably near the site of the proposed generation facility as practicable, depending upon the availability of suitable venues. For adjudicatory hearings held pursuant to section 1100-8.7 of this Part, another location, including by electronic webinar, may be selected based on the convenience of parties and witnesses at the discretion of the ALJ, provided that members of the public have reasonable access to attend the hearing;

(ii) for a major electric transmission facility, the ALJ, in the exercise of discretion, shall set the number and location of public comment hearings held pursuant to section 1100-8.3(a) of this Part to assure that members of the public have reasonable access to attend the hearing. The ALJ may require such additional public comment hearings as are necessary to assure that all statutory requirements are complied with;

(iii) for a major electric transmission facility, the location of any adjudicatory hearing held pursuant to section 1100-8.7 of this Part shall be determined by the ALJ, in the exercise of discretion;

(4) the name and address of the applicant or permittee;

(5) that the application is seeking a siting permit, pursuant to article VIII of the Public Service Law and this Part 1100;

(6) a description of the project; and

(7) a publicly accessible location for review of the available application materials, and the draft siting permit conditions or statement of intent to deny.

(c) *Optional contents.* The notice may also specify the issues of concern to the office and the public.

(d) *Combined notice of availability of draft permit conditions or statement of intent to deny, public comment period and public comment hearing, and issues conference.* In addition to the contents of a notice required by subdivisions (b) and (c) of this section, the

combined notice shall contain the following information:

(1) the deadline and instructions for filing public comments on the draft permit conditions or statement of intent to deny electronically, by mail, or at a public comment hearing. The period for filing public comments shall be a minimum of sixty (60) days from the date of issuance of the combined notice;

(2) the date, time, and location of the public comment hearing scheduled pursuant to section 1100-8.3(a) of this Part;

(3) notice of commencement of the issues conference procedure required by section 1100-8.3(b) of this Part and instructions for filing a petition for party status pursuant to sections 1100-8.3 and 1100-8.4 of this Part. The period for filing a petition for party status shall be a minimum of sixty (60) days from the date of issuance of the combined notice;

(4) the deadline and instructions to municipalities for filing the statement of compliance with local laws and regulations required by section 1100-8.4(d) of this Part; and

(5) for an application for a major electric transmission facility siting permit, any portion of which is to be located on the land of a landowner for which the applicant lacks a right-of-way agreement, the deadline and instructions for such landowners to file a statement challenging the explanation for the public need given in such application authorized by section 1100-8.4(e) of this Part.

(e) *Service on specific persons.* Not less than twenty-one (21) days prior to a hearing date, individual copies of any notice required under this Subpart shall be sent to:

(1) the chief executive officer of any municipality in which any part of the project is located, or municipality which may be adversely impacted by the project;

(2) each member of the State Legislature in whose district the facility or any alternative proposed in the application would be located;

(3) all persons and entities required to receive copies of the application pursuant to section 1100-1.6(a) of this Part;

(4) all persons and entities required to received notice of the

application pursuant to section 1100-1.6(c) of this Part;

(5) all persons and entities on the party list for the proceeding; and

(6) such other persons as the office deems to have an interest in the application.

The ALJ shall direct the applicant to provide notice further in advance of the hearing to those persons specified in this subdivision where the ALJ finds it necessary to adequately inform them about the hearing. Nothing herein shall authorize the ALJ to delay the commencement of the hearing beyond the deadlines established in this Part without the applicant's consent.

(f) *Landowner notification.* For an application for a major electric transmission facility siting permit, the applicant shall serve by first class mail the combined notice required by subdivision (d) of this section on each landowner of land on which any portion of the proposed facility is to be located together with a notice that such landowner’s property may be impacted by the project.

**Section 1100-8.3. Public comment hearing and issues conference.**

(a) *Public comment hearing.*

(1) Not less than sixty (60) days from the date of issuance of the combined notice required by section 1100-8.2(d) of this Part, a public comment hearing shall be convened to hear and receive the unsworn statements of parties and non-parties relating to the siting permit application. A stenographic transcript of such statements shall be made but shall not be part of the record of the hearing, as defined by section 1100-8.11 of this Part.

(2) The ALJ may require that lengthy statements be submitted in writing and summarized for oral presentation.

(3) The statements and written submissions made at the public comment hearing or written comments submitted by the close of the public comment period shall not constitute evidence but may be used by the ALJ as a basis to inquire further of the parties and potential parties at the issues conference stage.

(b) *Issues conference*.

(1) *Purpose.* The purpose of the issues conference is:

(i) to narrow or resolve disputed issues of fact without resort to taking testimony;

(ii) to receive argument on whether disputed issues of fact that are not resolved meet the standards for adjudicable issues set forth in subdivision (d) of this section;

(iii) to receive argument on whether party status should be granted to any petitioner on disputed issues of fact;

(iv) to determine whether legal issues exist whose resolution is not dependent on facts that are in substantial dispute and, if so, to receive argument on the merits of those issues; and

(v) to decide any pending motions.

(2) *Procedures.*

(i) The ALJ shall preside over the issues conference. Participants shall include office staff, the applicant, and any person who has filed a petition for party status pursuant to section 1100-8.4(c) of this Part.

(ii) In the combined notice required by section 1100-8.2(d) of this Part, the mandatory parties identified in section 1100-8.4(b) of this Part, and any potential parties shall be provided with the opportunity to file petitions for party status and statements authorized pursuant to section 1100-8.4 of this Part concerning potential substantive and significant issues. The issues conference shall be conducted solely on papers, unless the ALJ, in their sole discretion, determines that oral argument is necessary to fully understand the issues proposed by the parties and potential parties.

(iii) Within fifteen (15) days after the close of the public comment period, the filing of petitions for party status, or the filing of any statements authorized by section 1100-8.4 of this Part, whichever event occurs later, or by such later date established by the ALJ in the exercise of discretion:

(*a*) office staff may file and serve a response to any petitions for party status, any statement of issues by the applicant, any statement of compliance with local laws and regulations, and for applications for a major electric transmission facility siting permit, any landowner statement challenging the explanation of public need;

(*b*) the applicant may file and serve a response to any petition for party status, statement of compliance with local laws and regulations, or for applications for a major electric transmission facility siting permit, any landowner statement challenging the explanation of public need. In addition, the applicant shall file and serve on office staff a response to public comments received during the public comment period, including any supplemental information.

(iv) At the ALJ's discretion, an issues conference may be revisited at any time prior to the issuance of a final decision to consider issues based on new information upon a showing that such information was not reasonably available at the time of the issues conference. Upon a demonstration that the public review period for the application prior to the issues conference was insufficient to allow potential parties to adequately prepare for the issues conference, the ALJ may adjourn the issues conference, extend the time for written submittals, or make some other fair and equitable provision to protect the rights of the potential parties.

(c) *Rulings on issues and party status.*

(1) In no event later than thirty (30) days after the date of receipt of written submissions for the issues conference and responses thereto, the ALJ shall:

(i) determine which issues satisfy the requirements for being adjudicable issues as set forth in subdivision (d) of this section, and define those issues as precisely as possible;

(ii) determine which persons satisfy the requirements for

party status as set forth in subdivision (e) of this section for any adjudicatory hearing on the disputed issues of fact identified for adjudication;

(iii) rule on the merits of any legal issue where ruling does not depend on the resolution of disputed issues of fact. Legal determinations made by ORES staff in the draft siting permit or notice of intent to deny are reviewed for an error of law. Exercises of discretion and policy decisions made by ORES staff are reviewed for an abuse of discretion;

(iv) decide any pending motions to the extent practicable; and

(v) summarize comments received on the application and draft permit conditions or notice of intent to deny.

(2) If the ALJ determines that there are no fact issues to adjudicate and finally determines all legal issues raised by the parties, the ALJ shall direct in writing that no adjudicatory hearing be held, make the findings required by section 1100-9.1(c) of this Part, and remand the matter to office staff to continue processing the application to issue the requested siting permit, including issuance of a written summary and assessment of public comments received during the public comment period on issues not otherwise addressed in the ALJ's ruling.

(d) *Standards for adjudicable issues*.

(1) *Generally applicable rules.* Subject to the limitations set forth in paragraphs (5) and (6) of this subdivision, an issue is adjudicable if:

(i) it relates to a dispute between office staff and the applicant over a proposed term or condition of the draft siting permit, including uniform standards and conditions;

(ii) it relates to a matter cited by office staff as a basis to deny the siting permit and is contested by the applicant;

(iii) it is proposed by a potential party and is both substantive and significant; or

(iv) public comments, including comments provided by a municipality or a landowner, on a draft siting permit condition published by the office raise a substantive and significant issue.

(2) An issue is substantive if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry. In determining whether such a demonstration has been made, the ALJ shall consider the proposed issue in light of the application and related documents, the standards and conditions, or draft siting permit, the statement of issues filed by the applicant, the content of any petitions filed for party status, the record of the issues conference, and any subsequent written or oral arguments authorized by the ALJ.

(3) An issue is significant if it has the potential to result in the denial of a siting permit, a major modification to the proposed project, or the imposition of significant permit conditions in addition to those proposed in the draft siting permit, including uniform standards and conditions.

(4) In situations where office staff has reviewed an application and finds that a component of the applicant's project, as proposed or as conditioned by the draft siting permit, conforms to all applicable requirements of statute and regulation, the burden of persuasion is on the potential party proposing any issue related to that component to demonstrate that it is both substantive and significant.

(5) The completeness of an application, as defined in this Part, shall not be an issue for adjudication.

(6) *ORES-initiated modifications.* The only issues that may be adjudicated are those related to the basis for modification cited in the office’s notice to the permittee. Whenever such issues are proposed for adjudication, the determination to require adjudication shall be made according to the standards set forth in paragraph (1) of this subdivision.

(e) *Standards for party status.* Rulings on party status shall be made by the ALJ after the deadline for receipt of petitions for party status and responses thereto and shall be set forth in the rulings on

issues and party status provided for at subdivision (c) of this section.

(1) *Full party status.* The ALJ's ruling of entitlement to full party status shall be based upon:

(i) a finding that the petitioner has filed an acceptable petition pursuant to paragraphs (c)(1) and (2) of section 1100-8.4 of this Part;

(ii) a finding that the petitioner has raised a substantive and significant factual issue or that the petitioner can make a meaningful contribution to the record regarding a substantive and significant factual issue raised by another party; and

(iii) a demonstration of adequate interest related to the standards and conditions established by the office for the siting, design, operation, and construction of the project.

(2) *Amicus status.* The ALJ's ruling of entitlement to *amicus* status shall be based upon:

(i) a finding that the petitioner has filed an acceptable petition pursuant to paragraphs (c)(1) and (3) of section 1100-8.4 of this Part;

(ii) a finding that the petitioner has identified a legal or policy issue which needs to be resolved by the hearing; and

(iii) a finding that the petitioner has a sufficient interest in the resolution of such issue and through expertise, special knowledge or unique perspective may contribute materially to the record on such issue.

(3) *Inadequate petition.* If a potential party fails to file a petition in the form set forth in section 1100-8.4(c) of this Part, the ALJ may deny party status or may require additional information from the petitioner.

(4) *Supplementation of petitions.* Where the ALJ finds that a potential party did not have adequate time to prepare its petition for party status, the ALJ shall provide an opportunity for supplementation of the petition.

(f) *Late-filed petitions for party status and late-raised issues.*

(1) Petitions filed after the date set in the combined notice provided for in section 1100-8.2(d) of this Part shall not be granted except under the limited circumstances outlined in paragraph (2) of this subdivision.

(2) In addition to the required contents of a petition for party status as set forth in section 1100-8.4(c) of this Part, a petition filed late shall include the following to receive any consideration:

(i) a demonstration that there is good cause for the late filing;

(ii) a demonstration that participation by the petitioner will not significantly delay the proceeding or unreasonably prejudice the other parties; and

(iii) a demonstration that participation will materially assist in the determination of adjudicable issues raised in the proceeding.

(3) Issues raised for the first time after the date set in the combined notice provided for in section 1100-8.2(d) of this Part for the filing of petitions or applicant's statement of issues authorized by section 1100-8.4 of this Part will not be considered except under the limited circumstances outlined in paragraph (2) of this subdivision and upon a demonstration that the late-raised issue meets the standards for adjudicable issues set forth in subdivision (d) of this section.

**Section 1100-8.4. Hearing participation, petitions for party status, and statements.**

(a) Participation in the adjudicatory hearing may be as a full party or as *amicus*, depending upon the demonstrated compliance with the criteria set forth in subdivisions (b) through (e) of this section. Non-parties who wish to have their comments recorded shall be permitted to submit oral or written comments during the public comment portion of the proceedings, or as otherwise provided by the ALJ, as set forth in this Part. Such public statements shall not constitute evidence in the adjudicatory hearing but may be used by the ALJ as a basis to inquire further of all parties and potential parties at the issues conference stage.

(b) *Mandatory parties.* The applicant and assigned office staff are full parties to the proceeding. The office or NYSDPS shall designate members of its staff to represent the public interest at any adjudicatory hearing held pursuant to this Part, including with respect to the application of local and State laws. Any municipality, political subdivision, or an agency thereof are full parties to the proceeding if issues related to the jurisdiction or authority of those agencies are joined for adjudication in the rulings on issues provided for in section 1100-8.3(c) of this Part.

(1) *Applicant's statement of issues.* No later than the date set in the combined notice provided for in section 1100-8.2(d) of this Part for the filing of petitions for party status, or an earlier date set in the exercise of the ALJ's discretion, the applicant shall file and serve on office staff a statement of issues the applicant intends to raise with respect to any determination of the office. The applicant shall serve the statement of issues on persons filing petitions for party status within five (5) days of such filing. The applicant's statement of issues shall:

(i) identify an issue for adjudication that meets the criteria of section 1100-8.3(d) of this Part;

(ii) present a statement of material facts sought to be adjudicated and an offer of proof specifying the witness(es), each witness's qualifications, the nature of the evidence the applicant expects to present, and the grounds upon which the assertion is made with respect to that issue; and

(iii) identify the permit conditions that are contested.

(c) *Other parties.* By the date set in the combined notice provided for in section 1100-8.2(d) of this Part, a person desiring party status shall file a petition in writing which includes the requirements of either paragraphs (1) and (2) or paragraphs (1) and (3) of this subdivision.

(1) Required contents of petition for party status:

(i) identification of the proposed party together with the name(s), address, telephone number and email address of the person or persons who will act as representative of the

party;

(ii) statement of the petitioner's interest related to the standards and conditions established by the ORES for the siting, design, operation, and construction of the project;

(iii) identification of any interest relating to statutes administered by other State agencies or ORES relevant to the project;

(iv) statement as to whether the petition is for full party or *amicus* status; and

(v) identification of the precise grounds for opposition or support.

(2) Additional contents required for petitions for full party status:

(i) identification of an adjudicable issue(s) which meets the criteria set forth in section 1100-8.3(d) of this Part; and

(ii) present a statement of material facts sought to be adjudicated and an offer of proof specifying the witness(es), each witness's qualification, the nature of the evidence the person expects to present, and the grounds upon which the assertion is made with respect to each issue identified;

(iii) to raise material issues of fact, the offer of proof must allege facts that are:

*(a)* contrary to what is in the application materials or draft siting permit;

*(b)* demonstrate an omission in the application or draft siting permit; or

*(c)* show that defective information was used in the application or draft siting permit.

(3) Additional contents required for petitions for *amicus* status:

(i) identify the nature of the legal or policy issue(s) to

be briefed which meets the criteria of section 1100-8.3(d) of this Part; and

(ii) provide a statement explaining why the proposed party is in a special position with respect to that issue.

(d) *Municipal statement of compliance with local laws and regulations.* At any time after an application is filed and no later than the date set in the combined notice provided for in section 1100-8.2(d) of this Part for the filing of petitions for party status, or an earlier date no less than sixty (60) days from the issuance of the combined notice set in the exercise of the ALJ's discretion, any municipality, political subdivision, or an agency thereof that has received notice of the filing of an application shall file and serve on office staff and the applicant a statement indicating whether the proposed facility is designed to be sited, constructed, and operated in compliance with applicable local laws and regulations, if any, concerning the environment, or public health and safety. The applicant shall serve the municipality's statement on persons filing petitions for party status within five (5) days of such filing. Any municipality, political subdivision, or an agency thereof that proposes to adjudicate any issues related to a facility's compliance with local laws and regulations shall file a petition for party status as provided for in subdivision (c) of this section, and shall include the statement of compliance with local laws and regulations in the petition. Statements of compliance with local laws and regulations without a petition are comments on the application or draft siting permit.

(e) *Landowner statement challenging explanation for public need.* For an application for a major electric transmission facility siting permit, any portion of which is to be located on the land of a landowner for which the applicant lacks a right-of-way agreement, at any time after an application is filed and no later than the date set in the combined notice provided for in section 1100-8.2(d) of this Part for the filing of petitions for party status, or an earlier date no less than sixty (60) days from the issuance of the combined notice set in the exercise of the ALJ's discretion, any such landowner that has received notice of the filing of an application may file and serve on office staff and the applicant a statement challenging the explanation of public need given in such application. The applicant shall serve the landowner's statement on persons filing petitions for

party status within five (5) days of such filing. Any such landowner challenging the explanation of public need that proposes to adjudicate any issues related to a facility's public need shall file a petition for party status as provided for in subdivision (c) of this section, and shall include the statement challenging the explanation of public need in the petition. Statements challenging the explanation of public need without a petition are comments on the application or draft siting permit.

(f) *Rights of parties.*

(1) A full party has the right to:

(i) engage in and conduct disclosure of any other party to the proceeding;

(ii) participate at the hearing in person or through an authorized representative;

(iii) present relevant evidence and cross-examine witnesses of other parties;

(iv) present argument on issues of law and fact;

(v) initiate motions, requests, briefs, or other written material in connection with the hearing, and receive all correspondence to and from the ALJ and to and from all other parties that is circulated to the parties generally;

(vi) appeal adverse rulings of the ALJ; and

(vii) exercise any other right conferred on parties by this Part or SAPA.

(2) A party with *amicus* status has the right to file a brief and, at the discretion of the ALJ, present oral argument on the issue(s) identified in the ALJ's ruling on its party status but does not have any other rights of participation or submission.

(3) A potential party has the rights provided above consistent with the party status sought in their petition until their petition has received final denial or acceptance.

(g) *Loss of party status.* Upon determining that the party or its representative has failed to comply with the applicable laws, rules, or directives of the ALJ and has substantially disrupted the hearing

process or prejudiced the rights of another party to the proceeding, the ALJ may revoke the party status of the offending party.

**Section 1100-8.5. General rules of practice.**

(a) *Service and filing of papers*.

(1) CPLR 2103 governs service of papers except that papers may be served by a party and service upon the party's duly authorized representative may be made by the same means as provided for service upon an attorney. Notwithstanding any other rule to the contrary, service shall be made by electronic means, such as email or facsimile, unless the serving and receiving parties agree otherwise, or the ALJ, upon good cause shown, authorizes the use of a different means of service consistent with CPLR 2103.

(2) All parties who appear on the party list for the application are parties to be served consistent with CPLR 2103(e).

(3) Except as otherwise provided in this Part or Parts 1101 and 1102 of this Title, papers required to be filed shall be filed with the ALJ by electronic means and with the secretary pursuant to subdivisions (a) through (d) of section 3.5 of this Title. Papers will be deemed filed when a filing that meets all filing guidelines established by the secretary is received by the office.

(4) Proof of service shall be made in the same manner as under the CPLR and shall be filed with the ALJ and the secretary as provided in paragraph (3) of this subdivision.

(5) When papers are served by electronic transmission, the serving parties shall simultaneously send a copy of the papers transmitted electronically to the recipient by first class mail if requested by the receiving parties.

(b) *Computation of time limits*.

(1) The rules of New York State General Construction Law sections 20 and 25-a govern the computation of time limits.

(2) If a period of time prescribed under this Part is measured from the date of service of a paper or the date of the issuance of a ruling, decision, or other communication instead of the date of service,

(i) five (5) days are added to the prescribed period if service or issuance is by first class mail;

(ii) one (1) day is added to the prescribed period if service or issuance is by overnight delivery;

(iii) if service or issuance is by facsimile transmission only, the service is complete upon the receipt by the sender of a signal from the equipment of the party served that the transmission was received; and

(iv) if service or issuance is by email only, the service is complete upon transmission. Service by email is not complete upon transmission if the serving party receives notification that the papers sent by email did not reach the person to be served.

(c) *Motion practice*.

(1) Motions and requests made at any time are part of the record. Motions and requests prior to any hearing shall be in writing. All motion papers shall be served and filed with the ALJ and the secretary, together with proof of service of the motion on all parties. During the course of the adjudicatory hearing, motions may be made orally except where otherwise directed by the ALJ. If no ALJ has been assigned to the proceeding, the motion shall be filed with the Chief ALJ.

(2) Every motion shall clearly state the relief requested, and the legal arguments and any facts on which the motion is based.

(3) All parties have five (5) days after a motion is served to serve and file a response. Thereafter no further responsive papers shall be allowed without permission of the ALJ. All responsive papers shall be filed with the ALJ and the secretary, together with proof of service on all parties.

(4) The ALJ should rule on a motion within five (5) days after a response has been served or the time to serve a response has expired. The ALJ shall rule on all pending motions prior to the

close of any adjudicatory hearing. Any motion not ruled upon prior to the close of an adjudicatory hearing shall be deemed denied.

(5) Where a standard of review applicable to a motion or request is not otherwise provided for in this Part, other sources of standards, including statutory law such as SAPA and the CPLR, case law, and administrative precedent, may be consulted.

(d) *Office of Hearings*.

(1) Prior to the appointment of an ALJ to hear a particular proceeding, the Chief ALJ may take any action which an ALJ is authorized to take.

(2) The Chief ALJ may establish a schedule for hearing pretrial motions and other matters for proceedings that have no assigned ALJ.

(e) *Interlocutory Appeals*. The time periods for interlocutory appeals filed pursuant to section 1100-8.7(d)(2) of this Part are as follows:

(1) Interlocutory appeals pursuant to section 1100-8.7(d)(2)(i) of this Part shall be served and filed with the executive director, the ALJ, and the secretary in writing within five (5) days of the date of the disputed ruling. All parties have five (5) days after a notice of interlocutory appeal is served to serve and file a response to the appeal. Only the executive director shall determine whether further responsive pleadings after the responses will be allowed.

(2) Motions for permission to file an interlocutory appeal pursuant to section 1100-8.7(d)(2)(ii) of this Part shall be served and filed with the executive director, the ALJ, and the secretary in writing within five (5) days of the date of the disputed ruling. All parties have five (5) days after a motion for permission to appeal is served to serve and file a response to the motion.

(3) Upon being granted permission to appeal, appellant shall serve and file the appeal in writing within five (5) days of permission being granted. Thereafter the other parties may serve

and file a response in support of or in opposition to the appeal within five (5) days of service of the appeal.

(f) Video recording or televising the adjudicatory hearing for rebroadcast is prohibited by section 52 of the New York State Civil Rights Law.

(g) All rules of practice involving time frames may be modified by direction of the ALJ or the executive director and, for the same reasons, any other rule may be modified by the executive director upon recommendation of the ALJ or upon the executive director's own initiative.

**Section 1100-8.6. Disclosure.**

(a) *Prior to the issues conference.* Discovery is limited to what is afforded under the Freedom of Information Law (New York Public Officers Law – Access to Records). In the absence of extraordinary circumstances, the ALJ shall not grant petitions for further disclosure. This provision does not alter the rights of any person under the Freedom of Information Law, nor does it limit the ability of any party to seek disclosure after the issues conference.

(b) *Without permission of the ALJ.* Within ten (10) days after service of the final designation of the issues, any party has the right to serve a disclosure demand upon any other party demanding that party provide:

(1) documents, in general conformance with CPLR section 3120(a)(1)(i);

(2) a list of witnesses to be called, their addresses, and the scope and content of each witness's proposed testimony, and the qualifications and published works of each, in general conformance with CPLR section 3101(d)(1), except that disclosure of fact witnesses as well as expert witnesses may be demanded;

(3) an inspection of property, in general conformance with CPLR section 3120(a)(1)(ii), except that drilling and other intrusive sampling and testing is not provided as of right;

(4) a request for admission, in general conformance with CPLR section 3123; or

(5) lists of documentary or physical evidence to be offered at the hearing;

(6) electronically stored information (ESI). Unless authorized by the ALJ, disclosure of ESI is limited only to ESI that is located in a computer's memory or in storage media (including servers, desktop or laptop computers, tablets, cellphones, hard drives, flash drives, compact discs, digital video discs, and portable media players) that is immediately available in the normal course of business.

(c) *By permission.* With permission of the ALJ, a party may:

(1) obtain discovery prior to the issues conference;

(2) use discovery devices from the CPLR not provided for in subdivision (b) of this section;

(3) submit late requests for discovery or vary the time for responding to requests; and

(4) access real property in the custody or control of another for the purpose of conducting drilling or other sampling or testing. In such instance, all parties shall be given notice of such activities and be allowed to observe and to take split samples or use other specified methods of verification;

(5) upon motion of any party demonstrating substantial prejudice, the ALJ may order additional disclosure of ESI beyond that provided for in subdivision (b) of this section, subject to any terms and conditions deemed appropriate by the ALJ. Such a motion shall be accompanied by an affirmation of an attorney, or an affidavit of the moving party if not represented by an attorney, describing the good faith efforts to resolve the dispute without resort to a motion.

(d) *Protective order and motion to compel.*

(1) A party against whom disclosure is demanded may make a motion to the ALJ for a protective order, in general conformance with CPLR 3103 to deny, limit, condition or regulate the use of any disclosure device in order to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice. Such a motion shall be submitted within ten (10) days of the disclosure demand and shall be accompanied by an

affidavit of counsel, or by the moving party or other authorized representative if not represented by counsel, reciting good faith efforts to resolve the dispute without resort to a motion.

(2) If a party fails to comply with a disclosure demand without having made a timely objection, the proponent of the disclosure demand may apply to the ALJ to compel disclosure. The ALJ may direct that any party failing to comply with disclosure after being directed to do so by the ALJ suffer preclusion from the hearing of the material demanded. Further, a failure to comply with the ALJ's direction will allow the ALJ or the executive director to draw the inference that the material demanded is unfavorable to the noncomplying party's position. The motion must be accompanied by an affirmation of an attorney, or an affidavit of the moving party or other authorized representative if not represented by an attorney, describing the good faith efforts to resolve the dispute without resort to a motion.

(3) *Sanctions.* Upon failure by a party to comply with a ruling or order by the ALJ or the executive director to produce material or information demanded in disclosure, the ALJ or executive director may exclude the material or information. In addition, the ALJ or the executive director may draw an adverse inference regarding the non-producing party with respect to the material or information the party did not produce or grant other appropriate relief consistent with CPLR 3126. The award of attorneys' fees or other costs is not authorized.

(e) *Pre-filed testimony.* The ALJ shall require the submission of pre-filed written testimony for fact and expert witnesses in advance of an adjudicatory hearing. Such testimony shall be attested to at the hearing and the witness shall be available to be cross-examined on the testimony, unless otherwise stipulated by the parties and directed by the ALJ. Pre-filed written testimony shall provide, or shall be accompanied by, a technical report which provides, a full explanation of the basis for the views set forth therein, including data, tables, protocols, computations, formulae, and any other information necessary for verification of the views set forth, as well as a bibliography of reports, studies, and other documents relied upon. Upon ten (10) days' notice (which time may be shortened or extended by the ALJ), the party submitting pre-filed written testimony may also be required to make available all raw data,

laboratory notes, and other basic materials, as well as all items on the bibliography provided.

(f) *Subpoenas.* Consistent with the CPLR, any attorney of record in a proceeding has the power to issue subpoenas. A party who is not represented by an attorney admitted to practice in New York State may request the ALJ or if no ALJ has been assigned to the proceeding, the Chief ALJ, to issue a subpoena, stating the items or witnesses needed by the party to present its case. A subpoena duces tecum to be served upon a library, other department or bureau of a municipal corporation or of the State, or an officer thereof, requiring the production of any books, papers or other things, may be issued consistent with CPLR 2307 by the ALJ assigned to the proceeding or, if no ALJ has been assigned to the proceeding, the Chief ALJ. The service of a subpoena is the responsibility of its sponsor. In addition, the sponsor shall be responsible for all costs arising from the issuance of or compliance with the subpoena. A subpoena shall give notice that the ALJ may quash or modify the subpoena pursuant to the standards set forth under CPLR article 23. This Part does not affect the authority of an attorney of record for any party to issue subpoenas under the provisions of CPLR 2302.

**Section 1100-8.7. Conduct of the adjudicatory hearing.**

(a) *Order of events.* The ALJ has discretion to determine and adjust the order of events and presentation of evidence, and to establish procedures to promote the conduct of a fair and efficient hearing. In general, the order of events at a hearing shall be as follows:

(1) Formal opening. The ALJ shall convene the hearing by opening the record, identifying the applications involved, and making appropriate procedural announcements.

(2) Noting appearances. The ALJ shall call the name of each person who has been granted status as a party.

(3) Opening statements. Prior to the commencement of the adjudicatory sessions, each party may, at its option, offer a brief opening statement of position on the application.

(4) Admission of evidence. The applicant shall present its direct case first and shall start by identifying all documents which constitute the application, any supplements to the application, and all supporting documents which are relevant to

the issues to be adjudicated. A panel of witnesses may be used for presenting testimony or for cross-examination at the ALJ's discretion. Cross-examination shall be conducted by parties in a sequence to be established by the ALJ, which normally will be the sequence in which the parties will present their direct cases. The evidence shall be confined to that which is relevant to issues identified in the ALJ's written determination following the issues conference.

(5) Close of record. Closing statements of position will be dealt with in the same manner as opening statements. At the concluding session of the hearing, the ALJ shall determine whether to allow the submission of written post-hearing briefs. The hearing record shall be officially closed upon the receipt of the stenographic record by the ALJ, the receipt of additional technical data or other material agreed at the hearing to be made available after the hearing, or the submission of briefs and reply briefs, conclusions of law, memoranda, and exceptions, if any, by the various parties, whichever occurs last. The ALJ shall notify the applicant by certified mail, and all other parties by regular mail, immediately upon official closing of the hearing record.

(6) Where the ALJ permits the filing of briefs, the ALJ shall also determine page limits for said briefs and whether replies will be permitted and the schedule for filing. Simultaneous filing shall normally be required. A party shall give specific reference to the portions of the record, whether transcript or otherwise, relied upon in support of the respective statements of fact made throughout the brief. Briefs shall be considered only as argument and shall not refer to or contain any evidentiary material outside of the administrative record.

(b) *The ALJ.*

(1) In proceedings pursuant to this Part, the ALJ has power to:

(i) rule upon all motions and requests, including those that decide the ultimate merits of the case;

(ii) set the time and place of the hearing, recesses, and adjournments;

(iii)administer oaths and affirmations;

(iv) issue subpoenas upon request of a party not represented by an attorney admitted to practice in New York State. Subpoenas issued by the ALJ are regulated by the Civil Practice Law and Rules;

(v) upon the request of a party, issue a subpoena duces tecum to be served upon a library, other department or bureau of a municipal corporation or of the State, or an officer thereof, requiring the production of any books, papers or other things;

(vi) upon the request of a party, quash and modify subpoenas except that in the case of a non-party witness the ALJ may quash or modify a subpoena regardless of whether or not a party has so requested;

(vii) summon and examine witnesses;

(viii) establish rules for and direct disclosure at the request of any party or upon the ALJ's own motion pursuant to the procedures set out in section 1100-8.6 of this Part;

(ix) admit or exclude evidence including the exclusion of evidence on grounds of privilege or confidentiality;

(x) hear and determine arguments on fact or law;

(xi) preclude irrelevant, immaterial, or unduly repetitious, tangential or speculative evidence, argument, examination or cross-examination;

(xii)direct the consolidation of parties with similar viewpoints and input;

(xiii) limit the number of witnesses;

(xiv)utilize a panel of witnesses for purposes of direct testimony or cross-examination;

(xv) allow oral argument, so long as it is recorded;

(xvi)take any measures necessary for maintaining order and the efficient conduct of the proceeding;

(xvii) issue orders limiting the length of cross-examination, the form, length and content of motions and briefs and similar matters;

(xviii) order a site visit, on notice to all parties; and

(xix) exercise any other authority available to ALJs under this Part or to presiding officers under SAPA article 3.

(2) Impartiality of the ALJ and motions for recusal.

(i) The ALJ shall conduct the proceeding in a fair and impartial manner.

(ii) An ALJ shall not be assigned to any proceeding in which the ALJ has a personal interest.

(iii)Any party may file with the ALJ a motion in conformance with section 1100-8.5(c) of this Part, together with supporting affidavits, requesting that the ALJ be recused on the basis of personal bias or other good cause. Such motions shall be determined as part of the record of the proceeding.

(3) The designation of an ALJ as the executive director's representative shall be in writing and filed in the Office of Hearings.

(c) *Appearances.*

(1) A party may appear in person or be represented by an attorney licensed in New York State or any other jurisdiction, or by a non-attorney chosen by the party. Any representative of a party who is other than an attorney licensed to practice in New York State shall disclose their qualifications to the party. All persons appearing before the ALJ shall conform to the standards of conduct required of attorneys appearing before the courts of the State of New York. Any person signing any papers submitted in or entering an appearance in any proceeding shall be considered to have agreed to conform to those standards. A failure to conform to those standards shall be grounds for exclusion from that and any later proceeding. Nothing in this paragraph authorizes a non-lawyer to engage in the practice of law.

(2) Any person appearing on behalf of a party in a representative capacity may be required by the ALJ to show and state on the record the person's authority to act in such capacity and to file a notice of appearance with the ALJ and the

secretary.

(3) If there is a change or withdrawal of a party's attorney or authorized representative, the party shall provide notice of the change or withdrawal to the ALJ and the secretary, and the attorneys or authorized representatives of all other parties, or, if a party appears without an attorney or authorized representative, to the party within ten (10) days of the change or withdrawal.

(d) *Appeals of ALJ rulings.*

(1) Any ALJ ruling may be appealed to the executive director after the completion of all testimony as part of a party's final brief or by notice of appeal and appeal where no final brief is provided for. Where no final brief is provided for, the appellant shall serve and file the notice of appeal and appeal within five (5) days after service of the notice of the official closing of the hearing record.

(i) An ALJ ruling pursuant to section 1100-8.3(c)(2) of this Part that finally resolves all issues in a proceeding may be appealed to the executive director by notice of appeal and appeal. An ALJ ruling pursuant to section 1100-8.3(c) of this Part that finally resolves all issues as to a party may be appealed to the executive director by that party. The appellant shall serve and file the notice of appeal and appeal within five (5) days of the ALJ's ruling.

(ii) The notice of appeal and appeal shall be served on all parties and filed with the executive director, the ALJ, and the secretary. All parties have five (5) days after an appeal is served to serve and file a response to the appeal. Only the executive director shall determine whether further responsive pleadings after the responses will be allowed.

(2) During the course of the proceeding, in conformance with section 1100-8.5(e) of this Part, the following rulings may be appealed to the executive director on an interlocutory basis:

(i) any ruling in which the ALJ has denied a motion for recusal; and

(ii) any other ruling of the ALJ that does not finally

resolve all issues in the proceeding, by seeking permission to file an interlocutory appeal upon a demonstration that the failure to decide such an appeal would be unduly prejudicial to one of the parties or would result in significant inefficiency in the hearing process. In all such cases, the executive director's determination to entertain the appeal on an interlocutory basis is discretionary.

(3) A motion for permission to file an interlocutory appeal shall demonstrate that the ruling in question falls within the criteria set forth in subparagraph (ii) of paragraph (2) of this subdivision.

(4) The executive director may review any ruling of the ALJ on an interlocutory basis upon the executive director's determination or upon a determination by the ALJ that the ruling should be appealed.

(5) Whenever the executive director grants permission to file an interlocutory appeal, the parties shall be notified. The appellant shall be provided the opportunity to serve and file a brief on appeal and the other parties shall be provided with the opportunity to serve and file a response to the appeal.

(6) Failure to file an interlocutory appeal or the denial of permission to file an interlocutory appeal shall not preclude an appeal from the ruling to the executive director after the hearing.

(7) The hearing shall not be adjourned while an appeal or motion for permission to appeal is pending except by permission of the ALJ or the executive director.

(8) On administrative appeal pursuant to paragraph (1) or (2) of this subdivision, the executive director reviews the ALJ’s ruling for any errors of law or fact, or abuses of discretion.

**Section 1100-8.8. Evidence, burden of proof and standard of proof.**

(a) *Evidence.*

(1) All evidence submitted shall be relevant and all rules of privilege shall be observed. However, other rules of evidence need not be strictly applied. Hearsay evidence may be admitted

if it falls within one or more of the exceptions provided by CPLR article 45 or other law, or is shown to be reasonably reliable, relevant, and probative.

(2) 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, waste of time, or needless presentation of repetitious or duplicative evidence.

(3) Where a part of a document is offered as evidence by one party, any party may offer the entire document as evidence.

(4) Each witness shall be sworn or make an affirmation before testifying. Opening, closing, and other unsworn statements are not evidence but shall be considered as arguments bearing on evidence.

(5) The ALJ or the executive director may take official notice of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the office. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and, on timely request, be afforded an opportunity, prior to the final decision of the executive director, to dispute the fact or its materiality.

(b) *Burden of proof.*

(1) The applicant has the burden of proof to demonstrate that its proposal shall be in compliance with all applicable laws and regulations administered by the office.

(2) Where the office has initiated a permit modification, the office staff bears the burden of proof to show that the modification is supported by the preponderance of the evidence.

(3) Where an application is made for permit modification, the permittee has the burden of proof to demonstrate that the modified permitted activity is in compliance with all applicable laws and regulations administered by the office. A demonstration by the permittee that the there is no substantive change in the originally permitted activity, environmental conditions or applicable law and regulations constitutes a prima facie case for the permittee.

(4) The burden of proof to sustain a motion shall be on the party making the motion.

(c) *Standard of proof*. Whenever factual matters are involved, the party bearing the burden of proof shall sustain that burden by a preponderance of the evidence unless a higher standard has been established by statute or regulation. This subdivision does not modify or supplement the questions that may be raised in a proceeding brought pursuant to CPLR article 78.

**Section 1100-8.9. Ex parte rule.**

(a) Except as provided below, an ALJ shall not directly or through a representative, communicate with any person in connection with any issue that relates in any way to the merits of the proceeding without providing notice and an opportunity for all parties to participate.

(b) An ALJ may consult on questions of law or procedures with supervisors or other staff in the Office of Hearings, provided that such supervisors or staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding.

(c) An ALJ and the Chief ALJ may communicate with any person on ministerial matters, such as scheduling or the location of a hearing.

(d) Parties or their representatives shall not communicate with the ALJ, the Chief ALJ, or the executive director, or any person advising or consulting with any of them, in connection with any issue without providing proper notice to all the other parties.

**Section 1100-8.10. Payment of hearing costs.**

(a) Within thirty (30) days of the last day at which testimony is taken, the applicant shall pay for the cost of: physical accommodations, if not held in office or department facilities; publishing any required notices; and any necessary stenographic transcriptions. Except that, when a hearing is held pursuant to an Office initiated modification, suspension, or revocation, the office shall be responsible for the costs listed above.

(b) The ALJ may require that the applicant post a bond or other acceptable financial guarantee for the costs of the hearing. Such

guarantee shall be provided to the office prior to commencing the hearing or the hearing shall be adjourned until the guarantee is made available.

(c) If the applicant has not paid the costs of the hearing referred to in subdivision (a) of this section by the date on which the final siting permit is issued, a requirement to submit such payment shall be included as a pre-construction requirement in the final siting permit.

(d) Public utilities that are subject to section 18-a of the Public Service Law are not subject to the costs established by this section.

**Section 1100-8.11. Record of the hearing.**

(a) All proceedings at a hearing shall be stenographically reported. The ALJ may arrange for a certified reporter to produce a stenographic transcript of the hearing or may permit the applicant to make such arrangements. When a stenographic transcript is made, an electronic copy of the transcript shall be served and filed with the ALJ and the secretary at the expense of the applicant. At the ALJ's discretion, part or all of the transcripts may also be required in hard copy or other form.

(b) The record of the hearing shall include the application (including any supplements to the application) and all notices (including the notice of hearing) and motions; conditions; any affidavit of publication of the notice of hearing; the transcript of the testimony taken at the hearing, the exhibits entered into evidence; any motions, appeals or petitions; any admissions, agreements or stipulations; a statement of matters officially noticed; offers of proof, objections thereto and rulings thereon; proposed findings; and the recommended decision and hearing report; and briefs as may have been filed including any comments on the recommended decision and hearing report filed pursuant to section 1100-8.12 of this Part. Correspondence among the parties to a proceeding shall not be included in the record unless the ALJ determines in the exercise of discretion that a document should be entered into the record.

(c) As soon as the record becomes available, the ALJ shall assure that a complete and current copy of the record is placed in an accessible location for the parties' reference and/or copying.

**Section 1100-8.12. Final decision.**

(a) *Recommended decision and hearing report.*

(1) The ALJ shall issue a recommended decision and hearing report to the executive director and the parties within forty-five (45) days after the close of the record. The report shall include findings of fact, conclusions of law and recommendations on all issues before the ALJ.

(2) All parties to the proceeding have fourteen (14) days after receipt of the recommended decision and hearing report to serve and file comments with the executive director. The executive director has the sole discretion to authorize responses to comments and any further responsive filings.

(3) Office staff has fourteen (14) days after receipt of the recommended decision and hearing report to file with the executive director a written summary and assessment of public comments received during the public comment period on issues not otherwise addressed in the recommended decision and hearing report.

(b) *Stipulations*. A stipulation executed by all parties resolving any or all issues removes such issue(s) from further consideration in the proceeding. Within five (5) days of the execution of a stipulation, the applicant shall serve a copy of the fully executed stipulation on all parties and file a copy of the fully executed stipulation with the ALJ and the Secretary. Upon receipt of an executed stipulation that resolves all issues in the proceeding, the ALJ shall close the proceeding and remand the matter to Office Staff to continue processing the application to issue the requested siting permit.

(c) *Final decision.* The final decision of the executive director shall be issued within thirty (30) days after receipt of all comments on the recommended decision and hearing report.

(d) *Reopening the record.* At any time prior to issuing the final decision, the executive director or the ALJ may direct that the hearing record be reopened to consider significant new evidence.

**Subpart 1100-9.**

**Section 1100-9.1. Final determination on applications.**

(a) The office shall serve on the applicant and its representative, if applicable, a determination in the form of: a permit, including all applicable uniform standards and conditions and any site-specific conditions, or a statement that the permit applied for has been denied, with an explanation for the denial, as follows:

(1) within six (6) months of the office deeming the application complete for major renewable energy facilities in which the proposed site is a repurposed site as defined by this Part; or

(2) within one (1) year of the office deeming the application complete for all other major renewable energy facilities.

(3) Within one (1) year of the office deeming the application complete for all major electric transmission facilities.

(b) Upon mutual consent of the applicant and the office, the time periods set forth in subdivision (a) of this section may be extended.

(c) A siting permit may only be issued if the office makes a finding that the proposed project, together with any applicable uniform standards and conditions, necessary site-specific conditions, and applicable compliance filings:

(1) complies with Public Service Law article VIII and applicable provisions of this Chapter;

(2) complies with substantive provisions of applicable State laws and regulations;

(3) complies with substantive provisions of applicable local laws and ordinances, except any local law or ordinance the office has elected not to apply, in whole or in part, based on a finding that, as applied to the proposed facility, is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the facility and, in the case of a major electric transmission facility, the public need for the proposed project;

(4) avoids, minimizes, or mitigates to the maximum extent practicable potential significant adverse environmental impacts of the facility;

(5) achieves a net conservation benefit with respect to any impacted threatened or endangered species; and

(6) for a major electric transmission facility,

(i) demonstrates a qualified public need, including whether the proposed project conforms to plans related to the expansion or upgrade of the electric power grid and interconnected utility systems, or was included or considered in the power grid study required pursuant to the Accelerated Renewable Energy Act (L 2020, ch 58, part JJJ, § 7), and

(ii) is in the public and ratepayer interest.

(7) In making the required findings, the Office shall consider the CLCPA targets and the environmental benefits of the project and, in the case of a major electric transmission facility, the public need for the proposed project.

(d) The final siting permit for a major renewable energy facility shall include a provision requiring the permittee to provide a host community benefit, which may be a host community benefit as determined by the PSC pursuant to section 8 of part JJJ of chapter 58 of the Laws of 2020 or such other project as determined by ORES or as subsequently agreed to between the applicant and the host community.

(e) If a final siting permit decision has not been made by ORES within the time period provided for in subdivision (a) of this section or any extension agreed to by ORES and the applicant pursuant to subdivision (b) of this section, whichever is later, the siting permit shall be deemed to have been automatically granted for all purposes set forth in this Chapter and all uniform conditions or site specific permit conditions contained in the draft permit issued for public comment shall constitute enforceable provisions of the siting permit and, if no draft permit was issued for public comment, the siting permit shall be deemed denied. Notwithstanding the foregoing:

(1) Any portion of a major renewable energy facility which is to be located on the land of a landowner for which the applicant lacks an existing right-of-way agreement or valid and enforceable lease or easement for use of such relevant property, no such permit shall be automatically granted.

(2) Any portion of a major electric transmission facility which

is to be located on the land of a landowner for which the applicant lacks an existing right-of-way agreement and in which ORES has not made a public need determination, no such permit shall be automatically granted.

**Subpart 1100-10. Compliance Filings.**

**Section 1100-10.1. Office decisions on compliance filings.**

(a) Pre-construction compliance filings required pursuant to Subpart 1101-4 of Part 1101 of this Title or Subpart 1102-4 of Part 1102 of this Title shall be served on the office and filed with the secretary. The filing shall be deemed filed when an electronic copy of the filing that meets all filing guidelines established by the secretary is received by the office.

(1) Required compliance filings may be filed at any time after a draft siting permit is issued. The office shall review the filing and, within sixty (60) days of receipt thereof or thirty (30) days of final permit issuance, whichever is later, inform the permittee as to whether the compliance filing has been approved. The office shall not issue a *Notice to Proceed with Construction* until each such filing is received and approved, as necessary.

(2) If the office determines that a compliance filing cannot be approved, it shall detail all deficiencies identified and any additional information that shall be provided by the permittee.

(3) The permittee shall resubmit the compliance filing within sixty (60) days of receipt of a notice of deficiency. If the permittee believes it will take more than sixty (60) days to address the deficiencies, it shall request an extension of the time to resubmit within fifty-five (55) days of receipt of the notice of deficiency.

(4) The office shall review the revised filing and, within sixty (60) days thereof, inform the permittee as to whether the revised filing has been approved.

(5) If the permittee believes that any action or lack thereof,

or determination made, by a local agency in furtherance of such agency's review of any applicable regulatory permits or approvals, or actions or the lack thereof by a utility subject to the Public Service Commission's jurisdiction, is unreasonable or unreasonably delayed, conditioned, or withheld, the permittee may, upon reasonable notice to that agency or utility, request a determination from the executive director of any such unreasonable or unreasonably delayed, conditioned, or withheld action or determination. Such request shall include a description of the action or condition, the permittee's attempts to resolve the issue with the agency or utility, including copies of any relevant correspondence or communications, and the permittee's requested course of action. The office may suspend its review of any filed Environmental Management and Construction Plan (EM&CP) pending its response to the request. The executive director may take whatever action the director deems to be appropriate, in the exercise of discretion, to respond to the request to address the reasonableness of the action or determination. Such action may include, but is not limited to, granting relief from the requirement to obtain the subject approval as a condition of notice to proceed (NTP), limited NTP, or conditional NTP pending later approval of the subject authorization.

(b) Post-construction compliance filings required pursuant to Subpart 1101-5 of Part 1101 of this Title or Subpart 1102-5 of Part 1102 of this Title shall be served on the office and filed with the secretary. The filing shall be deemed filed when an electronic copy of the filing that meets all filing guidelines established by the secretary is received by the office. The office shall review the filing and, within sixty (60) days of receipt thereof, inform the permittee whether the compliance filing has been approved.

(1) If the office determines that a compliance filing cannot be approved, it shall detail all deficiencies identified and any additional information that shall be provided by the permittee.

(2) The permittee shall resubmit the compliance filing within sixty (60) days of receipt of a notice of deficiency. If the permittee believes it will take more than sixty (60) days to address the deficiencies, it shall request an extension of the

time to resubmit within thirty (30) days of receipt of the notice of deficiency.

(3) The office shall review the revised filing and, within sixty (60) days thereof, inform the permittee as to whether the revised filing has been approved.

**Section 1100-10.2. General requirements for compliance filings.**

(a) *Certification by a responsible official.* Any compliance filing submitted pursuant to this Part and Parts 1101 and 1102 of this Title shall contain certification of truth, accuracy, and completeness by a responsible official. This certification shall be in a form acceptable to the office and state that, based on information and belief formed after reasonable inquiry, the statements and information in the filing are true, accurate, and complete.

(b) *Certification by a professional engineer.* Any compliance filing submitted pursuant to this Part and Parts 1101 and 1102 of this Title that pertains to the practice of engineering shall contain certification of truth, accuracy, and completeness by a professional engineer. This certification shall be in a form acceptable to the office and state that the compliance filing was prepared under the general supervision of a person licensed to practice professional engineering in the State of New York and, based on information and belief formed after reasonable inquiry, the statements and information in the filing are true, accurate, and complete.

**Subpart 1100-11. Modifying, Transferring, or Relinquishing Permits.**

**Section 1100-11.1. Modifications to existing permit or approved EM&CP or compliance filings requested by the permittee.**

(a) An application by the permittee to modify an existing permit or an approved Environmental Management and Construction Plan (EM&CP) or compliance filing shall contain:

(1) A statement, including supporting information, setting forth the proposed permit or approved compliance filing modifications, identifying the existing condition(s) the permittee is requesting to be modified and whether the permittee

considers such change to be a minor or major modification.

(2) The office may request additional information necessary to determine whether the request is for a minor or major change or modification as provided below.

(b) If the permittee proposes any modification to an approved EM&CP or compliance filing that the office determines does not require any modification of the permit, and is not likely to result in any material increase in any identified adverse environmental impact or any significant adverse environmental impact not previously identified, the office shall issue a written determination that the proposed change constitutes a "minor change" that is not subject to further review or approval.

(c) If the office determines that a proposed modification to an approved EM&CP or compliance filing is likely to result in any material increase in any identified adverse environmental impact or any significant environmental impact not previously identified, the Office shall issue a written determination that the proposed modification constitutes a major modification subject to subdivision (e) of this section.

(d) If the permittee proposes any modification to a permit or any modification to an approved EM&CP or compliance filing that the office determines requires modification of the permit, the office shall review the request and issue a written determination within thirty (30) days whether such change constitute a minor modification to be processed by the office or a major modification subject to subdivision (e) of this section. The office may require modifications to any compliance filings to demonstrate compliance with the minor modification.

(e) *Major Modifications*.

(1) A request for a major modification to an existing permit or an approved EM&CP or compliance filing shall be noticed, filed, and served in the same manner as an application.

(2) A major modification to a major renewable energy facility siting permit or approved EM&CP or compliance filing for such a facility may require the permittee to supplement the local agency account to the extent that the permittee is seeking to increase the base nameplate capacity of the facility.

(3) A major modification to a major electric transmission facility siting permit or approved EM&CP or compliance filing for such a facility may require the permittee to supplement the local agency account to the extent that the permittee is seeking to increase the length of the facility such that the project falls within a higher category pursuant to section 1100-1.4(a)(9) of this Part.

(4) A request for a major modification are subject to the completeness determination procedures provided for at section 1100-4.1 of this Part.

(5) Major modifications shall be subject to the procedures provided for at Subpart 1100-8 of this Part, including a minimum sixty (60) day public comment period in which comments regarding the proposed modification will be accepted by the office. In determining whether a major modification should be approved, the office shall only accept and consider comments with respect to the changes proposed by the permittee.

(6) An adjudicatory hearing held on a major modification pursuant to Subpart 1100-8 of this Part is limited to only those changes proposed by the permittee for which significant and substantive issues have been identified.

(7) The office shall serve on the permittee a decision in the form of a modified permit, revised EM&CP or compliance filing requirement, or a statement that the major permit modification applied for has been denied, with an explanation for the denial.

(f) Nothing in this section shall prevent the permittee from implementing necessary actions in emergency situations threatening personal injury, property, or severe adverse environmental impact. The permittee shall notify the office as soon as practicable and in event no later than two (2) days following the initiation of such actions.

**Section 1100-11.2. Transfers of permit and pending applications.**

(a) A permit in effect may only be transferred to a person, as defined by section 1100-1.2(bf) of this Part, who agrees in writing to comply with the terms, limitations, or conditions contained in the permit, and upon the approval of the office.

(b) Applications for the transfer of permits in effect, or pending permit applications, to a different permittee or applicant, or to change the name of the permittee or applicant, shall be filed with the office and the secretary, and shall contain:

(1) a statement of the reasons supporting the transfer;

(2) a statement showing the transferee is qualified to carry out the provisions of the permit or any pending permit application and requirements of this Part;

(3) a verification by all parties to the proposed transfer;

(4) if required by the office, a copy of the proposed transfer agreement; and

(5) name, address, telephone number and electronic mail address of an employee or representative of the permittee or applicant from whom further information may be obtained.

(c) Applications for transfer of permits in effect, or pending permit applications, should be filed with the office at least thirty (30) days prior to transfer, unless a different time period is authorized by the office.

(d) An application for a permit transfer shall not include or cause a significant change in the design or operation of the project as approved by the office in a siting permit issued pursuant to article VIII of the Public Service Law or as described in an application pending before the office.

(e) The new permittee, or applicant, shall satisfy any required financial obligations and insurance coverage prior to approval of a transfer of an issued permit or pending application.

(f) A new permittee, or applicant, may be subject to a record of compliance review before a decision on permit or application transfer is rendered by the office.

(g) Any noncompliance by the existing permittee, associated with a permit proposed to be transferred, shall be resolved to the office’s satisfaction prior to transfer of such permit.

**Section 1100-11.3. Relinquishments.**

(a) A person may relinquish a permit by filing a written

notification with the office and the secretary. The notification shall:

(1) identify the permit to be relinquished by its permit number;

(2) state why the permit is being relinquished;

(3) describe how the provisions and conditions of the permit have been satisfied; and

(4) provide an explanation of any remaining actions required at the site or facility prior to terminating the permit.

(b) In reviewing a request to relinquish a permit, the office shall confirm whether or not permit provisions and conditions have been satisfied, including post-operational and decommissioning requirements as set forth in Parts 1101 or 1102 of this Title, as applicable. The office shall provide written verification of its concurrence with permit relinquishment or provide reasons why the permit shall remain in effect.

**Section 1100-11.4. Permit modifications by the office.**

(a) Permits may be modified or terminated on the basis of any of the following:

(1) materially false or inaccurate statements in the permit application, compliance filings, or supporting papers;

(2) failure by the permittee to comply with any terms or conditions of the permit conditions, orders of the executive director, or any provisions of law or regulations related to the permitted activity;

(3) exceeding the scope of the project as described in the permit application; or

(4) newly discovered material information or a material change in environmental conditions, relevant technology, or applicable law or regulations since the issuance of the existing permit.

(b) The office shall send a notice of intent to modify or terminate a permit to the permittee by certified mail return receipt requested or personal service consistent with CPLR article 3, and publish notice on the office’s website. The notice shall state the alleged

facts or conduct which appear to warrant the intended action and shall state the effective date, contingent upon administrative appeals, of the modification.

(c) Within fifteen (15) days of mailing a notice of intent, the permittee may file a written statement with the office and secretary, as directed, giving reasons why the permit should not be modified or terminated, requesting a hearing, or both. Failure by the permittee to timely file a statement shall result in the Office's action becoming effective on the date specified in the notice of intent.

(d) Where the office proposes to modify or terminate a permit and the permittee requests a hearing on the proposed modification, the original permit conditions or permit status shall remain in effect until a decision is issued by the executive director pursuant to subdivision (f) of this section. At such time, the permit conditions or permit status supported by the executive director's decision shall take effect.

(e) Within fifteen (15) days of receipt of the permittee's statement, the office shall either:

(1) rescind or confirm the notice of intent to modify or terminate based on a review of the information provided by the permittee, if a statement without a request for a hearing is submitted; or

(2) notify the permittee that a hearing shall be held at a date and place to be established by the office of hearings, if a statement with a request for a hearing has been submitted. The provisions of Subpart 1100-8 of this Part apply to hearings conducted pursuant to this section, except that the time periods provided for in section 1100-8.1 of this Part shall be measured from date of receipt of the permittee's request for a hearing.

(f) In the event such a hearing is held, the executive director shall, within thirty (30) days of receipt of all comments on the recommended decision and hearing report of the ALJ, issue a decision which:

(1) continues the permit in effect as originally issued; or

(2) modifies the permit; or

(3) terminates the permit.

(g) Notice of such decision, stating the findings and reasons therefor, shall be provided to the applicant pursuant to the procedures set forth in Subpart 1100-9 of this Part.

**Subpart 1100-12.**

**Section 1100-12.1. Enforcement.**

(a) All final siting permits issued by the office pursuant to PSL article VIII or by the Office of Renewable Energy Siting established pursuant to former Executive Law § 94-c, and all certificates of environmental compatibility and public need issued by the PSC pursuant to Public Service Law article VII, are enforceable by ORES and the NYSDPS pursuant to sections 24, 25, and 26 of the Public Service Law and implementing regulations as if issued by the PSC. Final siting permits issued to combination gas and electric corporations are enforceable by the office and the NYSDPS pursuant to section 25-a of the Public Service Law and implementing regulations. The office and NYSDPS shall have the authority to monitor, enforce, and administer compliance with all terms and conditions set forth in a final siting permit or certificate and in doing so may use and rely on authority otherwise available under the Public Service Law and implementing regulations. Notwithstanding any other provision of law to the contrary, the holder of a certificate or permit issued under Public Service Law article VIII, or a predecessor statute thereto, for a major renewable energy facility with an electric generating capacity between 25 and 80 megawatts or that otherwise opts into Public Service Law article VIII is subject to enforcement by ORES or the NYSDPS pursuant to sections 24, 25, and 26 of the Public Service Law and implementing regulations.

(b) Staff from ORES and the NYSDPS shall have the authority -- in the absence of responsible permittee supervisory personnel, or in the presence of such personnel who, after consultation with ORES or NYSDPS staff, refuses to take appropriate action -- to issue a stop work order and direct the field crews to stop the specific potentially harmful activity immediately, in the event of any emergency resulting from the specific construction or maintenance activities that violate, or may violate, the terms of a siting permit issued by the office, compliance filings submitted pursuant to

Subpart of 1100-10 of this Part, or any other supplemental filings. Any stop work order shall be limited to the activity at issue and/or the affected areas of the facility.

(c) If responsible permittee personnel are not on site, ORES and/or NYSDPS staff shall immediately thereafter inform the permittee's construction supervisor(s) and/or environmental monitor(s) of the action taken.

(d) A stop work order shall expire twenty-four (24) hours after issuance, or earlier if the issue promoting the stop work order is resolved, unless confirmed by the executive director of the office or the chief executive officer of the DPS. ORES and/or NYSDPS staff shall give the permittee notice by electronic mail of any application to have a stop work order so confirmed. If a stop work order is confirmed, the permittee may seek reconsideration from the executive director of the Office or the chief executive officer of the DPS.

(e) If the emergency prompting the issuance of a stop work order is resolved to the satisfaction of the office or the NYSDPS, the stop work order shall be lifted. If the emergency has not been satisfactorily resolved, the stop work order shall remain in effect.

(f) Stop work authority shall be exercised with due regard to potential environmental, public health, or safety impacts, economic costs involved, possible impact on construction activities, and whether an applicable statute, regulation, or permit condition or requirement is violated. Before exercising such authority, ORES and/or NYSDPS staff shall consult wherever practicable with the permittee's representative(s) possessing comparable authority. Within reasonable time constraints, all attempts will be made to address any issue and resolve any dispute in the field.

(g) Issuance of a stop work order shall not prevent the permittee nor the contractor from undertaking any safety-related activities as they deem necessary and appropriate under the circumstances.

(h) If ORES and/or NYSDPS staff determines that a significant threat exists such that protection of the public or the environment at a particular location requires the immediate implementation of specific measures, the respective staff may, in the absence of responsible

permittee supervisory personnel, or in the presence of such personnel who refuse to take appropriate action, direct the permittee or the relevant contractors to implement the corrective measures identified in the approved siting permit or compliance filings. All such directives shall follow the protocol established for communication between parties as set forth in the approved Facility Communications Plan submitted pursuant to Parts 1101 or 1102 of this Title, as applicable. The field crews shall immediately comply with ORES and/or NYSDPS staff directives as provided through the communication protocol. ORES and/or NYSDPS staff shall immediately thereafter inform the permittee's construction manager(s) and/or environmental monitor(s) of the action taken.

**Subpart 1100-13. Water Quality and Coastal Certification Procedures.**

**Section 1100-13.1. Water quality certification procedures.**

(a) In accordance with section 401 of the Clean Water Act, if construction or operation of a proposed major renewable energy facility or major electric transmission facility would result in any discharge into the navigable waters of the United States and require a Federal license or permit, the applicant shall request and, prior to commencing construction, obtain a water quality certification indicating that the proposed activity will be in compliance with water quality standards, as set forth in 6 NYCRR section 608.9.

(b) Generally, the request for the water quality certification shall be submitted to ORES when an application for a Federal license or permit is made, or any time thereafter.

(c) 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.

(d) 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 serves on the office and files with the secretary a copy of its related Federal permit application. An applicant shall include in its request, the following:

(1) final wetlands and stream delineation reports;

(2) Federal wetlands and streams jurisdictional determinations;

(3) an identification and summary of proposed temporary and permanent impacts to wetlands (per cover type), streams, and regulated adjacent areas, including drawings and details showing impacts and site-specific crossing details; and

(4) a description of any proposed mitigation for wetland and stream impacts.

To the extent this information has already been provided to the office as part of another filing (e.g. application, supplement, EM&CP, and so on), appropriate citations may be provided indicating where that information has already been submitted to the office.

(e) 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 office as to the applicable time period or any other issue.

(f) When an applicant or permittee has requested both a water quality certification from ORES and permits from the U.S. Army Corps of Engineers or other Federal agency, ORES shall provide information to the district engineer or other Federal agency to establish the reasonable period of time to act on the request for certification in order to avoid a waiver, consistent with applicable Federal regulations.

(g) A request for a water quality certification shall be filed and served and notice of it shall be given in the same manner as an application pursuant to section 1100-1.6 of this Part.

**Section 1100-13.2. Coastal certification procedures.**

(a) If a proposed major electric generating facility or major electric transmission facility would have any reasonably foreseeable effect on any land or water use or natural resource of the coastal area and Federal authorization is required or Federal funding is requested, the applicant shall, contemporaneously with submitting the

application, submit to NYSDOS pursuant to section 1100-1.6 of this Part copies of the application, the applicant's draft federal consistency certification, and data and information sufficient to initiate a pre-application review by NYSDOS pursuant to the federal Coastal Zone Management Act and its regulations.

(b) The record of the hearing as provided for at section 1100-8.11 of this Part may provide data and information which the Secretary of State may consider during their Federal review of the applicant's coastal consistency certification.

(c) If the proposed facility has a reasonably foreseeable effect on any land or water use or natural resource of the coastal areas and inland waterways, the NYSDOS, pursuant to article 42 of the Executive Law, may review, evaluate, and issue recommendations and opinions to the office concerning the potential for the proposal to affect such coastal areas and inland waterways, and policies related thereto.

(d) NYSDOS's recommendations and opinions regarding the completeness of the application pursuant to section 1100-4.1 of this Part shall be submitted to the office on or before sixty (60) days of receipt of the application for a major renewable energy facility, or on or before one-hundred and twenty (120) days of receipt of the application for a major electric transmission facility.

**Subpart 1100-14. Declaratory Rulings by the Office.**

**Section 1100-14.1. Availability.**

(a) The executive director, on behalf of the office, may, on a petition filed pursuant to this Subpart, issue a declaratory ruling with respect to:

(1) the applicability to any person, property, or state of facts of any rule or statute enforceable by the office;

(2) whether any action by the office taken or to be taken pursuant to a rule or statute is within the authority of the office; or

(3) whether a person's compliance with a Federal requirement will be accepted as compliance with a similar State requirement applicable to that person.

(b) A declaratory ruling may also be issued whenever the executive director determines it is warranted by the public interest.

**Section 1100-14.2. Procedure.**

(a) A petition for declaratory ruling shall be filed with the executive director by electronic means and with the secretary pursuant to subdivisions (a) through (d) of section 3.5 of this Title.

(b) In addition to complying with the requirements of subdivisions (a) through (d) of section 3.5 of this Title, a petition for declaratory ruling shall contain:

(1) a caption and a complete statement of the facts and grounds prompting the petition, including a full disclosure of the petitioner's interest in the proceeding;

(2) a clear, concise statement of:

(i) the controversy or uncertainty that is the subject of the petition and the request that it be resolved by declaratory ruling; and

(ii) the petitioner's proposed resolution of that controversy or uncertainty;

(3) copies of all relevant documents and supporting materials;

(4) reference to any pending administrative or judicial proceeding involving the same or similar set of facts, including the names and addresses of any other persons whose interests are reasonably likely to be affected by the ruling; and

(5) citations to any statutes, rules, or other authorities relevant to the determination.

(c) At the time it is filed, a petition for declaratory ruling shall be served on the affected utility company, if any, and any other entity known to be directly affected by or interested in the requested ruling. The executive director or designee may require service on other affected or interested persons.

(d) Responses to a petition for declaratory ruling may be filed within 21 days of the date the petition is filed, shall be served upon the petitioner, and shall comply with the requirements of subdivisions (a) through (d) of section 3.5 of this Title. All

respondents, as well as the petitioner, shall be considered parties.

(e) A petitioner for a declaratory ruling shall promptly correct any deficiencies in a filed petition within 48 hours of being notified of such deficiency and shall make available for the office's use copies of all books, papers, and documents upon which the petitioner relies or as the office may require. Failure to do so may be grounds for declining to issue a declaratory ruling.

(f) *Public comments; oral argument and briefing.*

(1) If the executive director or designee finds that it is in the public interest to solicit public comments on the petition, notice of the petition and the due date for public comment, together with a brief summary of the facts and the issues presented, shall be placed on the office’s website at the earliest available opportunity and emailed to all parties on the party list for the matter. Notice may also be sent to any person whom the executive director or designee has reason to believe has a substantial interest in the petition. Public comments on the petition must be received by the office no later than 15 business days after publication on the office’s website or such other date set by the executive director or designee in the exercise of discretion.

(2) All public comments received by the office shall be posted on the office’s website. Within 10 business days after the due date for public comments, the petitioner may respond to such comments or request an extension of time to respond.

(3) In the exercise of discretion, the executive director or designee may authorize oral argument on a petition. Any oral argument shall be recorded.

(4) Upon request of any party or in the exercise of discretion, the executive director or designee may authorize such additional briefing as the executive director or designee deems appropriate. Any party may request additional briefing within five (5) days of the petitioner’s response to public comments.

**Section 1100-14.3. Issuance of declaratory ruling.**

(a) Where a petition seeks a declaratory ruling with respect to whether an action should be taken pursuant to a rule, the ruling or a statement declining to issue a ruling will be issued within 60 days

of the date responses to the petition are due, the conclusion of any public comment period, the conclusion of any oral argument, or the submission of any briefing authorized by the executive director or designee, whichever occurs last.

(b) Rulings will be made on the facts alleged in the petition and those facts will be assumed to be true unless demonstrated not to be true by the documents submitted. The executive director also may take official notice of a fact not subject to reasonable dispute if it is either generally known or can be accurately and readily verified.

(c) The executive director may decline to issue a declaratory ruling on the following grounds:

(1) the petition does not raise a question of the applicability of any regulation or statute enforceable by the office;

(2) the petition raises issues which are, have been, or should have been the subject of office review pursuant to an application for a permit or other approval or are the subject of an enforcement proceeding;

(3) the petition raises issues that are the subject of pending rule making or litigation;

(4) a response to the petition is not in the public interest;

(5) the petition does not contain sufficient information or the petitioner has not adequately responded to the office's request for additional information needed to decide the issues presented; or

(6) the declaratory ruling is an inappropriate means of resolving the issues raised in the petition.

**Section 1100-14.4. Effect.**

A declaratory ruling shall be identified as such, shall be binding on the office, and shall not be retroactively changed.

**Subpart 1100-15.**

**Section 1100-15.1. Severability.**

If any provision of this Chapter or its application to any person or

circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination does not affect or impair the validity of the other provisions of this Chapter or the application to other persons and circumstances.

**Subpart 1100-16.**

**Section 1100-16.1. Effective date.**

This Chapter applies to applications received by the office on or after the effective date of this Chapter.

**Subpart 1100-17.**

**Section 1100-17.1. Material incorporated by reference.**

(a) Acoustical Society of America.

(1) The following publications accredited by the American National Standards Institute (ANSI) and published by the Acoustical Society of America (ASA) are incorporated herein by reference:

(i) Guide to the Evaluation of Human Exposure to Vibration in Buildings, publication date April 4, 1983, reaffirmed June 19, 2020 (ANSI/ASA Standard S2.71-1983);

(ii) Quantities and Procedures for Description and Measurement of Environmental Sound- Part 3: Short-term Measurements with an Observer Present, publication date 2013, reaffirmed June 29, 2018 (ANSI/ASA S12.9-2013/ Part 3);

(iii) Quantities and Procedures for Description and Measurement of Environmental Sound. Part 4: Noise Assessment and Prediction of Long-term Community Response, publication date 2005, reaffirmed June 19, 2020 (ANSI/ASA S12.9-2005/Part 4);

(iv) Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas, publication date 2014, reaffirmed May 28, 2020 (ANSI/ASA S3/SC1.100-2014-ANSI/ASA S12.100-2014); and

(v) Acoustics – Attenuation of Sound During Propagation Outdoor-Part 2: General Method of Calculation, publication date 2012, reaffirmed June 22, 2020, (ANSI/ASA S12.62-2012 /ISO 9613-2:1996 (MOD).

(2) Copies of said publications may be obtained from the publisher at the following address: Acoustical Society of America, Standards Secretariat, 1305 Walt Whitman Road, Suite 300, Melville, NY 11747-4300, or from the ANSI online webstore.

(b) International Electrotechnical Commission.

(1) The following publications published by the International Electrotechnical Commission (IEC) are incorporated herein by reference:

(i) Wind energy generation systems - Part 1: Design requirements. Fourth Edition, publication date 2019-02-08 (IEC 61400-1:2019);

(ii) Wind Turbines-Part 11: Acoustic Noise Measurement Techniques. Third Edition (3.1), publication date 2018-06-15 (IEC 61400-11:2012+AMD1:2018 CSV); and

(iii)Wind Turbines-Part 14: Declaration of Apparent Sound Power Level and Tonality Values, First Edition, publication date 2005-03-22 (IEC TS 61400-14:2005).

(2) Copies of said publications may be obtained from the publisher at the following address: IEC Regional Centre for North America (IEC-ReCNA), 446 Main Street, 16th Floor, Worcester, MA 01608, or from the IEC online webstore.

(c) Institute of Acoustics.

(1) The following publication published by the Institute of

Acoustics is incorporated herein by reference:

(i) IOA Noise Working Group (Wind Turbine Noise), Amplitude Modulation Working Group, Final Report. "A Method for Rating Amplitude Modulation in Wind Turbine Noise", 09 August 2016, Version 1.

(2) Copies of said publication are readily available without charge on the internet at https://www.ioa.org.uk/sites/default/files/AMWG%20Final%20Report-09-08-2016_0.pdf, and may be obtained from the publisher at the following address: Institute of Acoustics, 3rd Floor St Peter's House, 45-49 Victoria Street, St. Albans, Hertfordshire, AL1 3WZ, United Kingdom.

(d) World Health Organization.

(1) The following publication published by the World Health Organization is incorporated herein by reference:

(i) Guidelines for Community Noise, publication date 1999.

(2) Copies of said publication are readily available without charge on the internet at https://apps.who.int/iris/handle/10665/66217, and may be obtained from the publisher at the following address: World Health Organization, Avenue Appia 20, 1202, Genève, Switzerland.

(e) North American Electric Reliability Corporation.

(1) The following publication published by the North American Electric Reliability Corporation is incorporated herein by reference:

(i) Bulk Electric System Definition Reference Document, Version 3 (August 2018).

(2) Copies of said publication are readily available without charge on the internet at: https://www.nerc.com/pa/Stand/2018%20Bulk%20Electric%20System%20Definition%20Reference/BES_Reference_Doc_08_08_2018_Clean_for_Posting.pdf, and may be obtained from the publisher at the

following address: North American Electric Reliability Corporation, 1325 G Street NW, Suite 600, Washington, DC 20005.

(f) Department of Defense.

(1) The following publications published by the Department of Defense are incorporated herein by reference:

(i) 32 Code of Federal Regulations 211.6, effective date 01/06/14, which is readily available without charge on the internet at: https://www.ecfr.gov/cgi-bin/text-idx?node=pt32.2.211&rgn=div5#se32.2.211_16; and

(ii) 32 Code of Federal Regulations 211.7, effective date 01/06/14, which is readily available without charge on the internet at: https://www.ecfr.gov/cgi-bin/text-idx?node=pt32.2.211&rgn=div5#se32.2.211_17.

(2) Copies of said publications may be obtained from the publisher at the following address: U.S. Government Publishing Office, 732 North Capital Street, NW, Washington, DC 20401-0001.

(g) International Organization for Standardization.

(1) The following publication published by the International Organization for Standardization (ISO) is incorporated herein by reference:

(i) Acoustics- Attenuation of Sound During Propagation Outdoors- Part 2: General Method of Calculation, First Edition, publication date 1996-12-15 (ISO 9613-2:1996).

(2) Copies of said publication may be obtained from the publisher at the following address: International Organization for Standardization, ISO Central Secretariat, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, or from the ISO online webstore.

(h) Federal Aviation Administration.

(1) The following publication published by the Department of

Transportation and Federal Aviation Administration is incorporated herein by reference:

(i) FAA 14 Code of Federal Regulations Part 77, effective date 02/15/2011.

(2) Copies of said publication are readily available without charge on the internet at https://www.ecfr.gov/cgi-bin/text-idx?node=pt14.2.77&rgn=div5, and may be obtained from the publisher at the following address: U.S. Government Publishing Office, 732 North Capital Street, NW, Washington, DC 20401-0001.

(i) New York State Department of Environmental Conservation.

(1) The following publications published by the NYSDEC, are incorporated herein by reference:

(i) New York State Standards and Specifications for Erosion and Sediment Control, November 2016, which is readily available without charge on the internet at: https://www.dec.ny.gov/chemical/29066.html;

(ii) New York State Stormwater Management Design Manual, January 2015, which is readily available without charge on the internet at: https://www.dec.ny.gov/chemical/29072.html; and

(iii)NYSDEC Spill Reporting and Initial Notification Requirements Technical Field Guidance, undated, which is readily available without charge on the internet at: https://www.dec.ny.gov/docs/remediation_hudson_pdf/1x1.pdf.

(2) Copies of said publications may be obtained from the publisher at the following address: New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-0001.

(j) United States Environmental Protection Agency.

(1) The following publication published by the United States Environmental Protection Agency is incorporated herein by

reference:

(i) 2018 Edition of the Drinking Water Standards and Health Advisories Tables, March 2018.

(2) Copies of said publication are readily available without charge on the internet at https://www.epa.gov/sites/production/files/2018-03/documents/dwtable2018.pdf, and may be obtained from the publisher at the following address: United States Environmental Protection Agency, Office of Water, 4101M, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

(k) United States Bureau of Mines.

(1) The following publications published by the United States Bureau of Mines are incorporated herein by reference:

(i) United States Bureau of Mines Report of Investigation 8507, Structure Response and Damage Produced by Ground Vibration From Surface Mine Blasting, Figure B-1, undated, which is readily available without charge on the internet at: https://www.osmre.gov/resources/blasting/docs/USBM/RI8507BlastingVibration1989.pdf; and

(ii) United States Bureau of Mines Report of Investigation 8485, Structure Response and Damage Produced by Airblast From Surface Mining, including errata, undated, which is readily available without charge on the internet at: https://www.osmre.gov/resources/blasting/docs/USBM/RI8485StructureResponseDamageProducedAirblast1980.pdf.

(2) Copies of said publications may be obtained from the publisher at the following address: United States Department of Interior, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Washington, DC 20240.

(l) New York State Department of Agriculture and Markets.

(1) The following publications published by the New York

State Department of Agriculture and Markets are incorporated herein by reference:

(i) NYSAGM "Guidelines for Solar Energy Projects-Construction Mitigation for Agricultural Lands", 10/18/2019, which is readily available without charge on the internet at: https://agriculture.ny.gov/system/files/documents/2019/10/solar_energy_guidelines.pdf; and

(ii) NYSAGM "Guidelines for Agricultural Mitigation for Wind Power Projects" revised 4/19/18, which is readily available without charge on the internet at: https://agriculture.ny.gov/system/files/documents/2019/10/wind_farm_guidelines.pdf.

(2) Copies of said publications may be obtained from the publisher at the following address: New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235.

(m) New York Department of Transportation.

(1) The following publication published by the New York Department of Transportation is incorporated herein by reference:

(i) "Procedures for Blasting," issued August 2015, New York Department of Transportation, which is readily available without charge on the internet at: https://www.dot.ny.gov/divisions/engineering/technical-services/geotechnical-engineering-bureau/manuals.

(n) New York State Public Service Commission.

(1) The following publication published by the New York Public Service Commission is incorporated herein by reference:

(i) "Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities," issued and effective September 11, 1990, New York State Public Service Commission, Cases 26529 and 26559, which is readily available without charge on the internet at: https://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/0/9C381C4827

23BE6285256FA1005BF743/$File/26529.pdf?OpenElement.

(2) Copies of said publication may be obtained from the publisher at the following address: the New York State Public Service Commission, Empire State Plaza, Agency Building 3, Albany, NY 12223-1350.

(o) New York State Office of Parks, Recreation and Historic Preservation.

(1) The following publication published by the New York State Office of Parks, Recreation and Historic Preservation is incorporated herein by reference:

(i) "Indian Nation Areas of Interest" (January 2024), which is readily available without charge on the internet at: https://parks.ny.gov/documents/shpo/environmental-review/IndianNationAreasofInterest.pdf.

**Section 1100-17.2. Office address.**

The materials referenced above are available for public inspection and copying at the Office of Renewable Energy Siting and Electric Transmission, New York State Department of Public Service, Empire State Plaza, Agency Building 3, Albany, NY 12223-1350.