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

At a session of the New York State Board on Electric Generation Siting and the Environment held in the City of Albany on July 10, 2012, by a unanimous vote of its five members present

BOARD MEMBERS PRESENT:

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

Louis Alexander, Alternate for
Joseph Martens, Commissioner
New York State Department of
Environmental Conservation

Robert Chinery, Alternate for
Nirav Shah, M.D., Commissioner
New York State Department of Health

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

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

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

MEMORANDUM AND RESOLUTION ADOPTING ARTICLE 10 REGULATIONS

(Issued and Effective July 17, 2012)

BY THE BOARD:

INTRODUCTION

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

Board) promulgates new regulations to implement Article 10 of the Public Service Law, enacted in Chapter 388 of the Laws of 2011. Article 10 empowers the Siting Board to issue Certificates of Environmental Compatibility and Public Need authorizing the construction and operation of major electric generating facilities.

BACKGROUND

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

NOTICE OF PROPOSED RULE MAKING

A Notice of Proposed Rulemaking concerning the regulations under consideration here was published in the State Register on April 11, 2012 (SAPA12-F-0036SP1). The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding that notice expired on May 29, 2012. Certain municipal parties were given an extension until June 15, 2012 to submit comments. Over 100 comments were received. All the relevant comments received are summarized below.

DISCUSSION AND ANALYSIS OF COMMENTS

Part 1000 General Comments

A few comments raise concerns about the role and powers of the Ad Hoc members of the Siting Board. "Ad Hoc" is a Latin term meaning "for this special purpose". We take this opportunity to clarify that Ad Hoc members will be appointed for the special purpose of providing a local voice in individual proceedings conducted to consider applications for certificates. Each facility application will have its own unique Ad Hoc members and therefore its own unique Siting Board. In those individual proceedings, the Ad Hoc members will contribute to there being a quorum, and will have voting rights, just like the permanent members. If a certificate is ultimately granted, pursuant to the statute, the unique Siting Board for the case will relinquish its jurisdiction and thereafter certain subsequent matters will either be in the jurisdiction of the Permanent Board (without Ad Hoc members) or in the jurisdiction of the Public Service Commission.

1000.1 Purpose and Applicability

No discussion necessary.

1000.2 Definitions

(u) Local Substantive Requirements

An engineering consultant firm asserted that the definition should not include references to wetlands, flood zones, and solid waste because these areas are regulated by federal rules or a combination of federal and state rules, which are sufficient to protect the resources. A public interest coalition asserted that local requirements related to waste handling facilities should be added to the definition because Article 10 should not provide a mechanism for circumventing municipal regulations that ensure waste facilities are not

overly concentrated in specific communities or sited in close proximity to receptors.

Discussion

Neither request will be adopted. Many local governments have adopted local substantive requirements regarding what can be built (or not built) in wetlands and flood zones, and have adopted local substantive requirements regarding solid waste handling and storage. Taking the language out of the definition would have the opposite effect of that intended by the comment. The location of waste facilities is already encompassed in the term "zoning" that is already part of the definition.

(x) Modification & (ak) Revision

Several wind developers and their trade supporters request that the definition of "modification" include, and the definition of "revision" exclude, the shifting of an access road or electric collector line to a new location within a 500 foot radius of the original location provided such change does not significantly increase impacts on sensitive resources or decrease compliance with setback and similar requirements, as is currently allowed for the shifting of wind turbines by the proposed regulations. They argue that if the shifting of turbine locations is allowed, it is likely that the ancillary access roads and electric collector lines will need to be shifted as well. They argue these allowances recognize the common practice of making adjustments in wind turbine locations to accommodate concerns raised during application review. One wind developer requests that the 500 foot limitation be eliminated such that any change in location would not be a "revision". Some wind developers request that the same allowance be made for substations, and that a change of turbine types also not be considered a "revision".

A member of the State Senate urges that the discretionary 500 feet allowed for the actual construction of the turbines should be drastically reduced because if the project is approved, it should be constructed where it was approved, and the public should be guaranteed of its location. One individual commented that a 500 foot change in turbine location should not be allowed, especially when it impacts a non-participating landowner. Another individual asserted that the section should be kept as originally written. A municipality asserted that the allowance in the definitions should be reduced to no more than a 100 foot radius because the Federal Aviation Administration (FAA) considers micro adjustment or micro siting to mean moving the wind turbine from 100 to 500 feet from its originally filed location, thus any reposition of a turbine outside of a 100 foot circle will require FAA review. A 500 foot move will likely also require reconsideration of visual and noise impacts, particularly if such a move also entails a change in elevation.

Discussion

The discretion at issue here does not include discretion to move turbines without Siting Board approval, although the Siting Board may consider granting such discretion separately in a certificate condition. The addition of access roads and electric collector lines to the allowance is a logical and practical extension of what was intended by the original allowance with respect to turbine placement therefore those changes will be made. Changes in substation locations and turbine types may raise substantially different issues and should be considered on a case by case basis without a pre-set allowance for changes. The interplay of concurrent Siting Board and FAA jurisdiction may present a challenge to siting, but limiting flexibility in the Siting Board arena will not

necessarily make matters easier. In a large rural, agricultural or forested landscape, a 500 foot shift could likely be accommodated provided that it does not significantly increase impacts on sensitive resources or decrease compliance with setback and similar requirements. We expect that most such shifts will be motivated by decreasing adverse impacts rather than increasing them.

(ae) Private Facility Applicant

A facility trade organization requests that the definition be modified to find that an applicant is not a private facility applicant when it is working with an industrial development agency or public authority and the agency or authority is using its powers of eminent domain to condemn the proposed site location. It believes the proposed definition will delay the pre-application process and that the agency or authority that is working with the applicant may not be willing to exercise its power of eminent domain in support of the proposed facility. Even if some agencies or authorities are comfortable using this power to condemn small parcels of land in support of the project, for example property needed for a substation or transmission line, that fact alone does not indicate that the agency or authority would be willing to condemn significant amounts of property.

An individual responded that the language pertaining to eminent domain should not provide an avenue for developers to gain eminent domain privileges and the applicant should have to identify alternative locations because that is a cost of the development process regardless of eminent domain powers.

Discussion

The exclusion of private facility applicants from having to consider alternative sites is only legitimate if they

have no direct or indirect ability to obtain such sites. We are not persuaded by the comments that any change is warranted.

(ai) Public Rights of Way

A facility trade organization asserts that the definition of public rights of way should not be limited to only land that is used by motor vehicles. It notes that projects can rely on public rights of way to site interconnections in the subsurface area of the land, which can include land that is accessible only by foot or is underwater land. It further asserts that the proposed definition restricts the definition of public rights of way in a manner that is not found or supported by the statute.

An individual asserts in response that the municipalities should have to grant permission for the use of public rights of way on municipally held land because these lands are within their jurisdiction.

Discussion

The use of the word "public" implies that the public has an unrestricted right of travel over the rights of way at all times. The use of the words "rights of way" implies that the lands are primarily used for through access and are not general lands. Rights of way established for motor vehicles (streets and highways) are generally the only publically-owned rights of way that meet both parts of the definition. The definition as written recognizes rights similar in nature to those granted to public utility companies when they obtain franchises to use the rights of way of streets and highways maintained by a municipality, but no more. We believe that to be the intention of the statute. Lands reserved for future streets, footpaths and inland water bodies on public lands are generally subject to restrictions such that they often are not open to public use, and they are not primarily used for

unrestricted through access. Inland rivers in public ownership may be subject to momentary navigation rights, but not permanent occupation. Lands underwater in the Great Lakes, Lake Champlain, the Hudson River, Long Island Sound and the Atlantic Ocean (there may be others) within the jurisdiction of New York State, while subject to navigation rights, are not considered public rights of way. They are held in trust by the State or certain municipalities for the benefit of the people and may not be alienated. These lands may be occupied in a manner that does not interfere with navigation pursuant to certain revocable consents that may be granted pursuant to State statutes that cannot be waived by the Siting Board. We are not persuaded by the comments that any change is warranted.

(ar) Study Area

A wind developer and an organization that promotes wind development assert that the five-mile study area for rural projects is too broad and should be restricted to the project footprint unless extended in the stipulation process. A facility trade organization asserts that the definition needs to provide that in a highly urbanized area the study area will be one-mile for all projects, regardless of size. It also asserts that the study area for all projects should be one mile, with the applicant having the option to increase the study area based on project specifics or a stipulation executed by the parties.

A public interest coalition asserts that the study area should be broadened to include any area affected by at least one significant adverse impact from the proposed project. A municipality asserts that a two-mile radius study area should be sufficient to understand potential noise impacts, unless site specific topography suggests otherwise, but the regulations should retain the larger study area for visual, wireless communications, avian and bat impacts. In also notes that in

addition to visual impacts, evaluation of potential impacts on military and weather radar require study beyond five miles from a wind-powered facility. Impacts on other wireless communications may require a similarly wide field of investigation. In addition, Article 10 identifies potential impacts of wind-powered facilities on avian and bat resources as requiring special study. These studies ordinarily require an investigation in excess of five miles around the project area and, if the potential for such impacts exists, may call for detailed field studies over several years.

Discussion

The issues raised are similar to those already raised in the stakeholder process. The proposed regulations provide sufficient flexibility to address all the issues that were raised in an appropriate manner. Having reviewed the comments, we are satisfied that no changes are warranted.

1000.3 Adoption of Procedures by Reference

No discussion necessary.

1000.4 Public Involvement

Several wind developers, a developer representative, and two facility trade organizations, assert that the public involvement plan should be merged with the preliminary scoping statement thereby eliminating any time between the two and any requirement for public involvement activities prior to submission of the preliminary scoping statement. They claim that an applicant is not in a position to share details of the project with the public in an outreach effort until it has filed the preliminary scoping statement and that the public will want a full understanding of the project, not an incomplete sketch. They argue that the preliminary scoping statement provides sufficient opportunity for the public to provide input on the project and allows the applicant to make any appropriate changes

to the project at an early stage in the case. Some of the wind developers also argue that their public outreach already conducted on pending applications that become Article 10 cases should not be ignored. One wind developer asserts that since the proposed regulations do not require an applicant to make changes to the public involvement plan recommended by the Department of Public Service (DPS) in its review of the plan, the need for an applicant to respond in writing to DPS's comments should be eliminated. Another wind developer asserts that all the timeframes should be optional. Some of the comments, including one from a public utility company, request shortened timeframes for repowering projects. One wind developer also requests that applicants be allowed waivers of the 90-day timeframe between the filing of the preliminary scoping statement and the application, for good cause shown.

Many individuals, municipalities, and a locality advocacy group provided comments in support of the proposed regulations as written. They assert the public should become involved in planning at the earliest possible time; the public does not want to hear about a project that appears to be a "done deal"; local stakeholders should not be put in a hurry-up mode; it is imperative that public input takes place before scoping begins; and public involvement should not be sacrificed to save time.

Several members of the State Assembly urge that the regulations provide for meaningful outreach to stakeholders in environmental justice communities potentially impacted by an Article 10 application, to maximize their ability to participate meaningfully throughout the process. They note that one basic tenet of environmental justice is that government must work actively to overcome barriers that have all too often resulted in decision-making without the active and informed participation

of minority and low-income communities. They assert that outreach and engagement of environmental justice community stakeholders is necessary so that their voices are not subordinated to those of other affected communities with more resources, and also to ensure that the analyses and recommended mitigation measures are not developed in studies that do not consider their knowledge and insights on the needs of their community.

One municipality observed that the lead time necessary for planning and other pre-application environmental and health information is at least as time-consuming as the lead time necessary to conduct public involvement activities, therefore retaining the public involvement requirements as drafted is not overly burdensome and will allow beneficial public participation at an early stage in project planning. The requirements as drafted may also allay concerns of municipalities that their participation in the siting process is being overly curtailed. The better approach is to require public involvement during a pre-application phase, as provided in the proposed regulations, to preserve the goal of completing Article 10 application reviews in a 12-month timeframe.

A public interest coalition and a county planning office request that the regulations include provisions for recourse to hold developers accountable for the failure to adequately conduct public involvement activities, including making any certificate issued vulnerable to legal challenge.

Several of the comments included requests that public hearings be held in the affected locality and at times when residents can participate.

Discussion

It is important that public involvement activities begin as early as practicable before development plans are so

far advanced that the developer feels it cannot be flexible or open to beneficial modifications. Moreover, the statute calls for early and often public involvement in the siting process.

In any event, most, if not all, major electric generation facilities are planned over a sufficient lead time that the time periods set forth in the proposed regulations should not be unnecessarily burdensome. The issues raised are similar to those already raised in the stakeholder process. Having reviewed the comments, we are satisfied that no changes are warranted.

1000.5 Pre-Application Procedures

An engineering consultant asserted that in order to gain information that will help in the review of projects, the State should become involved in the siting process earlier than required by the regulations and, therefore, applicants should be required to provide notice when they build a met tower or begin leasing lands for a future facility.

A wind developer asserts that applicants should not be required to discuss alternate locations owned by affiliates of the applicant, claiming that an applicant does not necessarily have access to the locations owned or controlled by its affiliates. A wind developer asserts that the requirement for public notice of the filing of a preliminary scoping statement to any community where an alternative site is being evaluated should be eliminated so as not to jeopardize future development of the alternate site. A facility trade organization asserts that the proposed regulations require too much information in the preliminary scoping statement regarding the environmental justice analysis and the air quality data, which will have to be changed later after interaction with stakeholders and the state agencies. A facility trade organization asserts that an applicant should not be required to identify at the preliminary

scoping statement stage if it will seek to use the power of eminent domain as the applicant may later change its project. A wind developer asserts that the timeframe between the filing of a preliminary scoping statement and the application should be reduced as the timeframe is excessive. A wind developer asserts that the Siting Board should indicate which local laws it will waive for the project prior to the submission of an application. Another wind developer requests that the regulations impose a maximum comment period of five days for public comment on proposed stipulations.

A facility trade organization requests that the analyses in the preliminary scoping statement about an applicant's ability to comply with state laws and regulations and the applicant's explanation as to why the Board should elect not to apply local laws should be only "preliminary" analyses and explanations.

A public utility company and a facility trade organization assert that the regulations should be modified to reduce the submittal and time requirements for repowering projects. A Hudson River conservation group asserts that the regulations should ease the regulatory burden of renewable resource facility applications in comparison to fossil fuel facilities.

A municipality warns that scoping has been used to overly narrow the study that may be required as applications develop, and advises that to forestall that possibility, the preliminary scoping statement should contain the level of detail as written in the proposed regulations. The application process should not go forward without fully specifying the scope of future studies. Otherwise, disputes about the scope can be expected to exceed the time allowed for expedited review, as applicants, siting board staff and intervenors will continue to

argue about the scope of such studies. Because the timeframes for subsequent stages of the application review process are expedited, the regulations should identify a sufficient level of detail in the information required to begin the process.

A locality advocacy organization asserts that the amount of time to comment on a preliminary scoping statement should be increased from 21 to 90 days since the additional time would help level the field for municipalities having resources that are not equal to those of developers. An individual commented that the 21 day comment period is not long enough for local boards that usually only meet once a month and may not be able to respond within such a short period of time. In addition, she is concerned that three weeks is not enough time to properly read and address the issues within the document. A county planning office agreed that the 21 days is not long enough to prepare adequate comments, especially for the local boards who meet only once a month. Another advocacy organization asserted that all public responses should be given a minimum of 60 days, and that developers should perform environmental studies for at least a year before the pre-application phase, with the studies continuing through the application process.

Another locality advocacy organization asserts that the applicant should provide notice to the host town and those in the surrounding 10-mile area, including notice to the town clerks, town supervisors, and chairs of planning boards, and copies should be placed in public libraries, post offices, and other public buildings.

A municipal official asserted that copies of finalized PILOT (payment in-lieu of taxes) agreements should be required as part of the preliminary scoping statement as evidence that the local taxing authorities can agree on a PILOT acceptable to

the applicant, so as not to waste valuable resources and time on a project that will not come to pass.

Discussion

In keeping with the statutory scheme to act efficiently, the timeframes provided are already the minimum necessary to conduct a workable process and there is no room to further expedite the process and have it remain meaningful. Most of the issues raised are not new and were already raised in the stakeholder process. Having reviewed the comments, we are satisfied that in general, no changes are warranted. We do agree that the addition of the word "preliminary" in two places as requested would be an enhancement that is in keeping with other clarifications we are making, so those changes will be made.

1000.6 Filing and Service of an Application

A locality advocacy organization requests that applications be made available to the public on-line and downloadable in searchable format. An individual requests that the chief executive officer of the host municipality receive a searchable electronic copy to facilitate distribution to the members of the town board, planning board, and zoning board.

Discussion

Searchable electronic copies will be available to all on the internet.

1000.7 Publication and Content of Notices

A public interest coalition requested an amendment to paragraph (1) of subdivision (b) to specify notices provided in languages other than English be published in newspapers serving the appropriate language communities. The public interest coalition also requested an amendment to paragraph (2) of subdivision (b) to require that notice be provided to members of the State Legislature in whose district any portion of the Study

Area is located, and in New York City, to Borough Presidents and Community Boards in whose jurisdiction any portion of the Study Area is located.

Discussion

With some refinements, the request regarding publishing notices provided in languages other than English in newspapers serving the appropriate language communities is an enhancement and will be included. The second request fails to recognize the interplay between Sections 1000.6 and 1000.7 and would result in some redundancy. In addition, any of these persons could file a statement with the secretary to be put on the list of persons to receive notices.

1000.8 Water Quality and Coastal Certification Procedures

A conservation group associated with the Hudson River discusses four topics in connection with the handling of Water Quality Certifications pursuant to §401 of the federal Clean Water Act (CWA). They are: the distinction between "pollutants" and "pollution", the scope of CWA §401, the waiver period applicable to Water Quality Certifications, and antidegradation.

Pollutants and Pollution

The conservation group states that the proposed regulations use the term "pollutant" in several places, including proposed §1000.5(d)(2), and asserts in the context of requests for Water Quality Certifications that the word "pollution" is more appropriate.

Discussion

The conservation group also points out, however, that the regulations of the Department of Environmental Conservation (DEC) concerning water quality include a definition of the term "pollution" in 6 NYCRR §700.1(a)(47) as "the presence in the environment of conditions and/or contaminants in quantities of

characteristics that are or may be injurious to human, plant or animal life or to property or that unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the State as shall be affected thereby." It also notes that "pollution" is defined in the CWA.[1] Therefore, to the extent that a distinction can be drawn between the words "pollutant" and "pollution," the regulations, by requiring compliance with the substantive provisions of State water quality standards (including applicable definitions), are susceptible to that distinction.

The scope of CWA §401

The conservation group explains that the state agency that issues a Water Quality Certification must assure that the project or activity under review will comply not only with federal requirements but with all pertinent State water quality standards and any other appropriate requirement of State law. It asserts that the Siting Board should accordingly clarify that analyses under laws such as the Endangered Species Act and the Water Quality Certification are legally separate investigations.

Discussion

Because the regulations require compliance with the substantive provisions of all applicable State law, the record of each certification proceeding will necessarily include a showing by means of whatever analyses are necessary that such compliance will be achieved.[2]

The Waiver Period

The conservation group also contends that the regulations should not include provisions, in §1000.8(a)(5), relating to the applicable period after which a Water Quality Certification will be deemed to have been waived when applicants

[1] CWA § 502(19); 33 U.S.C. § 1362(19).
[2] See §1000.8(a)(3).

request permits from the U.S. Army Corps of Engineers (USACE). It asserts that federal agencies may not shorten the one-year waiver period specified in the CWA.

Discussion

CWA §401(1)[3] provides that if a State "fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application." The USACE has, and other federal lead agencies may, establish reasonable waiver periods shorter than one year. Therefore, we will clarify §1000.8(a)(5) as follows:

> (5) When an applicant or certificate holder has requested both a Water Quality Certification from the Board and permits from the U.S. Army Corps of Engineers or other federal lead agency, the Board or a designee will provide information to the district engineer or other federal lead agency as to whether circumstances require a period of time longer than the period specified in applicable federal regulations for the certifying agency to act on the request for certification in order to avoid a waiver. The Board shall issue, waive or deny such Certification within such applicable period after the filing of the application or other document in which the request is made, taking into account whether any federal agency from which the applicant or certificate holder has sought a license or permit to conduct any activity that may result in any discharge into the navigable waters has:

In this connection, we will also correct a typographical error in §1000.8(a)(6), where "subdivision (f)" should be "paragraph (a)(5)."

[3] 33 USC §1341(a)(1).

Antidegradation

The conservation group maintains that, since the issuance of a Water Quality Certification requires a finding that an applicant satisfy requirements in place to ensure antidegradation, the Article 10 regulations should require applicants to submit sufficiently detailed information for the Siting Board to make findings pertinent to this topic.[4]

Discussion

The cited DEC guidance document is based on provisions of State law and regulation, including 6 NYCRR Parts 701 and 702. Because the Article 10 regulations require compliance with State laws and regulatons, a separate requirement on antidegradation is not required.

General Issues

A wind developer asserts that water quality certification issues will be presented in the application, so there is no need for notice of a subsequent filing of a request for a Water Quality Certification in the regulations. Another conservation group associated with the Hudson River asserted that because New York's coasts are unique and valuable scenic, recreational, and ecological resources that need to be protected, under no circumstances should Article 10 be used to override the federal Coastal Zone Management Act, New York State Coastal Management program, or local waterfront revitalization plans. It also asserted that the regulations should reserve the State's right to make a decision on water quality certification within one year as provided under the CWA.

Discussion

Not every developer will be in a position to apply for a Water Quality Certification at the time of application, so there is a need for the additional notice provision in the

[4] It cites DEC's TOGs #1.3.9 in this regard.

regulations. The Siting Board does not have the power to override requirements of federal or state law, and nothing in the regulations would preclude the State from utilizing the one year for a decision to the degree that it is provided under the CWA.

1000.9 Additional Information

No discussion necessary.

1000.10 Fund for Municipal and Local Parties

Intervenor Fees

Many of the comments contain assertions that the amount of funding provided for intervenors is too low. An engineering consulting firm asserts that in its experience with similar project reviews under the State Environmental Quality Review Act (SEQRA), fees often run in excess of $100,000, and the intervenor fund provisions as written are inadequate to support that level of fees. A municipality concurred in the assertion that for similar project reviews under SEQRA, fees often run in excess of $100,000. A locality advocacy organization asserts that there is not enough money provided to do a reasonable job with scoping, a visual impact assessment, a health analysis, a bird migration study, noise estimate, historic impact analysis, and a legal review of local laws. It requests that a minimum of at least $100,000 be available to all intervenors, and that the amount be indexed to inflation. An individual also requested that the fee structure be indexed to inflation. Another individual noted that, but for Article 10, a municipality in exercising its home rule powers can charge developers fees to pay the full costs to the municipality of its review of the project without any arbitrary cap on the costs. So that municipalities will have equal resources with developers, another locality advocacy organization asserts that the fee structure should be increased as follows: (a) $50,000

plus $700 per MW not to exceed $400,000 for preliminary scoping statements; and (b) $100,000 plus $1,500 per MW not to exceed $600,000 for project applications.

An organization that promotes wind development and two wind developers assert that the requirement in the proposed regulations that the applicant shall submit an additional intervenor fee in the amount of $75,000 for amendments determined to be a "revision" to the application disproportionately impacts moderately sized renewable energy projects. They note that the intervenor fee for applications is only $1,000 per megawatt, so the $75,000 fee for a revision for projects below 75 megawatts might be substantially higher than the original fee for the entire application. They request that applicants be required to provide additional intervenor funding for project revisions at the same rate that they are required to provide initial intervenor funds, $1,000 per megawatt. They also note that the statute empowers the Siting Board to impose an intervenor fee for revisions of "up to" $75,000, but does not require such payment automatically in all instances.

Discussion

The overall amount of intervenor fees that can be imposed is established by the State Legislature, not by the Siting Board. The proposed regulations are written to mirror the statutory allowances. We are persuaded that the regulations should be modified in one respect; the fee that is paid at the time of submitting a revision to an application should logically not be higher than the fee paid initially and therefore, we will adopt the recommendation to impose a floor funding amount of $1,000 per megawatt for revisions to application. We will, however, retain the full discretion provided by the State Legislature to require up to $75,000 for a revision regardless of facility size in appropriate circumstances.

Timing

A developer representative asserts that the 30 day time period for applying for intervenor funds is excessive and will hinder the expedience of the stipulation process. He requests that the timeframe for applying for intervenor funds be reduced to 15 days, and that the time taken to decide if funds will be awarded should be reduced from the 45-60 day window. A wind developer asserts that intervenor fund applications and awards for the pre-application phase should be completed in 30 days.

Discussion

While every attempt will be made to act quickly, the timeframes are already minimal and need to be maintained to be realistic.

Miscellaneous

A public interest coalition requests that the notice of availability of funds must be given to the same parties for whom pre-application notice is required, that criteria be provided on what constitutes an equitable basis, and that the regulations be structured to allow for community-based parties to determine their funding needs as the application process progresses and as they obtain expert advice.

Discussion

We appreciate the comments and believe that it is in the interest of community-based parties that these matters are left to the discretion of the Presiding Examiner in the case.

1000.11 Assistance with Documents

No discussion necessary.

1000.12 Evidence and Proof

An organization that promotes wind development and a wind developer assert that the standard for evidence should be "substantive and significant" because they believe that quasi-

judicial hearings are only triggered by evidence that is "substantive and significant". A different wind developer asserts that the standard for determining which issues are to be litigated should be "relevant and material." A facility trade organization asserts that the proposed regulation requires issues to only be relevant, but that the standard should be "relevant and material". An individual asserts that it is important to allow issues to be introduced for consideration that are "material and relevant" without increasing any burden-of-proof requirements on the community. A locality advocacy organization asserts that the section should be kept as it currently reads, such that an issue or evidence is allowed if material and relevant. A county planning office asserts that the proposed regulation is too lenient because the rules of evidence do not have to be applied strictly. Another locality advocacy organization asserts that the proposed regulations set narrow limits on evidence to the disadvantage of plaintiffs and the public, and should be broader. A member of the State Senate urged that the regulations maintain the option that a party can force a hearing by showing there is a material and relevant issue, a provision that should be neither diluted nor eliminated.

As to proof, one individual asserts that applicants must use a scientific method to support any argument presented in support of the development of their proposed project.

Discussion

The "substantive and significant" standard is a special standard applied in certain DEC proceedings where DEC staff has completed its review of an application and issued a written draft permit for final challenge by parties that can demonstrate that they have a "substantive and significant" issue with the draft permit language and conditions. The Article 10

process does not operate in that fashion for the statute states that presiding and associate examiners will inquire into and call for testimony concerning relevant and material matters (PSL §167(1)(a)). The statute does not support application of the "substantive and significant" standard, and such standard, in any event, is not per se required for all quasi-judicial hearings. After having considered the comments, we are satisfied that no changes in the proposed text in this section are warranted.

1000.13 Amendment of an Application

No discussion necessary.

1000.14 Dismissal of an Application

No discussion necessary.

1000.15 Acceptance of a Certificate

Several individuals commented that both developers and municipalities should have equal rights to request a rehearing, appeal or to file a written unqualified acceptance of the Certificate.

Discussion

This section must be read in conjunction with the Rules of Procedure of the Public Service Commission adopted by reference in Section 1000.3. All parties have equal rights to rehearings and appeals. A written unqualified acceptance of the Certificate forces the applicant to indicate its acceptance of all modifications and conditions set forth in the Certificate, including those that may not have been proposed by the applicant. Such an acceptance is not applicable to any other party.

1000.16 Amendment, Revocation and Suspension of a Certificate

No discussion necessary.

1000.17 Transfer of a Certificate

An individual asserts that the Ad Hoc siting board

members and the host community should have a say in a certificate transfer; the Chairperson should not have exclusive power to transfer certificates. The proposed regulations require submission of a copy of the proposed transfer agreement only if required by the Board's Chairperson. A developer representative asserts that the requirement allowing the Chairperson to require the copy to be submitted is unnecessary since the petition for transfer must be verified by all parties to the transfer.

Discussion

The Ad Hoc members will have a say on transfers until their jurisdiction has ceased. After that, the Permanent Board will have jurisdiction. The host community has an opportunity to comment on any transfer application. The Chairperson only gets sole jurisdiction if no party has objected to the transfer in the comments. We do not understand the logic behind the assertion that verification of the petition makes the copy of the transfer agreement unnecessary.

1000.18 Counsel to the Board

No discussion necessary.

Part 1001 Miscellaneous Comments

Wind developers and an organization that promotes wind development opined that the regulations require too much of an applicant and do not take into consideration the regulatory burden being imposed on moderately-sized renewable energy projects. They believe that certain information required in the application is overly burdensome and its consideration will be of little assistance to the Siting Board in making statutory determinations and findings. They believe that the application requirements should be tailored in a manner that will not deter or delay wind projects.

Several individuals responded that the comments

provided by lobbyist groups or pro-wind firms/individuals should be disregarded as biased and motivated by money. They believe that the public is entitled to information that involves the developer's compliance and that the proposed requirements should remain in the regulations.

Discussion

Our goal has been to balance all interests. Specific changes will be addressed on their merits.

1001.1 General Requirements

An organization that promotes wind development requests flexibility for applicants to provide studies and data in their application based upon the type of generation being proposed. An individual comments that the Siting Board should be required to perform a certain level of due diligence to ensure that project developers are providing accurate information and to give equal weight to the needs of those who live near a proposed development.

Discussion

The regulations already provide developers with flexibility to omit exhibits that are not relevant to the particular application. That flexibility is appropriately balanced with specific required details of exhibits which we hope will enable the Siting Board to make informed findings and determinations.

1001.2 Exhibit 2: Overview and Public Involvement

No discussion necessary.

1001.3 Exhibit 3: Location of Facilities

Some of the comments from developers and their representatives request that the study area be limited in scope to the area of all planned facility components, interconnections, and related facilities, with or without a "buffer area", and that the five-mile minimum radius for large

facilities or wind power facilities with components spread across a rural landscape should only be considered, if at all, on a case-by-case basis through the stipulations process instead of as a set radius. They assert that a five-mile study area is impractical, excessive and unnecessarily burdensome and would be better left determined per project as the stipulation process can determine the appropriate study area. One developer also objects to having to identify existing utilities and infrastructure in the study area unless they are to be impacted or used by a project.

Individuals and municipalities concerned about wind facilities assert that due to the far-reaching effects of wind turbines, a five-mile study area for such facilities is important for the proper consideration of visual impacts, property values, and noise issues. Several individuals went farther and request that the regulations prohibit heavy industrial uses like wind turbines in populated residential areas or mandate large setbacks from residences for reasons of safety and to avoid negative impacts.

A public interest coalition recommends that the study area be tied to the actual area of impact of the facility, and that what is meant by a "large facility" should be clarified.

Discussion

While we expect that the stipulations process will be useful in defining the study area, if there is not universal acceptance of a stipulation there needs to be a standard by which applications can be judged for compliance. For wind facilities, which based on the comments appear likely to be controversial in some locations, certainty is provided for all by the setting of a minimum five-mile study area. That is a reasonable policy that will minimize conflicts. Many of the developers' comments do not reflect that for non-wind

facilities, the study area has been defined as an area generally related to the nature of the technology involved and the setting of the proposed site, and that for facilities in areas of significant resource concerns, the size of a study area shall be configured to address specific features or resource issues. It is difficult to define the meaning of "large facility" in advance as we would not want to inadvertently omit facilities that need a large study area due to the failure now to anticipate such facilities. We are satisfied that the regulations as proposed are properly balanced.

1001.4 Exhibit 4: Land Use

A developer representative requests that the requirement for maps showing all publicly known proposed land uses should be limited to projects in which formal applications have been made. A wind developer requests that the proposed land use plans that must be shown be limited to ones that are already fully permitted as of the date of the submission of the application. Its concern is that some proposed land uses might not be consistent with existing local requirements, and therefore shouldn't be shown. Two wind developers request that the requirement to map proposed land use plans for any parcels within the study area be eliminated. A facility trade organization requests that the words "publicly known" be added to subdivision(c) to make it less vague and consistent with subdivision (f). The developer representative also requests that the qualitative assessment requirements be stricken from the regulations as duplicative. A wind developer requests that the requirement for aerial photographs be limited to what is publicly available such that applicants could never be forced to pay for photo mapping of the study area which in its view would needlessly increase the application cost. The wind developer also requests that the term "major facilities" as used in the

section requiring applicants to file a map of existing overhead and underground major facilities for electric, gas or telecommunications within study area be defined. A county planning office believes that subdivisions (h) and (i) group too many items together and that the phrase "significant invasion of privacy" in subdivision (h) needs to be clarified.

Discussion

Concerns about potentially duplicative provisions in the regulations have already been addressed on a global basis by subdivision (e) of Section 1001.1 which allows references to material already provided instead of the provision of duplicative matter. We agree that the addition of the words "publicly known" to subdivision(c) would be an improvement for the reasons given by the requestor. That change will be made. Aerial photographs are a key tool in the siting process. The request to eliminate them from the application if they are not publicly available is unworkable as it does not address what tool would be sufficient for use in their absence. Obtaining such photos is not an unnecessary expense as the photos are needed. The descriptor "major facilities" was added as a result of stakeholder input primarily from the developers and is meant to eliminate unnecessary minutia such as service lines not crossed by the proposed construction that would be irrelevant to the siting process and expensive to map. It is not clear that a more specific definition would be beneficial as not every case can be anticipated and we would not want to omit important facilities through a drafting omission. The phrase "significant invasion of privacy" in subdivision (h) is a term already in common usage in the parlance of cultural resources reviews, therefore we see little benefit to attempting to modify it.

1001.5 Exhibit 5: Electric System Effects

A wind developer asserts that the requirement to provide information regarding the electric system effects of the interconnection of the facility should be deleted. According to several wind developers, applicants should be allowed to provide the Siting Board with only studies and reports originating from the interconnection process at the New York Independent System Operator (NYISO). An organization that promotes wind development and a wind developer added that deliverability studies would be included as part of the NYISO interconnection process. A developer representative suggested that the information required in subdivisions (i) through (l) should be addressed through compliance filings instead of in the application because the information requested is too specific for the application stage of the project.

The electric utility company serving the New York City area requests that a new exhibit requirement be added to the regulations that would require applicants to identify and demonstrate compliance with all reliability criteria, including that of the local interconnecting transmission utility. It believes applicants should be required to confer with appropriate representatives of the Department of Public Service, NYISO and the local transmission owners to identify applicable requirements and to demonstrate how they will comply with these reliability rules and requirements. It also requests the imposition of reliability rules for blackstart and automatic fuel switching capabilities.

New York City also asserts that the regulations should require all applicants to evaluate the implications, costs, and benefits of including blackstart capability in their proposed projects, and, if they decide not to add such capability, to provide their reasons for declining to do so. It believes this

requirement will encourage developers to include blackstart capability in their projects and it will also allow for a proper record to be developed should the Siting Board decide to condition the approval of a project on the inclusion of blackstart capability. It believes the burdens imposed by this proposal should not be significant, and they are greatly outweighed by the potential benefits to be realized by the State by the addition of new facilities with blackstart capability.

Finally, a county planning office commented that the language of this section is not easily understandable to lay people or written at an eighth grade reading level.

Discussion

We expect that the required system reliability impact study from the NYISO will provide the basis for much of what is required by this section, but the study itself will not adequately address all the issues as we have laid them out. In addition, we believe the wind advocates are incorrect when they assert that the system reliability impact study will address deliverability in the sense that we have used that term in relation to estimating the effects of the proposed facility on emissions and the energy dispatch of existing must-run resources, such as wind, hydroelectric and nuclear facilities.

While the proposed regulations already require information regarding blackstart capabilities, we agree that it would be a beneficial enhancement to require an identification and demonstration of the degree of compliance with all relevant applicable reliability criteria including that of the local interconnecting transmission utility that may have criteria regarding blackstart and fuel switching capabilities. The regulations will be slightly modified to incorporate incremental reliability information.

As to the language, we note that the section includes many unavoidable terms of art that likely have little meaning to a lay person, but that the sentence structure is sufficiently understandable.

1001.6 Exhibit 6: Wind Power Facilities

Many individuals took the opportunity to comment on this section to give their opinions of the benefits and burdens of wind power. The opinions in favor stress clean air benefits, the creation of construction and permanent jobs, real property tax income for local communities and school districts, and an opportunity for struggling farmers to lease land and obtain a second income. The opinions in opposition stress the high cost of wind power, the lack of capacity benefits, the visual impact on landscapes and seascapes and resultant negative impact on tourism, and adverse health effects from the noise emitted by wind turbines.

Setbacks

One wind developer asserted that the application should only include a summary of setback requirements, akin to that required in the preliminary scoping statement, and that waivers of unreasonable setbacks should occur prior to the application.

Many individuals and organizations proposed that minimum setbacks be imposed by the Siting Board in the regulations including a minimum 6-mile (31,680 feet) distance from any shoreline; a minimum 1,500 feet from every on-land wind tower to each non-participating property's line; or a minimum one mile (5,280 feet)or 2 kilometers (6,562 feet) from the property lines of private and public owners. Several asserted that a 2 kilometer setback is the minimum recommended by the World Health Organization. One individual also suggested a minimum land area of 25 acres per turbine. In favor of the

proposed minimum setbacks, they cite concerns about public health and safety, ice throw, tower collapses, blade fragmentation, shadow flicker, noise, infrasound, the preservation of property values, visual domination, and the preservation of land development potential.

Discussion

We are satisfied that the regulations will elicit the appropriate amount of information needed at the application phase regarding setbacks. It is not clear how the wind developer that does not want to provide this information would have the Siting Board resolve setback issues. We will address setbacks within individual cases when we will have the benefit of a record tailored to the particular location.

Third Party Certification of Wind Turbines

Several wind developers requested that this section be re-written to make third-party review and certification of wind turbines a post-certificate compliance matter.

Discussion

The wind developers are reading too much into the language of the proposed regulation. The requirement is for a status report, not a mandate of final third party review and certification at the time of application.

Meteorological Analyses

Several wind developers and their supporters assert that applicants should not be required to file meteorological data, which they claim is proprietary information that should be kept confidential. Many individuals and several municipalities responded that the analysis of wind meteorological data is part of proper siting, that it should be provided publicly so an informed decision can be made, and that it will assist in determining whether there are adequate wind resources at a proposed location for a wind project. One individual further

argues that New York State residential ratepayers help fund Met Towers (meterological towers used for wind speed measurement and recording equipment) by paying RPS and SBC charges, therefore the citizenry should be provided with all of the results of those Met Tower results. Another individual argues that the data should be for a minimum of two years prior to an application. A municipality argues that given the impact wind turbine towers have on the community, the data must be made public to ensure the veracity of electric production projections before wind turbine towers are allowed to be constructed.

Discussion

The language of the proposed regulation requires submittal of an analysis of the data; it does not expressly mandate the raw data itself. If either the raw data or the analysis qualifies for trade secret status, applicants can pursue their rights in that regard to limit public disclosure.

Property Value Guarantees

Several individuals requested that wind developers be made to provide guarantees on the value of neighboring property in the form of insurance, cash payments, or buyouts if their wind projects cause a devaluation of the neighboring property.

Discussion

It is unclear how devaluation would be measured, but in any event, we are not prepared at this time to make any such requirement as part of the regulations.

1001.7 Exhibit 7: Natural Gas Power Facilities

A county planning office commented that the current regulation language is confusing as written. If natural gas is required for use by the facility, the requirements need to be specified in detail.

Discussion

The proposed Exhibit 7 requirements are brief and relatively straightforward. We do not see a need for revisions.

1001.8 Exhibit 8: Electric System Production Modeling

Several wind developers, a facility trade organization and an organization that promotes wind development assert that the estimated capacity factor for a project is one factor used in determining the economics of a project and is therefore commercially sensitive and its disclosure could negatively impact the developer. They believe that the developer should not have to divulge the proprietary information and should be able to keep it confidential. In lieu thereof, the facility trade organization recommends that the applicant should be allowed to provide an estimated capacity factor based upon publicly available information.

The several wind developers and the organization that promotes wind development object to the idea of having to model facility production at all. They assert that the System Reliability Impact Study, required in Exhibit 5, is all the Siting Board needs to determine reliability issues.

The facility trade organization also asserts that the applicant should not be required to estimate the effects of the proposed facility on the energy dispatch of cogeneration units under contractual obligation to provide steam because an applicant is not in a position to determine contractual obligations that are not publicly available.

Several individuals provided comments supporting the text of the proposed regulations as written. They believe that wind facilities should not be exempted from providing the information required, even though developers may think that providing the information is costly and unnecessary, because the Siting Board needs to know this information and there are no

reasons for wind to be exempted from these requirements. They also believe that full disclosure to the public should be mandatory. One individual asserts that the regulations should hold project developers to efficiency and production standards to ensure that the capacity produced outweighs the burden placed on the community by erecting wind turbines. Similarly, another individual supports verifiable electric generation monitoring. Another individual requests that a distinction be made between nameplate and effective capacity when determining if the facility should be approved because if the operating capacity is low, the Board should determine if it is worth the burden on the community. This individual also recommends that higher priority for approvals be given to facilities located close to the end users because the need to build fewer transmission facilities would balance out the burden on the community of constructing the facility.

One municipality asserts that production volatility is a key input parameter for figuring emission impact and also in the prediction of the costs and benefits of new generation sources. According to this municipality, providing this data will help in the evaluation of effective capacity and the information should not be considered protected trade secrets due to the impact that the towers have on the community. Another municipality states that it strongly disagrees with the assertions of wind industry stakeholders that disclosure of facility capacity and generation, among other things, is unrealistic and burdensome information to ask for at the initial application stage. This municipality challenges the basis for any conclusion that capacity information is entitled to confidential treatment. The municipality believes strongly that information specific to the project and site regarding cost and generation capacity is necessary as early as possible in the

application process to determine what project alternatives should be considered, as required by the statute, and whether a proposed project is, on balance, in the public interest, also as required by the statute. It asserts that a determination as to whether a given wind project can make a substantial contribution to the state's energy goals and the needs of ratepayers requires accurate information on project cost, electric generation capacity and alternatives. The municipality notes that wind energy projects will not happen without substantial ratepayer subsidies, and those costs should be evaluated in light of environmental benefits. It further advises that the intermittent nature of wind results in electricity being generated only periodically and, therefore, other types of generating facilities must be operating to meet demand resulting in very low emissions reductions from the operation of wind energy projects.

Discussion

In general, we agree with the comments that the production information is necessary as an important input for the modeling used for simulation analyses used for a host of purposes in an Article 10 proceeding, including for analyses that will inform the necessary statutory findings and determinations. The mandates of the Article 10 statute require that such information be provided, including, in particular, to inform a required finding whether the proposed project would provide a beneficial addition of capacity. In addition, it should be noted that the production modeling studies required in this Section provide the information needed to determine energy deliverability issues without a separate energy deliverability study. The modeling required in the electric system production modeling will quantify and evaluate, among other things, the economic and physical impact of interconnecting the project to

the electric system. This includes being able to estimate the effects of the proposed facility on emissions and the energy dispatch of existing must-run resources, such as wind, hydroelectric and nuclear facilities. With this information the Siting Board will be able to determine if granting an Article 10 certificate to a particular project could result in backing down other valuable resources. Therefore, a separate energy deliverability study was deleted from the application filing requirements.

Article 10 provides for a public procedure where public involvement is a key component of the review process. In that context, almost all of the application information that relates to an essential Board finding or determination will have to be publicly available. If the required information truly qualifies for confidential treatment, the regulations already provide a process for determining trade secret status and for limiting public disclosure. The party required to submit the information has an opportunity to seek a determination of confidentiality under the Rules of Procedure of the Public Service Commission (contained in Subchapter A of Chapter I of 16 NYCRR), which will apply in Article 10 certification proceedings. Pursuant to these rules, the presiding examiner may, if needed, provide for sharing of such information with the parties under a protective order setting the limits on its disclosure.

In addition, we are not persuaded that the effects of the proposed facility on the energy dispatch of cogeneration units under contractual obligation to provide steam cannot be estimated without the details of contractual obligations that are not publicly available.

No changes are warranted by the comments.

1001.9 Exhibit 9: Alternatives

A wind developer requests that the word "fully" be inserted before the word "owned" in subdivision (a) to eliminate sites partially owned by the applicant because the disclosure and description of future development sites could jeopardize the ability of the developer to develop that site, especially if such analysis showed the alternate site to be less suitable for project development, and because identifying these sites may unnecessarily raise public concern or optimism. A developer representative requests that the language regarding the required evaluation in subdivision (b) should be clarified to require only a qualitative evaluation. A facility trade organization requests that the word "available" be inserted after the word "reasonable" in subdivision (c) to make the language comparable to that in subdivision (a). A wind developer requests that the requirement to provide alternative layouts of the turbines within the proposed site should be limited to providing the layout that would provide the worst case impacts.

New York City asserts that applications for certificates for major electric generating facilities should not be assessed in isolation from other proposed projects. Instead, the potential environmental impacts of a particular project should be viewed in context, with consideration given to the potential cumulative impacts if numerous facilities are approved in the same relative time frame. New York City also asserts that requiring developers on an individual basis to prepare comparative analyses of their proposed projects is excessive and unnecessary, the purpose of Article 10 being to evaluate the merits and impacts of a proposed generating facility, not debate the relative merits and public policy considerations of generation versus energy efficiency. New York City also requests that the Siting Board consider adding a requirement

that Article X applicants with projects in New York City evaluate the benefits, costs, and potential impacts of including automatic fuel-switching capabilities at their projects so that new generating facilities have the ability to switch fuels, if needed, to preserve the robustness of the electric system.

Another municipality asserts that the recommendations for changes proposed by wind industry stakeholders should not be adopted and that the disclosure of alternative sites where the applicant has an ownership interest is not unrealistic and burdensome. A third municipality asserts that the requirement for the evaluation of climate change should be eliminated in the case of wind farms unless it will cause atmospheric drag and convection current changes that affect climate. On the climate change topic, a citizen coalition asserts that wind facilities studied in Texas are estimated to be causing climate change.

One individual asserted that transmission lines from wind facilities to the grid are not a public necessity and therefore wind developers should not be given any right of eminent domain, either directly, or in partnership with an industrial development agency (IDA) or public authority. To safeguard the citizenry's interest by obtaining for the citizenry the lowest available electricity rates, another individual requests that when an Article 10 power generation site is proposed, there should be a competitive bidding process for the use of that geographically defined site by the Siting Board.

Discussion

We decline to insert the word "fully" before the word "owned" in subparagraph (a) because it would tend to undermine the intent of the provision and could open the door to gaming by allowing a small fraction of ownership by another to be manufactured to defeat the provision. We also decline to

eliminate quantifications from the comparisons required in subdivision (a). Some applicants may find that quantitative comparisons make for a better exhibit, and if quantifications are possible, they would make review of the exhibit all the easier. Similarly, we decline to add the word "available" to subdivision (c). The concept of "available" in this Section relates primarily to site ownership of alternate locations and the alternatives being explored in subdivision (c) are at the primary proposed location where ownership of the site should not be an issue. As to the layout of wind turbines, while a worst case layout would be instructive, the purpose of considering alternative layouts is not only to decide whether a certificate can be granted. Another purpose is for the optimal layout to emerge. Therefore, we decline to grant the request.

We agree with New York City that cumulative impacts must be considered. We do not agree that the availability of energy efficiency alternatives could never be a basis for denial of a certificate under the statute. As to automatic fuel switching, we are not opposed to its consideration by an applicant as part of the analysis of back-up fuel required by Section 1001.37, but we want the regulations to be neutral as to whether, for example, a developer of a gas-fired power plant should consider making provision for a back-up such as fuel oil.

We have considered the other comments and do not believe they warrant any changes to the language of the regulations.

1001.10 Exhibit 10: Consistency with Energy Planning Objectives

A wind developer asserts that issues of reliability and electric transmission constraints should be postponed to the compliance phase of the proceeding and should be satisfied by an applicant with the completion of the NYISO interconnection process.

In response, an individual commented that wind facilities should not be exempted from providing the information required, even though developers may think that providing the information is costly and unnecessary. According to the individual, it is necessary for the Siting Board to know this information and there are no reasons for wind to be exempted from these requirements. Another individual asserted that the regulations must specifically address and regulate offshore wind turbines to be in compliance with the New York State Energy Plan. A third individual commented that the electric transmission constraints should be listed and explained.

Discussion

Reliability and electric transmission constraints relate directly to required findings and determinations the Siting Board must make. These matters cannot be put off as compliance matters. The NYISO process will inform the Siting Board's process pursuant to Section 1001.5 of the proposed regulations. Offshore wind turbines within the jurisdictional offshore areas of New York State are already addressed by the regulations. The required Exhibit 10 will include an explanation of any electric transmission constraints. No changes are warranted by the comments.

1001.11 Exhibit 11: Preliminary Design Drawings

Some wind developers would like to submit conceptual sketches instead of preliminary scaled drawings. Others do not want to submit any specific information until the compliance phase. They assert that the development of wind projects is fluid, with often only 30% of the design locked in at the time of application. They argue that fluidity allows them to efficiently respond to the input of agencies, transmission owners, and the public. They also claim that the Siting Board does not need this level of detail in making the determinations

and findings required under the law.

Several individuals commented that the requirements of this section are not unreasonable and should be kept within the regulations. One individual further noted that the fact that wind facilities may take up a large land area does not, in and of itself, make the application requirements unreasonable or burdensome. Another individual requests that the regulations go further and require construction details and mitigation plans for adverse construction impacts as a safeguard against potential impacts to groundwater. One municipality asserted that if a developer cannot specify the make and model of the equipment being used, then impact assessments should not be conducted until the equipment has been determined. Another municipality strongly denied that construction-level detail is not typically prepared during the permitting phase of a wind power project, and it asserted that such details are currently reviewed by the lead agency under SEQRA.

Discussion

The concerns of wind developers are overstated. We are not requiring them to conduct land surveys or to engineer every last detail for the application phase. In fact, the proposed regulations were purposefully modified in several places before they were issued to make it clear that construction level details are not required for an application. The comments received appear to overlook these specific wording changes. What is required is a preliminary design for the project drawn on a scaled drawing with sufficient details so that an intelligent evaluation of the proposal may be made. Site layout, construction operations areas, grading, landscape screening, basic architectural and other similar design details are needed to understand the proposal, its impacts, and the possible need for revisions. It is not realistic to expect that

a certificate is going to be granted to construct major industrial facilities based only on a sketch. We have considered the comments and are satisfied that we have struck the appropriate balance between the burden on applicants and the need for sufficient information to support an application.

1001.12 Exhibit 12: Construction

A developer representative requests that the requirement for a quality assurance and control plan be modified to require that such plan be a "preliminary" plan.

Discussion

We agree that the request is in keeping with our intent. The word "preliminary" will be added to the text.

1001.13 Exhibit 13: Real Property

A wind developer, citing the cost and effort required to search titles, asserts that wind developers should not be required to map out the easements, grants and related encumbrances for the proposed site and adjacent properties. It requests that the developer only be required to provide the tax identification number for each parcel and record owner. In addition, it notes that the applicant will not be able to identify easements, grants or encumbrances that are not on record. A developer representative requests that for subdivisions (b) and (c), the scope of the required property/right-of-way map of all proposed interconnection facilities should be limited to interconnections falling under the Siting Board's jurisdiction. A wind developer commented that developers should not be required to demonstrate full land control at the point of application because typical wind projects require extensive negotiations with significant numbers of landowners and these negotiations may not be concluded at the time of application.

An individual commented that the regulations should continue to require the level of information requested in this section because it is important to have an accurate view of the restrictions of the site in considering the design and protections for neighboring land uses.

Discussion

All developers, even wind developers, will need to provide some due diligence as to property rights. For example, an applicant has the burden to search for things like conservation easements over the site that would prohibit the intended construction activity before asking parties to expend resources reviewing the proposal. Obviously, unrecorded interests will not be disclosed in a record search. The regulations presume only due diligence to discover publicly recorded encumbrances. While some interconnections may not be subject to the jurisdiction of the Siting Board, they should be shown so that the Siting Board will be able to consider the cumulative impacts. A demonstration of full land control at the point of application is not required by the regulations. We have considered the comments and are satisfied that no change to the language of the regulations is warranted.

1001.14 Exhibit 14: Cost of Facilities

Several wind developers, two facility trade organizations, a developer representative, and a public utility company provided comments opposing the requirement that information regarding the cost of facilities must be provided in the application. They assert that such cost information is one factor used in determining the economics of a project and is, therefore, data that is confidential and commercially sensitive. They also assert that requiring wind developers to provide this information would force them to divulge their business models, cost forecasting and industry-specific expertise. They fear

that competitors will use the information to their economic disadvantage, and that fear of the release of proprietary information will discourage investor participation. They also claim that the Siting Board does not need the information to make its findings and determinations. Several of the comments concede that the cost information could be provided to the presiding examiner and DPS Staff, but seek a generic regulation keeping the information confidential from all others. The developer representative asserts that specific cost information should only be required on a case by case basis if it becomes material and relevant. One of the facility trade organizations concedes that the information is relevant to the consideration of alternatives, but claims that such an analysis is not applicable to private facility applicants. Additional concerns were expressed that some turbine manufacturers prohibit wind developers from disclosing pricing information, and that some interconnection costs may not be known at the time of the application. Some also expressed fears that the safeguards provided by the Freedom of Information Law (FOIL) are not sufficient to protect this confidential commercial information.

Several individuals and municipalities provided comments supporting the text of the proposed regulations as written. They believe that wind facilities should not be exempted from providing the information because the Siting Board needs to know this information and there are no reasons for wind to be exempted from these requirements. They also believe that full disclosure to the public should be mandatory. One municipality asserts that cost information should not be considered protected trade secrets due to the impact that wind turbine towers have on the community. It further asserts that any wind developer that refuses to provide cost information should not be eligible for any consideration of the waiver of

local laws. Another municipality states that it strongly disagrees with the assertions of wind industry stakeholders that disclosure of facility capacity and generation, among other things, is unrealistic and burdensome information to ask for at the initial application stage. It challenges the basis for any conclusion that cost information is entitled to confidential treatment. The municipality believes that the cost information specific to the project is necessary as early as possible in the application process to determine what project alternatives should be considered, as required by the statute, and whether a proposed project is, on balance, in the public interest, also as required by the statute. It notes that wind energy projects will not happen without substantial ratepayer subsidies, and those costs should also be evaluated in light of environmental benefits.

Discussion

In general, we agree with the comments that the cost information is necessary as an important input in an Article 10 proceeding, including for analyses that will inform the necessary statutory findings and determinations. For example, such information may be relevant to the required consideration of alternatives, the reasonableness of local laws, or whether the proposed facility is in the public interest.

Article 10 provides for a public procedure where public involvement is a key component of the review process. In that context, almost all of the application information that relates to an essential Board finding or determination will have to be publicly available. If the required information truly qualifies for confidential treatment, the regulations already provide a process for determining trade secret status and for limiting public disclosure. The party required to submit the information has an opportunity to seek a determination of

confidentiality under the Rules of Procedure of the Public Service Commission (contained in Subchapter A of Chapter I of 16 NYCRR), which will apply in Article 10 certification proceedings. Pursuant to these rules, the presiding examiner may, if needed, provide for sharing of such information with the parties under a protective order setting the limits on its disclosure. If the safeguards provided by the Freedom of Information Law (FOIL) are not sufficient to protect disclosure of the information, one has to question whether it truly qualifies as information that the government should keep from public view.

We note that the regulations offer considerable flexibility as to presentation of the information related to costs, including flexibility enough to address wind developer concern regarding divulging the cost of turbines. However, we note that an agreement between a wind developer and a manufacturer to keep prices secret from the market is not a per se barrier to discovery of this information by DPS Staff and other parties.

No changes are warranted by the comments.

1001.15 Exhibit 15: Public Health and Safety

A facility trade organization asserts that in subdivision (b), applicants should be required to provide the anticipated volume of waste for the proposed facility based upon the "typical" operating condition, not "any" operating condition because it would be costly and of little value to the Siting Board to provide data on waste to be emitted for any operating condition. In response, a county planning office recommends that the regulations require that the volumes of waste should be specified on a daily, weekly, and monthly basis and that there should also be a requirement for a local consent to emergency plans.

An individual asserts that if there are any adverse impacts on the environment, public health, or safety from a wind project, then the project should be denied because wind power is not an essential commodity. Another individual asserts that public health and safety issues need to be addressed prior to construction with strict guidelines, not afterwards, and there should be avenues of enforcement and penalties for developers who exceed noise limits.

Additional individuals assert that wind turbines should be subject to specific restrictions in a State building code so as to increase accountability and allow for mitigation of factors such as ice throw and shadow flicker. They assert maps should be prepared to show zones in which wind turbine shadow flicker is likely to occur and how much of a property is rendered unusable thereby so that turbines can be sited to minimize the amount of flicker impact.

One individual asserts that a citizen's advisory panel should be made a component of Article 10 because it would establish an equitable balance of interests through citizen participation to offset a bias in favor of developers due to fast-tracking under Article 10. The individual also requests that the regulations do more to protect the health and safety of citizens by requiring conformance with manufacturers' safety standards.

A public interest coalition recommends that the regulations require the applicant to identify how measures to minimize and/or offset impacts will be measured and monitored.

An individual and a municipality assert that low frequency sound causes long term, serious health effects on those near wind turbines and this section should address low frequency sound. The individual requests that C-weighted sound be measured and that the regulations include frequency limits of

35 dBA at non-participating property lines and 5 dBA above ambient levels in the winter night.

Discussion

Many of the issues raised in the comments will have to be addressed on a case by case basis in Article 10 proceedings after the development of an adequate record. Similarly, we will leave it to the stipulations process to further refine what is meant by "any" operating condition regarding estimates of the volume or components of waste. Low frequency sound is addressed in Section 1001.6. PSL Section 168(5) specifies that the Department of Public Service or the Public Service Commission shall monitor, enforce and administer compliance with the terms and conditions of the Siting Board's order. We have considered the comments and are satisfied that no change to the language of the regulations in this section is warranted.

We do not adopt the recommendation to create a citizen's advisory panel as part of the Article 10 process because the statute and these proposed regulations already provide for extensive citizen input through such measures as the Ad Hoc members of the Siting Board, the public involvement plan, and the provision of intervenor funding to aid the participation of local parties.

1001.16 Exhibit 16: Pollution Control Facilities

A county planning office requests that there be public input on renewal applications.

Discussion

Pursuant to subdivision (b), renewal applications for certain permits will be handled by DEC, and as such is not a matter we need address.

1001.17 Exhibit 17: Air Emissions

A wind developer requests that the words "if applicable" be added at the beginning of the section. A

developer representative requests that the word "demonstrating" in subdivision (c) be changed to "indicating".

An individual requests that the regulations specify that the emissions measurements are taken from various locations around the project (downwind, smokestacks, etc.) and also that they are performed when the facilities are using regular, not clean, fuel in order to get an accurate read on the impact that the facilities will have on the environment.

Discussion

The addition of the words "if applicable" may be redundant, but is in keeping with our intention, so the words will be added. We also agree with the substitution of the word "indicating" for the word "demonstrating" because the substitution would be a beneficial technical and grammatical correction, so the substitution will be made.

While we appreciate the comment about where air emissions should be measured, DEC has protocols for air emissions modeling and we do not want to specify anything that might conflict with DEC's practices in that regard.

1001.18 Exhibit 18: Safety and Security

A developer representative requests that the regulations be revised to reduce the level of specification and to call for final plans to be submitted as compliance filings. A wind developer also asserts that the site security plans for construction and operation should be postponed to the compliance phase of the proceeding. A facility trade organization requests that the site plans filed with the security plan for the proposed facility for both construction and operation be noted as "preliminary" site plans. The wind developer also requests that wind developers be exempted from the requirement to consult with the New York State Division of Homeland Security and Emergency Services.

A county planning office requests that the requirements of the plans be reviewed by local first responders. A municipality comments that it opposes the proposal of wind developers to postpone review of security features. It believes these aspects of a proposed facility should be reviewed by the Siting Board, as they are currently reviewed by the lead agency under SEQRA.

Discussion

Security features are too important to not be considered in the application, but we do agree that the plans called for should be "preliminary" plans. The word "preliminary" will be inserted in subdivisions (a), (b) and (c).

We do not see a compelling reason to exempt wind developers from the requirement that applicants consult with the New York State Division of Homeland Security and Emergency Services.

In considering the comment of the county planning office, we note that the safety response plan by its terms is to ensure the safety and security of the local community. Therefore, it makes sense to add a local consultation requirement. A new subdivision will be added to enhance what was already to be required.

1001.19 Exhibit 19: Noise and Vibration

Low-frequency Noise and Infrasound

This issue generated the highest volume of comments related to noise. A significant number of individuals, municipalities and other organizations request that C-weighted noise measurements be required in Article 10 applications. An engineering consultant firm asserted the opposite, and recommended that no discussion of low-frequency noise should be required at all within the application. A few individuals commented that wind turbine noise is no louder than other noises

in the landscape like truck traffic and air conditioners, so it should be allowed. The advocates for C-weighted noise measurements cite concerns about health and safety, low frequency sound vibrations harmful to the human body, the long term effects of wind farms causing tinnitus and sleep deprivation, and their belief that most complainants at operating wind farms ultimately identify low frequency noise as the source of the problem. An acoustical engineer commented that the characteristics of wind turbine sound emissions are similar to those of problematic HVAC (heating, ventilation and air conditioning) systems where the irritations experienced were not diminished until low frequency sounds were reduced by the HVAC industry applying limits developed by its technical society ASHRAE. The advocates for C-weighted noise measurements further argue that such measurements will allow for a scientific approach to resolving noise issues.

Discussion

Despite the number of comments, no significantly different information than that presented in the stakeholder process has been offered. The proposed regulations would require applicants to provide an analysis of whether the facility will produce significant levels of low frequency noise or infrasound, without specifically requiring the measurement and estimation of C-weighted/dBC sound levels, but do not preclude a case-by-case determination requiring the measurement and estimation of C-weighted/dBC sound levels in a proceeding in an appropriate circumstance. Until we have more experience with these issues, we will leave the regulations as originally proposed.

Caps on Noise Levels

An engineering consultant firm asserted that a 50 dBA sound level limit is consistent with limiting sound level

increases in a high quality rural sound environment that is very quiet to an increase of no more than 6 dBA. In response, a municipality challenges that assertion by pointing out that if the preexisting sound level in a community at night, when wind farms operate, is 30 dBA, a 50 dBA sound level limit will obviously drive some people out of the area and/or discourage others from moving in. Several individuals arguing for caps on noise levels support a cap of 35 dBA measured at non-participating property lines, and incremental increases up to the cap of no more than 6 dBA.

Discussion

The disagreement described above lends support to the case by case approach in the proposed regulations. We have reviewed the comments and do not believe that any change is warranted.

Other Proposed Adjustments

A number of specific adjustments to this section of the proposed regulations were proposed that represent the diversity of the comments received.

Discussion

Most of the proposals go against the grain of the regulatory scheme we intend, or were not supported by sufficient analysis to warrant a greater consideration. Two of the proposals warrant adoption.

Subdivision (c) will be modified to eliminate an evaluation of pure tone and amplitude modulation for the construction period. We expect that construction noise instead will be more practically managed by case by case limits on construction hours.

Subdivision (f) will be modified to provide for average sound condition cases in addition to the already required ambient and worst case scenarios. Addition of the

average case while not eliminating the other cases will provide the Siting Board with a fuller spectrum of information.

1001.20 Exhibit 20: Cultural Resources

No discussion necessary.

1001.21 Exhibit 21: Geology, Seismology and Soils

A facility trade organization requests that the engineering assessment pursuant to paragraph (1) of subdivision (r) be noted as "preliminary". A wind developer requested that the requirement for a site plan, showing existing and proposed contours, a preliminary calculation of fill, gravel, asphalt and surface material requirements, and a calculation of the cut material or spoil to be removed be postponed until the compliance phase of the proceeding.

Discussion

We agree that the engineering assessment called for should be a "preliminary" assessment. That change will be made. We do not agree that the requirement for a preliminary site plan can be postponed until the compliance phase. The required preliminary design is not to be engineered to the level of a construction drawing.

1001.22 Exhibit 22: Terrestrial Ecology and Wetlands

A wind developer requests that the need for an applicant to describe plant communities present on adjacent properties be eliminated because applicants do not have access to adjacent properties that are privately owned and may not be able to gain such access via negotiation with the private landowner. A facility trade organization and a wind developer assert that applicants should be required to delineate only those wetlands occurring in the area within 100 feet of the surface areas proposed to be disturbed during construction or operation of the proposed facility and interconnections because

they believe such a limitation would still account for potential changes in project configuration.

Several individuals assert that any bird and bat studies that are required must be multi-year studies (one full year to three years) that take into account seasonal variations, and must include an economic impact analysis of the expected kills. One individual asserted that applicants should have to disclose the prevailing wind direction to the DEC so that the DEC may predict the impact of the facilities on the avian wildlife because the prevailing winds of turbines are often in the same direction as the migratory pattern of birds, which could potentially adversely affect the local ecology.

A municipality opposes the recommendation to limit wetlands delineation to areas within 100 feet of those ground areas proposed to be physically disturbed during construction or operation of the facility and the interconnections. The municipality asserts that wetlands well outside the 100 foot range attract birds and bats to the area, thus putting them at risk of mortality due to collisions with wind turbines. The municipality notes that birds and bats fly long distances from roosting or nesting sites to feeding and breeding areas and these transit routes can take them directly into a wind farm. It further asserts that limiting study to areas of direct disturbance will result in insufficient information for a Siting Board to evaluate potential impacts to such natural resources. The municipality asserts that the habitat of birds, and bats in particular, within several miles of a project area needs to be studied and both DEC and U.S. Fish and Wildlife Service guidelines require a landscape-scale investigation, using publicly available information, at the initial planning stage.

Discussion

We are not convinced that plant community characterization for adjacent properties cannot be adequately identified using aerial photographs, soils maps and other means, and adequately described for preparation of an application, short of having access to the properties. The timing of bird and bat studies is a detail best left to potential resolution in the first instance in the stipulations process.

As to the area of necessary wetlands delineation, delineation techniques necessary for federal permitting require on-site sampling; therefore the rules will distinguish between delineation of wetlands on facility site properties within 500 feet of areas to be disturbed by construction, and identification of mapped or predicted wetlands on adjacent properties based on analysis of mapped and remotely-sensed data where access is not available.

1001.23 Exhibit 23: Water Resources and Aquatic Ecology

A number of wind developers commented that the Stormwater Pollution Prevention Plan information should not be required as part of the application phase. Some wind developers also request that they be relived of the requirements to map some or all of the aquifers and groundwater recharge areas. A facility trade organization opposes having to provide the cost information for the proposed cooling water system.

A municipality responded that the Stormwater Pollution Prevention Plan should be reviewed by the Siting Board, as it is currently reviewed by the lead agency under SEQRA. An individual commented that there should be compensation for any loss to a water system.

Discussion

The concerns of wind developers about the Stormwater Pollution Prevention Plan are overstated. Most wind facilities

will likely be subject to the SPDES (State Pollution Discharge Elimination System) general permit issued by DEC and their initial Stormwater Pollution Prevention Plan will be rather generic. As to the mapping of aquifers and groundwater recharge areas, it is not clear that wind turbines, which may require excavation for deep foundations, and extensive clearing and grading for roads, power lines and substations, are any less likely to impact aquifers and groundwater recharge areas than any other type of generation facility. Compensation for the loss of water resources is a matter best left for specific cases. We have considered the comments and are satisfied that no change to the language of the regulations in this section is warranted.

1001.24 Exhibit 24: Visual Impacts

A developer representative asserts that the above-ground interconnections made a part of the visual impact assessment should be limited to those interconnections falling under the Siting Board's jurisdiction. A wind developer asserts that the description of the resources that would be affected by the proposed facility should be limited to significant visual resources. Another wind developer requests that the visibility of roadways to be constructed within the study area not be considered in the visual impact assessment because it believes that the viewshed analysis will not provide a meaningful evaluation of the visibility of roadways. The wind developer also requests that the requirement for line of sight profile be clarified so that wind developers can provide the profile to the nearest potentially visible turbine as determined by the viewshed analysis. The wind developer also requests that the regulation be modified to allow the applicant to provide a list of building/structure data for potentially eligible properties to the Office of Parks, Recreation and Historic Preservation

(OPRHP) and DPS, and if the agencies wish to add a building/structure as a viewpoint, the agencies would have to notify the applicant of such within 30 days.

Some individuals and an environmental advocacy organization observed that the beauty of Upstate New York should be preserved and steps should be taken to do that, such as building generation facilities with air pollution controls close to New York City where the power is needed, and prohibiting facilities with any significant visual effect or viewable from a Scenic Area of Statewide Significance. Two individuals assert that the visual impact assessment should include a nighttime visibility study, and one individual asserts that views across water bodies are equally important for communities located on water.

Discussion

While some interconnections may not be subject to the jurisdiction of the Siting Board, they should be included in the analysis so that the Siting Board will be able to consider the cumulative impacts. If roadways are to be constructed in a manner that they will become a visible element in the landscape, they must be included in the visual impact assessment. The assessment should be conducted in a way that determines whether roadways will be visible. The nearest turbine may not be the most visually obtrusive. In determining when line of sight profiles are appropriate, we note that the language describes representative viewpoints, is to be applied with a measure of reasonableness, and that the stipulations process and the consultations described in the regulations are the best vehicle for making specific determinations about what profiles to provide. In that same vein, the proposal about giving agencies 30 days to add viewpoints does not foster the kind of communication we are trying to foster within the consultation

process. Wind developers should embrace the opportunity to work with agency staff to reach agreement on technical issues. We clarify here that nighttime visibility and views across water bodies are already included within the parameters of the required visual impact assessment.

1001.25 Exhibit 25: Effect on Transportation

An individual asserted that wind developers should pay for prompt updates to nautical and aviation maps to show turbine locations, and "no swimming" zones around electrical grounding areas and lake floor/sea floor electrical cables. The individual also requested that the regulations address and plan for a downed passenger aircraft on water rescue within a large offshore wind generation complex.

A public interest coalition recommends that the words "reasonable mitigation measures" in paragraph (d)(4) be modified to "practicable mitigation measures". It asserts that the change would be consistent with statutory requirements.

A facility trade organization asserts that for the requirements of paragraph (d)(5), the applicant should be required to file only those agreements it has entered into to date. It requests that the words "if any" be added after the word "agreements" so that the regulation does not result in applicants being held hostage to the parties that control the agreements. A developer representative asserts that the same information should be addressed through a compliance filing and be coordinated with local officials responsible for safety and infrastructure issues.

DPS Staff advises that it has consulted with the Department of Defense regarding the adequacy of the language regarding an analysis and evaluation of the impacts of the facility on "airports" as it relates to military airports (and heliports). DPS Staff learned that any such airport analysis

and evaluation would have to begin with a consultation with the operator of the airport, and that the Department of Defense has established a single nationwide point of contact for informal consultations. The Department of Defense also provided Staff with advice regarding the likely zone around runways where structural obstructions would require specific reviews. Staff has recommended enhanced language in that regard for the regulations. DPS Staff also recommends additional language that would include impacts on Military Use Airspace and Special use Airspace as defined by the military.

Discussion

A requirement to update nautical and aviation maps goes beyond the scope of application requirements we intend to cover by the regulations. We will leave it to the parties in the stipulations process to determine in the first instance whether the downed passenger aircraft scenario is sufficiently likely that it should be addressed in an application.

We have no objection to modifying the word "reasonable" to the word "practicable" in paragraph (d)(4) as requested. We also agree that the addition of the words "if any" to paragraph (d)(5) is in keeping with the intended regulatory scheme. Those changes will be incorporated.

DPS Staff's recommended enhanced language for the regulations in substance merely requires applicants to consult with airport operators in conducting their analysis and evaluation of the impacts of the facility on airports (and heliports) in the pre-application and application preparation phases. It is important that tall structures do not obstruct air traffic or unnecessarily interfere with radar and other communications used in flying. In addition, military facilities in the State are important to our economy and security. It also makes sense for applicants to participate in the informal

consultation process established by the Department of Defense to eliminate unnecessary conflicts between energy facilities and military facilities and operations. Staff's language will be incorporated here and in Section 1000.4.

1001.26 Exhibit 26: Effect on Communications

A developer representative asserts that the geographic scope of inquiry in relation to existing broadcast communications sources, underground cable, and fiber optic telecommunication lines should be addressed on a case-by-case basis during the stipulation negotiation phase. An individual stressed the importance of considering interference with telecommunications and TV/radio within at least a 2-mile radius, including a request that the analysis be done by a qualified engineer on a case-by-case basis. Another individual expressed concerns about offshore wind turbines severely affecting radar returns because they are all very tall above the relatively flat surface of the water.

DPS Staff advises that based on its consultations with the Department of Defense, the proposed two-mile study area is technically insufficient for certain technologies, particularly radar, and that the scope of inquiry for those technologies should include all "affected sources". In addition, Staff advises that the words "radar systems used for air traffic control" should be clarified to be "radar or instrument systems used for air traffic control, guidance, weather, or military operations including training."

Discussion

The changes recommended by Staff are desirable from a technical basis and flesh out the obvious intent of the proposed regulations that the effect on communications be fully analyzed. Those changes will be made. The new language will require greater reliance on the stipulations process as suggested by the

developer representative.

1001.27 Exhibit 27: Socioeconomic Effects

As they did for issues regarding wind facilities, many individuals took the opportunity to comment on this section to give their opinions of the social and economic benefits and burdens of wind power. The opinions in favor stress clean air benefits, the creation of construction and permanent jobs, real property tax income for local communities and school districts, and an opportunity for struggling farmers to lease land and obtain a second income. The opinions in opposition stress the high cost of wind power, the lack of capacity benefits, the visual impact on landscapes and seascapes and resultant negative impact on tourism, and adverse health effects from the noise emitted by wind turbines. Many of the stories provided offer heartfelt descriptions of the struggles in people's lives, on both sides of the issues, and illustrate the challenges communities face as they consider the plusses and minuses of hosting wind facilities. All of the comments demonstrate that individuals are thoughtfully weighing difficult choices about benefits and burdens.

Discussion

The comments are more in the nature of advice to the Siting Board on how it should exercise its judgment than they are directions related to the specific language of the regulations. We have considered the numerous comments and are satisfied that the regulations as written will elicit the appropriate information we intended regarding socioeconomic effects.

1001.28 Exhibit 28: Environmental Justice

Opinions were expressed by individuals about wind power ranging from it being clean energy and not posing a danger to the environment, to it being a primary cause of environmental

injustice requiring large amounts of rare earth metals and raw materials, and destroying the environment by disrupting land and obstructing views. One individual requests that the language that reads "maximum extent practical" should be removed, and instead, where the facilities cannot meet certain requirements, the certificate should be denied.

A public interest coalition recommends that the words "or minimized" be removed from the language "if such impacts cannot be avoided or minimized". It is concerned the provision could lead to misinterpretation of the offset requirements. The public interest coalition also requests that paragraph (b)(3) be clarified to state that the offset projects must benefit, and be evaluated by the extent to which they benefit, the specific local communities that are disproportionately impacted. It believes the clarification to be necessary also to avoid misinterpretation of the offset requirements.

Discussion

The statute allows certificate denial if impacts cannot be avoided, but does not mandate it. Instead, the statute allows for offsets in a proper case. The public interest coalition is correct that the words "or minimized" in paragraph (b)(3) could lead to confusion. If impacts are "minimized", by definition they are not fully avoided and there are residual impacts for which it may be appropriate to require an offset. The suggested change will be made. We do not disagree with the sentiment that the offset projects should ideally benefit, and be evaluated by the extent to which they benefit, the specific local communities that are disproportionately impacted, but the requested change seeks to restate the standard set forth in the statute and we believe that the statute is better served by us leaving it as stated by the Legislature.

1001.29 Exhibit 29: Site Restoration and Decommissioning

Many comments about site restoration and decommissioning were received from individuals, municipalities and other organizations. They were almost universally directed towards ensuring that wind turbines are dismantled and removed from the landscape at the end of their useful lives at the expense of the wind developers, and not the taxpayers. The recommendations made in the many comments include that there should be a uniform decommissioning plan to protect property owners and the host community from the abandonment of non-functional wind turbines; the plan should include defined criteria for when decommissioning would be initiated; the plan should include regular reviews of the decommissioning process; a decommissioning trust fund and replenishment obligation should be required for all large power generating facilities, not just nuclear facilities; simply having a plan in place for decommissioning and site restoration is not enough without funding; the fund should be structured so that the money can be used to remove turbines that aren't active; the fund should be available for decommissioning with or without the permission of the developer/owner of the turbines; the size of the fund should correlate to the size and potential environmental impacts of the facility; an applicant should be required to provide proof of its financial commitment that a plan can be fully implemented; fiduciary solvency standards and bonding should be required; the funds should be held in financial institutions licensed in New York; funds should be collected prior to the commencement of construction or operation and held in escrow to cover the cost of the decommissioning; the decommissioning fund should be set at 125% of the full cost of decommissioning and restoration to account for variations; scrap metal credits should not be included in the cost because scrap metal values are volatile and

inappropriate for long term calculations; wind developers should not be able to avoid decommissioning by dissolving their limited liability corporations; the plans should explain how ownership will pass; and there should be severe and clear penalties for non-compliance.

Some municipalities and individuals commented that the funds should be held by the town where the development is located and that the host community should have control over the decommissioning funds. A county planning office and an individual recommended the use of Facility Construction and Reclamation Guidelines developed by the U.S. Department of Agriculture and Markets in the decommissioning of sites located on agricultural land. Wind developers did not provide comments on site restoration and decommissioning.

Discussion

This section of the proposed regulations, as written, is adequate to address the site restoration and decommissioning issues raised on a case by case basis in Article 10 proceedings. We are not prepared to establish a uniform plan as part of these regulations at this time. The comments do not discuss that State agencies are not statutorily well-enabled to receive escrow funds because any funds received by a State agency must be deposited in the General Fund of the State where such funds, even escrow funds, cannot be spent unless appropriated by the State Legislature. While it is possible to set up third-party standby trusts to receive and spend the funds, that process is cumbersome and not conducive to rapid spending on decommissioning projects. It also remains to be seen whether a state/local partnership with a town acting as the escrow agent will be a workable scenario. We are genuinely appreciative of the many comments and we expect that the ideas put forth will be

of great value in addressing site restoration and decommissioning issues in individual cases.

1001.30 Exhibit 30: Nuclear Facilities

A facility trade organization asserts that since the Siting Board does not have the authority to override the jurisdiction of the Nuclear Regulatory Commission, it would be a useless exercise and expensive for the applicant to litigate issues outside the Siting Board purview. It requests that the proposed regulation state explicitly that the impacts on public health, public safety and environment information required to be provided for nuclear facilities will not be used by the Siting Board to make statutory findings and determinations.

Discussion

The proposed regulation already provides that the provision of this information shall not result in litigation in the Article 10 proceeding of any issue solely within the jurisdiction of the Nuclear Regulatory Commission. Whether any of the information to be provided would inform the Siting Board in making its statutory findings and determinations within its jurisdiction could only be determined on a case by case basis by examining the information so provided.

1001.31 Exhibit 31: Local Laws and Ordinances

A significant number of individuals and municipalities used the comments to express their opposition to the Siting Board having the power to override local laws. They note that Article 10 removes the decision making power for land use decisions from local governments. They assert that the "home rule" concept for land use decisions has been important in New York for a long time, and that Article 10 violates that concept. Some argue that Article 10 violates the home rule provisions of the New York State Constitution. More specifically, they assert local governments should be able to make decisions about

projects that directly affect them; local government is closest to the people and reflects their needs and concerns; the majority in the community should decide what is best for the people; while the State could standardize construction and siting for energy installations, the decision to have or not have an energy installation in a particular locality should be left for that locality to control; local board members are better able to preserve the local needs than the state; standards of each community have been set by that community with the best interest of the citizens in mind and they should be upheld for those reasons; local laws have been established to protect the beauty and character of the area and should not be overruled just for the sake of industry; the Siting Board does not answer to the citizens and thus their decisions are not reflective of the will of the people; appointees on the Siting Board would be making decisions for the people of the entire state without proper representation; the fact that the local members of the Siting Board would serve only on an Ad Hoc committee will result in local rules being disregarded; State action is unwanted; the 12-month time frame encourages speed over thoughtful consideration; and wind projects are not sustainable without government subsidies, so there is no reason to assert that these projects are essential to the State, and thus the State should not be able to overrule the local governments;

Several individuals welcome Siting Board control. They assert that due to the level of disagreement within communities and the controversy involved regarding wind projects, the State should be responsible for these decisions, not the local governments.

A number of wind developers and wind power supporters also provided extensive comments regarding local laws. An

organization that promotes wind development asserts that the regulations should not limit the basis upon which the Siting Board can rely when determining whether to waive local laws. Specifically, it asserts that the proposed regulations establish three tests for determining override, none of which are in the statute (Section 1001.31(e)(1)-(3)). It further asserts that the standard for demonstrating the override of local laws should be low and once the applicant has met the statutory standard for the findings and determinations for a certificate, the burden to maintain local laws should shift to the municipality. Other wind power supporters assert that applicants should not be required to justify a project's non-compliance with local standards. The Siting Board should rely upon wind-friendly local laws adopted by various municipalities in the State as the standard for determining whether to waive local laws. The regulations should allow an applicant to meet the "unduly burdensome" standard for waiver of local laws if it can demonstrate that the project is consistent with standards employed by wind projects already in operation. Advocates of the local law standard would then have the burden of defending continued application of the standard to the project. They also assert that applicants should not have to demonstrate that they could not comply with local law via design changes or that any departures from the local law are the minimum necessary.

Some assert that the Siting Board should evaluate a project and its compliance with only the local laws in effect at the time the application is submitted. They believe that local governments should not be able to impact the review of an Article 10 application by passing laws addressed towards and potentially with the desired goal of stopping the specific proposed project.

Several wind developers assert that the regulations should provide for an early determination of the waiver of local laws because early decision will allow developers to perform the studies and design work for the facility to satisfy the applicable local laws and make appropriate project revisions resulting in a more efficient and cost effective regulatory process, which is a particular benefit to developers of moderately-sized renewable energy projects.

A developer representative asserts that the Siting Board should retain authority to review and approve building plans, inspect construction work and certify compliance with the N.Y.S. Uniform Fire Prevention and Building Code and other similar codes.

One wind developer asked the Siting Board to provide guidance on how it would apply the "unreasonably burdensome" standard to local laws requiring (1) property value guarantees; (2) U.S.-made components; (3) constantly changing local standards; (4) setback requirements; and (5) sound limits.

Many comments follow the theme that local laws should be earnestly addressed by the Siting Board and should be upheld to the greatest extent possible so as not to deprive the municipality of its ability to protect landowner rights and the health and safety of the community. A member of the State Senate urged that the Siting Board take the needs and desires of the community into consideration when determining if a local law is unduly burdensome. More specific assertions made include local laws should be applied as a default - unless shown to be otherwise, local laws should be presumed to be reasonable, necessary and reflective of community standards; all local public comments should be taken carefully into account; in determining unreasonable and burdensome local laws, the test in the proposed regulations must be maintained; the burden of proof

must rest with the applicant; the State should not override local laws when wind projects intermingle with nonparticipating landowner rights; comparing the local costs of non-compliance with the benefits to ratepayers of electricity in the State is not a reasonable comparison; localities have put a lot of time and effort into making these laws and they are tailored specifically to the needs of the town; the language about "unreasonably burdensome" laws, is too vague and should be tightened to protect the local citizens; "unduly burdensome" should be interpreted in a manner that respects local laws and protects adversely impacted homeowners because town laws regarding wind development, land use and road use containing reasonable guidelines regarding setbacks and noise levels reflect the will of the people and ensure that the rural life-style the community enjoys will not be compromised; the facilities should have to be within substantial compliance of local laws, even if the state laws are allowed to supersede local laws; local setbacks should be respected with regard to siting of the projects; and the views of local residents and elected officials should have more weight than those of the appointed Siting Board with regard to reviewing the applications for facilities.

A locality advocacy organization asserted that local ordinances should be sustained with regard to the following essential provisions, regardless of the cost benefit balance test: (1) where turbines may be located in a town; (2) setbacks; (3) wetland and aquifer protection; (4) historic site protection; (5) sensitive environmental areas; (6) consistency with the town's comprehensive plan; (7) maximum total number of turbines allowed within town; and (8) PILOT (payments in-lieu of taxes) programs.

A municipality asserts that despite Article 10, municipalities remain free to limit the use of land by prohibiting certain types of power plants, or restricting the area in which they may be sited, because Article 10 falls short of preempting a local restriction on land uses that neither requires any local approvals nor addresses facility construction or operations. It bases its assertion on a Court of Appeals holding that state laws that establish a process for obtaining a permit do not preempt a municipality's local law banning such facilities. Analogous with the law of extractive mining in New York (Article 23, Title 27 - Environmental Conservation Law: Mined Land Reclamation), it asserts that Article 10 does not supersede local laws restricting land uses generally, and does not authorize a Siting Board to disregard local laws that do not address power plant operations. It states that this conclusion does not apply to power plants with the power of eminent domain, but notes that wind-powered facilities would not exercise eminent domain.

Some individuals and municipalities oppose any cutoff for the consideration of new local laws. They believe that the local law situation in municipalities hosting wind development is continuously evolving and is not stagnant, local laws are crucial to safeguarding the health, safety, and economy of the localities and the Siting Board should consider the impact on any local laws adopted regardless of the date. They assert that deadlines should not render crucial laws ineffective, which would give a bad name to wind energy and the Siting Board.

Some individuals and municipalities also oppose the idea of looking at the standards of a project in a different community as governing whether local laws are reasonable. They believe all local laws should be considered on a case by case basis. Some also question the behavior of developers and some

elected officials in those other communities and do not believe their actions are legitimate or entitled to precedential value.

In response to the request by the developer representative that the Siting Board should retain authority over building codes, an individual commented that the local governments should retain the right to determine if the project is in compliance with local codes (construction, fire, etc.).

Discussion

Some comments challenge the constitutionality of Article 10 and the proposed regulations under the "home rule" provisions of the New York State Constitution. The concept of "home rule" involves the power of a local government to adopt and implement its own laws without state government action or interference. Home rule shifts much of the responsibility for local government from the state legislature to the local community. Without home rule authority, municipalities depend for their governing authority on specific acts of the State Legislature. With home rule authority, municipalities have the right to enact laws within the bounds of the state and federal constitutions that are municipal in nature and that do not frustrate or run counter to a state law or prohibition. The extent of home rule powers, however, is subject to limitations prescribed by state constitutions and statutes.

New York is considered to be a "home rule state". While municipalities in New York generally owe their origin to and derive their powers and rights from the State Legislature, the New York State Constitution[5] grants fairly broad home rule powers to local governments to adopt local laws. The Municipal Home Rule Law implements the home rule provisions of the Constitution. A New York municipality has authority to act by local law (i) with respect to its "property, affairs, or

[5] N.Y. Const. art. IX, § 2.

government" so long as such local laws are "not inconsistent with the provisions of the constitution ... or any general law"; and (ii) with respect to other powers granted in the Municipal Home Rule Law, "whether or not they relate to its property, affairs, or government," so long as such local laws are "not inconsistent with the provisions of the constitution" or "any general law" "except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government." The power of cities, towns and villages to "perform comprehensive or other planning work relating to the jurisdiction", and to "adopt, amend and repeal zoning regulations", are among the home rule powers granted.[6]

A "general law" is a law enacted by the State Legislature which in terms and effect applies alike to all counties,[7] all cities, all towns, or all villages.[8] It is contrasted with a "special law" which is a law enacted by the State Legislature which in terms or effect applies to one or more, but not all, counties, cities, towns, or villages.[9]

If Article 10 had been drafted to apply only to generation facilities in a particular municipality or group of municipalities, but not to all such municipalities, then it would have been a special law, and because of the home rule prohibitions it could not have been enacted without a home rule message requesting enactment from the affected local governments.

But there is no limit on the State Legislature's authority to act by general laws to supersede such home rule

---

[6] See N.Y. Mun. Home Rule Law § 10(1)(a)(14)(McKinney 2012) in conjunction with N.Y. Stat. Local Gov'ts §10(6)&(7).
[7] Means counties outside of New York City.
[8] N.Y. Const. art. IX, § 3.
[9] Id.

powers. Article 10, by its terms, applies alike in every municipality in the State.[10] Therefore, Article 10 is a general law not subject to the home rule prohibitions. Article 10 and the proposed implementing regulations are not in conflict with the New York State Constitution or the home rule powers granted to New York local governments.

As a general matter, PSL § 172(1) supplants all local procedural requirements applicable to the construction or operation of a proposed major electric generating facility (including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the PSL) unless the Board expressly authorizes the exercise of the procedural requirement by the local government. The default is that the local procedural requirement is supplanted and the Siting Board does not need to take any action or adopt any findings for that to happen. PSL § 172(1) also supplants all local procedural requirements applicable to the interconnection to or use of water, electric, sewer, telecommunication, fuel and steam lines in public rights of way that the Siting Board elects not to apply, in whole or in part, pursuant to PSL §168(3)(e). The default is that the local procedural requirement is not supplanted unless the Siting Board elects to not apply it by finding that, as applied to the proposed facility, the requirement is "unreasonably burdensome" in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.

PSL § 172(1), however, does not supplant any local substantive requirements applicable to the construction or operation of a proposed major electric generating facility (includes interconnection electric transmission lines and fuel

[10] N.Y. Pub. Serv. Law § 162(1)(McKinney 2012).

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

We do not agree that the information required to be included in the application by paragraphs (1) through (3) of subdivision (e) alters or diminishes the statutory findings as set forth in the statute. The statute speaks for itself. The regulations also do not preclude an applicant from presenting whatever additional relevant and material information it desires to present in the application or at the hearings to support an applicant's request. Similarly, parties on the other side of such issues are also not precluded from providing additional information.

As to the consideration of local laws adopted after the submission of an application, we will have to consider that matter on a case by case basis. We understand that there is precedent in New York in the zoning context that vested rights to construct something without regard to newly enacted local laws do not accrue unless the construction has substantially commenced pursuant to a valid permit. We are not sure whether that precedent applies, or how it would be applied in a case

having a statutory deadline for completion. We also note that the Article 10 process has some built in deadlines that, without imposing a special change in procedure, will act as a practical hindrance on the consideration of new local laws including the application deadline, the deadlines for testimony, and the date upon which hearings are closed. Presumably, a similar conundrum would be presented by a change in state laws adopted after the submission of an application. Therefore, this issue will need to be addressed on a case-by-case basis.

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

With regard to the Siting Board retaining authority to review and approve building plans, inspect construction work and certify compliance with the N.Y.S. Uniform Fire Prevention and Building Code and other similar codes, we note, as indicated in the regulations, that the function must be performed by a city, town, village, county, or State agency qualified by the Secretary of State to review and approve the building plans, inspect the construction work, and certify compliance with the New York State Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of New York State, and the substantive provisions of any applicable local electrical,

plumbing or building code. The Siting Board is not so qualified.

It is difficult to provide guidance as to how the Siting Board in individual cases will apply the "unreasonably burdensome" standard to local laws because the Ad Hoc members for each Siting Board will be different and no Ad Hoc members are on the Permanent Board promulgating the regulations. Also, the statute requires that local governments be given an opportunity to defend their specific laws before the matter can be considered. However, without deciding anything, we will make some generic observations.

While property value guarantees could be offered voluntarily by an applicant, such a requirement being imposed by local law would appear to be a tax and it is not clear that there is municipal authority to impose such a tax or to transfer applicant money to the affected property owner, or that there is Siting Board jurisdiction over tax issues. Requirements that facility components be made in the United States probably violate the interstate commerce clause of the U.S. Constitution and one or more international trade treaties that are the law of the land. Setbacks requirements would have to be considered on a case by case basis by looking at the purpose for their establishment and the circumstances of a specific site or case. A setback might be unreasonable for the purposes of preventing construction encroachments but reasonable to protect migratory flight-paths. A setback might be unreasonable for preventing noise impacts but reasonable if applied as an "overlay zone", a term of art in zoning parlance that creates special zoning districts over ordinary zoning districts further governing which uses are permitted. The reasonableness of sound limits would clearly require a case-by-case analysis. Worst case

considerations should be considered as part of any noise analysis, but they are not necessarily determinative.

Finally, as to the assertion that despite Article 10, municipalities remain free to limit the use of land by prohibiting certain types of power plants, or restricting the area in which they may be sited, without deciding anything we note that the analysis provided is not complete. The extractive mining law cited does not have a local override provision like Article 10. In addition, some uses such as the provision of a fair share of multifamily housing cannot be outright prohibited by a municipality regardless of whether the entity doing the building has eminent domain powers. There is judicial precedent in New York that necessary public utility uses cannot be prohibited, and additional judicial precedent that what constitutes a utility use is rather broad.

Having considered all of the comments, we are satisfied that the proposed regulations in this section are reasonable and that no changes are warranted.

1001.32 Exhibit 32: State Laws and Regulations

No discussion necessary.

1001.33 Exhibit 33: Other Applications and Filings

No discussion necessary.

1001.34 Exhibit 34: Electric Interconnection

A wind developer and a developer representative assert that the information required in this section should be able to be provided through a compliance filing after discretionary approvals have been obtained. They claim that the information requested is too detailed for that stage of development and that it is unnecessary to support any Siting Board determination or finding.

An individual commented that due to the socioeconomic impact of transmission lines on the community, the Siting Board

should be well informed of the transmission line requirements when making their determinations. Another individual requested that the State not place new transmission lines across land used for dairy farming because dairy farming is important to the local economy and taking farmland for new transmission lines may interfere with dairy farming.

Discussion

Pursuant to the Article 10 statute, the electric interconnection is part of the facility that is sited when a certificate is granted. Therefore, the information on the electric interconnection is a crucial component of the application for a certificate. In addition, the information is needed to adequately consider the cumulative impacts of the facility and its interconnections, as suggested by the individual mentioned. Any particular location of transmission lines, such as on the lands of a dairy farm, is properly made only in a case by case determination.

1001.35 Exhibit 35: Electric and Magnetic Fields

A wind developer requests that the regulation be revised to reflect that the NYISO interconnection process will determine the specifics of the interconnection of the facility. The wind developer also requests that the Siting Board define what is meant by "unique EMF characteristics."

Discussion

We do not anticipate that the NYISO will be determining electric and magnetic field levels at adjoining properties. Field levels may have an impact on siting considerations and must be considered in the application phase. EMF characteristics are different depending on structure types, average heights, rights-of-way widths, and co-location of other transmission facilities in the right-of-way. Each segment of right-of-way for an electric transmission line having a

different mix of these features can be said to be "unique".

1001.36 Exhibit 36: Gas Interconnection

A developer representative requests that the preliminary design information required in subsection (b) be addressed through a compliance filing because this level of information is not available during the early stages of development and there is no reason that the Board would need such in depth information. A facility trade organization objects to being asked to identify in the application who shall construct, own and operate the gas pipeline interconnection facilities because an applicant may not know, at the time of application, who will be involved with the pipeline facilities. The facility trade organization also objects to the proposed regulation that would require a discussion of the impact of the facility use of gas on wholesale supplies and prices in the affected region. It asserts that pricing information was excluded from the statute as part of legislative negotiations.

An individual commented that it is important for the Siting Board to consider the effect gas pricing impacts may have on ratepayers.

Discussion

The preliminary design information, particularly the information about pipeline class, valve locations, and the need for cathodic protection, is information necessary to determine pipeline siting issues and must be presented on at least a preliminary basis in the application. We also do not think it is unreasonable for an applicant to address who will own and operate the gas pipeline interconnection facilities for which the applicant is seeking siting approval. As to pricing, the regulation as proposed does not ask an applicant to reveal its gas fuel price, it only asks for an analysis of the impact of the facility use of gas on the supplies and prices of others,

which is consistent with the PSL §164(1)(k). New gas-fired generation facilities are large users of gas and have the potential to significantly affect gas markets.

1001.37 Exhibit 37: Back-Up Fuel

A developer representative and a facility trade organization object to the proposed regulation that would require a discussion of the impact of the facility use of fuel oil on wholesale supplies and prices in the affected region. They assert that the information is irrelevant to the Siting Board, difficult to analyze, and pricing information was excluded from the statute as part of legislative negotiations.

An individual commented that it is important for the Siting Board to consider the effect oil pricing impacts may have on oil customers.

Discussion

Consideration of the impacts of back-up fuel is mandated by the statute (PSL §164(1)(k)). The proposed regulation does not ask an applicant to reveal its fuel price, it only asks for an analysis of the impact of facility use of fuel oil on the supplies and prices of others. This issue is of particular concern on Long Island and other areas of the State highly dependent on fuel oil for space heating purposes where a major withdrawal of fuel oil from the market might have significant consequences on homeowners and businesses relying upon fuel oil.

1001.38 Exhibit 38: Water Interconnection

A developer representative requested that the requirement for water consumption should be changed from daily to overall peak and average levels, asserting that the level of information would be sufficient to understand the impacts of a project on water usage.

Discussion

Some water systems operate on very low capacity margins for additional usage. The requested change would make it impossible to create a demand curve for the year that would more precisely define the usage, and therefore will not be made.

1001.39 Exhibit 39: Wastewater Interconnection

A facility trade organization requests that the description of how the wastewater interconnection and any necessary system upgrades will be installed, owned, maintained and funded be allowed to be a "preliminary" description.

Discussion

We agree that a preliminary description would be in keeping with the scheme of the proposed regulations and the suggested change will be made.

1001.40 Exhibit 40: Telecommunications Interconnection

No discussion necessary.

1001.41 Exhibit 41: Applications to Modify or Build Adjacent

An individual commented that the regulations operate on the assumption that the emissions will decrease, but since there is also a chance they will increase, there should be a required table to document increases in emissions as well as decreases.

Discussion

The purpose of this exhibit is to demonstrate compliance with Section 165(4)(b) of the Public Service Law which mandates emissions decreases if an application is to qualify for special treatment. The exhibit is therefore appropriately focused on decreases. Increases are separately covered in Exhibit 17 regarding Air Emissions.

1002.1 Purpose.

No discussion necessary.

1002.2 General Procedures.

A developer representative asserts that the timeframe to comment on compliance filings should be reduced from 21 days to 15 days because he believes 15 days should be sufficient to review a filing. A county planning office requests that minor changes be made available for timely public comment.

Discussion

Given the technical nature and large scope of most compliance filings, it is not realistic to expect parties to review the filings and comment on them in only 15 days. The 21 day timeframe provided is already ambitious, but has been set in the interests of processing compliance filings as quickly as possible. Minor changes are very limited in scope and should not entail contested issues requiring comment. Allowing for a comment period would defeat the purpose of having a minor change process to quickly process inconsequential changes.

1002.3 General Requirements.

No discussion necessary.

1002.4 Reporting and Inspections.

A county planning office requests that reports be available to the public and retained in hard copies in an accessible location. An individual and a locality advocacy organization request that this section include an explanation of enforcement procedures. A public interest coalition requests that, where disproportionate impacts on an environmental justice community have been found, for the duration of the certificate there be ongoing monitoring of existing offset projects and consideration of potential new offset projects, by the filing of periodic reports and an opportunity for parties to periodically propose additional offset projects for consideration.

Discussion

A copy of all filings will be available for public inspection at the office of the Secretary during ordinary business hours, and will be available electronically on the internet. PSL Section 168(5) specifies that the Department of Public Service or the Public Service Commission shall monitor, enforce and administer compliance with the terms and conditions of the Board's order. If a Certificate Holder were found not to be in compliance with a provision of a Board Order, the Commission would issue an order requiring compliance within a specified period of time, then enforce its Order pursuant to PSL Section 26 or seek a penalty pursuant to PSL Sections 24 and 25. The concept of monitoring offsets and making adjustments for the duration of a certificate is novel and we are not comfortable prejudging that process at this juncture. The proposal made by the public interest coalition may be a good starting point for the creation of such a process in an appropriate case when the issue can be considered with parties in interest in a less abstract fashion.

CONCLUSION

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

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

(SIGNED) JACLYN A. BRILLING
Secretary

ATTACHMENT A

List of Filed Comments

List of Filed Comments

Individual	Organization
Alan J. Isselhard	
Allison A. Scagel	
Anthony Carter	Finger Lakes Preservation Association
Barbara Massoud	
Ben Brazell	EDR Companies
Beverly Grant	
Bill and Susan Morehouse	
Bill Whitlock	EDP Renewables North America LLC
Brian Perusser	AES Energy Storage, LLC
Brooks Bragdon	
Carol E. Murphy	Alliance for Clean Energy New York, Inc
Charles Ebbing	Ebbing Acoustics
Charles Newell	
Christopher Corrado	National Grid USA
Couch White, LLP	City of New York
Dale Connor	
Daniel Sullivan	
Daniel Wing	
David B. Applebaum	NextEra Energy Resources, LLC
David Henderson	
David Salvatore	
Dawn Munk	
Dean R. Long, AICP	The LA Group, P.C.
Don Mason	
Donna Essegian	
Dooley S. Kiefer	
Douglas Whitfield	
Dr. Alice Sokolow	
Ellen King	
Eric Miller	Invenergy Wind LLC
Eric Thumma	Iberdrola Renewables, LLC
Frank Giaquinto	
Fred C. Beardsley, Chairman	Oswego County Legislature
Frederick Bays	

Individual	Organization
Gary A. Abraham, Esq.	Town of Malone
Gary A. Abraham, Esq. Daniel Krupke, Supervisor	Town of Richland
Gary King	
Gavin Kearney	New York City Environmental Justice Alliance New York Lawyers for the Public Interest
Guy and Julia Gosier	
Harry Levine, President	Advocates for Springfield
Harvey White	
Hayley Carlock, Esq.	Scenic Hudson, Inc.
Hester Chase	
Jack Palmenteri	
James Hall	Citizen Power Alliance
Jane Welsh	Jane Welsh P.C.
Janet Radley	
Jason C. Pfotenhauer	The St. Lawrence County Planning Office
John Cowley, Supervisor	Town of Naples
John M. Becker, Chairman	Madison County Board of Supervisors
Jonathan Hirschey	
Town of Litchfield	
Joseph A. Giaquinto	
Judith Hall	Cohocton Wind Watch
Judy E. Tubolino	
Karen L. Stumpf	
Kathryn A. Hludzenski	
Kevin A. Cahill, Robert K. Sweeney and Charles D. Lavine	Members of Assembly
L. Weaver	
Larry Frigault	
Marcie Gallagher	
Margaret Jolliff	
Margaret Pond	
Marion Labincki	

Individual	Organization
Mark L. Lucas, Esq.	Riverkeeper, Inc.
Marlene Burton	
Marshall D. Hollander	
Marty Mason	
Mary and Del Hamilton	Concerned Residents of Hammond
Mary Giaquinto	
Mary Kay Barton	Citizen Power Alliance
Michael Herzog	
Michael Massoud	
Monica Harris, Town Clerk	Town of Richfield
Nancy Wahlstrom	
Nate Seamon	
Owen B. Grant	Ridgeline Energy LLC
Patricia A Henderson	
Patricia A. Ritchie	State Senator
Patricia G. Christensen	
Paul and Elaine Mason	
Read and Laniado, LLP	Independent Power Producers of New York, Inc.
Rex and Dawn Seamon	
Richard Charles Wiley, Sr.	
Richard F. Chandler	BP Wind Energy North America Inc.
Richard Lawrence	
Richard Slowinski	
Rob Aliasso, Jr.	Coalition on Article X (COAX)
Robert A. Gauthier	
Robert Bollinger	
Robert J. Kelsch, Supervisor	Town of Ontario
Robert Spreter	
Roger Caiazza	Environmental Energy Alliance of New York
Ronald Bertram, Supervisor	Town of Hammond
Russell L. Cary, Supervisor	Town of Fenner
Sandy Payne	
Sarah F Boss, Chairman	Wind Power Ethics Group, LLC

Individual	Organization
Scott G. Aubertine, Supervisor	Town of Lyme
Sharon B. Rossiter	
Sheila Salvatore	
Shira R. Rosenblatt	Consolidated Edison Company of New York, Inc.
Sidney L. Manes	
Stafford Town Board	Town of Stafford
Stephen L. Gordon	Beveridge & Diamond P.C.
Suzann Cornell	
Ted & Donna Smith	
Theodore M. Fafinski, Supervisor	Town of Farmington
Urban Hirschley, Supervisor	Town of Cape Vincent

ATTACHMENT B

Resolution by the Board

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

At a session of the New York State Board on Electric Generation Siting and the Environment held in the City of Albany on July 10, 2012, by a unanimous vote of its five members present

BOARD MEMBERS PRESENT:

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

Louis Alexander, Alternate for
Joseph Martens, Commissioner
New York State Department of
Environmental Conservation

Robert Chinery, Alternate for
Nirav Shah, M.D., Commissioner
New York State Department of Health

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

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

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

RESOLUTION BY THE BOARD

(Issued and Effective July 17, 2012)

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

RESOLVED:

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

2. The official Compilation of Codes, Rules and Regulations of the State of New York, Title 16, Public Service, is amended, effective upon publication of a Notice of Adoption in the State Register, by the repeal of Subchapter A of Chapter X and the addition of a new Subchapter A to read as set forth in the Appendix attached hereto.

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

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

(SIGNED) JACLYN A. BRILLING
Secretary

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

PART 1000 GENERAL PROCEDURES

(Statutory Authority: Public Service Law §§160(8), 161(1)and(3), 163(1)(h), (2)and(4)(b), 164(2),(3),(4) and (6)(B), 165(2),(4)(b)(5), and 167(1)(b) and (4), State Administrative Procedure Act §306(2)(4))

Sec.

1000.1 Purpose and Applicability

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

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

1000.2 Definitions

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

(a) Adjacent or Contiguous: When used in the context of PSL §165(4)(b), located on the same parcel of real property, on separate parcels of real property sharing a common border, or on separate parcels of real property separated by no more than 500 feet.

(b) The New York State Adirondack Park Agency (APA).

(c) Applicant: Any person who is required to have submitted or who submits a Public Involvement Program plan to the DPS pursuant to Section 1000.4 of this Subchapter or who in fact submits an application for a Certificate to the Board under this Subchapter, or who holds a Certificate.

(d) Associate Examiner: An administrative law judge appointed by DEC.

(e) Base Nameplate Generating Capacity: (1) for generating facilities in commercial operation on or before August 4, 2012, their nameplate generating capacity as of August 4, 2012; (2) for generating facilities commencing commercial operations after August 4, 2012, their nameplate generating capacity as of the date of commencement of commercial operations; (3) for generating facilities that increased their nameplate generating capacity as a result, in whole or in part, of receiving a Certificate after August 4, 2012, their nameplate generating capacity as of the date of commencement of commercial operations of the increased capacity as a result of the Certificate. Incremental increases in generating capacity after August 4, 2012 not made as a result of receiving a Certificate shall not increase the Base Nameplate Generating Capacity.

(f) Board: The New York State Board on Electric Generation Siting and the Environment.

(g) Certificate: A certificate of environmental compatibility and public need authorizing the construction and operation of a major electric generating facility.

(h) Commission: The New York State Public Service Commission.

(i) Compliance Filing: A document prepared by or on behalf of an Applicant that describes how the Applicant will comply with the terms, conditions, limitations and modifications on the construction and operation of a facility granted a Certificate by the Board and which may, at the Applicant’s option, consist of phased submissions.

(j) Ag&Mkts: The New York State Department of Agriculture and Markets.

(k) DEC: The New York State Department of Environmental Conservation.

(l) DOH: The New York State Department of Health.

(m) DOS: The New York State Department of State.

(n) DPS: The New York State Department of Public Service.

(o) ECL: The Environmental Conservation Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(af) PSL: The Public Service Law.

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

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

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

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

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

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

(am) Secretary: The Secretary to the Commission.

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

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

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

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

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

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

1000.3 Adoption of Procedures by Reference

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

1000.4 Public Involvement

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) notifications; and

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

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

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

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

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

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

(f) The Public Involvement Program plan for any potential application likely to require one or more consultations with operators of airports or heliports pursuant to Subdivision (f) of Section 1001.25 shall include as a component of the plan outreach to such operators to preliminarily inform them of the proposed facility and its location prior to the submission of the preliminary scoping statement.

1000.5 Pre-Application Procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the proposed facility and its location;

(2) the range of potential environmental and health impacts of the construction and operation of the facility and of each pollutant that will be emitted or discharged by the facility;

(3) the application and review process;

(4) the amount of pre-application funds available for municipal and local parties; and

(5) shall designate a contact person, with telephone number, e-mail address and mailing address, from whom information will be available on a going-forward basis as well as contact information for the public information coordinator and DPS website.

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

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

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

(g) Within 21 days after the filing of the preliminary scoping statement, any person, agency or municipality may submit comments on the preliminary scoping

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

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

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

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

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

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

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

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

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

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

(l) The preliminary scoping statement shall contain:

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

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

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

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

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

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

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

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

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

(viii) a description and evaluation of reasonable and available

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

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

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

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

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

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

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

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

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

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

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

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

1000.6 Filing and Service of an Application

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

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

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

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

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

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

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

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

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

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

(c) The application shall be accompanied by:

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

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

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

(4) any appropriate motion; and

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

1000.7 Publication and Content of Notices

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

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

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

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

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

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

(d) Notices shall be:

(1) in display format; and

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

(e) The notice(s) shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1000.8 Water Quality and Coastal Certification Procedures

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

(1) Generally, the request for the Water Quality Certification shall be submitted accompanying the Article 10 application. However, in the event the related application for a federal license or permit has not been submitted on or before the date of submission of the Article 10 application, the request for the water quality certification shall be submitted to the Board when an application for a Federal license or permit is made. If the request does not accompany the Article 10 application, the applicant shall provide a statement describing its plan for making such a request, including a timetable.

(2) A copy of all pertinent state and federal permit applications related to the Water Quality Certification shall be submitted along with the request for the Water Quality Certification.

(3) In support of any request for a Water Quality Certification, an applicant shall demonstrate compliance with the provisions referenced in 6 NYCRR Section 608.9. A request for a Water Quality Certification will not be considered valid until the applicant files with the Secretary a copy of its related federal permit application.

(4) Any applicant that applies for a federal license or permit that will require a Water Quality Certification shall provide the pertinent contact information for the district engineer of the U.S. Army Corps of Engineers or other federal lead agency to use in contacting the Board as to the applicable time period or any other issue.

(5) When an applicant or certificate holder has requested both a Water Quality Certification from the Board and permits from the U.S. Army Corps of Engineers or other federal lead agency, the Board or a designee will provide information to the district engineer or other federal lead agency as to whether circumstances require a period of time longer than the period specified in applicable federal regulations for the certifying agency to act on the request for certification in order to avoid a waiver. The Board shall issue, waive or deny such Certification within such applicable period after the filing of the application or other document in which the request is made, taking into account whether any federal agency from which the applicant or certificate holder has sought a license or permit to conduct any activity that may result in any discharge into the navigable waters has:

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

(ii) determined that such Certification may either be issued or denied within a specified longer period, not to exceed one year (based on information provided by a designee of the Board), or be waived.

(6) If it appears that the review of a request for a Water Quality Certification cannot be completed within the applicable period identified in paragraph (a)(5) of this section, the Board or a designee will deny the Certification without prejudice to a later request for Certification.

(7) The DPS Director of the Office of Energy Efficiency and the Environment is designated to act as the designee referenced in this section.

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

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

(1) The hearing shall be used to elicit, and the hearing record in the proceedings shall provide, information on which the Secretary of State may base the determination of whether or not to concur with the applicant’s coastal consistency certification.

(2) The Secretary of State may use procedures established in the Article 10 proceeding to the extent that they are consistent with the federal Coastal Zone Management Act and its implementing regulations to facilitate the required concurrence. The Secretary of State is encouraged to provide such determination to the Board prior to its decision whether or not to issue a Certificate.

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

1000.9 Additional Information

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

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

(1) clearly state the additional information sought;

(2) establish its relevance and materiality;

(3) to the best of its ability, demonstrate that the information can be obtained in a timely manner consistent with the need to conduct the proceeding in an expeditious fashion; and

(4) set forth any other reasons why such information should be supplied by the applicant.

1000.10 Fund for Municipal and Local Parties

(a) Pre-Application Provisions

(1) Each pre-application preliminary scoping statement shall be accompanied by an intervenor fee in an amount equal to $350.00 for each 1,000 kilowatts of generating capacity of the subject facility, but no more than $200,000.00.

(2) All intervenor fees submitted with each preliminary scoping statement and application, as well as any intervenor fee required to be submitted when a pre-application scoping statement or application is amended, shall be deposited in an intervenor account, established pursuant to Section 97-kkkk of the State Finance Law.

(3) Following the filing of a preliminary scoping statement, the Presiding Examiner or the Secretary shall issue a notice of availability of pre-application intervenor funds providing a schedule and related information describing how interested members of the public may apply for pre-application funds. Requests for pre-application funds shall be submitted to the presiding examiner not later than 30 days after the issuance of the notice of the availability of pre-application intervenor funds.

(4) An initial pre-application meeting to consider fund requests shall be convened within no less than 45 days but no more than 60 days of the filing of a preliminary scoping statement. At any pre-application meeting that may be held to consider fund requests, participants should be prepared to discuss their funding applications and the award of funds. Participants are encouraged to consider the consolidation of requests with similar funding proposals of other participants.

(5) If the pre-application preliminary scoping statement is substantially modified or revised subsequent to its filing, the Board may require an additional pre-application intervenor fee in an amount not to exceed $25,000.00. In such circumstances, the presiding examiner may make awards of the additional funds, on an equitable basis, in relation to the potential for such awards to make an effective contribution to review of the preliminary scoping statement, thereby providing early and effective public involvement.

(6) Each request for pre-application funds shall be filed with the Secretary and submitted to the presiding examiner, with copies to other interested persons, as identified by the Secretary or presiding examiner.

(7) The presiding examiner shall reserve at least 50% of the pre-application funds for potential awards to municipalities.

(8) Following receipt of initial requests for pre-application funds, the presiding examiner shall expeditiously make an initial award of pre-application funds, and thereafter may make additional awards of pre-application funds, in relation to the potential for such awards to make an effective

contribution to review of the preliminary scoping statement, thereby encouraging early and effective public involvement.

(9) The presiding examiner shall award funds on an equitable basis to participants during the pre-application phase whose requests comply with the provisions of this section, provided use of the funds will make an effective contribution to review of the preliminary scoping statement, and thereby provide early and effective public involvement.

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

(11) On a quarterly basis, unless otherwise required by the presiding examiner, any person receiving an award of funds shall submit to the presiding examiner, and file with the Secretary, a report:

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

(ii) showing:

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

(b) whether the purpose for which the funds were awarded has been achieved; or

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

(12) All disbursements from the pre-application intervenor account to any person shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed.

(b) Application Provisions

(1) Each application shall be accompanied by an intervenor fee in an amount:

(i) equal to $1,000 for each 1,000 kilowatts of capacity, but no more than $400,000.00, and

(ii) for facilities that will require storage or disposal of fuel waste byproduct, an additional intervenor fee of $500.00 for each 1,000 kilowatts of capacity, but no more than an additional $50,000.00, shall be deposited in the intervenor account.

(2) If an amendment of an application is determined by the Chairperson to be a revision as defined in this Part, the

application will require substantial additional scrutiny and the applicant shall submit an additional intervenor fee, in the amount equal to $1,000 for each 1,000 kilowatts of capacity of the proposed project, as amended, but no more than $75,000.00. The presiding examiner may, however, increase the level of the additional intervenor fee that shall be submitted, up to the maximum level of $75,000 if the presiding examiner finds circumstances require a higher level of intervenor funding in order to ensure an adequate record for review of the revision to the application.

(3) Following an applicant's publication of notice of filing a PSL Article 10 application, the presiding examiner or secretary shall issue a notice of availability of application intervenor funds providing a schedule and related information describing how municipal and local parties may apply for application funds. Requests for application funds shall be submitted to the presiding examiner within 30 days after the issuance of the notice of the availability of application intervenor funds.

(4) The presiding examiner shall award funds during the application phase on an equitable basis to municipal and local parties whose requests comply with the provisions of this section, so long as use of the funds will contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility and will facilitate broad participation in the proceeding.

(5) The presiding examiner shall reserve at least 50% of the intervenor funds for potential awards to municipalities.

(6) Any municipality or local party (except an applicant) may request funds from the intervenor account to defray expenses for expert witness, consultant, administrative or legal fees (other than in connection with judicial review).

(7) Each request for application funds shall be filed with the Secretary and submitted to the presiding examiner, with copies provided to all other parties.

(8) At any pre-hearing conference that may be held to consider fund requests, the parties should be prepared to discuss their funding applications and the award of funds. Parties are encouraged to consider the consolidation of requests with similar funding proposals of other participants.

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

(10) On a quarterly basis, unless otherwise required by the presiding examiner, any party receiving an award of funds shall submit to the presiding examiner and file with the Secretary a report:

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

(ii) showing:

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

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

(11) Disbursement of Funds

(i) All disbursements from the application intervenor account to any party shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed.

(ii) All vouchers must be submitted for payment not later than six months after any withdrawal of an application or the Board's final decision on an application (including a decision on rehearing, if applicable).

(iii) Following withdrawal or final Board decision on an application, any funds that have not been disbursed shall be returned to the applicant.

(c) General Provisions

(1) Each request for funds shall contain:

(i) a statement of the number of persons and the nature of the interests the requesting party represents;

(ii) a statement of the availability of funds from the resources of the requesting party and from other sources and of the efforts that have been made to obtain such funds;

(iii) the amount of funds being sought;

(iv) to the extent possible, the name and qualifications of each expert to be employed, or at a minimum, a statement of the necessary professional qualifications;

(v) if known, the name of any other interested person or entity who may, or is intending to, employ such expert;

(vi) a detailed statement of the services to be provided by expert witnesses, consultants, attorneys, or others (and the basis for the fees requested), including hourly fee, wage rate, and expenses, specifying how such services and expenses will contribute to the compilation of a complete

record as to the appropriateness of the site and facility;

(vii) if a study is to be performed, a description of the purpose, methodology and timing of the study, including a statement of the rationale supporting the methodology and timing proposed, including a detailed justification for any proposed methodology that is new or original explaining why pre-existing methodologies are insufficient or inappropriate;

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

(ix) a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person.

(2) If the matter has not been assigned to a presiding examiner, the Secretary shall act as an interim examiner until a presiding examiner has been assigned to the matter.

1000.11 Assistance with Documents

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

1000.12 Evidence and Proof

(a) Evidence

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

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

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

(4) All rules of privilege will be observed.

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

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

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

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

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

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

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

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

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

(b) Burden of proof

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

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

(c) Standard of proof.

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

1000.13 Amendment of an Application

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

(b) If an amendment of an application is determined by the Chairperson to be a revision as defined in this Part, the application will require substantial additional scrutiny and the applicant shall submit an additional intervenor fee, in the amount equal to $1,000 for each 1,000 kilowatts of capacity of the proposed project, as amended, but no more than $75,000.00. The presiding examiner may, however, increase the level of the additional intervenor fee that shall be submitted, up to the maximum level of $75,000 if the presiding examiner finds circumstances require a higher level of intervenor funding in order to ensure an adequate record for review of the revision to the application. Such additional fee shall be awarded and disbursed substantially in accordance with section 1000.10 of this Part.

1000.14 Dismissal of an Application

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

1000.15 Acceptance of a Certificate

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

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

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

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

(i) enforcing the Board's decision; or

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

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

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

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

1000.16 Amendment, Revocation and Suspension of a Certificate

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

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

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

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

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

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

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

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

(5) The notice shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1000.17 Transfer of a Certificate

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

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

(1) state the reasons supporting the transfer;

(2) show that the transferee is qualified to carry out the provisions of the certificate and any Orders issued thereunder;

(3) be verified by all parties to the proposed transfer;

(4) if required by the Chairperson, be accompanied by a copy of any proposed transfer agreement;

(5) be accompanied by an affidavit of service of a copy of the petition on each of the parties to the certification proceeding; and

(6) be accompanied by an affidavit of publication of a notice concerning the petition and service of such notice on all property owners that have executed agreements to convey property rights to the applicant and all other persons, municipalities or agencies entitled by law to be given notice of, or to be served with a copy of, any application to construct a major electric generating facility, which notice shall:

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

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

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

(c) If no party to the proceeding opposes such petition within the time for filing comments, the Chairperson, after consultation with the other

members of the Permanent Board, shall have exclusive jurisdiction without further notice to grant or deny the petition, grant the petition upon such terms and conditions as deemed appropriate, or conduct such further investigation as deemed necessary.

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

1000.18 Counsel to the Board

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

PART 1001 CONTENT OF AN APPLICATION

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

Sec.

1001.1 General Requirements

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

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

(1) the applicant's name;

(2) the title of the exhibit; and

(3) the proper designation of the exhibit.

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

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

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

(f) Exhibit 1 shall contain:

(1) the name, address, telephone number, facsimile number, and E-mail address of the applicant;

(2) the address of a website established by the applicant to disseminate information to the public regarding the application;

(3) the name, address, telephone number, facsimile number, and E-mail address of a person provided by the applicant that the public may contact for more information regarding the application;

(4) the name, business address, telephone number, facsimile number, and E-mail address of the principal officer of the applicant;

(5) if the applicant desires service of documents or other correspondence upon an agent, the name, business address, telephone number, facsimile number, and E-mail address of the agent;

(6) a brief explanation of the type of business entity that the applicant is, including its date and location of formation and the name and address of any parent entities; and

(7) if the facility is to be owned by a corporation, a certified copy of

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

1001.2 Exhibit 2: Overview and Public Involvement

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

(a) A brief description of the major components of the proposed facility, interconnections and related facilities.

(b) A brief summary of the contents of the application.

(c) A brief description of the public involvement program conducted by the applicant prior to submission of the application and an identification of significant issues raised by the public and affected agencies during such program and the response of the applicant to those issues including a summary of changes made to the proposal as a result of the public involvement program.

(d) A brief description of the public involvement program to be conducted by the applicant after submission of the application.

(e) A brief, clearly and concisely written overall analysis in plain language that assembles and presents relevant and material facts regarding the proposed project upon which the applicant proposes that the Board make its decision. The analysis shall be analytical and not encyclopedic and shall specifically address each required finding, determination and consideration the Board must make or consider in its decision pursuant to Section 168 of the PSL and explain why the applicant believes that the requested Certificate can be granted.

1001.3 Exhibit 3: Location of Facilities

Exhibit 3 shall contain:

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

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

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

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

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

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

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

(b) Maps clearly showing the location of the proposed facility site, any reasonable and available alternative location sites required to be

identified, the interconnections, and all ancillary features not located on the facility site in relation to municipal boundaries, taxing jurisdictions, designated neighborhoods or community districts, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.

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

1001.4 Exhibit 4: Land Use

Exhibit 4 shall contain:

(a) A map showing existing land uses within the study area.

(b) A map of any existing overhead and underground major facilities for electric, gas or telecommunications transmission within the study area.

(c) Except for wind power facilities, a map of all properties upon which any component of the major electric generating facility or the related facilities would be located, and all properties adjoining such properties, that shows the current land use, tax parcel number and owner of record of each property, and any publicly known proposed land use plans for any of these parcels. For wind power facilities, a map of all properties upon which any component of the major electric generating facility or the related facilities would be located, and all properties within 2,000 feet of such properties, that shows the current land use, tax parcel number and owner of record of each property, and any publically known proposed land use plans for any of these parcels.

(d) A map of existing zoning districts, and proposed zoning districts within the study area, including a description of the permitted and the prohibited uses within each zone.

(e) A statement as to whether the municipality has an adopted comprehensive plan and whether the proposed land use is consistent with such comprehensive plan. If the municipality's comprehensive plan is posted on a website, the exhibit shall contain the address of the internet site where the plan is posted.

(f) A map of all publicly known proposed land uses within the study area, gleaned from interviews with state and local planning officials, from the public involvement process, or from other sources.

(g) Maps showing designated coastal areas, inland waterways and local waterfront revitalization program areas; groundwater management zones; designated agricultural districts; flood-prone areas; and critical environmental areas designated pursuant to the State Environmental Quality Review Act.

(h) Maps showing recreational and other land uses within the study area that might be affected by the sight, sound or odor of the construction or operation of the facility, interconnections and related facilities, including Wild, Scenic and Recreational River Corridors, open space, and any known archaeological, geologic, historical or scenic area, park, designated wilderness, forest preserve lands, scenic vistas specifically indentified in the Adirondack Park State Land Master Plan, conservation easement lands, scenic byways designated by the federal or state governments, nature preserves, designated trails, and public-access fishing areas; major communication and utility uses and infrastructure; and institutional, community and municipal uses and facilities; including a summary describing the nature of the probable environmental impact of facility and interconnection construction and operation on such uses, including an identification of how such impact is avoided or, if unavoidable, minimized or mitigated. Given the provisions of §304 of the National Historic Preservation Act, 9 NYCRR §427.8, and §15 of the Public Service Law, information about the location, character, or ownership of a cultural

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

(1) cause a significant invasion of privacy;

(2) risk harm to the affected cultural resource; or

(3) impede the use of a traditional religious site by practitioners.

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

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

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

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

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

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

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

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

1001.5 Exhibit 5: Electric System Effects

Exhibit 5 shall contain:

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

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

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

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

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

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

(1) engineering codes, standards, guidelines and practices that apply;

(2) generation facility type certification;

(3) procedures and controls for facility inspection, testing and commissioning; and

(4) maintenance and management plans, procedures and criteria.

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

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

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

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

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

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

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

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

(i) vegetation clearance requirements;

(ii) vegetation management plans and procedures;

(iii) inspection and maintenance schedules;

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

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

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

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

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

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

(n) After consultation with DPS, NYISO, and the local transmission owners to identify applicable requirements, an identification and demonstration of the degree of compliance with all relevant applicable reliability criteria of the Northeast Power Coordinating Council Inc., New York State Reliability Council, and the local interconnecting transmission utility, including any criteria regarding blackstart and fuel switching capabilities.

1001.6 Exhibit 6: Wind Power Facilities

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

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

(1) the manufacturer's specifications;

(2) the Applicant; and

(3) any local ordinance or law.

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

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

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

1001.7 Exhibit 7: Natural Gas Power Facilities

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

(a) An estimate of the monthly and hourly gas usage by the facility.

(b) A statement of the gas pressure required for the gas turbines and how the pressure will be regulated or increased.

1001.8 Exhibit 8: Electric System Production Modeling

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

Exhibit 8 shall contain:

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

(1) estimated statewide levels of SO2, NOx and CO2 emissions, both with, and without the proposed facility;

(2) estimated minimum, maximum, and average annual spot prices representative of all NYISO Zones within the New York Control Area, both with and without the proposed facility;

(3) an estimated capacity factor for the facility;

(4) estimated annual and monthly, on peak, shoulder and off-peak MW output capability factors for the facility;

(5) estimated average annual and monthly production output for the facility in MWhs;

(6) an estimated production curve for the facility over an average year;

(7) an estimated production duration curve for the facility over an average year; and

(8) estimated effects of the proposed facility on the energy dispatch of existing must-run resources, defined for this purpose as existing wind, hydroelectric and nuclear facilities, as well as co-generation facilities to the extent they are obligated to output their available energy because of their steam hosts.

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

1001.9 Exhibit 9: Alternatives

Exhibit 9 shall contain:

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

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

(1) the environmental setting;

(2) the recreational, cultural and other concurrent uses that the site may serve;

(3) engineering feasibility, including fuel availability, wind availability (if applicable), and interconnections;

(4) reliability and electric system effects;

(5) environmental impacts, including an assessment of climate change impacts (whether proposed energy use contributes to global temperature increase);

(6) economic considerations;

(7) environmental justice considerations;

(8) security, public safety and emergency planning considerations;

(9) public health considerations;

(10) the site's vulnerability to potential seismic disturbances and current and anticipated climate change impacts, such as sea-level rise, precipitation changes, and extreme weather events; and

(11) the objectives and capabilities of the applicant;

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

(1) general arrangement and design;

(2) technology, including alternative power block technologies, air emissions control systems, stack configurations (single flue vs. combined flues), cooling technologies, and alternatives to any proposed use of aqueous ammonia;

(3) scale or magnitude;

(4) for wind power facilities, alternative layouts of the turbines within the site location; and

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

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

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

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

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

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

(1) engineering feasibility;

(2) reliability and electric system effects;

(3) environmental impacts, including an assessment of climate change impacts(whether proposed energy use contributes to global temperature increase);

(4) economic considerations;

(5) environmental justice considerations;

(6) security, public safety and emergency planning considerations;

(7) public health considerations; and

(8) the objectives and capabilities of the applicant;

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

1001.10 Exhibit 10: Consistency with Energy Planning Objectives

Exhibit 10 shall contain:

(a) a statement demonstrating the degree of consistency of the construction and operation of the facility with the energy policies and long range energy planning objectives and strategies contained in the most recent state energy plan including consideration of the information required by subdivisions (b) through (i) in this section;

(b) a description of the impact the proposed facility would have on reliability in the state;

(c) a description of the impact the proposed facility would have on fuel diversity in the state;

(d) a description of the impact the proposed facility would have on regional requirements for capacity;

(e) a description of the impact the proposed facility would have on electric transmission constraints;

(f) a description of the impact the proposed facility would have on fuel delivery constraints;

(g) a description of the impact the proposed facility would have in relation to any other energy policy or long range energy planning objective or strategy contained in the most recent state energy plan;

(h) an analysis of the comparative advantages and disadvantages of reasonable and available alternative locations or properties identified for construction of the proposed facility; and

(i) a statement of the reasons why the proposed location and source is best suited, among the alternatives identified, to promote public health and welfare, including minimizing the public health and environmental impacts related to climate change.

1001.11 Exhibit 11: Preliminary Design Drawings

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

Exhibit 11 shall contain:

(a) A site plan showing all buildings, structures, driveways, parking areas, emergency access lanes, sidewalks, access ways and other improvements at the facility site, depicting the proposed site in relation to adjoining properties, and depicting the layout of onsite facilities and ancillary features. Additional drawings shall be included depicting the layout of all offsite facilities and ancillary features.

(b) A construction operations plan indicating all materials lay-down areas, construction preparation areas, major excavation and soil storage areas, and construction equipment and worker parking areas.

(c) Grading and erosion control plans indicating soil types, depth to bedrock, general areas of cut and fill, retaining walls, initial and proposed contours, and permanent stormwater retention areas.

(d) A landscaping plan indicating areas of trees to be retained, removed, or restored; berms, walls, fences and other landscaping improvements, and areas for snow removal storage.

(e) A lighting plan showing type and location of exterior lighting fixtures and indicating measures to be taken to prevent unnecessary light trespass beyond the facility property line.

(f) Architectural drawings including building and structure arrangements and exterior elevations for all buildings and structures, indicating the length, width, height, material of construction, color and finish of all buildings, structures, and fixed equipment.

(g) Typical design detail drawings of all underground facilities indicating proposed depth and level of cover, and all overhead facilities indicating height above grade, including descriptions and specifications of all major components including piping, conductors, cooling towers, exhaust stacks, wind turbine towers and blades, and other structures.

(h) For interconnection facilities, the plans and drawings required by subsections (a) through (g) of this Section for the proposed interconnection facilities and a profile of the centerline of the interconnection facilities at exaggerated vertical scale.

(i) A list of engineering codes, standards, guidelines and practices that the applicant intends to conform with when planning, designing, constructing, operating and maintaining the generating facility power plant, wind turbines, electric collection system, substation, transmission line, inter-connection, and associated buildings and structures.

1001.12 Exhibit 12: Construction

Exhibit 12 shall contain:

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

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

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

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

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

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

1001.13 Exhibit 13: Real Property

Exhibit 13 shall contain:

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

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

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

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

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

1001.14 Exhibit 14: Cost of Facilities

Exhibit 14 shall contain:

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

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

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

1001.15 Exhibit 15: Public Health and Safety

Exhibit 15 shall contain:

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

(a) the anticipated gaseous, liquid and solid wastes to be produced at the facility during construction and under representative operating conditions of the facility, including their source, anticipated volumes, composition and temperature, and such meteorological, hydrological and other information needed to support such estimates and any studies, identifying the author and date thereof, used in the analysis;

(b) the anticipated volumes of such wastes to be released to the environment during construction and under any operating condition of the facility;

(c) the treatment processes to eliminate or minimize wastes to be released to the environment;

(d) the manner of collection, handling, storage, transport and disposal for wastes retained and not released at the site, or to be disposed of;

(e) for wind power facilities, impacts due to blade throw, tower collapse, audible frequency noise, low-frequency noise, ice throw and shadow flicker;

(f) maps of the study area and analysis showing relation of the proposed facility site to public water supply resources; community emergency response resources and facilities including police, fire and emergency medical response facilities and plans; emergency communications facilities; hospitals and emergency medical facilities; designated evacuation routes; existing known hazard risks including flood hazard zones, storm surge zones, areas of coastal erosion hazard, landslide hazard areas, areas of geologic, geomorphic or hydrologic hazard; dams, bridges and related infrastructure; explosive or flammable materials transportation or storage facilities; contaminated sites; and other local risk factors;

(g) all significant impacts on the environment, public health, and safety associated with the information required to be identified pursuant to subdivisions a through f of this section, including all reasonably related short-term and long-term effects;

(h) any adverse impact on the environment, public health, and safety that cannot be avoided should the proposed facility be constructed and operated, and measures for monitoring and measuring such impacts;

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

(j) any measures proposed by the applicant to minimize such impacts;

(k) any measures proposed by the applicant to mitigate or offset such impacts; and

(l) any monitoring of such impacts proposed by the applicant.

1001.16 Exhibit 16: Pollution Control Facilities

(a) If applicable, Exhibit 16 shall contain:

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

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

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

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

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

1001.17 Exhibit 17: Air Emissions

If applicable, Exhibit 17 shall contain:

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

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

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

(1) sulfur dioxide (SO2);

(2) oxides of nitrogen (NOx);

(3) carbon dioxide (CO2);

(4) carbon monoxide (CO);

(5) particulate matter (PM 2.5, PM 10, total PM));

(6) volatile organic compounds (VOCs);

(7) elemental lead;

(8) mercury; and

(9) a set of non-criteria (i.e. toxic) pollutants to be emitted from the proposed facility as determined in consultation with DOH and DEC.

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

(1) an estimation of the maximum potential air concentrations (short-term and long-term) of appropriate pollutants determined in consultation with DOH and DEC;

(2) a comparison of the maximum predicted air concentrations to ambient air quality standards and guidelines and ambient background concentrations for non-criteria pollutants for both short-term and long-term exposures for any appropriate pollutant determined in consultation with DOH and DEC;

(3) where warranted as determined in consultation with DOH and DEC, cumulative source impact analyses for any appropriate pollutant in accordance with air permitting requirements and 6 NYCRR Part 487; and

(e) An offsite consequence analysis for any ammonia that shall be stored onsite, including an analysis of an accidental release scenario for ammonia performed to meet the requirements of the U.S. Environmental Protection Agency's regulations implementing Section 112(r) of the Clean Air Act.

1001.18 Exhibit 18: Safety and Security

Exhibit 18 shall contain:

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

(1) access controls including fences, gates, bollards and other structural limitations;

(2) electronic security and surveillance facilities;

(3) security lighting, including specifications for lighting and controls to address work-site safety requirements and to avoid off-site light trespass; and

(4) setback considerations for facility components which may present hazards to public safety.

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

(1) access controls including fences, gates, bollards and other structural limitations;

(2) electronic security and surveillance facilities;

(3) security lighting, including specifications for lighting and controls to address work-site safety requirements and to avoid off-site light trespass;

(4) lighting of facility components to ensure aircraft safety;

(5) setback considerations for facility components which may present hazards to public safety, and

(6) a description of a cyber security program for the protection of digital computer and communication systems and networks that support the facility demonstrating compliance with current standards issued by a standards setting body generally recognized in the information technology industry, including, but not limited to, the federal Department of Commerce's National Institute of Standards and Technology, the North American Electric Reliability Corporation, or the International Organization for Standardization, and providing for periodic validation of compliance with the applicable standard by an independent auditor.

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

(1) an identification of contingencies that would constitute a safety or security emergency;

(2) emergency response measures by contingency;

(3) evacuation control measures by contingency; and

(4) community notification procedures by contingency.

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

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

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

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

(h) A statement that the applicant has provided a copy of the plans required in subdivision (c) of this section to, and requested review of such plans and comment by, local emergency first responders serving the area of the facility site, and a review of any responses received.

1001.19 Exhibit 19: Noise and Vibration

Exhibit 19 shall contain:

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

(a) A map of the study area showing the location of sensitive sound receptors in relation to the facility, related facilities and ancillary equipment (including any related substations). The sensitive sound receptors shown shall including residences, outdoor public facilities and areas, hospitals, schools and other noise-sensitive receptors.

(b) An evaluation of ambient pre-construction baseline noise conditions, including A-weighted/dBA sound levels, prominent discrete (pure) tones, at representative potentially impacted noise receptors, using actual measurement data recorded in winter and summer and during day and night as a function of time and frequency using a suitable and suitably calibrated sound level meter (SLM) and octave band frequency spectrum analyzer, or similar equipment. The ambient pre-construction baseline sound level should be filtered to exclude seasonal and intermittent noise.

(c) An evaluation of future noise levels during construction of the facility and related facilities including predicted A-weighted/dBA sound levels at potentially impacted and representative noise receptors, using computer noise modeling.

(d) An estimate of the noise level to be produced by operation of the facility, related facilities and ancillary equipment assuming wind-induced background noise or stable atmospheric conditions, as appropriate, and not assuming any attenuation of sound that transiently occurs due to weather or temperature.

(e) An evaluation of future noise levels during operation of the facility, related facilities and ancillary equipment including predicted A-weighted/dBA sound levels, , prominent discrete (pure) tones, and amplitude modulated sound, at potentially impacted and representative noise receptors, using computer noise modeling, and an analysis of whether the facility will produce significant levels of low frequency noise or infrasound.

(f) A statement in tabular form of the A-weighted/dBA sound levels indicated by measurements and computer noise modeling at the representative external property boundary lines of the facility and related facilities and ancillary equipment sites, and at the representative nearest and average noise receptors, for the following scenarios:

    (1) Daytime ambient noise level - a single value of sound level equivalent to the level of sound exceeded for 90% of the time during the daytime hours (7 am - 10 pm) of a year (L_{90}).

(2) Summer nightime ambient noise level - a single value of sound level equivalent to the level of sound exceeded for 90% of the time during the nightime hours (10 pm - 7 am) during the summer (L_{90}).

(3) Winter nightime ambient noise level - a single value of sound level equivalent to the level of sound exceeded for 90% of the time during the nightime hours (10 pm - 7 am) during the winter (L_{90}).

(4) Worst case future noise level during the daytime period - the daytime ambient noise level (L_{90}), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of sound exceeded for 10% of the time by such sources under normal operating conditions by such sources in a year (L_{10}).

(5) Worst case future noise level during the summer nightime period - the summer nightime ambient noise level (L_{90}), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of sound exceeded for 10% of the time by such sources under normal operating conditions by such sources in a year (L_{10}).

(6) Worst case future noise level during the winter nightime period - the winter nightime ambient noise level (L_{90}), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of sound exceeded for 10% of the time by such sources under normal operating conditions by such sources in a year (L_{10}).

(7) Daytime ambient average noise level – a single value of sound level equivalent to the energy-average ambient sound levels (Leq) during daytime hours (7 am –10 pm); and

(8) Typical facility noise levels - the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of the sound exceeded 50% of the time by such sources under normal operating conditions by such sources in a year (L50).

(9) Typical future noise level during the daytime period - the energy-average ambient sound level during daytime hours (Leq), plus the noise level from the proposed new sources modeled as a single value of sound level equivalent to the level of the sound exceeded 50% of the time by such sources under normal operating conditions by such sources in a year (L50).

(g) A description of the noise standards applicable to the facility, including any local requirements, and noise design goals for the facility at representative potentially impacted noise receptors, including residences, outdoor public facilities and areas, hospitals, schools, other noise-sensitive receptors, and at representative external property boundary lines of the facility and related facilities and ancillary equipment sites.

(h) A tabular comparison of the noise standards applicable to the facility, including any local requirements, and noise design goals for the facility, and the degree of compliance indicated by computer noise modeling at the representative external property boundary lines of the facility and

related facilities and ancillary equipment sites, and at the representative nearest and average noise receptors.

(i) An identification and evaluation of reasonable noise abatement measures for construction activities, including a description of a complaint-handling procedure that shall be provided during the construction period.

(j) An identification and evaluation of reasonable noise abatement measures for the final design and operation of the facility including the use of alternative technologies, alternative designs, and alternative facility arrangements.

(k) An evaluation of the following potential community noise impacts: hearing damage (as addressed by applicable Occupational Safety and Health Administration standards); indoor and outdoor speech interference; interference in the use of outdoor public facilities and areas; community complaint potential; the potential for structural damage; and the potential for interference with technological, industrial or medical activities that are sensitive to vibration or infrasound.

(l) A description of post-construction noise evaluation studies that shall be performed to establish conformance with operational noise design goals.

(m) An identification of practicable post-construction operational controls and other mitigation measures that will be available to address reasonable complaints, including a description of a complaint-handling procedure that shall be provided during periods of operation.

(n) The computer noise modeling values used for the major noise-producing components of the facility shall fairly match the unique operational noise characteristics of the particular equipment models and configurations proposed for the facility. The software input parameters, assumptions, and associated data used for the computer modeling shall be provided.

1001.20 Exhibit 20: Cultural Resources

Exhibit 20 shall contain:

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

(1) a summary of the nature of the probable impact on any archeological/cultural resources identified addressing how those impacts shall be avoided or minimized;

(2) a Phase IA archeological/cultural resources study for the Area of Potential Effect (APE) for the facility site and any areas to be used for interconnections or related facilities, including a description of the methodology used for such study;

(3) a Phase IB study, if required, as determined in consultation with OPRHP;

(4) where warranted based on Phase I study results as determined in consultation with OPRHP, a Phase II study based on intensive archaeological field investigations shall be conducted to assess the boundaries, integrity and significance of cultural resources identified in Phase I studies. Phase II shall be designed to obtain detailed information on the integrity, limits, structure, function, and cultural/historic context of an archaeological site, as feasible, sufficient to evaluate its potential eligibility for listing on the State or National Register of Historic Places. The need for and scope of work for such investigations shall be determined in consultation with OPRHP and DPS;

(5) a statement demonstrating that all archaeological materials recovered during the facility cultural resources investigation shall be cleaned, catalogued, inventoried and curated according to New York Archaeological Council standards; that to the extent possible, recovered artifacts shall be identified as to material, temporal or cultural/chronological associations, style and function; and that the facility archaeologists shall provide temporary storage for artifacts until a permanent curatorial facility is identified; and

(6) an Unanticipated Discovery Plan that shall identify the actions to be taken in the unexpected event that resources of cultural, historical, or archaeological importance are encountered during the excavation process. This plan shall include a provision for work stoppage upon the discovery of possible archaeological or human remains. In addition, the plan shall specify the degree to which the methodology used to assess any discoveries follows the most recent Standards for Cultural Resource Investigations and Curation of Archaeological Collections in New York State. Such an assessment, if warranted, shall be conducted by a professional archaeologist, qualified according to the standards of the New York State Archaeological Council.

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

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

1001.21 Exhibit 21: Geology, Seismology and Soils

Exhibit 21 shall contain:

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

(a) a map delineating existing slopes (0-3%, 3-8%, 8-15%, 15-25%, 25-35%, 35% and over) on and within the drainage area potentially influenced by the facility site and interconnections;

(b) a proposed site plan showing existing and proposed contours at two-foot intervals, for the facility site and interconnections, at a scale sufficient to show all proposed buildings, structures, paved and vegetative areas, and construction areas;

(c) a description and preliminary calculation of the quantity of cut and fill necessary to construct the facility, including separate calculations for topsoil, sub-soil and rock, and including a plan to identify the presence of invasive species in spoil material and to prevent the introduction and/or spread of invasive species by the transport of fill material to or from the site of the facility or interconnections;

(d) a description and preliminary calculation of the amount of fill, gravel, asphalt, and surface treatment material to be brought in to the facility site and interconnections;

(e) a description and preliminary calculation of the proposed type and amount of cut material or spoil to be removed from the facility site and interconnections;

(f) a description of excavation techniques to be employed;

(g) a delineation of temporary cut or fill storage areas to be employed;

(h) a description of the characteristics and suitability for construction purposes of the material excavated for the facility and of the deposits found at foundation level, including factors such as soil corrosivity, bedrock competence, and subsurface hydrologic characteristics;

(i) a preliminary plan describing all blasting operations including location, minimum blasting contractor qualifications, hours of blasting operations, estimates of amounts of rock to be blasted, warning measures, measures to ensure safe transportation, storage and handling of explosives, use of blasting mats, conduct of a pre-blasting condition survey of nearby buildings and improvements, and coordination with local safety officials;

(j) an assessment of potential impacts of blasting to environmental features, above-ground structures and below-ground structures such as pipelines and wells;

(k) an identification and evaluation of reasonable mitigation measures regarding blasting impacts, including the use of alternative technologies and/or location of structures, and including a plan for securing compensation for damages that may occur due to blasting;

(l) a description of the regional geology, tectonic setting and seismology of the facility vicinity.

(m) an analysis of the expected impacts of construction and operation of the facility with respect to regional geology, if such can be determined;

(n) an analysis of the impacts of typical seismic activity experienced in the facility area based on current seismic hazards maps, on the location and operation of the facility identifying potential receptors in the event of failure, and if the facility is proposed to be located near a young fault or a fault that has had displacement in Holocene time, demonstration of a suitable setback from such fault;

(o) a map delineating soil types on the facility and interconnections sites;

(p) a description of the characteristics and suitability for construction purposes of each soil type identified above, including a description of the soil structure, texture, percentage of organic matter, and recharge/infiltration capacity of each soil type and a discussion of any de-watering that may be necessary during construction and whether the facility shall contain any facilities below grade that would require continuous de-watering;

(q) maps, figures, and analyses delineating depth to bedrock and underlying bedrock types, including vertical profiles showing soils, bedrock, water table, seasonal high groundwater, and typical foundation depths on the facility site, and any area to be disturbed for roadways to be constructed and all off-site interconnections required to serve the facility, including an evaluation for potential impacts due to facility construction and operation, including any on-site wastewater disposal system, based on information to be obtained from available published maps and scientific literature, review of technical studies conducted on and in the vicinity of the facility, and on-site field observations, test pits and/or borings as available;

(r) an evaluation to determine suitable building and equipment foundations, including:

(1) a preliminary engineering assessment to determine the types and locations of foundations to be employed. The assessment shall investigate the suitability of such foundation types as spread footings, caissons, or piles, including a statement that all such techniques conform to applicable building codes or industry standards;

(2) if piles are to be used, a description and preliminary calculation of the number and length of piles to be driven, the daily and overall total number of hours of pile driving work to be undertaken to construct the facility, and an assessment of pile driving impacts on surrounding properties and structures due to vibration; and

(3) identification of mitigation measures regarding pile driving impacts, if applicable, including a plan for securing compensation for damages that may occur due to pile driving; and

(s) an evaluation of the vulnerability of the facility site and the operation of the facility to an earthquake event and a tsunami event.

1001.22 Exhibit 22: Terrestrial Ecology and Wetlands

Exhibit 22 shall contain:

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

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

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

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

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

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

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

(h) For proposed wind-powered facilities:

(1) an identification and evaluation of the expected environmental impacts of the facility on avian and bat species and the habitats that support them based on information gathered during pre-construction studies conducted at the proposed site and other nearby sites, analysis of known or predicted species and species migration corridors present on site, and including a description of the extent, methodology and results of all such pre-construction studies;

(2) an identification and description of a period of post-construction operations monitoring for potential direct and indirect impacts to avian and bat species and habitats, including a description of the extent, methodology and timing of such post-construction operations monitoring; and

(3) a plan to avoid or, where unavoidable, minimize and mitigate any such impacts during construction and operation of the facility based on existing information, the results of pre- and post-construction monitoring, and any known post-construction impacts that may occur.

(i) A map showing delineated boundaries based on on-site identification of all federal, state and locally regulated wetlands present on the facility site and within 500 feet of areas to be disturbed by construction, including the interconnections; and predicted presence and extent of wetlands on the remainder of site properties and adjacent properties within 500 feet of areas to be disturbed by construction. For adjacent properties without accessibility, initial surveys may be based on remote-sensing data, interpretation of published wetlands and soils mapping and aerial photography.

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

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

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

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

(n) An identification and evaluation of reasonable avoidance measures or, where impacts are unavoidable mitigation measures to be employed regarding the wetlands and adjacent areas impacts, including the use of alternative technologies and control of potential phosphorus and nitrogen sources from

the facility. Where appropriate, mitigation shall include plans for compensatory mitigation. Such plans shall contain sections on grading, planting, and monitoring for success.

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

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

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

1001.23 Exhibit 23: Water Resources and Aquatic Ecology

Exhibit 23 shall contain the following with regard to:

(a) Groundwater:

(1) Hydrologic information reporting depths to high groundwater and bedrock, including a site map showing depth to high groundwater and bedrock in increments appropriate for the facility site.

(2) A map based on publicly available information showing all areas within the study area delineating all groundwater aquifers and groundwater recharge areas, and identifying groundwater flow direction, groundwater quality, and the location, depth, yield and use of all public and private groundwater wells or other points of extraction of groundwater, and including delineation of well head and aquifer protection zones.

(3) An analysis and evaluation of potential impacts (during normal and drought conditions) from the construction and/or operation of the facility on drinking water supplies, groundwater quality and quantity in the facility area, including potential impacts on public and private water supplies, including private wells within a one mile radius of the facility site, and wellhead and aquifer protection zones.

(b) Surface Water:

(1) A map and identification of all surface waters, including intermittent streams, within the study area.

(2) A description of the New York State listed Water Classification and Standards physical water quality parameters, flow, biological aquatic resource characteristics (including species, habitat, and presence of aquatic invasive species) and other characteristics of such surface waters, including intermittent streams, within the study area.

(3) An identification of any downstream surface water drinking-water supply intakes within one mile, or if none within one mile, an identification of the nearest one (giving location of the intakes by longitude and latitude) that could potentially be affected by the facility or interconnections, including characterization of the type, nature, and extent of service provided from the identified source.

(4) An analysis of the impact of the construction and operation of the facility and interconnections on such surface waters, including impacts to drinking water supplies, and an identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, mitigation measures regarding impacts on such surface waters, including the precautions that will be taken to avoid or minimize dredging.

(5) An identification and evaluation of reasonable avoidance measures, and where impacts are unavoidable, mitigation measures, including the use of water storage, stormwater reuse, and offsetting water conservation, regarding groundwater impacts.

(c) Stormwater:

(1) A Stormwater Pollution Prevention Plan (SWPPP) for the collection and management of stormwater discharges from the project prepared in

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

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

(d) Chemical and Petroleum Bulk Storage:

(1) A description of the spill prevention and control measures to be in place for ammonia storage, fuel oil storage, wastewater storage, and other chemical, petroleum or hazardous substances stored on site, including an evaluation of alternatives and mitigation measures.

(2) An identification whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum or hazardous substances, or disposal of solid wastes on site is subject to regulation under the State of New York's chemical and petroleum bulk storage programs, and if so, a demonstration of compliance with such regulations.

(3) An identification whether the storage of ammonia, fuel oil, wastewater, other chemicals, petroleum or hazardous substances on site is subject to regulation under local law (County, City, Town or Village), and if so, a demonstration of the degree of compliance with such local laws.

(e) Aquatic Species and Invasive Species:

(1) An analysis of the impact of the construction and operation of the facility on biological aquatic resources, including species listed as endangered, threatened, or species of special concern in 6 NYCRR Part 182, and including the potential for introducing and/or spreading invasive species.

(2) An identification and evaluation of reasonable avoidance measures and, where impacts are unavoidable, mitigation measures regarding impacts on such biological aquatic resources, including species and invasive species impacts (if any) and assure compliance with applicable water quality standards (6 NYCRR Part 703).

(f) Cooling Water:

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

(2) a description of the volume and location of the cooling water discharge, the anticipated maximum discharge temperature and maximum delta T, and a description of the anticipated thermal plume; and

(3) a description of the practices that will be employed to avoid pathogen growth (including legionella), an assessment of whether such practices conform to recommendations of the Cooling Tower Institute, and the identification of any potential biocides to be used in the cooling water system.

(4) A description of the taxonomic identification and life history information of all species and life stages of fish and shellfish potentially susceptible to impingement and entrainment by the proposed cooling water intake structure including the estimated number of all species and life stages to be impinged and entrained.

(5) An identification and evaluation of mitigation measures taken to minimize adverse environmental impacts to aquatic life as a result of the location, design, construction, and capacity of the cooling water intake structure.

1001.24 Exhibit 24: Visual Impacts

Exhibit 24 shall contain:

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

(1) the character and visual quality of the existing landscape;

(2) visibility of the facility, including visibility of facility operational characteristics, such as visible plumes from the exhaust stacks;

(3) visibility of all above-ground interconnections and roadways to be constructed within the facility study area as determined by the viewshed analysis;

(4) appearance of the facility upon completion, including building/structure size, architectural design, facade colors and texture, and site lighting;

(5) lighting (including lumens, location and direction of lights for facility area and/or task use, and safety including worker safety and tall structure marking requirements) and similar features;

(6) representative views (photographic overlays) of the facility, including front, side and rear views, indicating approximate elevations;

(7) nature and degree of visual change resulting from construction of the facility and above-ground interconnections;

(8) nature and degree of visual change resulting from operation of the facility;

(9) analysis and description of related operational effects of the facility such as visible plumes, shading, glare, and shadow flicker;

(10) proposed mitigation and mitigation alternatives based on an assessment of mitigation strategies, including screening (landscaping), architectural design, visual offsets, relocation or rearranging facility components, reduction of facility component profiles, alternative technologies, facility color and design, lighting options for work areas and safety requirements, and lighting options for stack lighting if required by the Federal Aviation Administration; and

(11) a description of all visual resources that would be affected by the facility.

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

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

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

(2) The VIA shall include a detailed description of the methodology used to develop the viewshed maps, including software, baseline information, and sources of data.

(3) The viewshed mapping shall be used to determine the sensitive viewing areas and locations of viewer groups in the facility vicinity. These shall include recreational areas, residences, businesses, historic sites (listed or eligible for listing on the State or National Register of Historic Places), and travelers (interstate and other highway users).

(4) The applicant shall confer with municipal planning representatives, DPS, DEC, OPRHP, and where appropriate, APA in its selection of important or representative viewpoints. Viewpoint selection is based upon the following criteria:

(i) representative or typical views from unobstructed or direct line-of-sight views;

(ii) significance of viewpoints, designated scenic resources, areas or features (which features typically include, but are not limited to: landmark landscapes; wild, scenic or recreational rivers administered respectively by either the DEC or the APA pursuant to ECL Article 15 or Department of Interior pursuant to 16 USC Section 1271; forest preserve lands, scenic vistas specifically indentified in the Adirondack Park State Land Master Plan, conservation easement lands, scenic byways designated by the federal or state governments; Scenic districts and scenic roads, designated by the Commissioner of Environmental Conservation pursuant to ECL Article 49 scenic districts; Scenic Areas of Statewide Significance; state parks or historic sites; sites listed on National or State Registers of Historic Places; areas covered by scenic easements, public parks or recreation areas; locally designated historic or scenic districts and scenic overlooks; and high-use public areas;

(iii) level of viewer exposure, i.e., frequency of viewers or relative numbers, including residential areas, or high volume roadways;

(iv) proposed land uses;

(v) input from local public sources; and

(vi) building/Structure data collected for each potentially eligible property prepared in a format acceptable to OPRHP and DPS and submitted to OPRHP and DPS for review prior to completing the viewpoint selection.

(5) Photographic simulations of the facility and interconnections shall be prepared from the representative viewpoints to demonstrate the post-construction appearance of the facility. Where vegetation screening is relied on for project mitigation, leaf-off and leaf-on simulation shall be provided. Representative viewpoints shall be established in consultation with DEC, DPS, OPRHP, and APA where appropriate.

(6) Additional revised simulations illustrating mitigation shall be prepared for those observation points for which mitigation is proposed in the application.

(7) Each set of existing and simulated views of the facility shall be compared and rated and the results of the visual impact assessment shall be summarized. Documentation of the steps followed in the rating and assessment methodology shall be provided including results of rating impact panels and a description of the qualifications of the individuals serving on the panels. Where visual impacts from the proposed facility are identified, potential mitigation measures shall be outlined, and the extent to which they effectively minimize such impact shall be discussed.

(8) As applicable to the proposed facility technology, the analysis shall include analyses of overall appearance and operational characteristics of the facility and related facilities, including stack and cooling tower plume visibility, shading, glare, shadow flicker, or related visible effects of facility operation, including an assessment of the predicted extent, frequency, and duration of any such visible effects created by the facility.

1001.25 Exhibit 25: Effect on Transportation

Exhibit 25 shall contain:

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

(1) for generation facility sites other than for wind turbines, horizontal and vertical geometry, the number of approach lanes, the lane widths, shoulder widths, traffic control devices by approaches, and sight distances;

(2) for wind turbine sites, access road locations and widths, including characterizations of road intersection suitability.

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

(1) a review of existing data on vehicle traffic, use levels and accidents;

(2) a review of transit facilities and routes, including areas of school bus service;

(3) an identification of potential approach and departure routes to and from the facility site for police, fire, ambulance and other emergency vehicles;

(4) a review of available load bearing and structural rating information for expected facility traffic routes; and

(5) in congested urbanized areas, the results of twenty-four hour traffic volume counts and peak turning movement counts for typical weekday morning, weekday afternoon, and Saturday peaks, at representative critical intersections.

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

(1) for each major phase of construction, and for the operation phase, an estimate of the number and frequency of vehicle trips, including time of day and day of week arrival and departure distribution, by size, weight and type of vehicle;

(2) an identification of approach and departure routes to and from the facility site out to a 5-mile distance for vehicles carrying water, fuel oil, bulk fuels (including wood, biomass, coal and municipal solid waste), chemicals or hazardous materials for construction or operation of the facility;

(3) for major cut or fill activity (spoil removal or deposition at the facility site and affected interconnection areas), a separate estimate of the number and frequency of vehicle trips, including time of day and day of week arrival and departure distribution, and including a delineation of approach and departure routes, by size, weight and type of vehicle; and

(4) an identification of approach and departure routes to and from the facility site for construction workers and employees of the facility.

(d) An analysis and evaluation of the traffic and transportation impacts of the facility, including:

(1) a comparison of projected future traffic conditions with and without the proposed facility, the analysis to be conducted separately for the peak construction impacts of the facility and for the typical operations of the completed facility, including in congested urbanized areas a calculation and comparison of the level of service for each representative intersection, giving detail for each turning movement;

(2) an evaluation of the adequacy of the road system to accommodate the projected traffic, the analysis to be conducted separately for the peak construction impacts of the facility and for the typical operations of the completed facility, the analysis to also include an identification of the extent and duration of traffic interferences during construction of the facility and any interconnections;

(3) an assessment of over-size load deliveries, and the adequacy of roadway systems to accommodate oversize and over-weight vehicles; improvements necessary to accommodate oversize or overweight deliveries; impacts associated with such improvements; and mitigation measures appropriate to minimize such impacts;

(4) an identification and evaluation of practicable mitigation measures regarding traffic and transportation impacts, including time restrictions, the use of alternative technologies, the construction of physical roadway improvements, the installation of new traffic control devices, and the repair of local roads due to damage by heavy equipment or construction activities during construction or operation of the facility; and

(5) a description of all road use and restoration agreements, if any, between the applicant and landowners, municipalities, or other entities, regarding repair of local roads damaged by heavy equipment or construction activities during construction or operation of the facility.

(e) An analysis and evaluation of the impacts of the facility on airports and airstrips, railroads, subways, buses and any other mass transit systems in the vicinity of the facility. The analysis and evaluation shall include impacts on military training and frequent military operations in the National Airspace System and Special Use Airspace designated by the Federal Aviation Administration.

(f) If any construction or alteration is proposed that requires a Notice of Proposed Construction to be submitted to the administrator of the Federal Aviation Administration (FAA) in accordance with 14 Code of Federal Regulations, Part 77 pursuant to 49 U.S.C., Section 44718 (generally required for all construction or alteration of more than 200 feet in height above the ground level, and for certain other construction or alteration near or at civilian public airports and heliports and military airports and heliports or in instrument approach areas as defined by the FAA):

(1) The application shall include a statement that the applicant has:

(i) received an informal Department of Defense review of the proposed construction or alteration in accordance with 32

Code of Federal Regulations, Section 211.7; or

(ii) received a formal Department of Defense review of the proposed construction or alteration in accordance with 32 Code of Federal Regulations, Section 211.6.

(2) If such construction or alteration is proposed to be located:

(i) Within 12 miles of the nearest point of the nearest runway of a commercial service, cargo service, reliever or general aviation (public use) airport or a military airport with at least one runway more than 3,200 feet in actual length; or

(ii) Within 6 miles of the nearest point of the nearest runway of a commercial service, cargo service, reliever or general aviation (public use) airport or a military airport with its longest runway no more than 3,200 feet in actual length; or

(iii) Within 3 miles of the nearest point of the nearest point of the nearest landing and takeoff area of a commercial service, cargo service, reliever or general aviation (public use) heliport or military heliport:

The application shall include a statement that the applicant has consulted with the operators of such airports and heliports that are non-military facilities, has provided a detailed map and description of such construction or alteration to such operators, and has requested review of and comment on such construction or alteration by such operators.

The application shall include a statement that the applicant has provided a detailed map and description of such construction or alteration to the operators (Base Commanders) of such airports and heliports that are military facilities.

(3) The application shall include a detailed description of the responses received in such reviews and consultations required in Paragraphs (1) and (2) of this Subdivision, including specifically whether and why such operators believe such construction or alteration should be:

(i) unrestricted;

(ii) subject to site-specific requirements; or

(iii) excluded from certain areas.

1001.26 Exhibit 26: Effect on Communications

Exhibit 26 shall contain:

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

(1) AM radio;

(2) FM radio;

(3) Television;

(4) telephone;

(5) microwave transmission (all affected sources, not limited to a two-mile radius);

(6) emergency services;

(7) municipal/school district services;

(8) public utility services;

(9) Doppler/weather radar (all affected sources, not limited to a two-mile radius);

(10) air traffic control (all affected sources, not limited to a two-mile radius);

(11) armed forces (all affected sources, not limited to a two-mile radius);

(12) GPS;

(13) LORAN (all affected sources, not limited to a two-mile radius); and

(14) amateur radio licenses registered to users.

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

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

(1) structures to interfere with broadcast patterns by re-radiating the broadcasts in other directions;

(2) structures to block necessary lines-of-sight;

(3) physical disturbance by construction activities;

(4) adverse impacts to co-located lines due to unintended bonding; and

(5) any other potential for interference.

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

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

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

1001.27 Exhibit 27: Socioeconomic Effects

Exhibit 27 shall contain:

(a) An estimate of the average construction work force, by discipline, for each quarter, during the period of construction; and an estimate of the peak construction employment level.

(b) An estimate of the annual construction payroll, by trade, for each year of construction and an estimate of annual direct non-payroll expenditures likely to be made in the vicinity of the facility (materials, services, rentals, and similar categories) during the period of construction.

(c) An estimate of the annual secondary employment and economic activity likely to be generated in the vicinity of the facility by the construction of the plant. This analysis shall state the basis of any economic multiplier factor or other assumption used.

(d) An estimate of the number of jobs and the on-site payroll, by discipline, during a typical year once the plant is in operation, and an estimate of other expenditures likely to be made in the vicinity of the facility during a typical year of operation.

(e) An estimate of the annual secondary employment and economic activity likely to be generated in the vicinity of the facility by its operation.

(f) An estimate of incremental school district operating and infrastructure costs due to the construction and operation of the facility, this estimate to be made after consultation with the affected school districts.

(g) An estimate of incremental municipal, public authority, or utility operating and infrastructure costs that will be incurred for police, fire, emergency, water, sewer, solid waste disposal, highway maintenance and other municipal, public authority, or utility services during the construction and operation phases of the facility (this estimate to be made after consultation with the affected municipalities, public authorities, and utilities).

(h) An identification of all jurisdictions (including benefit assessment districts and user fee jurisdictions) that levy real property taxes or benefit assessments or user fees upon the facility site, its improvements and appurtenances and any entity from which payments in lieu of taxes will or may be negotiated.

(i) For each jurisdiction, an estimate of the incremental amount of annual taxes (and payments in lieu of taxes, benefit charges and user charges) it is projected would be levied against the post-construction facility site, its improvements and appurtenances.

(j) For each jurisdiction, a comparison of the fiscal costs to the jurisdiction that are expected to result from the construction and operation of the facility to the expected tax revenues (and payments in lieu of taxes, benefit charge revenues and user charge revenues) generated by the facility.

(k) An analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local

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

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

1001.28 Exhibit 28: Environmental Justice

Exhibit 28 shall contain:

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

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

(1) The specific measures the applicant proposes to take to avoid such impacts to the maximum extent practicable for the duration that the Certificate is granted, including a description of the manner in which such impact avoidance measures will be verified and a statement of the cost of such measures.

(2) If such impacts cannot be avoided, measures the applicant proposes to take to minimize such impacts to the maximum extent practicable for the duration that the Certificate is granted, including a description of the manner in which such impact mitigation measures will be verified and a statement of the cost of such measures.

(3) If such impacts cannot be avoided, the specific measures the applicant proposes to take to offset such impacts to the maximum extent practicable for the duration that the Certificate is in effect, including a description of the manner in which such impact offset measures will be verified and a statement of the cost of such measures.

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

1001.29 Exhibit 29: Site Restoration and Decommissioning

Exhibit 29 shall contain:

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

(1) safety and the removal of hazardous conditions;

(2) environmental impacts;

(3) aesthetics;

(4) salvage and recycling;

(5) potential future uses for the site; and

(6) the useful life of the facility

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

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

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

(1) sufficient funding will be available to decommission the non-radiological portions of the facility and restore the site assuming a reasonable life expectancy for the facility and the commencement of decommissioning upon the cessation of operation of the facility; and

(2) segregation of funds such that radiological decommissioning and site restoration activities do not exhaust funds needed to decommission the non-radiological portions of the facility and to restore the site.

1001.30 Exhibit 30: Nuclear Facilities

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

(1) any filing it makes with the NRC;

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

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

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

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

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

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

1001.31 Exhibit 31: Local Laws and Ordinances

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

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

Exhibit 31 shall contain:

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

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

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

building permit application, inspection and certification processes by such city, town or village.

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

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

(1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable:

(2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local substantive requirement outweigh the benefits of applying such provision; and

(3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the local substantive requirement.

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

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

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

(1) for requests grounded in the existing technology, that there are technological limitations (including governmentally imposed technological limitations) related to necessary facility component bulk, height, process or materials that make compliance by the applicant technically impossible, impractical or otherwise unreasonable:

(2) for requests grounded in factors of costs or economics (likely involving economic modeling), that the costs to consumers associated with applying the local substantive requirement outweigh the benefits of applying such provision; and

(3) for requests grounded in the needs of consumers, that the needs of consumers for the facility outweigh the impacts on the community that would result from refusal to apply the local substantive requirement.

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

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

1001.32 Exhibit 32: State Laws and Regulations

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

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

Exhibit 32 shall contain:

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

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

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

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

(e) A list of all state approvals, consents, permits, certificates, or other conditions for the construction or operation of any proposed offsite

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

1001.33 Exhibit 33: Other Applications and Filings

Exhibit 33 shall contain:

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

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

1001.34 Exhibit 34: Electric Interconnection

Exhibit 34 shall contain:

A detailed description of the proposed electric interconnection including:

(a) the design voltage and voltage of initial operation;

(b) the type, size, number and materials of conductors;

(c) the insulator design;

(d) the length of the transmission line;

(e) the typical dimensions and construction materials of the towers;

(f) the design standards for each type of tower and tower foundation;

(g) for underground construction, the type of cable system to be used and the design standards for that system;

(h) for underground construction, indicate on a profile of the line the depth of the cable and the location of any oil pumping stations and manholes;

(i) equipment to be installed in any proposed switching station or substation including an explanation of the necessity for any such switching station or substation;

(j) any terminal facility; and

(k) the need for cathodic protection measures.

1001.35 Exhibit 35: Electric and Magnetic Fields

Exhibit 35 shall contain:

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

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

(1) all overhead electric transmission, sub-transmission and distribution facilities including the proposed facility showing structural details and dimensions and identifying phase spacing, phasing, and any other characteristics affecting EMF emissions;

(2) all underground electric transmission, sub-transmission and distribution facilities;

(3) all underground gas transmission facilities;

(4) all right-of-way boundaries; and

(5) structural details and dimensions for all structures (dimensions, phase spacing, phasing, and similar categories) and include a Station number identifying the location.

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

(1) identified right-of-way segment;

(2) cross-section; and

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

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

(1) the study must be signed and stamped/sealed by a licensed professional engineer registered and in good standing in the State of New York;

(2) provide the name of the computer software program used to model the facilities and make the calculations;

(3) regarding electric fields, model the circuits at rated voltage and provide electric field calculation tables and field strength graphs calculated at one meter above ground level with 5 foot measurement intervals depicting the width of the entire right-of-way and out to 500 feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations;

(4) regarding magnetic fields, model the circuit phase currents equal to the summer normal, summer short term emergency (STE Sum), winter-normal, and winter short term emergency (STE Win) loading conditions and provide magnetic field calculation tables and field strength graphs calculated at one meter above ground level with 5 foot measurement intervals depicting the width of the entire right-of-way and out to 500 feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations;

(5) regarding magnetic fields, also model the circuit phase currents equal to the maximum average annual load estimated to be occurring on the power lines within ten years after the proposed Facility is put in operation and provide magnetic field calculation tables and field strength graphs calculated at one meter above ground level with 5 foot measurement intervals depicting the width of the entire right-of-way and out to 500 feet from the edge of the right-of-way on both sides, including digital copies of all input assumptions and outputs for the calculations; and

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

1001.36 Exhibit 36: Gas Interconnection

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

(a) A study of gas supply options, capacity, and system impact, including:

(1) A detailed description of the proposed gas pipeline interconnection, including all interconnecting facilities, pipeline route, size, operating pressure, volume of gas required to serve the facility, the need for new on-site compression, and identifying who shall construct, own and operate the pipeline facilities.

(2) An analysis demonstrating that there shall be sufficient gas supply and gas transmission capacity to support the requirements of the facility.

(3) An estimate of the peak hour, peak day, seasonal and annual natural gas requirements of the facility.

(4) An identification of the nature and extent of the natural gas capacity and transportation service as firm, interruptible, or both.

(5) An evaluation of the potential impacts of the facility on the gas distribution system of the Local Distribution Company (LDC).

(6) A discussion of the impact of the facility use of gas on wholesale supplies and prices in the region using the same transmission facilities as the facility.

(b) A description and preliminary design details for the gas interconnection including:

(1) class criteria for the interconnection pipeline location;

(2) location and design of valves;

(3) a plan for pressure testing of the station piping facilities, indicating applicable code, standards and procedures for testing and release of test medium; and

(4) the need for cathodic protection measures.

1001.37 Exhibit 37: Back-Up Fuel

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

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

(1) A chemical analysis of the back-up fuel;

(2) an estimate of the rate of fuel oil consumption at full power output;

(3) a description of any fuel oil storage tank(s), including the storage capacity of the tank(s) and a description of any secondary containment structures proposed to be constructed around the tank and off loading areas and any other facilities or measures proposed to prevent, contain or clean up oil spills;

(4) an estimate of the maximum period that the plant could burn oil without refueling;

(5) a description of the proposed method of oil delivery and on site oil delivery infrastructure or offsite interconnections and an estimate of the maximum rate of delivery, given the transportation methods and facilities proposed;

(6) an estimate of the expected frequency and duration of oil firing of the facility and a discussion of the assumptions and analyses used to arrive at this estimate; and

(7) a statement of the number of days of back-up fuel supply to be maintained including a discussion as to whether such number will be sufficient to conform to Commission policies on minimum back-up fuel supply quantities.

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

(1) a copy of any Spill Prevention, Countermeasures and Control (SPCC) Plan required pursuant to federal regulations;

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

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

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

(e) If it is proposed to use a back-up fuel other than fuel oil, an identification of the proposed back-up fuel and such information for the identified back-up fuel as is required for fuel oil as a back-up fuel

pursuant to subdivisions (a) through (d) of this section, to the degree such information is applicable.

1001.38 Exhibit 38: Water Interconnection

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

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

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

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

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

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

(1) studies to assess the available capacity of the water supply source and an analysis of the impacts, in terms of quantity, quality, and pressure during both normal and drought periods of the facility's water use on the water supply system, including an identification of the well field(s) in the localized zone;

(2) an identification of all infrastructure requirements necessary to serve the facility including treatment requirements;

(3) the impact of the facility on excess infrastructure capacity, including distribution piping, mains, pumps, storage, or additional supply during both normal and maximum system demands;

(4) if use of surface water or an on-site well is proposed for water supply for the facility, a qualitative analysis of the water balance and an assessment of the impacts of the removal of the maximum daily withdrawal for the facility, particularly during drought periods, on stream flows and the ecological balance of waterbodies, including hydrogeological studies to clearly demonstrate the effect of this withdrawal on any contaminant plumes that have the potential to be influenced by the proposed well. These studies must state all methods used to promote that this withdrawal will not adversely affect any public or private wells.

(5) if new surface water withdrawal is proposed for water supply for the facility, an identification and description of any water treatment facilities and intake structures including a demonstration that each facility represents Best Technology Available, if applicable; and

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

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

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

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

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

1001.39 Exhibit 39: Wastewater Interconnection

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

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

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

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

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

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

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

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

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

1001.40 Exhibit 40: Telecommunications Interconnection

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

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

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

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

1001.41 Exhibit 41: Applications to Modify or Build Adjacent

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

(a) A statement whether the application is to:

(1) modify by an increase of more than 25 MW the nameplate capacity of an existing electric generating facility already having a nameplate generating capacity of 25 MW or more; or

(2) construct a new facility adjacent or contiguous to an existing facility.

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

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

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

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

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

(1) sulfur dioxide (SO2);

(2) oxides of nitrogen (NOx);

(3) carbon dioxide (CO2);

(4) carbon monoxide (CO);

(5) particulate matter (PM 2.5, PM 10 and total PM);

(6) volatile organic compounds (VOCs);

(7) elemental lead; and

(8) mercury.

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

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

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

(1) sulfur dioxide (SO2);

(2) oxides of nitrogen (NOx);

(3) carbon dioxide (CO2);

(4) carbon monoxide (CO);

(5) particulate matter (PM 2.5, PM 10 and total PM);

(6) volatile organic compounds (VOCs);

(7) elemental lead; and

(8) mercury.

The percentage reduction shall be calculated by comparing the past actual emissions of each of the relevant contaminants emitted by the existing facility averaged over the three years preceding the date of application, to the annualized potential to emit each such contaminant of the modified facility or of the combined existing and new facility as proposed in the application.

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

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

PART 1002 COMPLIANCE FILINGS

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

Sec.

PART 1002 COMPLIANCE FILINGS

Section 1002.1 Purpose.

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

1002.2 General Procedures.

(a) The applicant may not commence construction of the facility or interconnections until the applicant has accepted the Certificate in accordance with Section 1000.14 of this subchapter.

(b) The applicant may not commence construction of all or any portion of the facility or interconnections for which the Board has required approval of a compliance filing as a condition precedent to such construction until the applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased.

(c) The applicant shall file an electronic copy and ten paper copies of any compliance filing with the Board, or the Commission after the Board's jurisdiction has ceased, by filing it with the Secretary at the Albany, New York Offices of the DPS and shall serve copies as follows:

(1) one paper copy on the DEC project manager;

(2) one paper copy on each affected DEC regional office;

(3) three paper copies on the DEC at its central office;

(4) one paper copy on any other party specified in the certificate or order requiring the compliance filing; and

(5) an electronic copy on every party to the proceeding.

(d) Any interested person or party may file comments regarding any compliance filing within 21 days of the filing and service of such compliance filing done in accordance with subdivision (c) of this section.

(e) A compliance filing may not be used to request an amendment to a Certificate. If the Secretary determines that a request in a compliance filing is a request for an amendment to a Certificate, the Secretary shall issue a letter denying further processing of such request as a compliance filing.

(f) Compliance filings will not be effective until approved by the Board or by the Commission after the Board's jurisdiction has ceased.

(g) Approval may be made subject to specified terms, conditions, limitations, or modifications.

(h) Decisions on compliance filings will generally be made at the next available session of the Board or the Commission, as the case may be,

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

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

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

1002.3 General Requirements.

The compliance filing shall contain:

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

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

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

1002.4 Reporting and Inspections.

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

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

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