

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

### 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.