

1                   NYS BOARD ON ELECTRIC GENERATION SITING  
2                   AND THE ENVIRONMENT

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3                   Meeting of:

4                   NYS Board on Electric Generation Siting  
5                   and the Environment

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FRIDAY, MARCH 23, 2012  
2:00 p.m.

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Agency Building 3  
19th Floor  
Albany, New York

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COMMISSIONERS:

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GARRY A. BROWN, Chairman of the New York State Public  
Service Commission and Chairman of the Siting Board

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JOE MARTENS, New York State Department of Environmental  
Conservation

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LOUIS ALEXANDER, alternate for Commissioner Martens,  
New York State Department of Environmental Conservation

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KEITH CORNEAU, alternate for Kenneth Adams, Commissioner  
of Economic Development and President and CEO of  
Empire State Development

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NIRAV SHAH, M.D., New York State Department of Health

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FRANK MURRAY, Acting Chairman and President and CEO,  
New York State Energy Research and Development Authority

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1                   CHAIRMAN BROWN: Good afternoon. I would like  
2 to call to order this meeting of the permanent members  
3 of the New York State Board on Electric Generation  
4 Siting and the Environment. This is the first meeting  
5 of the new siting board constituted pursuant to Article  
6 X of the Public Service Law enacted in the Power New  
7 York Act of 2011.

8                   I am Garry Brown, Chair of the New York State  
9 Public Service Commission and Chair of the Siting Board.

10                  To my immediate right is Lou Alexander,  
11 alternate for Commissioner Joe Martens of the New York  
12 State Department of Environmental Conservation.

13                  To his right is Keith Corneau, alternate for  
14 Ken Adams, Commissioner of Economic Development, and  
15 President and CEO of Empire State Development.

16                  To my immediate left is Commissioner Nirav  
17 Shah, MD, of the New York State Department of Health.

18                  And to his left is Frank Murray, Acting Chair  
19 and President and CEO of the New York State Energy  
20 Research & Development Authority.

21                  Deputy Secretary Elaine Lynch is sitting in  
22 for Secretary Brillling today.

23                  Ms. Lynch, are there any changes to the  
24 matters noticed for discussion at today's meeting?

1                   DEPUTY SECRETARY LYNCH: Yes, Mr. Chairman.  
2     There is one correction to the case title.

3                   The correct case title for 12-F-0036 is: In  
4     the Matter of the Rules and Regulations of the Board on  
5     Electric Generation Siting and the Environment contained  
6     in 16 NYCRR, Chapter X, Certification of Major Electric  
7     Generating Facilities.

8                   CHAIRMAN BROWN: We have a couple of action  
9     items today. What we will do is have a presentation  
10    made by Paul Agresta, Assistant Counsel and Managing  
11    Attorney, and Administrative Law Judge Kim Harriman will  
12    be available also to help answer questions, and I see  
13    Chief Law Judge Libby Liebschutz is here as well.

14                  I guess we are starting with you, Paul.

15                  MR. AGRESTA: Thank you, Mr. Chairman.

16                  The newly enacted Article X of the Public  
17    Service Law created the siting board and empowers you to  
18    issue certificates of environmental compatibility and  
19    public need authorizing the construction and operation  
20    of major electric generating facilities.

21                  Article X also empowers you to adopt  
22    regulations to govern the process and content for  
23    applications to be made to you.

24                  This meeting is for you to consider proposing

1 such regulations so that you can then seek public  
2 comment.

3           The first matter before you today is to take  
4 the steps necessary to incorporate the consideration of  
5 environmental factors into your decision making process  
6 regarding the proposed regulations.

7           As you begin the process of promulgating  
8 regulations, the State Environmental Quality Review Act,  
9 otherwise known as SEQR, requires you to give a  
10 threshold consideration to whether the action is likely  
11 to have a significant adverse impact on the environment.

12           An environmental assessment form and a  
13 supporting memorandum have been prepared by staff of the  
14 Department of Public Service and is before you to assist  
15 in that determination.

16           The proposed action of promulgating  
17 regulations does not include any direct approval for the  
18 siting or construction of any facilities, but rather,  
19 outlines procedural processes and filing requirements  
20 for submission of applications.

21           Each such application will be individually  
22 reviewed by the siting board to determine, among other  
23 factors, the environmental impacts of constructing and  
24 operating any particular facility.

1                   It is staff's recommendation that, since the  
2 proposed regulations are primarily procedural in nature,  
3 and do not contain substantive standards requiring  
4 particular outcomes, the mere act of adopting the  
5 regulations will have no impact on environmental  
6 conditions.

7                   Technically, staff recommends that, as lead  
8 agency for the action, you determine that the proposed  
9 adoption of regulations is an unlisted action as defined  
10 by SEQR, and that you adopt a negative declaration  
11 regarding the action.

12                   What that means is that you make a finding  
13 that there will likely be no significant adverse impact  
14 on the environment from your future adoption of the  
15 regulations, and therefore, no environmental impact  
16 statement or other additional review process under SEQR  
17 is necessary.

18                   Now, after you have completed the first  
19 matter, the second matter before you today is to  
20 actually initiate the process for promulgating the new  
21 regulations.

22                   The process for creating regulations is  
23 governed by the State Administrative Procedure Act,  
24 otherwise known as SAPA. An agency proposing new

1 regulations must publish in the State Register a notice  
2 of proposed rulemaking seeking public comments on the  
3 proposed draft regulations.

4 A summary of the proposed regulations is  
5 published in the notice, and the full text of what is  
6 proposed, otherwise known as the express terms, is made  
7 available for public review.

8 The public will have a minimum of 45 days  
9 after the notice is published to review the draft  
10 regulations and to submit written comments for your  
11 consideration.

12 If you act today, we anticipate that the  
13 notice of proposed rulemaking would be published on  
14 Wednesday, April 11, 2012, and the deadline for written  
15 public comments would be Tuesday, May 29, 2012.

16 After you have received and considered all  
17 the public comments, you will then be in a position to  
18 convene another meeting to consider the final adoption  
19 of regulations.

20 DPS staff has prepared a draft set of  
21 regulations for your consideration. The regulations  
22 were drafted with input from your respective staffs at  
23 the Department of Environmental Conservation, the  
24 Department of Health, Empire State Development, and

1 NYSERDA, and also with the significant help of nearly  
2 100 stakeholders representing a diverse set of  
3 interests.

4                   You have before you a memorandum and  
5 resolution with attachments, including the full text of  
6 express terms of the draft regulations.

7                   The document describes in detail how the  
8 draft regulations fully address the many requirements in  
9 the statute; encourage public involvement; provide  
10 funding to assist municipal and local parties; ensure an  
11 early consideration of environmental justice issues;  
12 fairly accommodate local and state requirements in a  
13 unified proceeding; and focus regulatory review on  
14 pertinent issues regarding impacts on the environment,  
15 health, safety, community character, capacity needs,  
16 long range energy planning objectives, and other social,  
17 economic and other public interest considerations in  
18 light of available technology in the nature and  
19 economics of reasonable alternatives.

20                   In addition, the procedures and structure of  
21 applications are designed in the draft regulations to  
22 ensure efficient but comprehensive proceedings before  
23 the siting board that will enable parties and the public  
24 to effectively and promptly engage in the Article X

1 hearing process, while not unduly burdening applicants  
2 that bear the cost of preparing applications.

3                   Now, by adopting the memorandum and  
4 resolution you would be proposing the draft regulations  
5 for later adoption; authorizing the publication of the  
6 required SAPA notice seeking public comment; and  
7 issuing, in addition, your own notice strongly  
8 encouraging entities that want you to consider a  
9 significantly different balance among the competing  
10 considerations to file their comments early.

11                   A statement of what would be resolved appears  
12 on page 20 of the big document that you have.

13                   You will note that, among the attachments,  
14 there is a draft resolution for adopting the  
15 regulations. That attachment is just a proposal at this  
16 time, and does not get adopted until after the public  
17 comments are received and the siting board meets again  
18 to actually adopt the regulations.

19                   Staff recommends that you adopt the  
20 memorandum and resolution in the manner proposed, and  
21 that the draft regulations be put out for public  
22 comment.

23                   In closing, I would like to acknowledge the  
24 work of the DPS staff team assigned to this project that

1 produced, what I hope you will agree, is a magnificent  
2 set of balanced regulations that will serve the public  
3 interest for years to come.

4 This concludes my presentation, and we are  
5 available to address any questions you may have for us.

6 CHAIRMAN BROWN: I'll start out by, for the  
7 record, Commissioner Joe Martens of the Department of  
8 Environmental Conservation has been able to join us just  
9 in time for questions or comments.

10 Do we have any questions or comments today?

11 Seeing none, I do want to acknowledge the  
12 valuable contributions that were made by all of the  
13 stakeholders out there that you mentioned, Paul.

14 We reached out to potential developers of  
15 generating facilities, state agencies, authorities,  
16 municipalities, environmental groups, environmental  
17 justice groups, attorneys, consultants, and others  
18 likely to participate in the siting board certification.

19 As you noted, the proposed regs strike the  
20 proper balance of the interested entities in the Article  
21 X process, as well as enabling parties and the public to  
22 effectively engage in the siting process, but I know  
23 that they had a major effect on these draft regulations.  
24 Some significant changes were made prior to this point.

1           But, at this point, this is the formal  
2 process for public input, and we will be looking forward  
3 to hearing further from the parties on their comments on  
4 the draft regulations as we go through this process.

5 But, once again, thank everybody on this.

6           So, we have two things to vote on here today.  
7 The first vote is on the recommendation that we adopt a  
8 negative declaration pursuant to the State Environmental  
9 Quality Review Act. By this resolution we will be  
10 determining that the proposed regulations will not have  
11 a significant effect on the environment.

12           All those in favor of the resolution, please  
13 signify by saying aye.

14           (Response of "aye".)

15           Opposed?

16           (No response.)

17           Hearing none, the resolution is approved.

18           The second vote is on the recommendation that  
19 we propose draft regulations for implementation of the  
20 Article X law, and that we also adopt a notice for  
21 produced rulemaking seeking public comment on the  
22 proposed draft regulations. And I think Paul described  
23 the dates and times for that.

24           By this resolution -- once again, we are only

1 proposing the regulations today. After the comments are  
2 received we will have a future meeting to consider  
3 whether to adopt them or not.

4                   So, all those in favor of the resolution  
5 please signify by saying aye.

6                   (Response of "aye".)

7                   Opposed?

8                   (No response.)

9                   Hearing none, the resolution is approved.

10                  Any other comments from the panel?

11                  Hearing none, Ms. Lynch, are there any  
12 further matters to come before the board?

13                  DEPUTY SECRETARY LYNCH: No, Mr. Chairman.  
14 That completes today's agenda.

15                  CHAIRMAN BROWN: Thank you very much. The  
16 meeting is adjourned.

17                  (Meeting adjourned at 2:12 p.m.)

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