

NEW YORK CODES, RULES AND REGULATIONS

TITLE 21. MISCELLANEOUS  
CHAPTER X. POWER AUTHORITY OF THE STATE OF NEW YORK  
PART 461. IMPLEMENTATION OF THE STATE ENVIRONMENTAL QUALITY REVIEW ACT

21 NYCRR Part 461

Part 461 Notes

Statutory authority: Environmental Conservation Law, § 8-0113; Public Authorities Law, § 1004

§ 461.1 Purpose

The Power Authority of the State of New York, generally known as the New York Power Authority, develops and supplies economic energy generation for the people of the State of New York in order to promote economic growth and the general welfare. In meeting these goals, the Power Authority seeks to balance environmental, energy, safety and economic needs of the people of the State of New York. The purpose of this Part is to establish additional procedures for the implementation of the State Environmental Quality Review Act (SEQRA) by the Power Authority in accordance with the authority contained in section 8-0113 of the Environmental Conservation Law (ECL).

§ 461.3 Definitions

(a) Actions include:

(1) projects or physical activities, such as construction or other activities, which change the use or appearance of any natural resource or structure, which:

- (i) are directly undertaken by an agency;
- (ii) involve funding by an agency; or
- (iii) require one or more permits from an agency or agencies;

(2) planning activities or an activity that commits the agency to a course of future decisions; and

(3) agency rules, regulations, procedures and policymaking. Note: Capital projects commonly consist of a set of activities or steps (i.e., planning, design, contracting, construction and operation). For purposes of this Part, the entire set of activities or steps can be considered an action. If it is determined that an environmental impact statement (EIS) is necessary, only one draft and one final EIS need be prepared on the action if the statements address each step at a level of detail sufficient for an adequate analysis of environmental effects. In the case of a project or activity involving funding or a permit from an agency, the entire project shall be considered an action, whether or not such funding or permit relates to the project as a whole or to a portion or component of it.

(b) Agency, unless otherwise noted, means a State or local agency.

(c) Applicant means any person making an application or other request to the Power Authority. An applicant does not include an officer or employee of the Power Authority acting in that capacity.

(d) Approval means a decision by the Power Authority to issue a permit or to otherwise authorize a proposed project or activity.

(e) Commissioner means the Commissioner of the New York State Department of Environmental Conservation.

(f) Coastal area means the State's coastal waters and the adjacent shorelands, as defined in article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the Office of the Secretary of State, as required by section 914(2) of the Executive Law.

(g) Director means the Power Authority's Director of the Environmental Division, and is the individual responsible for the preparation and review of environmental determinations to assure compliance with this Part.

(h) Environmental assessment form (EAF) means a form used by the Power Authority to assist it in determining the environmental significance or nonsignificance of actions. The term short form EAF means a simplified EAF that may be used by the Power Authority to determine whether it has sufficient information on which to determine the environmental significance or nonsignificance of an unlisted action.

(i) Environmental impact statement (EIS) means a written document prepared in accordance with this Part. An EIS may either be draft or final and, as appropriate in context, it may include a Federal draft or final EIS.

(j) Excluded action means an action which was undertaken, funded or approved prior to the effective dates set forth in SEQRA (see chapters 228 and 252 of the Laws of 1977 and 460 of the Laws of 1978).

(k) Exempt action means activities as listed in section 461.16 of this Part.

(l) Funding means any financial support given by the Power Authority, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance, in connection with a proposed action by an applicant.

(m) Lead agency means an agency principally responsible for carrying out, funding or approving an action, and therefore responsible for determining whether an EIS is required in connection with an action, and for the preparation and filing of the statement if one is required.

(n) Ministerial act means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the act. Such law or regulatory requirements may involve, to a limited degree, a construction of language or intent.

(o) Negative declaration means a written statement prepared by the director, after conducting an environmental review of an action, which announces that the director has determined that the action will not have a significant effect on the environment.

(p) Positive declaration means a written statement prepared by the director, after conducting an environmental analysis of an action, which announces that the director has determined that the action will have a significant effect on the environment.

(q) Power Authority means Power Authority of the State of New York.

(r) State agency means any State department, agency, board, public benefit corporation, public authority or commission.

(s) Type I action means an action or class of actions listed in section 461.6 of this Part.

(t) Type II action means an action or class of actions that is not a Type I action and is listed in sections 461.7 and 461.17 of this Part.

(u) Unlisted action shall mean actions not excluded or exempt and not listed as a Type I or Type II action in this Part.

#### § 461.4 Designation of lead agency

(a) If the activity is a Type I or unlisted action, the director shall determine if other agencies are involved.

(b) Where it is determined that other agencies are involved and the activity is a Type I action, the director shall mail the completed EAF and a copy of an application, if applicable, to the involved agencies, notifying them that, within 30 calendar days of the date the EAF was mailed to them, a lead agency must be designated by agreement among them. If no lead agency is agreed upon within the 30-day period, the Power Authority, pursuant to 6 NYCRR 617.6(e), may request the commissioner of the New York State Department of Environmental Conservation to designate a lead agency.

(c) Where it is determined that other agencies are involved and the activity is unlisted, the procedures set forth in subdivision (b) of this section are discretionary.

(d) Where an agency other than the Power Authority is determined to be a lead agency, the regulations of that agency apply in lieu of this Part; provided, however, that the determinations required pursuant to section 461.13(b) of this Part must be made.

#### § 461.5 Action by the Power Authority

(a) If the action is an excluded, an exempt or a Type II action, no action under this Part is necessary.

(b) As early as possible, in the formulation and design of an action to be undertaken directly by the Power Authority, the director shall conduct an environmental analysis of the proposed action to determine whether the action may or will not have a significant effect on the environment.

(c) If the director determines that the action is a Type I action which will not have a significant effect on the environment, the director shall prepare and file a negative declaration following the procedures set forth in section 461.11(a) of this Part.

(d) If the director determines that the action is a Type I or unlisted action which may have a significant effect on the environment, and that the action does not require approval by other agencies, the director shall immediately prepare and file a positive declaration following the procedures set forth in section 461.11(a) of this Part. The director shall prepare or cause to be prepared draft and final EIS's following the procedures set forth in subdivisions (b)-(d) of such section.

(e) If the director determines that the action is a Type I or unlisted action which may have a significant effect on the environment, and that the action requires approval by other agencies, the director shall follow the procedures set forth in section 461.4 of this Part. If it is determined that the Power Authority is the lead agency, the procedures of subdivisions (c) and (d) of this section relating to the determination of significance and the preparation of an EIS shall be followed.

(f) If the director determines that the action is an unlisted action which will not significantly affect the environment, the director shall maintain a file of that determination and supporting reasons available for public inspection. Notices set forth in section 461.11 of this Part are not required.

(g) In the case of applications for permits or funding from the Power Authority, the director may require the applicant to supply any information in a specified form necessary to make the determinations required by this section or the preparation of an EAF. If an EIS is required, the applicant may prepare the EIS or request the authority to prepare it.

#### § 461.6 List of Type I actions

(a) The purpose of the list of actions identified as Type I in this section is to identify those actions and projects that are more likely to require the preparation of EIS's than those not so listed (i.e., unlisted actions).

(b) The following actions are Type I if they are undertaken, funded or approved by the Power Authority:

(1) the adoption of a comprehensive resource management plan;

(2) the acquisition, sale, lease or other transfer of 100 or more contiguous acres of land;

(3) construction of new nonresidential facilities which meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds, provided that the expansion and the existing facilities, when combined, meet or exceed any threshold contained in this section:

(i) a project or action which involves the physical alteration of 10 acres;

(ii) a project or action which would use ground or surface water in excess of 2,000,000 gallons per day;

(iii) parking for 1,000 vehicles;

(iv) in a city, town or village having a population of 150,000 persons or less: a facility with more than 100,000 square feet of gross floor area; or

(v) in a city, town or village having a population of more than 150,000 persons: a facility with more than 240,000 square feet of gross floor area;

(4) any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height;

(5) any nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to the Agriculture and Markets Law, article 25, section 303) which exceeds 10 percent of any threshold established in this section;

(6) any action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or contiguous to, any facility or site listed on the National Register of Historic Places, or any historic building, structure or site, or prehistoric site, that has been proposed by the Committee on the Registers for consideration by the

New York State Board for Historic Preservation for a recommendation to the State historic officer for nomination for inclusion in said National Register;

(7) any project or action, which exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space; and

(8) any action which exceeds the locally established thresholds or, if no such thresholds are established, any action which takes place wholly or partially within, or substantially contiguous to, any critical environmental area designated by a local agency pursuant to 6 NYCRR 617.4.

#### § 461.7 Type II actions

(a) Actions or classes of actions which have been determined not to have a significant effect on the environment are classified as Type II actions.

(b) A list of Type II actions is contained in section 461.17 of this Part.

#### § 461.8 Actions involving a Federal agency

(a) When a draft and final EIS for an action will be or has been prepared under the National Environmental Policy Act of 1969 (NEPA), the Power Authority shall have no obligation to prepare an additional EIS under this Part.

(b) When a negative declaration or other written threshold determination that the action will not require a Federal impact statement has been prepared under NEPA, the determination shall not constitute compliance with SEQRA. In such cases, the Power Authority shall follow the requirements for a SEQRA review contained in this Part.

(c) No SEQRA findings are required for actions which are excluded or exempt from SEQRA.

#### § 461.9 Preparation and content of environmental impact statements

(a) EIS's shall be clearly and concisely written in plain language that can be read and understood by the public. Within the framework presented in subdivision (d) of this section, EIS's should address in detail only those specified adverse or beneficial environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate, considering the nature and magnitude of the proposed action and the significance of its potential impacts. Highly technical material shall be summarized, and if it must be included in its entirety, it shall be referenced in the statement and included in an appendix.

(b) All draft and final EIS's shall be preceded by a cover sheet stating:

(1) whether it is a draft or final EIS;

(2) the name or descriptive title of the action;

(3) the location (county and town, village or city) of the action;

(4) the name and address of the Power Authority, and the name and telephone number of a person at the Power Authority who can provide further information;

(5) the names of individuals or organizations that prepared any portion of the statements;

(6) the date of its acceptance by the Power Authority; and

(7) in the case of a draft EIS, the date by which comments must be submitted.

(c) If a draft or final EIS exceeds 10 pages in length, it shall have a table of contents following the cover sheet and a precise summary which adequately and accurately summarizes the statement, focusing on issues of controversy, matters to be decided and major conclusions.

(d) The body of all draft and final EIS's shall contain at least the following:

(1) a concise description of the proposed action, its purpose and need;

(2) a concise description of the environmental setting of the areas to be affected, sufficient to permit an understanding of the effects of the proposed action and alternatives;

(3) a statement of the important environmental impacts of the proposed action, including short- and long-term effects and typical associated environmental effects;

(4) an identification and brief discussion of any adverse environmental effects which cannot be avoided if the proposed action is implemented;

(5) a description and evaluation of reasonable alternatives to the action which would achieve the same or similar objectives. The description and evaluation should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The no-action alternatives must also be discussed and evaluated;

(6) an identification of any irreversible and irretrievable commitments of resources which would be associated with the proposed action should it be implemented;

(7) a description of mitigation measures to minimize the adverse environmental impacts;

(8) a description of any of the proposed actions, where applicable and significant;

(9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;

(10) a list of any underlying studies, reports and other information obtained and considered in preparing the statement;

(11) in the case of a final EIS only, copies or a summary of the substantive comments received on the draft EIS and a response to such comments;

(12) in the case of a final EIS only, indication and identification of all revisions made to the draft EIS; and

(13) for State agency actions in the coastal area:

(i) when the action is not in an approved local waterfront revitalization program area, an identification of the applicable coastal policies of Executive Law, article 42, as contained in 19 NYCRR 600.5, and a discussion of the effects of the proposed action on such policies; or

(ii) when the action is in an approved local waterfront revitalization program area and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, an identification of the applicable policies of the local program and a discussion of the effects of the proposed action on such policies.

(e) An EIS may incorporate by reference all or portions of other documents, including EIS's which contain information relevant to the statement. When a statement incorporates by reference, the referenced document shall be briefly described, its applicable findings summarized, and the date of its preparation provided. The referenced documents shall be made available for inspection by the public within the time period for comment in the same places where the agency makes available copies of such statement.

(f) A final EIS may consist of the draft EIS, including any necessary revisions to it, copies or a summary of the substantive comments received and their source (whether or not the comments were received in the context of a hearing), and the Power Authority's substantive responses to the comments.

#### § 461.10 Programmatic or generic environmental impact statements

(a) A programmatic or generic environmental impact statement may be used to assess the environmental effects of:

(1) a number of separate actions in a given geographic area which, if considered singly may have minor effects, but if considered together may have significant effects;

(2) a sequence of actions, contemplated by the Power Authority, a single agency or individual;

(3) separate actions having generic or common impacts; and

(4) programs or plans having wide application or restricting the range of future alternative policies or projects.

(b) Generic or programmatic statements should set forth specific conditions or criteria under which future actions will be undertaken or approved, and shall include procedures and criteria for amendments or supplements to reflect impacts, such as specific impacts, which cannot be adequately addressed or analyzed in the initial statement. Such proce-

dures shall include provision for public notice of amendments or supplements which allow for comment thereon in the same manner as was provided by the original statement.

(c) When an individual action is proposed which was encompassed in a programmatic EIS, and the action is to be carried out in conformance with the conditions discussed in the programmatic statement, a subsequent EIS evaluating site-specific impacts should be prepared only if site-specific impacts differ significantly from those addressed in the programmatic statement.

(d) In connection with projects that are to be developed in phases or strategies, the site-specific impacts of the individual project under consideration and, in more general or conceptual terms, the cumulative effects on the environmental and existing natural resource base of subsequent phases of a large project or series of projects that may be developed in the future, and that are under the ownership or control of the same project sponsor, should be discussed. In these cases, this part of the EIS shall discuss the important elements and constraints present in the natural and man-made environment that may bear on the conditions of a decision on the immediate project.

#### § 461.11 Notices, circulation, filing and contents of SEQRA documents

(a) Notices of negative declarations and positive declarations shall:

(1) contain the following:

(i) a statement that it is a negative or positive declaration, as appropriate, for the purposes of article 8 of the Environmental Conservation Law;

(ii) the name and address of the lead agency;

(iii) the name and telephone number of a person at the Power Authority who can provide further information;

(iv) the nature and extent of the action and the action identifying number or name;

(v) the location of the action (county and city, town or village);

(vi) a brief description of the action;

(vii) in the case of a negative declaration, a brief explanation supporting the determination that the action will not have a significant effect on the environment; and

(viii) in the case of a positive declaration, a brief description of the possible significant environmental effects that have been identified, and a brief statement of the reasons supporting the determination; and

(2) be filed as follows:

(i) with the Commissioner of Environmental Conservation at 50 Wolf Road, Albany, NY 12233;

(ii) with the appropriate regional office of the Department of Environmental Conservation;

(iii) in the office of the chief executive officer of the political subdivision in which the action will be principally located;

(iv) in the main office and appropriate regional office of the lead agency;

(v) if the action involves an applicant, with the applicant;

(vi) if other agencies are involved in approval of the actions, with each other agency; and

(vii) at the Power Authority's headquarters office and at any local offices or projects in the area affected by the activity.

(b) Notices of completion of the draft EIS shall:

(1) contain the following:

(i) a statement that it is a notice of completion of a draft EIS;

(ii) the name and address of the lead agency;

(iii) the telephone number of a person who can provide further information;

(iv) the location of the action (county and city, town or village);

(v) a brief description of the action and the nature of its potential environmental impact statement;

(vi) a statement indicating where and how copies of the statement can be obtained;

(vii) a statement that comments on the draft EIS are requested and will be received and considered by the director. The notice shall specify the public comment and review period on the draft EIS. Such period shall be not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following any public hearing on the draft EIS; and

(viii) notice of hearing, if applicable; and

(2) be filed as follows:

(i) at the locations set forth in paragraph (a)(2) of this section;

(ii) with the State Clearinghouse;

(iii) with the appropriate regional clearinghouse designated under the Federal Office of Management and Budget circular A-95; and

(iv) for actions in the coastal zone, with the Secretary of State.

(3) if the director determines that a hearing is to be held:

(i) a notice of hearing may be made as part of the notice required by subdivision (b) of this section or separately, providing the information as specified in subdivision (b) is contained in the notice of hearing;

(ii) the notice of hearing shall specify the time, place and purpose of the hearing and a summary of the information contained in the notice of completion of the draft EIS; and

(iii) the notice of hearing shall be published at least 14 calendar days in advance of the hearing date in a newspaper of general circulation in the area of the potential impacts and effects of the action.

(c) One copy of all draft EIS's prepared by or at the request of the Power Authority and made available for public inspection as follows:

(1) at the locations set forth in paragraph (a)(2) of this section;

(2) shall be filed with persons requesting it. Where sufficient copies of a statement are not available, the Power Authority may charge a fee to persons requesting the statement to cover its costs in making the additional statement available; and

(3) for actions in the coastal zone, with the Secretary of State.

(d) The final EIS, together with the notice of its completion, shall be filed in the same manner as a draft EIS.

#### § 461.12 Responsibilities of the director

(a) With respect to Type I and unlisted activities where the Power Authority is the lead agency, the director shall make the initial determination of significance or nonsignificance. This determination will take into consideration the criteria set forth in section 461.18 of this Part, the information contained in the EAF and any other information which the director deems necessary to make such determination.

(b) If the director determines that an EIS is required, he shall prepare or cause to be prepared such EIS.

(c) Based upon the significance of the action and/or issues raised by any request for hearing, the director will determine if a hearing should be held. Any such hearing shall be for the purpose of obtaining additional public comment and shall be legislative in nature.

#### § 461.13 Decisionmaking and findings requirements

(a) Prior to the Power Authority's decision on an action which has been the subject of a final EIS, it shall afford agencies and the public a reasonable time period (not less than 10 calendar days) in which to consider the final EIS.

(b) The Power Authority, by its trustees or their delegate, shall not make a final decision to commence, engage in, fund or approve action that has been the subject of a final Federal or a final SEQRA EIS until it has:

(1) given consideration to the final EIS;

(2) made a written finding that the requirements of this Part have been met and the action is:

(i) consistent with social, economic and other essential considerations among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the relevant environmental impact statement; and

(ii) consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable; and

(3) prepared a written statement of the facts and conclusions relied upon in the EIS, supporting its decision and indicating the social, economic and other factors and standards which formed the basis of its decision.

(4) when the action is in the coastal area within the boundaries of an approved local waterfront revitalization program, and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, the action must be consistent, to the maximum extent practicable, with the applicable policies of such program.

(c) The Power Authority shall not make a decision to disapprove an action based upon the EIS until it has prepared a written statement of the facts and conclusions relied on in the EIS or comments provided thereon.

#### § 461.14 Fees and costs

(a) When an action subject to this Part involves an applicant, the Power Authority may charge a fee to the applicant in order to recover the actual costs of environmental review and/or preparing or reviewing the EIS; provided, however, that an applicant may not be charged a separate fee for both the preparation and review of an EIS; and provided, further, that any fee charged must reflect the actual costs to the Power Authority for such preparation or review. Where an applicant does not choose to prepare the EIS, the Power Authority shall provide the applicant, upon request, with an estimate of the costs for preparing such statement based on the total cost of the project for which funding or approval is sought.

(b) For nonresidential construction projects, the total project cost shall be the cost of supplying utility service to the project, the cost of site preparation and the cost of labor and material, as determined with reference to a current cost data publication in common usage such as Building Construction Cost Data by Means.

#### § 461.15 Confidentiality

When an applicant submits a completed EAF, draft or final EIS, or otherwise provides information concerning the environmental impacts of a proposed project, the applicant may request that specifically identified information be held confidential upon a showing by the applicant that such information constitutes a trade secret. Prior to divulging any such information, the Power Authority shall notify the applicant of its determination of whether or not it will hold the information confidential.

#### § 461.16 List of exempt actions

(a) Actions which are immediately necessary on an emergency basis for the protection or preservation of life, health, property or natural resources, including but not limited to water line or water storage breaks or leaks, contamination of water, threatened or actual dam failures, flooding and/or mechanical failures.

(b) Approval and execution of grants or contracts for minor reconstruction or rehabilitation, maintenance or repair of existing energy facilities or structures not involving an expansion of the facility or structure.

(c) Approval and execution of grants or contracts for the purchase of equipment and materials which will be used to rehabilitate, maintain or repair existing energy facilities or structures.

(d) All maintenance and repair activities involving no change in existing facilities and structures.

(e) All ministerial acts, including but not limited to:

(1) actions performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the act. Such law or regulatory requirements may involve, to a limited degree, a construction of their language or intent;\*

(2) any act, decision or commitment required to be made pursuant to SEQRA contractual agreements made prior to the effective date of SEQRA; and

(3) all enforcement actions and judicial and administrative proceedings commenced by or on behalf of the Power Authority against third parties to enforce compliance by such third party with any provision of any contract, law, rule or ordinance, by which such third party is bound.

(f) With respect to the requirements of subdivision 2 of section 8-0109 of SEQRA, actions requiring a Certificate of Environmental Compatibility and Public Need under articles VII and VIII of the Public Service Law, and the preparation of applications and supporting documents for, and considerations related to the granting or denial of, any such certificate.

(g) With respect to the requirements of subdivision 2 of section 8-0109 of SEQRA, actions subject to the jurisdiction of the Adirondack Park Agency pursuant to section 809 of the Executive Law, including actions of the Adirondack Park Agency thereunder, and actions subject to the jurisdiction of local governments pursuant to section 808 of the Executive Law and actions of such local governments pursuant thereto.

(h) Actions of the Legislature of the State of New York or of any court.

(i) Activities regulated by the Federal government, to the extent that State law is preempted.

#### § 461.17 List of Type II actions

(a) Reconditioning of existing facilities and structures, including essentially maintenance-type work with improvements to correct substandard features.

(b) Minor reconstruction of existing facilities and structures without making major expansion of said facilities or structures.

(c) The construction and location of small new structures and/or installation of minor new equipment, provided such construction or such location has no physical effect on unusual or unique areas, including Federal- or State-registered historic sites and critical areas designated in section 461.6(b)(8) of this Part.

(d) The conducting of engineering research and pilot plant studies to evaluate materials, equipment, methods and procedures, including but not limited to the installation of testing and monitoring equipment; provided that such studies do not involve a material change in the environment.

(e) The approval of funding for minor construction projects referenced in subdivisions (a)-(c) of this section.

(f) The preparation, review, approval or implementation of technical, engineering, economic, planning, environmental, feasibility or research studies, reports or memoranda which are preliminary to and may support the formulation of proposals for action(s) which do not otherwise commit the Power Authority to commence or engage in such action.

(g) The preparation of agreements (including leases, indentures, guarantees, construction agreements and similar documents) which are preliminary to and may support the formulation of proposal(s) for action(s) which do not otherwise commit the Power Authority to commence or engage in such action.

(h) The preparation and/or execution of construction contracts, involving an amount less than \$ 50,000 of labor, exclusive of the supply of materials, provided such construction which is the subject of such contract has no physical effect on unusual or unique areas, including Federal- or State-registered historic sites, and critical areas designated in section 461.6(b)(8) of this Part.

(i) Defining the scope of services, requests for proposals, negotiating and executing contracts with consultants for professional services.

(j) The preparation and/or execution of any purchase orders for materials, supplies or equipment appropriate to continued operation of authority offices or facilities.

(k) Planning, budgeting, cost estimation, preparation of work programs and other project process activities.

(l) The conducting of studies and the establishment of quality standards, including:

- (1) engineering research studies to evaluate materials, methods, equipment and procedures;
  - (2) establishing quality standards for engineering materials in accordance with accepted engineering practices;
  - (3) preparation of soil and water inventories;
  - (4) establishment of equipment construction standards; and
  - (5) conducting studies to determine efficiency and safety of existing systems.
- (m) Approval or adoption of plans, grants, contracts or permits to construct, replace, rehabilitate or convert existing equipment.
- (n) Approval and execution of grants or contracts to prepare studies or program plans which do not commit the authority to undertake specific programs or activities.
- (o) Preparation and adoption of new or revised comprehensive studies, or programs which do not commit the authority to undertake specific programs or activities.
- (p) Approval and execution of contracts or grants with respect to existing structures for:
- (1) the purchase or construction of fire/crash/rescue vehicles, buildings and other safety equipment to meet Federal requirements;
  - (2) the installation of fencing;
  - (3) the purchase and installation of security equipment;
  - (4) the purchase and installation of lighting systems;
  - (5) the purchase and installation of communication equipment;
  - (6) the purchase of weather and other atmospheric measuring equipment and/or services;
  - (7) the purchase of equipment necessary for facility maintenance; and
  - (8) the purchase of fuel.
- (q) The preparation and approval of documents certifying compliance with Federal and State requirements, preliminary to the formulation of proposal(s) for action(s).
- (r) The preparation and/or execution of agreements for the purchase, sale, transmission or distribution of electricity, not involving the construction of new transmission lines or generating facilities.
- (s) The execution of a lease for the use of Power Authority-owned property, where such lease provides for the use of the land and/or structures in their present condition or with minor alterations, provided that the lease of real property is less than 50 contiguous acres.
- (t) Minor temporary permits for the use of Power Authority property, where such use does not involve the physical alteration of such property.
- (u) The sale of Power Authority surplus property, other than land, radioactive material, pesticides, herbicides or other hazardous material.
- (v) The acquisition, sale or other transfer of less than 25 contiguous acres of land.
- (w) Preparing and maintaining policies, manuals, directives, procedures, guidelines, etc., which do not commit the authority to undertake new programs significantly impacting the environment, and which do not involve a major reordering of priorities.
- (x) Review of environmental impact statements prepared by others.
- (y) All routine administration, coordination, review and internal management activities of the Power Authority.
- (z) Grants to State or local governments for projects that do not involve construction or expansion of structures.
- (aa) Acceptance of grants or loans from the Federal, State or local governments, or any agency thereof.
- (ab) Issuance of indebtedness.
- (ac) The fixing of rates or adoption of customer rules, regulations and procedures for delivery of electrical service from existing or licensed facilities.

- (ad) Acceptance, rejection, approval or denial, by the chairman or his duly authorized agent, of:
- (1) schedules of minimum charges; and
  - (2) operating agreements.
- (ae) Repaving of existing highways or roads, not involving the addition of new travel lanes.
- (af) Street openings for the purpose of repair or maintenance of existing utility facilities.
- (ag) Installation of traffic control devices on existing streets, roads and highways.
- (ah) Public or private forest management practices, other than the removal of trees or the application of herbicides or pesticides.
- (ai) Maintenance of transmission right-of-way and existing facility landscaping or natural growth.
- (aj) Contracts for the purchase of power which do not commit the Power Authority to the construction of a large-scale energy facility.
- (ak) Temporary storage or disposal of waste material generated at Power Authority facilities, when such storage or disposal complies with State or Federal agency regulations.
- (al) Research and development contracts which do not involve a physical impact on the environment or an irreversible commitment to a course of action.
- (am) License and permit renewals, where there will be no material change in permit conditions or the scope of permit activities.
- (an) Minor temporary uses of land having negligible or no permanent effect on the environment.
- (ao) The extension of utility distribution facilities to service new or altered single- or two-family residential structures or to render service in approved subdivisions.
- (ap) Contracts or agreements contingent on the completion of SEQRA process or Public Service Law, article VII or VIII, Certification of Environmental Compatibility and Public Need.
- (aq) Approval of resale rates, as specified in Parts 452 and 454 of this Title.
- (ar) The operation or minor alteration of the following existing structures, buildings, facilities, mechanical equipment or topographical features involving negligible or no expansion of use beyond that previously existing. This category shall also include all levels of routine office and clerical activities, and the replacement of equipment with substantially identical equipment, except this exemption shall not apply to situations where the selection of substantial quantities of a source or type of material used in a project may have a significant environmental effect. It shall include, but not be limited to, the following authority categories:
- (1) laboratories;
  - (2) research stations;
  - (3) campsites and day-use areas;
  - (4) fishing docks and small piers, canoe carries, boat-launching sites, hunting and fishing access areas, trailheads and related structures;
  - (5) seawalls and other shore-protection facilities and structures, fences, guardrails and barriers;
  - (6) fish hatcheries, game farms and associated buildings and facilities;
  - (7) park areas and associated facilities;
  - (8) garages, service buildings and residences;
  - (9) beaches and playgrounds;
  - (10) headquarters and field offices;
  - (11) fish screens, fish ladders, stream improvement structures, fish barrier dams, fishing piers, fish spawning and incubator facilities, wildlife habitat areas, artificial wildlife waterway devices, streamflow, springs and waterholes, stream channels (clearing of debris) to protect fish and wildlife resources;

(12) roads, trails and paths, excluding the application of salts and other chemicals for snow and ice removal and betterments and safety-type projects, where the limits of the project are within the existing right-of-way, including parking lots, bridges, walkways, traffic signals and signs, lights and road drainage systems;

(13) dams and docks, not involving significant construction activity or any material change in height, hydraulics or operating schedules;

(14) streams, stream beds and existing ditches, including the cleaning of debris, silt, plant and tree roots and other obstructions from streams and ditches;

(15) aqueducts, levees and diversion facilities;

(16) water supply reservoirs;

(17) water pumping stations, water mains, water meters, water tunnels and appurtenances thereto;

(18) water treatment works;

(19) gasoline-powered generating works;

(20) watercourses and water bodies;

(21) sewers and subsurface disposal areas;

(22) sewage treatment works and associated facilities, including sewer interceptors, relief mains, outfalls, gatehouses, tidegates and other diversion structures, screens and combined sewer overflow treatment facilities;

(23) interior and exterior alterations involving such things as interior partitions, plumbing and electrical conveyances;

(24) the addition of safety or health protection devices for use during construction of, or in conjunction with, existing structures, facilities or mechanical equipment, or topographical features, including navigational devices; and

(25) the operation, alteration or replacement-in-kind of vehicles and equipment to be used at, or in conjunction with, the above items.

(as) The replacement, restoration, rehabilitation, reconstruction, renovation, demolition and removal of small existing equipment, structures or facilities, where the structure or facility to be modified or replaced will have substantially the same purpose and capacity as that replaced. Structures and facilities include, but are not limited to, those itemized under subdivision (ar) of this section. The activities described above in this category shall be limited to those having an estimated cost of \$ 500,000 or less, or which will have an interior area of not more than 10,000 square feet and not involve a total land area of more than two acres. Actions within this class are categorically exempt, as noted in subdivision (ar), except where substantially less harmful equipment having similar performance is available or where substantial noise, air, water or other pollution or the release of substantial waste products is likely to result from the reconstruction or replacement projects.

(at) The construction and location (or the allotment of funds therefor) of single, small, new facilities or structures where the total area of the structure does not exceed 10,000 square feet, or have an estimated cost exceeding \$ 500,000, and the surroundings are returned to their original condition after the construction/installation of the structure or facility. It shall also include additions of no more than 2,500 square feet to existing small structures or facilities. Actions within this category are exempt, except where construction activity may be reviewed as part of a whole, larger action not otherwise exempt, or series of actions, all of which are interrelated and logically form the component parts of a single larger action. It shall also include the installation of minor new equipment and facilities, such as air quality, other environmental monitoring facilities and research demonstration projects.

(au) Minor alterations in the condition of land, water, vegetation and/or fish and wildlife resources. This exemption shall not apply, for example, to the stockpiling on such lands of quantities of salt, corrosive chemicals, poisonous substances, fertilizers, etc., in quantities which may cause damage to the environment. The degree to which alteration is minor or not dangerous shall be determined on the basis of its actual and potential effect. This exemption shall include such actions as planting and landscaping to improve the general vegetation quality and similar projects. This exemption shall not include any substantial change in the authorized use for land where such change may have a significant environmental effect. It shall include, but not be limited to, the following:

(1) landscaping, groundskeeping and similar activities that may alter or temporarily disturb the surface of land, but which ultimately will return the land to substantially the same or better condition, such as minor soil grading, seeding, planting, etc.;

(2) soil and ground-water borings and tests, minor land cuts and brush clearing for survey purposes;

(3) the following silvicultural activities shall be considered minor: tree pruning; tree seeding and planting; weeding and releasing; noncommercial thinning; the improvement of cuttings and demonstration plot; the cutting of not more than 10 trees per acre in the saw timber class, which class shall include softwood trees of 9 inches diameter or more and hardwood trees of 11 inches diameter or more;

(4) forest management practices, including construction, maintenance and repair of facilities or structures and silvicultural activities in compliance with the Forest Road Construction Handbook (1973) and the Timber Harvesting Guidelines for New York (1975), or practice approved by the Public Service Commission;

(5) the following site-specific and individual fish and wildlife activities shall be considered minor if they do not involve significant departures from established and accepted practices and if such actions are described in and are a part of general fish and wildlife management programs for which an EIS has been prepared: fish and wildlife habitat improvement; planting of native or naturalized fish and wildlife; harvesting or thinning of fish or wildlife surpluses; hunting, trapping and fishing permits; weeding of competing or parasitic species and species incompatible with man's interests; improvement or rehabilitation of fish or wildlife resources, fish barrier dams, small rock or log dams, fish passage structures, minor diking, cribbing, bank stabilization and stream deflectors and other structures or improvements, designed solely for fishery management purposes, which do not materially alter the natural character of the waterway; and other alterations which are relatively short-lived and will be followed by prompt replacement of fish or wildlife resources with the intention of providing equivalent or greater values;

(6) minor trenching and backfilling, where the surface is restored;

(7) eradication of alternate host plants of parasitic tree diseases, using registered herbicides applied on an individual plant basis;

(8) ground application of registered pesticides, on an individual tree basis, for the suppression of forest pests on Power Authority lands;

(9) sanitation to control forest pests that vector tree diseases or threaten residual trees; and

(10) parasite and predator invertebrate releases for forest pest suppression.

(av) Information collection, consisting of basic data gathering for possible future actions of the Power Authority; short-range planning activities, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource and which are not preliminary steps leading to a given action or project already identified. This category includes: water quality and pollution studies; traffic counts; engineering studies; boring studies; soil surveys and other materials sampling; feasibility studies; mineral and oceanographic surveys and research projects not involving the removal of more than 100 cubic yards of material in any one location; the sampling of fish and wildlife population by netting, trapping and other acceptable scientific means; and inventory surveys conducted by Power Authority personnel in the field for game management, fish management, forestry, fire control, environmental protection, etc.

(aw) Inspections to check for performance of an operation or the quality, health or safety of an action, activity or project.

(ax) Administrative and service functions of the Power Authority, including but not limited to:

(1) Power Authority provision of technical assistance to other government agencies;

(2) Power Authority comments on legislation and regulations proposed by other agencies;

(3) training and education services of the Power Authority;

(4) routine contracts for printing, equipment maintenance, etc.;

(5) review of applications for aid to municipal customers, not involving major federally funded capital construction projects;

(6) the transportation of personnel, materials and equipment in connection with the operation of the Power Authority;

(7) preparation and adoption of operating budgets or modifications thereof;

(8) collective bargaining and employee personnel services;

(9) self-insurance or insurance contracting;

(10) dissemination of public information and public information activities; and

(11) the making of investments by or on behalf of the Power Authority.

#### § 461.18 Criteria for determination of significance

In order to determine whether a proposed Type I or unlisted action may have a significant effect on the environment, the impacts which may be reasonably expected to result from the proposed action must be compared against the criteria in this section, whether or not an EAF has been prepared. The following list is not exhaustive; however, these criteria are considered indicators of significant effects on the environment:

(a) a substantial adverse change in existing air quality, water quality or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding or drainage problems;

(b) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; or substantial adverse effects on a threatened or endangered species of animal or plant, or the habitat of such a species;

(c) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

(d) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;

(e) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources or of existing community or neighborhood character;

(f) a major change in the use of either the quantity or type of energy;

(g) the creation of a hazard to human health or safety;

(h) a substantial change in the use, or intensity of use, of land or other natural resources or in their capacity to support existing uses;

(i) the creation of a material demand for other actions which would result in one of the above consequences;

(j) changes in two or more elements of the environment, no one of which has a significant effect on the environment, but which when taken together result in a substantial adverse impact on the environment; or

(k) two or more related actions undertaken, funded or approved by an agency, no one of which has or would have a significant effect on the environment, but which cumulatively meet one or more of the criteria in this section.

(1) For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other simultaneous or subsequent actions which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

(2) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

(i) its setting (i.e., urban or rural);

(ii) its probability of occurring;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope; and

(vi) its magnitude.