



HIGH RIVER ENERGY CENTER

Case No. 17-F-0597

1001.32 Exhibit 32

State Laws and Regulations

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Exhibit 32: State Laws and Regulations

This Exhibit will track the requirements of proposed Stipulation 32, dated August 26, 2019, and therefore, the requirements of 16 NYCRR § 1001.32. Policies and guidelines are addressed in Exhibit 4.

32(a) State Approvals, Consents, Permits, Certificates, or Other Conditions of a Procedural Nature

The Applicant has compiled a list of state approvals, consents, permits, certificates, or other conditions of a procedural nature that are applicable to the construction or operation of the Project (see Table 32-1 below). These state requirements are supplanted by Public Service Law (PSL) Article 10 unless the Board expressly authorizes the exercise of such authority by the state agency.

Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature

Permit/Clearance	Regulatory Agency	When Required	Potential Studies & Application Requirements	Status
Certificate of Public Convenience and Necessity (PSL § 68)	New York Public Service Commission (NYPSC)	Projects greater than 80 Megawatts (MW)	Permission required per regulatory requirements as interpreted by New York Public Service Commission staff in Cassadaga decision	Concurrent with Article 10 Application review and approval.
Stormwater Permit for Discharges from Construction Activity (State Pollutant Discharge Elimination System [SPDES] GP-0-15-002)	New York State Department of Environmental Conservation (NYSDEC)	Soil disturbance of one or more acre	Preparation of a Stormwater Pollution Prevention Plan (SWPPP)	Applicant will submit a Final SWPPP to the NYPSC staff; submit Notice of Intent (NOI) to NYSDEC at least five days prior to construction.

Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature

Permit/Clearance	Regulatory Agency	When Required	Potential Studies & Application Requirements	Status
Water Quality Certification (Section 401 of the Clean Water Act [CWA])	NYPSC staff	Projects that will result in the discharge of dredged or fill material into Waters of the United States (WOTUS)	Wetland and waterbody delineations for this Application began in Summer 2017 and were completed in May 2019	Issuance will be coordinated as part of the Article 10 process.
Historic Preservation Act (Section 14.09)	New York State Historic Preservation Office (SHPO)	Project must go through review/consultation to determine whether it will affect historic or culturally significant properties	Phase I Assessment	Project has been preliminarily reviewed on SHPO Cultural Resources Information System (CRIS) Phase IA and IB review coordinated with Article 10 process.
Agricultural and Markets Law – Article 25-AA	New York State Department of Agriculture and Markets (NYSDAM)	Consultation required as Project is located within certified Agricultural Districts	Review of Agricultural District Mapping & Coordination with NYSDAM	Consult with NYSDAM for recommendations on how to minimize impacts to agricultural operations as part of the Project. Consultation will be incorporated into the Article 10 process.
Interconnection Studies	New York Independent System Operator (NYISO)	Interconnection Required	Feasibility study and system reliability impact study complete.	Interconnection request submitted 3/24/2017.

In addition to the Article 10 Application, the Applicant will apply to the NYPSC for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the PSL authorizing the exercise of municipal rights to occupy municipal property and for other authorizations as clarified by the NYPSC staff in its Cassadaga decision issuing the certificate.

32(b) List of State Procedural Requirements

At this time, the Applicant does not request the NYPSC staff to authorize any state agency to expressly authorize the exercise of authority for any procedural requirements.

32(c) State Approvals, Consents, Permits, Certificates, or Other Conditions of a Substantive Nature

The Applicant has compiled a list of state approvals, consents, permits, certificates, or other conditions of a substantive nature that are applicable to the construction or operation of the Project (see Table 31-2 below). The Applicant intends to comply with the substantive requirements as outlined in Table 32-2 below.

32(d) Summary Table of All State Substantive Requirements

Table 32-2. Summary Table of All State Substantive Requirements

Provision	Degree of Compliance
Water Quality Certification. Section 401 of the CWA 6 NYCRR Part 621.4e (Water Quality Certifications in Accordance with Section 401 of the CWA)	The Applicant anticipates to fully comply.
Consultation Pursuant to §14.09 of the New York State Historic Preservation Act 9 NYCRR Part 428 (State Agency Activities Affecting Historic or Cultural Properties)	The Applicant anticipates to fully comply.
SPDES General Permit for Construction Activity Article 3, 6 NYCRR Part 750-1.11 (Application of Standards, Limitations, and other Requirements)	The Applicant anticipates to fully comply.
Special Hauling Permit Section 385 of the New York State Vehicle and Traffic Law	If required, the Applicant anticipates to fully comply.

32(e) List of State Approvals, Consents, Permits, Certificates, or Other Conditions for Offsite Components

The Applicant has not identified any additional state approvals, consents, permits, certificates, or other conditions for proposed offsite interconnections and ancillary features.

References

- New York State Department of Environmental Conservation (NYSDEC). November 23, 2016. *SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-15-002)*. https://www.dec.ny.gov/docs/water_pdf/gp015002.pdf. Accessed 2019.
- NYSDEC. May 1997. *Article 24 Freshwater Wetlands, Title 23 of Article 71 of the Environmental Conservation Law*. https://www.dec.ny.gov/docs/wildlife_pdf/wetart24b.pdf. Accessed July 18, 2019.
- New York State Parks, Recreation, and Historic Preservation. n.d. *Federal and State Preservation Legislation*. <https://parks.ny.gov/shpo/environmental-review/preservation-legislation.aspx>. Accessed July 18, 2019.
- United States Environmental Protection Agency. May 1, 2019. *Clean Water Act Section 401: State Certification of Water Quality*. <https://www.epa.gov/cwa-401/clean-water-act-section-401-state-certification-water-quality>. Accessed 2019.