



# **EXCELSIOR ENERGY CENTER**

**Case No. 19-F-0299**

**1001.32 Exhibit 32**

**State Laws and Regulations**

## Contents

Exhibit 32: State Laws and Regulations .....	1
32(a) State Approvals, Consents, Permits, Certificates, or Other Conditions of a Procedural Nature .....	1
32(b) List of State Procedural Requirements .....	3
32(c) State Approvals, Consents, Permits, Certificates, or Other Conditions of a Substantive Nature.....	3
32(d) Summary Table of All State Substantive Requirements .....	4
32(e) List of State Approvals, Consents, Permits, Certificates, or Other Conditions for Offsite Components .....	4
References.....	5

## Tables

Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature .....	1
Table 32-2. Summary Table of All State Substantive Requirements .....	4

## Exhibit 32: State Laws and Regulations

This Exhibit will track the requirements of Stipulation 32, dated July 6, 2020, and therefore, the requirements of 16 New York Codes, Rules and Regulations (NYCRR) § 1001.32.

### 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 Excelsior Energy Center (Project) (Table 32-1). These state requirements are supplanted by Public Service Law (PSL) Article 10, except for the NYPSL Section 68 certificate of public convenience and necessity to be issued by the NYPSC and permits to be issued by the NYSDEC pursuant to federal recognition of state authority, or pursuant to federally delegated or approved authority, in accordance with the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, and permits pursuant to § 15-1503, Title 9 of Article 27, and Articles 17 and 19 of the ECL, unless the Board expressly authorizes the exercise of such authority by the state agency.

**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)	Certificate is required per regulatory requirements as interpreted by the Siting Board in the Cassadaga Article 10 decision and order.	Concurrent with or after Article 10 Application review and approval.
Stormwater Permit for Discharges from Construction Activity (State Pollutant Discharge Elimination System [SPDES] GP-0-20-01)	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 prior to construction and also 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])	Siting Board	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 2019 and were completed in April 2020	Issuance will be coordinated as part of the Article 10 process.
National Historic Preservation Act (Section 106)	New York State Historic Preservation Office (SHPO)	Project must go through review/consultation to determine whether it will affect historic properties	Phase IA/B Archaeological Survey Historic Architectural Survey	Project has been preliminarily reviewed on SHPO Cultural Resources Information System (CRIS). Phase IA and IB review coordinated with Article 10 process. Phase IB to be submitted to SHPO after Application filing. Historic Architecture Survey performed during Article 10 application 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.

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

Permit/Clearance	Regulatory Agency	When Required	Potential Studies & Application Requirements	Status
Highway Work and Use & Occupancy Permits	NYSDOT	Required for overhead or underground crossings of state highways, access roads from state highways, and temporary widening of intersections at state highways	Complete Standard Permit Application	If determined necessary, approved once routes are final; anticipated immediately prior to start of construction
Special Haul Permit	NYSDOT	Required for overweight and/or oversized deliveries	Complete Standard Permit Application	If determined necessary, approved once travel routes are final; anticipated immediately prior to start of construction

**32(b) List of State Procedural Requirements**

Apart from the NYSDOT permits described in Table 32-1 above, the Applicant does not request the Sitting Board authorize any state agency to expressly exercise the 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 (Table 31-2). The Applicant intends to comply with the substantive requirements as outlined in Table 32-2.

**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 §106 of the National 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.
NYSDOT Use and Occupancy of State Highway Rights-of-Way, 17 NYCRR Part 131 (accommodation of Utilities within State Highway Right-of-Way)	The Applicant anticipates to fully comply.
Highway Work Permit, New York State Highway Law, Article 3, § 52	The Applicant anticipates to fully comply.
NYSDOT Special Haul Permit, Section 385 of the New York State Vehicle and Traffic Law	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](https://www.dec.ny.gov/docs/water_pdf/gp015002.pdf). Accessed January 2020.
- 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](https://www.dec.ny.gov/docs/wildlife_pdf/wetart24b.pdf). Accessed January 2020.
- 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 January 2020.
- 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 January 2020.