

**Supplement to the Application for a Certificate of
Environmental Compatibility and
Public Need Pursuant to Article 10 of the
New York State Public Service Law**

Excelsior Energy Center

Town of Byron, New York

Case No.: 19-F-0299

Applicant:

Excelsior Energy Center, LLC
700 Universe Boulevard, FEW/JB
Juno Beach, FL 33408
Contact: Keddy Chandran
Keddy.Chandran@nexteraenergy.com
Office: (561) 691-7274



Prepared by:

TRC Companies, Inc.
1090 Union Road, Suite 280
West Seneca, NY 14224
Contact: Kaitlin McCormick
KMcCormick@trccompanies.com
Office: (716) 221-4128



December 2020

Contents

Exhibit 2: Overview and Public Involvement	2
Exhibit 3: Location of Facilities	2
Exhibit 4: Land Use	3
Exhibit 13: Real Property	3
Exhibit 15: Public Health and Safety	4
Exhibit 18: Safety and Security	4
Exhibit 20: Cultural Resources	5
Exhibit 21: Geology, Seismology, and Soils	6
Exhibit 22: Terrestrial Ecology and Wetlands	7
Exhibit 24: Visual Impacts	12

Attachments

Attachment A: Appendix 2-6: Stakeholder List, Revised December 2020	
Attachment B: Revised Figure 3-1A: Project Component Locations	
Attachment C: Revised Figure 4-3A: Tax Parcels	
Attachment D: Revised Figure 13-1A: Real Property Map	
Attachment E: Boundary Survey	
Attachment F: Glint and Glare Analysis	
Attachment G: Department of Homeland Security Consultation	
Attachment H. OPRHP Phase 1B	
Attachment I. OPRHP Historical Architecture Report Receipt/Review Acknowledgement	
Attachment J: Revised Figure 21-3A: Bedrock	
Attachment K: Revised Figure 21-5A: Mine Quarries and Oil and Gas Wells	
Attachment L: Revised Figure 22-2A: Plant Communities within 500ft of Disturbance	
Attachment M: Invasive Species Management and Control Plan (ISMCP), Revised December 2020	
Attachment N: Visual Impact Assessment - Revised Simulations	
Attachment O: Additional Water Well Surveys	
Attachment P: Supplement to Exhibit 31: Local Laws and Ordinances	

In response to the November 25, 2020 letter received from the Chair of the New York State Board on Electric Generation Siting and the Environment (Chair) regarding the Application submitted by Excelsior Energy Center, LLC (Applicant) pursuant to N.Y. Public Service Law (PSL) 164 for a Certificate of Environmental Compatibility and Public Need for the Excelsior Energy Center Project (the Project), supplemental information is provided below and attached. The organization of this document (hereafter referred to as the “Supplement to the Application”) is consistent with the Chair’s November 25, 2020 letter and presents each comment followed by the Applicant’s response to the comment.

Exhibit 2: Overview and Public Involvement

1. 16 NYCRR §1001.2(c) requires “a brief description of the public involvement program conducted by the applicant...”. In describing this, Exhibit 2 references the Stakeholder List in Appendix 2-6 which include incorrect information in that the names and titles of individuals do not correspond to the correct addresses and stakeholder groupings. For example, the names and titles of State agency staff are included in the categories of Host Community, Highway Department, County Agencies, Federal Agencies, and Emergency Responders, but with incorrect organization names and addresses. Please provide a revised Stakeholder List to reflect correct names, departments/agencies and addresses.

Response: The Stakeholder List in Appendix 2-6 has been revised to reflect correct names, departments/agencies and addresses of identified Stakeholders. The revised Stakeholder List is included herein as Attachment A.

Exhibit 3: Location of Facilities

1. Stipulation 3(a)(5) requires the Application to include the most recent USGS maps (1:24,000 topographic edition) showing “the Study Area for the Project generally related to the nature of the technology and the setting of the proposed Project Area. Based on the scale of the Project and the Project setting, the Application will include the evaluation of a two-mile Study Area from all Project Area property boundaries unless stated otherwise in the Application for resource-specific surveys.” Further, Stipulation 3(b) requires “maps clearly showing the location of the proposed Project Area and Study Area, which will be a two-mile Study Area unless otherwise noted. Mapping will also show the interconnections, including electric collection lines, collection substation, the 345 kV switchyard and tap line in relation to municipal boundaries, taxing jurisdictions, and designated neighborhoods or

community districts, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.” Exhibit 3 indicates this is shown in Figure 3-1; however Figure 3-1 does not show the location and full extent of the proposed facilities in relation to the two-mile Study Area as described in Exhibit 3 or in Stipulations 3(a)(5) and 3(b). Please revise Figure 3-1 to include the location and full extent of the proposed facilities, including the Project substation, POI substation and switchyard, and energy storage facilities, within the proposed two-mile Study Area.

Response: Figure 3-1 has been updated to show the location of the Project substation, point of interconnection (POI) substation and switchyard, and energy storage facilities, as requested, and is included herein as a new Figure 3-1A in Attachment B.

Exhibit 4: Land Use

1. 16 NYCRR §1001.4(c) requires “a map of all properties upon which any component of the major electric generating facility or the related facilities would be located, and all properties adjoining such properties, that shows the current land use, tax parcel number and owner of record of each property.” Exhibit 4 indicates this information is depicted in Figure 4-3, however that figure does not depict the tax parcel numbers or owners of record for all adjoining properties. Please provide a revised Figure 4-3 that includes the tax parcel numbers or owners of record for all adjoining properties.

Response: Figure 4-3 has been updated to include the tax parcel numbers or owners of record for all adjoining properties, as requested, and is included herein as a new Figure 4-3A in Attachment C.

Exhibit 13: Real Property

1. 16 NYCRR § 1001.13(a) requires “a survey of the facility site showing property boundaries with tax map sheet, block and lot numbers; the owner of record of all parcels included in the site and for all adjacent properties.” Figure 13-1 does not show the tax parcel numbers or owners of record for all adjacent properties. Please provide a revised Figure 13-1 that includes the tax parcel numbers or owners of record for all adjoining properties.

Response: Figure 13-1 has been updated to include the tax parcel numbers or owners of record for all adjoining properties, as requested, and is included herein as a new Figure 13-1A in Attachment D.

2. Stipulation 13(a) requires “a survey of the Project Area, created by a licensed surveyor.” Exhibit 13 states that “boundary surveys will be prepared by a New York State licensed professional and will comply with the applicable substantive requirements of the Town of Byron Code.” A survey of the Project Area was not provided. Please provide the survey of the Project Area as required by Stipulation 13(a).

Response: A boundary survey of the Project Area has been prepared by a New York State licensed professional and has been included herein as Attachment E.

Exhibit 15: Public Health and Safety

1. Stipulation 15(o) requires the Application to include a glare analysis prepared in accordance with Stipulation 24(a)(9). Stipulation 24(a)(9) requires an “analysis and description of related operational effects of the Project such as glare. A discussion on any potential glare impacts will be provided in the Application.” The Application only considered the potential for glare exposure at second story residential receptors. The potential for glare exposure at first story residential and public roadway receptors was not discussed. Please provide a glare analysis that assesses the potential extent, frequency and duration of solar panel glare at first story residential and public roadway receptors.

Response: The glare analysis has been updated to assess the potential for glare exposure at first story residential and public roadways. No glare is predicted. Results of the analysis are included in Attachment F.

Exhibit 18: Safety and Security

1. 16 NYCRR §1001.18(d) requires the Application to include “a statement that the applicant has provided a copy of the plans required in subdivisions (a), (b), and (c) of this section to, and requested review of such plans and comment by, the New York State Division of

Homeland Security and Emergency Services.” Exhibit 18 of the Application states “the Applicant will provide a copy of the plans required in Sections 18(a), 18(b), and 18(c) of this Exhibit to the New York State Division of Homeland Security and Emergency Services and will also request that it review and provide comments on the ERP.” Please confirm that the Applicant has provided a copy of the required plans to the New York State Division of Homeland Security and Emergency Services, including a request for review and comment, and specify the date this information was provided.

Response: On December 18, 2020 a copy of the plans required in Sections 18(a), 18(b), and 18(c) of Exhibit 18, including the Preliminary Emergency Response Plan and Site Security Plan, was provided to the New York State Division of Homeland Security and Emergency Services and request for review and comment was made by the Applicant. The consultation letter has been included herein as Attachment G. Copies of the Preliminary Emergency Response Plan and Site Security Plan were previously included with the Application and therefore have not been included again in this filing.

Exhibit 20: Cultural Resources

1. 16 NYCRR §1001.20(a)(3) requires a Phase IB study, as determined in consultation with the Office of Parks, Recreation, and Historic Preservation (OPRHP). Page 7 of Exhibit 20 indicates that the Phase IB archeological study is scheduled to occur concurrently with the filing of the Application. However, the Application as filed does not include the Phase IB archeological study. Please provide the Phase IB archeological study, upon completion and proof of consultation with SHPO regarding its receipt and review of the Phase IB study.

Response: The Phase IB Archaeological Survey is included as Attachment H. OPRHP’s acknowledgement of receipt of the Phase IB study is included as Attachment I.

2. 16 NYCRR §1001.20(a)(4) and Stipulation 20(a)(5) require a Phase II study based on the Phase I study results, as determined in consultation with OPRHP and DPS. If OPRHP determines that a Phase II study and/or site avoidance plans are warranted, please provide the Phase II report and/or site avoidance plans, along with proof of SHPO consultation regarding its receipt and review of the report.

Response: Site Avoidance Plans and proof of SHPO consultation are included in the Phase IB study report included as Attachment I.

3. Stipulation 20(c) requires that “consultation with Federally Recognized Indian Nations will be initiated by OPRHP, consistent with government-to-government consultations. Based on the Project’s geographical location, consultation will be conducted with the Seneca Nation of Indians and the Tonawanda Seneca Nation as determined by DPS and OPRHP. The Tribal Historic Preservation Offices (THPO) will be included on the Master Stakeholder List and documentation of these consultations will be included in the Application and reflected in the Meeting Log.” The Master Stakeholder List (Appendix 2-6) and the Meeting Log (Appendix 2-4) do not reflect consultations with the THPOs. Additionally, consultations with OPRHP are not reflected in the Meeting Log. Please update Appendices 2-4 and 2-6 with the required consultation information.

Response: All direct consultation with the Seneca Nation of Indians and the Tonawanda Seneca Nation was conducted through OPRHP and is included in Appendix 20-3 of the Application and therefore has not been included in Appendix 2-4. Appendix 2-6 has been revised to include the Tribal Historic Preservation Officers (THPO) for the Seneca Nation of Indians and the Tonawanda Seneca Nation (Attachment A).

Exhibit 21: Geology, Seismology, and Soils

1. 16 NYCRR 1001.21(q) requires “maps, figures, and analyses delineating depth to bedrock and underlying bedrock types” within the Facility Site. Figure 21-3 of the Application shows lavender shaded areas with black horizontal stripes, but this symbol is not defined. Please revise Figure 21-3 with a legend that defines all symbols on the map.

Response: Figure 21-3 has been updated to include a legend that defines all symbols on the map, as requested, and is included herein as a new Figure 21-3A in Attachment J.

2. Stipulation 21(z)(1) requires “an identification of all oil and/or natural gas wells that are located within 500 feet of the Project Area. The identification will be based on records maintained by NYSDEC.” NYSDEC advises that the API Well Numbers for each of the wells identified on Figure 21-5 and listed in Table 21-6 are incorrect. Please revise Figure

21-5 and Table 21-6 with accurate API Well Numbers. The API Well Numbers should be consistent with existing NYSDEC oil and gas well records.

Response: Figure 21-5 has been revised to include accurate API Well Numbers, as requested, and is included herein as a new Figure 21-5A in Attachment K. Table 21-6 has been updated the reflect these revisions and is included below:

Updated Table 21-6. NYSDEC-Regulated Oil and Gas Wells within 500 Feet of the Project Area

Well Name	API Well Number	NYSDEC Reported Status	Well Type	Lat	Lon
Welch 1	31037040440000	Plugged Well	Dry Hole Plugged	43.06666	-78.06454
Tyler 1	31037045930000	Unplugged Well	Dry Hole	43.04293	-78.07707
Starowicz	31037101790000	Unplugged Well	Gas Well	43.05212	-78.1148
Bater	31037103100000	Plugged Well	Dry Hole Plugged	43.0747	-78.09993
Britt 1	31037103150000	Unplugged Well	Gas Well	43.06043	-78.09057
Keif	31037104920000	Unplugged Well	Gas Well	43.06139	-78.09581

Exhibit 22: Terrestrial Ecology and Wetlands

1. Stipulation 22(a)(3) requires “maps at a scale of 1:1,200 (1”=100’) showing approximate locations and extent of identified plant communities as classified according to Ecological Communities of New York State (Edinger et al., 2014) for Project Areas within 500 feet of disturbance. Plant communities for parcels outside the Project Area on which the Applicant does not have control will be determined as identified through the National Land Cover Database (NLCD), and observations made from publicly accessible roads, as feasible.” Figure 22-2 uses a scale of 1”=300’. Please revise Figure 22-2 to the required scale of 1:1,200 (1”=100’).

Response: Figure 22-2 has been updated to the required scale of 1:1,200 (1”=100’), as requested, and is included herein as new Figure 22-2A in Attachment L. Due to the number of pages required for this figure, digital copies have been provided and hard copies will be provided by the Applicant upon request.

2. Stipulation 22(g) requires the Application to include “an identification and evaluation of reasonable avoidance measures or, where impacts are unavoidable, measures to minimize impacts during siting and development of the Facility, to the maximum extent practicable, including the use of alternative technologies, regarding impacts to vegetation, wildlife, including freshwater mussels, wildlife habitat, federally and State-listed and protected species, SSC, and SGCN.” NYSDEC advises that Exhibit 22 fails to include the required information for freshwater mussels. Rainbow (*Villosa iris*) is a freshwater mussel species that is ranked as S2 Imperiled in New York. There are records for Rainbow in Spring Creek (ONT-117-19-28), Black Creek (ONT-117-19), and Bigelow Creek (ONT-117-119-30) within the Project Area. Therefore, the entirety of these streams in the Project Area are within the 10 km screening distance for Rainbow. Please provide the required discussion.

Response: Horizontal directional drilling (HDD) will be utilized the installation of collection lines at three stream crossing, including one Black Creek crossing and two Bigelow Stream crossings. The location of these crossings can be found on sheets C.324, and C.340-C.341 of the Preliminary Design Drawings previously included as Appendix 11-1 of the Application. There are no proposed access road crossings for Spring Creek, Black Creek, or Bigelow Creek. Therefore, the Project will not include any direct impacts to Spring Creek, Black Creek, or Bigelow Creek. Indirect impacts will be avoided through the use of best management practices (BMPs), including those described in the Project’s Preliminary Stormwater Pollution Prevention Plan provided as Appendix 23-3 of the Application. Therefore, no impact to Rainbow (*Villosa iris*) is expected.

3. Stipulation 22(i)(1) requires “all wetlands in the Project Area, including those within 50 meters (164 feet) of a state-regulated wetland, regardless of size or connectivity, will be delineated and included in field mapping. Detailed location maps and ecological characterization data for all vernal pools located within 100 feet of related disturbances on all Project parcels will be included. Any part of the 100-foot survey area which falls outside of the Project parcels, without accessibility, will be estimated within 100 feet of the limits of disturbance.” NYSDEC advises that detailed location maps and ecological characterization data for all vernal pools were not provided for the entire Project Area, including 6.8 acres of forested area. Please provide an acknowledgement/commitment that the areas not reviewed in March 2020 will be field reviewed in the Spring of 2021.

Response: In response to the request for additional information, the Applicant will commit to the completion of vernal pool screening in the Spring of 2021 of the 6.8 acres of forested area within the Project Area that was not reviewed in March 2020. Results of this field review will be filed with the Secretary and forwarded to NYSDEC upon completion.

4. Stipulation 22(m) requires the Applicant to “consider publicly available records on prior converted cropland as part of its analysis.” NYSDEC advises that the Application does not indicate if any such analysis was done or if the above mentioned records were considered. Please provide the required analysis.

Response: A request for information regarding publicly available records on prior converted cropland was sent to Mr. Heath Eisele, District Conservationist with USDA NRCS Batavia Service Center on June 26, 2020. A response was received on July 6, 2020, however the response indicated records regarding prior converted cropland data are not held by NRCS and the information was not available.

5. Stipulation 22(o) requires the Application to discuss potential avoidance and minimization measures for federally and State-listed threatened and endangered (T&E) species. NYSDEC advises that the Application does not discuss potential avoidance and minimization measures for Project impacts to bald eagles. Appendix 22-9 contains a letter from the NY Natural Heritage Program dated May 29, 2019, stating that bald eagles have been documented within one mile of the Project. Additionally, NYSDEC has had several conversations with the Applicant regarding the bald eagle nest located less than one mile from proposed Project components. With pile-driving and other noise-producing construction activities being proposed for the Project (discussed in Exhibit 21), the Application must contain a discussion of potential avoidance and minimization measures for impacts to bald eagles. Please provide the required discussion.

Response: Although correspondence from the New York Natural Heritage Program indicated the presence of bald eagles within 1 mile of the project site, no bald eagle nests were observed during surveys of the Project Area. If at any time during construction of the Project (including site restoration measures upon commissioning of the Facility), a nest or roost of any federally or State-listed T&E bird species is discovered and confirmed by the onsite Environmental Monitor or if any federally or State-listed TE bird species is observed by the onsite Environmental Monitor displaying roosting or breeding behavior

for that species within 500 feet of the Project Area, the following actions will be taken: NYSDEC and DPS Compliance Staff will be notified within 24 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior; an area at least 500 feet in radius around the nest or roost of the T&E species will be posted and avoided (for eagles, the avoided area shall be at least one-quarter (1/4) mile in radius if there is no visual buffer, or an area of at least six hundred and sixty (660) feet in radius if there is a visual buffer) and will remain in place until notice to continue construction, ground clearing, grading, or restoration activities at that site is granted by DPS Compliance Staff, in consultation with NYSDEC. The nest or roost will not be approached under any circumstances unless authorized by DPS Compliance Staff in consultation with NYSDEC. The Environmental Monitor's observation may also include a recommendation pertaining to: 1) if the discovered T&E species nest or roost has the potential to be impacted by construction or restoration activities; 2) if the avoided area radius can be reduced according to the species identified and the associated construction, disturbance, or restoration activities; and, 3) what measures are necessary to protect the nest or roost and to provide a timeline for the implementation of such measures. All authorizations required by DPS Compliance Staff in consultation with NYSDEC shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

6. Stipulation 22(p)(3) requires "a summary of the survey methods to be used to identify and mark existing invasive species within the Project Area." NYSDEC advises that the ISMCP included as Appendix 22-8 does not contain this information. Please provide a revised ISMCP that includes this required information.

Response: The ISMCP has been revised to include a summary of the survey methods used to identify and mark existing invasive species within the Project Area, the results of which will serve as the baseline survey for post-construction invasive species monitoring efforts. The revised Plan is provided herein as Attachment M.

7. Stipulation 22(p)(10) requires a "detailed description of the BMPs or procedures that will be implemented, and the education measures that will be used to educate workers." NYSDEC advises that the ISMCP included as Appendix 22-8 does not contain information on how and when crews will be educated and who is responsible for

developing/providing/distributing the educational materials to workers. Please provide a revised ISMCP that includes this required information.

7. **Response:** Section 4.0 of the ISMCP includes a description of the BMPs that will be implemented during construction and operation of the Project. Section 5.0 of the has been revised to include the information on how and when crews will be educated on invasive species management and control. The Applicant will be responsible for developing/providing/distributing the educational materials to workers. The corporate environmental compliance team will provide construction staff training concerning compliance requirements. The revised ISMCP is provided herein as Attachment M.

8. Stipulation 22(p)(11) requires a “detailed description of a minimum of 5-year post-construction monitoring and corrective action/adaptive management plan, to achieve the goal of no new invasive species in the Project Area and no new locations of existing invasive species in the Project Area resulting from Project construction or operation, and survey measures and procedures for revising the ISMCP in the event that the goals of the initial plan are not met within a specified timeframe.” NYSDEC advises that the ISMCP included as Appendix 22-8 does not contain details on post-construction monitoring survey methodology and reporting that will be used (i.e., thresholds, success measures, who will conduct surveys, where, when, who will receive the reports, etc.) or an adaptive management plan, including survey measures and procedures for revising the ISMCP in the event that goals of the initial plan are not met within a specified time frame. Please provide a revised ISMCP that includes this required information.

8. **Response:** The ISMCP has been revised to include additional information regarding details on post-construction monitoring surveys. A post construction monitoring program (MP) shall be conducted in year 1, year 3, and year 5, following completion of construction and restoration. The MP shall collect information to facilitate evaluation of ISMCP effectiveness. If it is determined that the ISMCP did not meet its goals, the Applicant will meet with DPS, NYSDEC, and AGM to consider remedial control measures. The revised ISMCP is included herein as Attachment M.

Exhibit 24: Visual Impacts

1. 16 NYCRR §1001.24(b)(5) requires “photographic simulations of the facility and interconnections shall be prepared from the representative viewpoints to demonstrate the post-construction appearance of the facility. Where vegetation screening is relied on for project mitigation, leaf-off and leaf-on simulation shall be provided. Representative viewpoints shall be established in consultation with DEC, DPS, OPRHP, and APA where appropriate.” The Applicant did not provide leaf-off and leaf-on simulations where vegetation screening is relied upon for Project mitigation. The mitigation plantings appear to be in a leaf-on state against leaf-off backgrounds (Attachment 4 of Appendix 24-1 - Simulations and Lines of Sight). Please provide revised simulations showing the following mitigation plantings with both leaf-off and leaf-on conditions: VP7 - Cockram Road, VP9 - Cockram Road, VP15a - Cockram Rd, VP33 - West Shore Trail, and L2 - Batavia Byron Rd (CR 19A) to the collection substation.

Response: Revised simulations showing mitigation plantings with both leaf-off and leaf-on conditions have been prepared for VP7, VP9, VP15a, VP33, and L2. These simulations are provided as Attachment N.

Updated Information

Exhibit 23: Water Resources and Aquatic Ecology

As discussed in Exhibit 23 of the Application, in order to help identify private water well locations, well survey questionnaires were mailed to all landowners of tax parcels within 2,000 feet of the Project Area. TRC, as the Applicant’s environmental consultant, sent out questionnaires to the owners of 254 different tax parcels. TRC received 204 responses to the surveys, which were included as an Appendix to the Application. Since then, TRC has received two additional responses (completed water well surveys). Completed responses are included in Attachment O; however, as in the Application, they are redacted and submitted confidentially to protect the privacy of respondents.

Exhibit 31: Local Laws and Ordinances

The Town of Byron is currently considering a draft solar law titled the “Town of Byron Local Law #3 of 2020: A Local Law to Repeal and Replace Section 11.15 of the Zoning Law of the Town of Byron Relating to Solar Energy Systems,” which the Applicant anticipates will be adopted prior to January 1, 2021. As such, the Applicant has prepared a Supplement to Exhibit 31 that discusses the anticipated requirements of the Town’s new local law which draft (version from November 20, 2020) has been included herein as Attachment P.