

Heritage Wind Project

Case No. 16-F-0546

1001.32 Exhibit 32

State Laws and Regulations

EXHIBIT 32 STATE LAWS AND REGULATIONS

Before preparing this Exhibit, the Applicant consulted with the State agencies and authorities whose requirements are the subject of this Exhibit to determine whether the Applicant correctly identified all such requirements. The Applicant intends to comply with all identified requirements.

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

The Applicant has compiled a preliminary listing of state approvals, consents, permits, or other conditions of a procedural nature required for the construction or operation of the proposed Facility, as summarized in the Table 7.

Table 7. List of All State Approvals for the Construction and Operation of the Facility that are Procedural in Nature and Supplanted by Article 10

State Agency	Requirement	Discussion
New York State Department of Environmental Conservation	Water Quality Certification (WQC), Section 401 of the Clean Water Act	The request for a 401 WQC will not be filed until a federal U.S. Army Corps of Engineers permit application is filed (if necessary). Under the Siting Board regulations, the WQC will be issued by the Siting Board or DPS.
New York State Office of Parks, Recreation, and Historic Preservation (OPRHP)	Consultation Pursuant to §14.09 of the New York State Historic Preservation Act	The Applicant has initiated (and will continue) consultation with the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) to ensure compliance with §14.09 of the New York State Historic Preservation Act.
New York State Department of Environmental Conservation	Endangered and Threatened Incidental Take Permit Article 11, 6 NYCRR Part 182	The NYSDEC may issue a license or permit to “take” any species listed as endangered or threatened. This permit may be required if, in consultation with state agencies, it is determined that the Facility could result in incidental take of any state-listed endangered or threatened fish or wildlife species from occupied habitat. If this permit is required, the procedural requirements are supplanted by Article 10.
New York State Department of Environmental Conservation	Permit for Protection of Waters Article 15, 6 NYCRR Part 608	This permit would be required for the crossing of protected streams by Facility components. Protected streams are particular portions of streams designated by the NYSDEC with one of the following classifications: AA, AA(t), A, A(t), B, B(t) or C(t). The permit is required for any change, modification, or disturbance of any protected streams, streambeds, or stream banks. If this permit is required, the procedural requirements are supplanted by Article 10.

State Agency	Requirement	Discussion
New York State Department of Environmental Conservation	Permit for Freshwater Wetlands Article 24, 6 NYCRR Part 663	This permit would be required for the crossing of regulated freshwater wetlands or adjacent areas by Facility components. Regulated freshwater wetlands are designated and mapped by the NYSDEC, and are generally 12.4 acres or larger. Around every regulated freshwater wetland is an adjacent area of 100 feet that is also regulated to provide protection for the wetland. If this permit is required, the procedural requirements are supplanted by Article 10.
New York State Department of Environmental Conservation	SPDES General Permit for Construction Activity	This permit is required for construction projects that disturb one or more acres of soil. In accordance with 16 NYCRR 1001.32(a) this is identified as a state procedural requirement issued by the NYSDEC pursuant to federal recognition of state authority. This approval is subject to review by the NYSDEC independent of the Article 10 process.
New York State Public Service Commission	Certificate of Public Convenience and Necessity NY PSL §68	No electric corporation shall begin construction of an electric plant, having a generating capacity of at least 80 MW, without first having obtained the permission and approval of the commission. The procedural requirements of Section 68 are supplanted by Article 10.
New York State Department of Transportation	Special Use Permit for Oversize/Overweight Vehicles Section 385, NYS Vehicle and Traffic Law Use and Occupancy Permits (if necessary)	Special hauling permits from the New York State Department of Transportation (NYSDOT) are required for loads that exceed legal dimensions or weights. Thus, transport of the blades, nacelles, tower sections, and cranes will require a variety of special hauling permits. Actual loads and permits will depend on the specific turbine supplier, crane equipment chosen, and degree of disassembly of the crane. These permits are typically obtained by the contractor immediately prior to construction. Although these ministerial permits are supplanted by Article 10, it is anticipated that the Applicant will request that the Siting Board authorize the DOT to issue these permits because of the timing of these submissions and the likelihood that the information will not be available from the contractor until post-Certification.
New York State Department of Transportation	Highway Work Permit NYS Highway Law, Article 3, Section 52	The use of New York State highway ROWs must be carried out in accordance with terms and conditions of a highway work permit issued by the DOT. This includes permits for crossing state highways, which are not supplanted by Article 10.

State Agency	Requirement	Discussion
New York State Department of Agriculture and Markets	Notice of Intent NYS Agriculture & Markets Law Section 305(4)	Notice to the NYSDAM of proposed non-agricultural construction within a designated agricultural district. The Applicant will coordinate with NYSDAM to identify Facility impacts and potential mitigative measures. Notice of Intent procedural requirements are supplanted by Article 10. However, the Applicant will continue to consult with NYSDAM and anticipates that NYSDAM will provide recommendations to the Siting Board regarding more substantive aspects of the NYSDAM's <i>Guidelines for Agricultural Mitigation for Wind Power Projects</i> .

As indicated in the table above, some of these state procedural requirements are supplanted by PSL Article 10, except for permits to be issued by the New York State Department of Environmental Conservation (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 Section 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.

(b) List of Procedural State Approvals/Permits/Etc. that the Applicant Requests the Board Not Apply

The Applicant is requesting that, to the extent applicable to the Facility, the Siting Board expressly authorize the New York State Department of Transportation to issue any ministerial permits related to use of and/or construction in State highways and rights-of-way, such as those for over-sized vehicles, highway work permits and crossing approvals, including those authorized by 17 NYCRR Part 131 (Accommodation of Utilities within State Highway Right-of-Way). Generally, these approvals are issued immediately prior to construction and are submitted by the contractor based on final Facility drawings, as well as construction and delivery plans. It is not known at this time whether and for what specific activities/areas such permits will be needed. Further, the specific information needed for demonstration of compliance with the substantive requirements of these State laws will not be available until after a contractor is selected, a final Facility layout is ready to proceed to construction, and the Certificate and all other permits are issued. Given the ministerial nature of these permits, and the necessity that the Facility be in the final stages of development before the details of substantive compliance with permitting requirements are known, it is appropriate for the Siting Board to authorize the NYSDOT's exercise of this permitting authority at such time as it is appropriate to do so.

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

The Applicant will construct and operate the Facility in a manner that conforms to all State substantive requirements for those approvals, consents, permits, certificates, or other conditions. The following is a list of all substantive state requirements:

- Water Quality Certification (WQC), Section 401 of the Clean Water Act 6 NYCRR Part 621.4e (Water Quality Certifications in Accordance with Section 401 of the Clean Water Act)
- Consultation Pursuant to Section 14.09 of the New York State Historic Preservation Act
- Permit for Protection of Waters, Article 15, 6 NYCRR Part 608.7b (Permit Application Review) and 608.8 (Standards)
- Permit for Freshwater Wetlands, Article 24, 6 NYCRR Part 663.5 (Standards for Issuance of Permits and Letters of Permission)
- SPDES General Permit for Construction Activity, Article 3, 6 NYCRR Part 750-1.11 (Application of Standards, Limitations, and other Requirements)
- Endangered and Threatened Incidental Take Permit Standards, Article 11, 6 NYCRR 182.12 (Incidental Take Permit Standards)

(d) Summary Table of Substantive State Requirements

The substantive state requirements preliminarily identified above in (c) will be presented in a table in the Article 10 Application, and formatted per the associated requirements.

(e) State Approvals/Permits/Etc. for Offsite Features Not Encompassed by Major Electric Generating Facility

To the extent that offsite ancillary features, which are not considered part of the Major Electric Generating Facility, are needed, a list of all state approvals, consents, permits, certificates, or other conditions for the construction or operation of said offsite ancillary features will be listed in the Article 10 Application. That said, Heritage Wind does not anticipate that the proposed Facility will include offsite interconnections or ancillary features not otherwise encompassed by the Major Electric Generating Facility, which would make this section inapplicable.