

# **High Bridge Wind Project**

**Case No. 18-F-0262**

**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 following table is a listing of State approvals, consents, permits, or other conditions of a procedural nature which are required for the construction or operation of the proposed Facility.

**Table 32-1. List of All State Approvals for the Construction and Operation of the Facility that are Procedural in Nature and Whether Supplanted by New York State Public Service Law (PSL) Article 10**

State Agency	Requirement	Discussion
New York State Department of Environmental Conservation (NYSDEC)	Water Quality Certification (WQC), Section 401 of the Clean Water Act	The Applicant anticipates submitting a Joint Application for Permit application to the U.S. Army Corps of Engineers (USACE) in parallel with the filing of the Article 10 Application (or shortly thereafter) to address impacts to streams and wetlands. The request for a WQC is included with the Joint Application for Permit. Under the Siting Board regulations, the WQC will be issued by the Siting Board.
New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP)	Consultation pursuant to § 14.09 of the New York State Historic Preservation Act	The Applicant has initiated (and will continue) consultation with the NYSOPRHP to ensure compliance with § 14.09 of the New York State Historic Preservation Act, as well as compliance with the review process under National Historic Preservation Act § 106, to be initiated per submission of federal permit applications.
New York State Department of Environmental Conservation	Endangered and Threatened Species Incidental Take Permit, New York Environmental Conservation Law (ECL), Article 11, 6 NYCRR Part 182	The NYSDEC may require a license or permit to “take” any species listed as endangered or threatened if, in consultation with State agencies, it is determined that the project could result in incidental take of any State-listed endangered or threatened fish or wildlife species from occupied habitat. The procedural requirements of this permit are supplanted by Article 10.
New York State Department of Environmental Conservation	Permit for Use and Protection of Waters, ECL Article 15, 6 NYCRR Part 608	This permit is 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. One Class C(t) stream (Kent Brook) is located within the Wetland Study Area. However, impacts to this stream will be avoided using trenchless technologies. Should an Article 15 permit be required, the procedural requirements of this permit are supplanted by Article 10.

State Agency	Requirement	Discussion
New York State Department of Environmental Conservation	Permit for Freshwater Wetlands, ECL Article 24, 6 NYCRR Part 663	State-regulated freshwater wetlands are designated and mapped by the NYSDEC and are generally 12.4 acres or larger. No NYSDEC-mapped wetlands or wetlands 12.4 acres or larger were identified within the Wetland Study Area. Should an Article 24 permit be required, the procedural requirements would be supplanted by Article 10.
New York State Department of Environmental Conservation	State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from 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 permit is issued by NYSDEC pursuant to authority delegated to the State under the federal Clean Water Act. As a result, this approval is subject to review by NYSDEC independent of the Article 10 process.
New York State Department of Transportation (NYSDOT)	Special Use Permit for Oversize/Overweight Vehicles (OS/OW), New York State Vehicle and Traffic Law § 385	Special hauling permits from the NYSDOT are required for loads that exceed legal dimensions or weights on New York State highways and bridges. Although these ministerial permits are supplanted by Article 10, the Applicant request that the Siting Board authorize the NYSDOT to issue these permits. See Section (b) below for details.
New York State Department of Transportation	Highway Work Permit, New York State Highway Law, Article 3, § 52	The use of New York State highway rights-of-way (ROW) must be carried out in accordance with terms and conditions of a highway work permit issued by NYSDOT. The proposed Facility will need such a permit for temporary road improvements in New York State highway ROWs. Per the discussion below, these permits are not supplanted by Article 10.
New York State Department of Transportation	Highway Use and Occupancy Permit, 17 NYCRR Part 131	The installation of utility facilities, including collection/transmission lines, in New York State highway rights-of-way must be carried out in accordance with the terms and conditions of a highway use and occupancy permit issued by NYSDOT. The proposed Facility will need such a permit to construct improvements in the New York State highway ROW. Per the discussion below, these permits are not supplanted by Article 10.
New York State Public Service Commission (PSC)	Certificate of Public Convenience and Necessity New York Public Service Law, 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 Public Service Commission. Per the discussion below, while the procedural requirements of Section 68 are supplanted by Article 10, the Applicant will request that the Siting Board authorize the Public Service Commission (PSC) to issue this certificate under the narrow review standards articulated in Case 14-F-0490, Order Granting Certificate of Environmental Compatibility and Public Need to Cassadaga Wind (January 17, 2018).

Most State procedural requirements are supplanted by PSL Article 10, unless the Siting Board expressly authorizes the exercise of such authority by the state agency. 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 Section 15-1503, Title 9 of Article 27, and Articles 17 and 19 of the ECL are not supplanted by PSL Article 10. In addition, certain grants of authority for property rights are not supplanted by Article 10.

In this case, authority to issue the SPDES General Permit for Stormwater Discharges from Industrial Activity has been delegated to NYSDEC under the Clean Water Act. As a result, the Applicant must comply with both the procedural and substantive requirements of the permit in conjunction with constructing the Facility. The decision whether to authorize coverage under the General Permit will be made by NYSDEC under its delegated SPDES program.

Consistent with the Siting Board's order granting the Certificate of Environmental Compatibility and Public Need issued to Cassadaga Wind LLC (Case No. 14-F-0490) (the "Cassadaga Order"), highway use and occupancy permits (17 NYCRR Part 131) and highway work permits (NYS Highway Law Article 3, § 52) issued by the New York State Department of Transportation (NYSDOT) represent the issuance of property rights that are not superseded by Article 10. As a result, to the extent such permits are required to construct the Facility, the Applicant will comply with both the procedural and substantive requirements of these permits. The decision whether to authorize issuance of these permits will be made by NYSDOT.

(b) List of Procedural State Approvals/Permits/Etc. that the Applicant Requests the Board Authorize Agencies to Issue

Special hauling permits from NYSDOT under New York Vehicle and Traffic Law § 385 are required for loads on New York State highways 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. Although these ministerial permits are supplanted by Article 10, the Applicant requests that the Siting Board authorize the NYSDOT to issue the required permits. Because the information required to obtain the permits will not be available until shortly before construction begins, the application for these permits cannot be submitted until after a balance of plant contractor is selected (i.e., post-certification). The Siting Board's authorization is desirable and appropriate because it will permit the NYSDOT to address these routine, ministerial approvals at such time as there is sufficient information available to do so.

With respect to PSL § 68, consistent with Cassadaga Order, the Applicant will seek a Certificate of Public Convenience and Necessity (CPCN) from the New York Public Service Commission (PSC) before commencing construction of the Facility. However, the PSC's review of the CPCN petition will be limited to assessing the economic feasibility of the entity constructing the Facility and the entity's ability to finance improvements. The PSC will not duplicate the need and environmental compatibility issues addressed by the Siting Board under Article 10. The Applicant respectfully requests that the Siting Board authorize the PSC to issue this Certificate, to the extent such authorization is necessary in light of the Cassadaga Order.

At such time as the Applicant submits its Joint Application for Permit to the US Army Corps of Engineers (USACE), which triggers consultation requirements with the State Historic Preservation Office (SHPO) on cultural resources, the Applicant requests that the Siting Board authorize the New York State Office of Parks, Recreation and Historic Preservation to apply the procedural and substantive requirements of the New York State Historic Preservation Act § 14.09. This process will include preparation of a Phase IB study, in consultation with OPRHP. Applicant respectfully requests that the Siting Board authorize OPRHP to complete this process in accordance with Section 106 of the National Historic Preservation Act (16 USC § 470f).

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

The following is a list of all State approvals, consents, permits, or other conditions of a substantive nature that may be required for the construction or operation of the proposed Facility:

- Water Quality Certification, Clean Water Act § 401, 6 NYCRR § 621.4(e)
- Consultation Pursuant to New York State Historic Preservation Act § 14.09
- Endangered and Threatened Species Incidental Take Permit, ECL Article 11, 6 NYCRR § 182.12
- Permit for Use and Protection of Waters, ECL Article 15, 6 NYCRR § 608.7(b) (Permit Application Review) and § 608.8 (Standards)
- Permit for Freshwater Wetlands, ECL Article 24, 6 NYCRR § 663.5 (Standards for Issuance of Permits and Letters of Permission)
- SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002), 6 NYCRR Part 750-1.11 (Application of Standards, Limitations, and Other Requirements)
- Special Use Permit for OS/OW Vehicles, NYS Vehicle and Traffic Law § 385
- Highway Work Permit, New York State Highway Law, Article 3, § 52
- Highway Use and Occupancy Permit, 17 NYCRR Part 131
- Certificate of Public Convenience and Necessity for Construction of Electric Plant, PSL § 68

(d) Summary Table of Substantive State Requirements

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

Provision	Degree of Compliance
Water Quality Certification, Clean Water Act § 401, 6 NYCRR § 621.4(e)	The Applicant intends to comply with this requirement by implementing applicable water quality protection measures and soil erosion/sediment control best management practices (BMPs) (see Exhibits 22 and 23).
Consultation Pursuant to New York State Historic Preservation Act § 14.09	The Applicant has consulted with the New York State Historic Preservation Office (SHPO) regarding the impact of the

Provision	Degree of Compliance
	Facility on cultural resources (archaeological sites and historic structures). The Applicant has prepared Phase 1A surveys and work plans for archaeological and historic architectural resources, both of which were reviewed and concurred on by the SHPO (on May 10, 2019 and April 23, 2019, respectively). Per the commitments in the work plans, the Applicant has also conducted archaeological and historic architectural surveys to assess the potential impacts of the Facility on cultural resources, the results of which are included in the Article 10 Application. The Applicant and DPS are continuing consultation with SHPO pursuant to New York State Historic Preservation Act § 14.09 (see Exhibit 20).
Endangered and Threatened Incidental Take Permit, ECL Article 11, 6 NYCRR § 182.12	The Applicant intends to comply with these substantive requirements and has submitted a net conservation benefit plan consistent with these requirements (see Exhibit 22).
Permit for Protection of Waters, ECL Article 15, 6 NYCRR §§ 608.7(b) (Permit Application Review) and 608.8 (Standards)	The Applicant intends to comply with this requirement by: providing final engineering plans for each stream crossing to USACE, NYSDEC and DPS; meeting all NYSDEC stream crossing guidelines; implementing BMPs, including establishing no access and restricted activities areas; developing and implementing a soil erosion and sediment control plan; and adhering to NYSDEC work period restrictions for stream crossings (see Exhibits 22 and 23).
Permit for Freshwater Wetlands, ECL Article 24, 6 NYCRR § 663.5 (Standards for Issuance of Permits and Letters of Permission)	The Applicant intends to comply with this requirement by locating turbines and other project components primarily outside of NYSDEC-regulated wetlands and/or 100-foot adjacent regulated areas (see Exhibit 22 for additional detail).
SPDES General Permit for Stormwater Discharges from Construction Activity, ECL Article 3, 6 NYCRR § 750-1.11 (Application of Standards, Limitations, and Other Requirements)	The Applicant will comply with this requirement by preparing and implementing a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the SPDES General Permit GP-0-15-002 or its successor and the latest version of the NYSDEC Stormwater Management Design Manual (see Exhibits 22 and 23 and Appendix ____).
Special Use Permit for OS/OW Vehicles, NYS Vehicle and Traffic Law § 385	The Applicant will comply with the terms and conditions of any permits issued by NYSDOT consistent with Section (b) above.
Highway Work Permit, New York State Highway Law, Article 3, § 52	The Applicant will comply with the terms and conditions of any permits issued by NYSDOT consistent with Section (a) above.
Highway Use and Occupancy Permit, 17 NYCRR Part 131	The Applicant will comply with the terms and conditions of any permits issued by NYSDOT consistent with Section (a) above.
Certificate of Public Convenience and Necessity for Construction of Electric Plant, PSL § 68	The Applicant will comply with this requirement by making a separate submission to the PSC containing the information required to make the necessary determinations required by PSL § 68 with respect to the economic feasibility of the entity sponsoring the project and the entity's ability to finance improvements.

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

This section identifies the State approvals, consents, permits, certificates, or other conditions needed for the construction and operation of off-site ancillary features that are not considered part of the Major Electric Generating

Facility. Based on all studies and analyses conducted to date, the only off-site ancillary features associated with the Facility are temporary public road improvements, some of which are currently anticipated to be required within the ROW of NY State Route 8, which is located to the east of the Facility. This state route does not provide direct access to the Facility.