

Mohawk Solar

Case No. 17-F-0182

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 the identified requirements unless the Applicant specifically requests relief from the Siting Board.

(a) List of Anticipated 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 anticipated for the construction or operation of the proposed Facility.

Table 32-1. List of All Anticipated State Approvals for the Construction and Operation of the Facility that are Procedural in Nature and supplanted by New York State Public Service Law (PSL) 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.
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 Species Incidental Take Permit, New York Environmental Conservation Law (ECL), 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 project 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, ECL 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), C(t) or C(ts). 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.
New York State Department of Environmental Conservation	Permit for Freshwater Wetlands, ECL 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	State Pollutant Discharge Elimination System (SPDES)	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

State Agency	Requirement	Discussion
Environmental Conservation	General Permit for Stormwater Discharges from Construction Activity	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 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.
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 may need such a permit for temporary road improvements in New York State highway ROWs.
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 may need such a permit to construct improvements in the New York State highway ROW.
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 unless authorized by the Siting Board.

As indicated in the table above, some of these state procedural requirements are supplanted by PSL Article 10 unless the Board expressly authorizes the exercise of such authority by the state agency. Article 10 does not supplant 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. Of particular note, authority to issue the SPDES General Permit for Stormwater Discharges from Construction 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. In addition, certain grants of authority for property rights are not supplanted by Article 10.

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

The Applicant does not anticipate requesting waiver of any state approvals.

(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 anticipated substantive state requirements that may apply to the Facility:

- Water Quality Certification (WQC), Section 401 of the Clean Water Act 6 NYCRR Part 621.4(e) (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
- Endangered and Threatened Incidental Take Permit Standards, ECL Article 11, 6 NYCRR § 182.12
- Permit for Protection of Waters, ECL Article 15, 6 NYCRR Part 608.7(b) (Permit Application Review) and 608.8 (Standards)
- Permit for Freshwater Wetlands, ECL Article 24, 6 NYCRR Part 663.5 (Standards for Issuance of Permits and Letters of Permission)
- SPDES General Permit for Construction Activity (GP-0-15002), Article 3, 6 NYCRR Part 750-1.11 (Application of Standards, Limitations, and other Requirements)
- New York State Department of Transportation (NYSDOT) Use and Occupancy of State Highway Rights-of-Way, 17 NYCRR Part 131 (Accommodation of Utilities within State Highway Right-of-Way)
- Special Use Permit for OS/OW Vehicles, NYS Vehicle and Traffic Law § 385
- Highway Work Permit, New York State Highway Law, Article 3, § 52
- New York State Public Service Law (PSL) Section 68 Certificate of Public Convenience and Necessity for Construction of Electric Plant.

(d) Summary Table of Anticipated Substantive State Requirements

Table 32-2. Summary of all Anticipated Substantive State Requirements

Provision	Degree of Compliance
WQC, Section 401 of the Clean Water Act, 6 NYCRR § 621.4(e) (WQCs in Accordance with Section 401 of the Clean Water Act)	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 Section 14.09 of the New York State Historic Preservation Act	The Applicant has consulted with the New York State Historic Preservation Office (SHPO) regarding the impact of the 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 November 24, 2017 and October 26, 2017, respectively). Per the commitments in the work plans, the Applicant has also conducted archaeological and historic

Provision	Degree of Compliance
	architectural surveys to assess the potential impacts of the Facility on cultural resources. The results of these surveys are included in the Article 10 Application. The Applicant and DPS are continuing consultation with SHPO pursuant to Section 14.09 of the New York State Historic Preservation Act (see Exhibit 20).
Endangered and Threatened Species Incidental Take Permit Standards ECL Article 11, 6 NYCRR § 182.12	The Applicant intends to comply with this requirement if necessary.
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 New York State Department of Public Service; 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 Facility components primarily outside of NYSDEC-regulated wetlands and/or 100-foot adjacent regulated area. A jurisdictional site visit conducted with NYSDEC personnel on November 6, 2018, and a Freshwater Wetlands Determination was subsequently issued on February 7, 2019. The Applicant has quantified in this Application impacts to wetlands and/or the 100-foot adjacent area, which are discussed in Exhibit 22.
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 21-B).
NYS DOT Use and Occupancy of State Highway Rights-of-Way, 17 NYCRR Part 131 (Accommodation of Utilities within State Highway Right-of-Way)	The Applicant intends to comply with this requirement.
Special Use Permit for OS/OW Vehicles, NYS Vehicle and Traffic Law § 385	The Applicant intends to comply with this requirement.
Highway Work Permit, New York State Highway Law, Article 3, § 52	The Applicant intends to comply with this requirement.
PSL Section 68 Certificate of Public Convenience and Necessity for Construction of Electric Plants	The Applicant intends to comply with this requirement.

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

The Applicant does not anticipate that there will be any offsite features not encompassed by the major electric generating facility.