

**SUNRISE WIND LLC**  
**SUNRISE WIND NEW YORK CABLE PROJECT**

**EXHIBIT 8**  
**OTHER PENDING FILINGS**

**PREPARED PURSUANT TO 16 NYCRR § 86.9**

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## Acronyms and Abbreviations

AC	alternating current
ACHP	Advisory Council on Historic Preservation
Applicant	Sunrise Wind LLC
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
CAA	Clean Air Act
CECPN	Certificate of Environmental Compatibility and Public Need
CFR	Code of Federal Regulations
CMP	Coastal Management Program
CMR	Code of Massachusetts Regulations
COA	Corresponding Onshore Areas
COP	Construction and Operations Plan
CPCN	Certificate of Public Convenience and Necessity
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
CZMP	Coastal Zone Management Plan
DC	direct current
EIS	Environmental Impact Statement
EM&CP	Environmental Management and Construction Plan
EO	Executive Order
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FAA	Federal Aviation Administration
ft	feet
FCC	Federal Communications Commission

IAC	inter-array cable
ICW	intracoastal waterway
IHA	Incidental Harassment Authorization
km	kilometer(s)
kV	kilovolt(s)
LIPA	Long Island Power Authority
LIRR	Long Island Rail Road
LNМ	Local Notice to Mariners
LOA	Letter of Authorization
m	meter(s)
MACZM	Massachusetts Office of Coastal Zone Management
MBTA	Migratory Bird Treaty Act
MGL	Massachusetts General Law
mi	mile(s)
MMPA	Marine Mammal Protection Act
MS4	Municipal Separate Storm Sewers System
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
nm	nautical mile(s)
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOAA Fisheries	National Oceanic and Atmospheric Administration National Marine Fisheries Service (previously NMFS)
NPA	National Park Service
NPS	National Park Service

NRHP	National Register of Historic Places
NYCRR	New York Codes, Rules and Regulations
NYECL	New York Environmental Conservation Law
NYS	New York State
NYSDAM	New York State Department of Agriculture and Markets
NYSDEC	New York State Department of Environmental Conservation
NYSDOS	New York State Department of State
NYSDOT	New York State Department of Transportation
NYSERDA	New York State Energy Research Development Authority
NYSOGS	New York State Office of General Services
NYSOPRHP	New York State Office of Parks, Recreation and Historic Preservation
NYSPSC	New York State Public Service Commission
OCS	Outer Continental Shelf
OCS Lands Act	Outer Continental Shelf Lands Act
OFD	One Federal Decision
OnCS-DC	Onshore Converter Station-Direct Current
OREC	Offshore Renewable Energy Credit
PATON	Private Aids to Navigation
PSL	New York Public Service Law
Project	Sunrise Wind New York Cable Project
RHA	Rivers and Harbors Appropriate Act of 1899
RICRMC	Rhode Island Coastal Resources Management Council
RICRMP	Rhode Island Coastal Resources Management Program
ROD	Record of Decision
ROW	right-of-way
SHPO	State Historic Preservation Office
SPDES	State Pollutant Discharge Elimination System

SRWEC	Sunrise Wind Export Cable
SRWEC–NYS	Sunrise Wind Export Cable–New York State
SRWF	Sunrise Wind Farm
SWPPP	Stormwater Pollution Prevention Plan
THPO	Tribal Historic Preservation Office
TJB	transition joint bay
US	United States
USACE	United States Army Corps of Engineers
USCG	United States Coast Guard
USDoD	United States Department of Defense
USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
WQC	Water Quality Certification

## EXHIBIT 8: OTHER PENDING FILINGS

In accordance with New York Public Service Law (PSL) § 122 and 16 New York Codes, Rules and Regulations (NYCRR) § 86.9, this exhibit outlines any pending, decided, or future filings the Applicant has made or will make with the New York State Public Service Commission (NYSPSC) or any other governmental department or agency (federal or state) concerning the Project.

### 8.1 INTRODUCTION

Sunrise Wind LLC (Sunrise Wind or the Applicant), a 50/50 joint venture between Orsted North America Inc. (Orsted NA) and Eversource Investment LLC (Eversource), proposes to construct, operate, and maintain the Sunrise Wind New York Cable Project (the Project). Sunrise Wind executed a 25-year Offshore Wind Renewable Energy Certificate (OREC) contract related to the Sunrise Wind Farm (SRWF) and the Project with the New York State Energy Research and Development Authority (NYSERDA) in October 2019. The Project will deliver power from the SRWF, located in federal waters on the Outer Continental Shelf (OCS), to the existing electrical grid in New York (NYS). The Project includes offshore and onshore components within NYS that are subject to PSL Article VII review and will interconnect at the existing Holbrook Substation, which is owned and operated by the Long Island Power Authority (LIPA).

Specifically, power from the SRWF will be delivered to the existing mainland electric grid via distinct Project segments: the submarine segment of the export cable (SRWEC), which will be located in both federal and NYS waters (the NYS portion of the cable referred to as the SRWEC–NYS); the terrestrial underground segment of the transmission cable (Onshore Transmission Cable); the new Onshore Converter Station (OnCS–DC); and the underground segment of the interconnection cable (Onshore Interconnection Cable). The Onshore Transmission Cable, the OnCS–DC, and Onshore Interconnection Cable (together, the Onshore Facilities) are all located in the Town of Brookhaven, Suffolk County, New York.

The Project's components are generally defined into two categories:

- SRWEC–NYS
  - One direct current (DC) submarine export cable bundle (320 kilovolt [kV]) up to 6.2 miles (mi) (10.8 kilometers [km]) in length in NYS waters and up to 1,575 feet (ft) (480 meters [m]) located onshore (*i.e.*, above the Mean High Water Line [MHWL], as defined by the United States [US] Army Corps of Engineers [USACE] [33 Code of Federal Regulations (CFR) 329]) and underground, up to the transition joint bays (TJBs).



- Onshore Facilities

- One DC underground transmission circuit (320 kV) (referred to as the Onshore Transmission Cable) up to 17.5 mi (28.2 km) in length within existing roadway right-of-way (ROW), TJBs, and concrete and/or direct buried joint bays and associated components;
- One OnCS-DC that will transform the Project voltage to 138 kV alternating current (AC);
- Two AC underground circuits (138 kV) (referred to as the Onshore Interconnection Cable) up to 1 mi (1.6 km) in length, which will connect the new OnCS-DC to the existing Holbrook Substation; and
- Fiber optic cables co-located with both the Onshore Transmission Cable and Onshore Interconnection Cable.

## 8.2 ASSOCIATED FILINGS OF APPLICANT

Components of the SRWF, SRWEC, and Onshore Transmission Facilities will be located in three areas: federal waters of the OCS, NYS waters, and onshore in the Town of Brookhaven. As such, several federal and NYS regulatory agencies have jurisdictional authority. The federal and NYS permits, approvals and consultations the Applicant is seeking or anticipates seeking prior to constructing the Project are listed in Table 8.2-1, along with the date of anticipated issuance.

**Table 8.2-1. Summary of Permits, Approvals and Consultations**

Regulatory Authority	Permit/Approval	Statute/Regulation	Anticipated Approval (or Approval) Date
FEDERAL PERMITS, APPROVALS AND CONSULTATIONS			
Bureau of Ocean Energy Management (BOEM)	Issuance of Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS	30 CFR § 585; Outer Continental Shelf Lands Act (43 USC §§ 1331 et seq.)	OCS-A-0487 Lease a/
	Approval of Site Assessment Plan	30 CFR §§ 585.610-618	TBD
	Approval of Construction and Operations Plan (COP)	30 CFR §§ 585.621-627	Anticipated Q1 2023
	Consultation with National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries [previously NMFS]) and United States Fish and Wildlife Service (USFWS)	Section 7 of the Endangered Species Act (ESA) (16 USC §§1531 et seq.)	

Regulatory Authority	Permit/Approval	Statute/Regulation	Anticipated Approval (or Approval) Date
	Consultation with NOAA Fisheries	Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 USC §§1801 et seq.), Marine Mammal Protection Act (MMPA) (50 CFR § 216, 16 USC §§ 1361 et seq.)	
	Consultation with USFWS	Migratory Bird Treaty Act (MBTA) (16 USC §§ 703 et seq.) and Bald and Golden Eagle Protection Act (16 USC §§ 668 et seq.)	
	Review under National Environmental Policy Act (NEPA) in consultation with the US Army Corps of Engineers (USACE), National Park Service (NPS) and other cooperating agencies	42 USC §§ 4321 et seq., BOEM regulations (30 CFR §§ 585.646, 585.648(b)), and other relevant regulations	
	Review under Section 106 in consultation with Advisory Council on Historic Preservation (ACHP), State Historic Preservation Offices (SHPOs), and Tribal Historic Preservation Offices (THPOs)	Section 106 of the National Historic Properties Act of 1966 (NHPA), as amended (54 USC § 306.108)	
	Approval of Facility Design Report	30 CFR §§ 585.538.701	To be reviewed by a CVA and submitted to BOEM after COP approval
	Approval of Fabrication and Installation Report	30 CFR § 585.700	
US Army Corps of Engineers (USACE)	Issuance of Individual Permit	Section 10, Rivers and Harbors Act (33 USC §§ 333, 403), Section 404, Clean Water Act (CWA; 33 USC § 1344), Section 14, Rivers and Harbors Act (33 USC § 408)	Anticipated Q1 2023
US Environmental Protection Agency (EPA)	Issuance of OCS Air Permit and Conformity Determination	Clean Air Act (CAA) (40 CFR § 55, 60; 42 USC § 7627)	Anticipated Q1 2023
	Issuance of National Pollutant Discharge Elimination System (NPDES) Individual Permit	Clean Water Act (CWA) (Section 316(b), 40 CFR § 122, 33 USC § 1251)	Anticipated Q1 2023
National Oceanic Atmospheric Administration (NOAA)	Approval of Incidental Harassment Authorization	MMPA (50 CFR § 216, 16 USC §§ 1361 et seq.)	Anticipated Q1 2023
US Coast Guard (USCG)	Approval for Private Aids to Navigation (PATON)	USCG regulations (33 CFR § 64.11)	Issued four weeks prior to start of offshore construction
	Local Notice to Mariners (LNM)		Issued two weeks prior to start of vessel mobilization for offshore construction

Regulatory Authority	Permit/Approval	Statute/Regulation	Anticipated Approval (or Approval) Date
National Park Service (NPS)	Right-of-Way Permit and Temporary Construction Permit	36 CFR § 14 (54 USC § 100902)	Anticipated Q2 2023
US Fish and Wildlife Service (USFWS)	Right-of-Way Permit and Temporary Construction Permit	50 CFR Part 29 (16 USC § 668(dd)(d)(1)(B))	Anticipated Q2 2023
Federal Aviation Administration (FAA)	Notice of Proposed Construction or Alteration (potential)	14 CFR Part 77.9	Anticipated Q3 2022
NEW YORK STATE (NYS) PERMITS, APPROVALS AND CONSULTATIONS			
New York State Public Service Commission (NYSPSC)	Water Quality Certification (WQC)	Section 401 of the CWA and Implementing Regulations (6 NYCRR Parts 701, 702, 704, 754 and Part 800 to 941)	Anticipated Q3 2022
	Section 68 Petition, Permission to exercise grants of municipal rights	PSL § 68	Anticipated Q3 2022
	Section 70 Petition, Transfer or lease of franchise, works or system	PSL § 70	Anticipated Q3 2022
	Environmental Management and Construction Plan (EM&CP)	Article VII of the PSL (16 NYCRR Parts 85 through 88)	Anticipated Q1 2023
New York State Department of Environmental Conservation (NYSDEC)	Consultation with NYSDEC	Protection of Waters Permit (Article 15 (6 NYCRR Part 608 and 621); Freshwater Wetlands Permit (Article 24, Parts 663 to 665); Tidal Wetlands Permit (Article 25 (6 NYCRR Part 661))	Anticipated Q3 2022
		Threatened and Endangered Species (New York Environmental Conservation Law [NYECL] Article 11 Section 535; 6 NYCRR Part 182)	Anticipated Q3 2022
New York State Department of Environmental Conservation (NYSDEC)	State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity	GP-0-20-001 for Stormwater Discharges from Construction Activity, pursuant to 6 NYCRR Part 750-757	Anticipated Q1 2023
New York State Office of Parks, Recreation and Historic Preservation (OPRHP) State Historic Preservation Offices (SHPO)	Consultation with SHPO	Section 106 of the National Historic Preservation Act, Section 14.09 of the New York State Historic Preservation Act of 1980, and Section 233 of the State Education Law (submerged archaeological resources)	Anticipated Q3 2022
New York State Department of Transportation (NYSDOT) - Region 10	Utility or Highway Work Permit	New York State Highway Law (Article 3, § 52)	Anticipated Q1 2023

Regulatory Authority	Permit/Approval	Statute/Regulation	Anticipated Approval (or Approval) Date
New York State Office of General Services (NYSOGS), Bureau of Land Management	Easement to Use New York State Lands Under Water	New York State Public Lands Law (Article 2, Section 3, Subsection 2)	Anticipated Q4 2022
New York State Department of State (NYSDOS), Division of Coastal Resources	Concurrence with Coastal Zone Management Program (CZMP) Federal Consistency Certification	Coastal Zone Management Act (CZMA) (16 USC § 1451 et seq., 15 CFR Part 930, and 30 CFR §§ 585.611(b), 627(b)) and State Article 42 of the Executive Law (19 NYCRR Part 600 and 6 NYCRR Part 617)	Anticipated Q4 2021
LOCAL PERMITS, APPROVALS AND CONSULTATIONS			
Central Pine Barrens Joint Planning & Policy Commission	Core Preservation Area (CPA) Hardship Exemption	NYECL § 57-0121 (10)	Anticipated Q4 2021
OTHER STATE PERMITS, APPROVALS AND CONSULTATIONS			
Rhode Island			
Rhode Island Coastal Resources Management Council (RICRMC)	Concurrence with CZMP Federal Consistency Determination	CZMA (16 USC §§ 1451 et seq., 15 CFR § 930, and 30 CFR §§ 585.611(b), 627(b)) and Rhode Island Coastal Resources Management Program (RI CRMP) (§ 400)	Anticipated Q4 2021
Massachusetts			
Massachusetts Office of Coastal Zone Management (MACZM)	Concurrence with CZMP Federal Consistency Determination	Pursuant to CZMA (16 USC §§ 1451 et seq., 15 CFR § 930, and 30 CFR §§ 585.611(b), 627(b)), Massachusetts General Law (M.G.L.) (21A, Subpart 4A) and Massachusetts Coastal Zone Management Program Policies (310 Code of Massachusetts Regulations [CMR] 20.00 and 21.00)	Anticipated Q4 2021
<p>NOTES:</p> <p>a/ A portion of Lease Area OCS-A 0500 (Bay State Wind LLC) and the entirety of Lease Area OCS-A 0487 (formerly Deepwater Wind New England LLC) were assigned to Sunrise Wind LLC on September 3, 2020, and the two areas will be merged and a revised Lease OCS-A 0487 will be issued. Thus, when using the term "Lease Area" it refers to the Applicant's merged Lease Area OCS-A 0487.</p>			

### 8.2.1 Federal Permits, Approvals, and Consultations

#### BOEM-Led Permits and Approvals

BOEM has the authority and responsibility to regulate activities associated with the production, transportation, or transmission of renewable energy resources on the OCS under the Outer Continental Shelf Lands Act (OCS Lands Act) (43 USC § 1337). BOEM must ensure that any approved activities are safe, conserve natural resources on the OCS, are undertaken in coordination with relevant federal

agencies, provide a fair return to the US, and are compliant with all applicable laws and regulations (30 CFR § 585.102), including the National Environmental Policy Act (NEPA).

BOEM issued Renewable Energy Lease Area OCS-A-0487 to the Applicant for development of a renewable energy project(s) within the Lease Area. The construction and operation of the SRWF, SRWEC and Onshore Facilities will require a COP that is compliant with BOEM regulations (30 CFR § 585) and that is approved by BOEM prior to the start of construction.

BOEM is expected to coordinate with agencies such as NOAA, USFWS, NPS, USCG, United States Department of Defense (USDOD), FAA, and the Bureau of Safety and Environmental Enforcement (BSEE) to complete necessary reviews. In addition, federal agency review must also occur under NEPA, Section 106 of the NHPA, and Section 307 of the CZMA, which requires concurrence from NYS, Rhode Island, and Massachusetts for the CZMP federal consistency determination for each state, as described below.

#### National Environmental Policy Act

The NEPA (42 USC § 4321 et seq.) requires federal agencies to evaluate the potential impacts of any proposed federal action and to consider alternatives to the proposed action (42 USC § 4332, 40 CFR §§ 1500-1508). The federal actions that require review under NEPA include: BOEM's approval of the COP; USACE issuance of an Individual Permit; NPS issuance of a Right-of-Way permit within Fire Island National Seashore; USFWS issuance of a Right-of-Way permit for crossing of the Wertheim National Wildlife Refuge (NWR) at Carmans River; and NOAA issuance of an Incidental Harassment Authorization (IHA). For renewable energy facilities on the OCS, BOEM acts as the Lead Federal Agency for NEPA review and compliance.

BOEM will lead the preparation of an Environmental Impact Statement (EIS) to evaluate potential impacts associated with implementation of the SRWF, SRWEC and Onshore Facilities. Federal agencies, identified as cooperating agencies in the NEPA process, are responsible for reviewing the impacts to protected resources under their jurisdiction and evaluating the need for any mitigation measures. These agencies will have the opportunity to comment through interagency consultations required for federal permitting (NEPA, USACE Individual Permit Application). In addition, BOEM will be required to satisfy Section 106 of the NHPA, which requires consideration of historic properties.

Under Executive Order (EO) 13807 (One Federal Decision [OFD]), which mandated a process for improving the coordination and timeliness of environmental reviews of major infrastructure projects, BOEM is responsible for coordinating and streamlining the permitting review process undertaken by all federal agencies with jurisdiction over the SRWF, SRWEC and Onshore Facilities, except the USGS, as described below. This includes the following steps:

- Issuance of a single EIS and Record of Decision (ROD) with a 90-day authorization deadline.
- Establishing concurrent agency reviews and limiting agency comments to issues that are within the agency's area of expertise or jurisdiction.
- All RODs issued within 2 years of the Notice of Intent for the EIS.
- Establishing agency concurrence points.
- Timely elevation of inter-agency disputes.
- Establishing schedule exceptions limited to authorizing agency's "Special Circumstances" or applicable law making a 2-year schedule impracticable; or for developer requests or unresponsiveness.

#### Endangered Species Act

Section 7 of the ESA requires that federal agencies ensure their actions do not destroy or jeopardize the existence of critical habitat of any threatened or endangered species listed under the ESA. To comply with this obligation, BOEM is required to consult with USFWS and NOAA Fisheries.

USFWS and NOAA Fisheries will be responsible for reviewing potential impacts to protected resources and evaluating the need for mitigation measures. These agencies will have the opportunity to comment through interagency consultations required for federal permitting. USFWS and NOAA Fisheries will review impacts to marine, coastal, and terrestrial threatened and endangered species protected by the ESA.

If construction or operation is likely to impact listed species under USFWS jurisdiction (such as terrestrial animal or plant species or avian species) or under NOAA Fisheries jurisdiction (such as fish species), then an IHA may be required from USFWS or NOAA Fisheries. NOAA Fisheries will issue an IHA pursuant to the MMPA.

Impacts to non-listed species and habitats will also be evaluated under several other wildlife protection laws, including the MBTA of 1918, the Bald and Golden Eagle Protection Act of 1940, the MMPA, and the MSFCMA of 1976 as amended.

#### National Historic Preservation Act

Section 106 of the NHPA, as amended (54 USC § 306108) requires that federal agencies consider the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places (NRHP). To comply with this obligation, BOEM is

required to consult with the applicable SHPOs, Native American tribes commonly represented by THPOs, and other interested parties.

#### Coastal Zone Management Act

The CZMA requires that federal actions impacting any coastal use or resource (defined as land or water use, or natural resource of a state's coastal zone), be conducted in a manner that is consistent with the enforceable policies of a state's federally-approved CZMP or CRMP. Within this authority of the CZMA, state coastal programs that have been approved by NOAA may review federal actions impacting their coastal uses or resources or both, to verify that such activities are consistent with the state's enforceable program policies.

The Applicant has prepared consistency statements specific to NYS, Rhode Island, and Massachusetts to confirm consistency with each state's enforceable policies impacting any coastal use or resource. In accordance with the "consistency" requirement of the CZMA (16 USC § 1456), as well as 307(c) (3) (A) and 15 CFR Part 930, an assessment of the consistency of the Project with the NYS's CMP is summarized in Exhibit 4: Environmental Impact and included as Appendix 4-A – Consistency with New York State Coastal Management Program Policies.

#### **8.2.2 Other Federal Permits, Approvals, and Consultations**

In addition to the approvals led by BOEM, the Applicant will also require other federal approvals. These include an Individual Permit and Letter of Authorization from the USACE; OCS Air Permit and Construction General Permit from EPA; IHA from NOAA Fisheries; PATON(s) from USCG; a ROW Permit from NPS; and a ROW Permit from USFWS.

#### **USACE – Individual Permit and Section 408 Letter of Authorization**

USACE has jurisdiction pursuant to Section 10 and Section 14 of the Rivers and Harbors Appropriation Act of 1899 (RHA) and Section 404 of the CWA for projects located within navigable waters, federally-maintained navigation channels, and Waters of the United States.<sup>1</sup> The Applicant will apply for an Individual Permit from USACE Region 2 for the planned activities as described below. The Individual Permit process includes an application sufficiency review, as well as review of any potential impacts on the environment, public notice, and a public hearing, which will be conducted in coordination with BOEM's review of the COP.

Section 404 of the CWA (33 USC § 1344) establishes federal regulatory authority over the discharge of dredged or fill material into Waters of the United States, including wetlands. These activities may include

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<sup>1</sup> Waters of the United States are defined in 40 CFR § 230.3(s)

side-casting of material during installation of the SRWEC–NYS, temporary excavation material associated with construction activities at the landfall, placement of concrete matting associated with cable protection along the SRWEC–NYS, and any temporary or permanent fill associated with the Onshore Facilities.

Section 10 of the RHA (33 USC § 403) requires authorization from the USACE for the construction of any structure in or over any navigable water of the United States, as well as fixed structures on the OCS. This includes installation of foundations on the OCS, as well as installation of the SRWEC–OCS and SRWEC–NYS under the seafloor. USACE Section 10 review will occur concurrently with the Section 404 review.

Section 14 of the RHA (33 USC § 408) ensures that congressionally-authorized benefits of a project are protected and maintained (e.g., flood risk management, coastal storm damage reduction, navigation) and to ensure the proposed alteration is not injurious to the public interest. Section 408 of the RHA allows USACE to grant permission for another party to alter a Civil Works<sup>2</sup> project constructed by the USACE, assuming such alteration will not be injurious to the public interest and will not impair the usefulness of the Civil Works project. The USACE will issue a Letter of Authorization for projects authorized under Section 408 of the RHA. This includes crossing of the Long Island intracoastal waterway (ICW), the Fire Island to Montauk Point Reformulation Study, and the Fire Island Inlet to Moriches Inlet Stabilization Project.

The USACE New York District will be a cooperating agency under BOEM's NEPA process to satisfy the NEPA requirements for these authorizations. USACE reviews under RHA Section 10 and 14 and CWA Section 404 will be processed concurrently with BOEM's NEPA review, and USACE approval would be issued as part of the OFD.

#### **EPA – Outer Continental Shelf Air Permit**

The EPA regulates air quality on the OCS pursuant to the CAA Outer Continental Shelf Air Act (42 USC § 7627; 40 CFR Part 55, 60), including emissions from the construction, operation, and decommissioning of the SRWF, including any equipment, activity, or facility that emits, or has the potential to emit, any air pollutant; is regulated or authorized under the OCS Lands Act; and is located on the OCS, or in or on waters above the OCS. This definition includes vessels when they are permanently or temporarily attached to the seabed and erected thereon (40 CFR 55.2), as well as vessels associated with the SRWF while operating at the SRWF or within 25 mi (40.2 km) of the activity.

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<sup>2</sup> The USACE Civil Works programs include water resource development projects, including flood risk management, navigation, recreation, and infrastructure and environmental stewardship, as well as emergency response.



Activities located in state territorial waters and within state nonattainment areas for National Ambient Air Quality Standards (NAAQS) may require a General Conformity determination, as specified in 40 CFR § 93, Subpart B, to demonstrate that the activity will not interfere with the state implementation plan for air quality control and will not cause or contribute to new violations, and to support attainment and maintenance of the NAAQS.

#### **EPA - NPDES Individual Permit**

The EPA regulates point sources that discharge pollutants to waters of the United States pursuant to the CWA (Section 316(b), 40 CFR § 122, 125, 33 USC § 1251). NYS has partially delegated authority within state jurisdiction and the EPA retains authority over point sources on the OCS.

The design of the Offshore Converter Station (OCS-DC) in federal waters may include a cooling water intake structure, which would require a NPDES Individual Permit if the design intake flow is greater than 2 million gallons per day. The Applicant is evaluating the design, including potential intake and discharge, and will coordinate with EPA regarding the potential need for this permit.

#### **NOAA Fisheries Incidental Harassment Authorization**

Pursuant to the MMPA (16 USC § 1361 et seq.) certain species and population stocks of marine mammals that are, or may be, in danger of extinction or depletion as a result of human activities should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and the primary objective of their management should be to maintain the health and stability of the marine ecosystem. The MMPA designated NOAA Fisheries (also known as NMFS) as the primary agency responsible for the protection of whales, dolphins, porpoises, seals, and sea lions.

Construction and operation of the SRWF and SRWEC requires consultation with NOAA Fisheries and will likely require authorization from NOAA Fisheries for the unintentional “take” of marine mammals incidental to certain noise producing activities associated with the SRWF and SRWEC, including pile driving.

#### **USCG – Private Aids to Navigation Permit and Local Notice to Mariners**

The USCG exercises authority over maritime navigation in Waters of the United States pursuant to 33 CFR § 66 (49 USC § 44718). PATON includes all marine aids to navigation operated in the navigable waters of the United States other than those operated by the federal government or those operated in state waters for private aids to navigation.

The USCG will issue a PATON approval for installation of the components in federal waters to alert mariners to potential hazards to navigation. The PATON approval will be obtained after receipt of the USACE permit, approximately four weeks prior to the start of offshore construction.

A request for a Local Notice to Mariners (LNM) will be submitted to the USCG prior to vessel mobilization for construction activities to enable USCG to issue the LNM. An LNM is a weekly notification published by the USCG to disseminate information to mariners concerning aids to navigation, hazards to navigation, and other items of interest to marine users.

#### **NPS – Right-of-Way Permit and Temporary Construction Permit**

NPS exercises authority over public lands included in the National Park System. While Smith County Park is not owned by the federal government, it is located within the designated Fire Island National Seashore, and portions of the SRWEC–NYS and Onshore Transmission Cable will be located under the seafloor within the Fire Island National Seashore. As such, the Secretary of the NPS must grant a ROW Permit for the offshore components pursuant to 54 USC § 100902 and may also issue a temporary construction permit.

#### **USFWS – Right-of-Way Permit and Temporary Construction Permit**

USFWS exercises authority over areas within the NWR System. The Onshore Transmission Cable will cross the Carmans River within the Wertheim NWR in the Town of Brookhaven on land owned by the USFWS. As such, the Regional Director of the USFWS must grant a ROW permit pursuant to 16 USC § 668 (dd) (d) (1) (B), and may also issue a temporary construction permit.

#### **FAA – Notice of Proposed Construction or Alteration**

Under 14 CFR Part 77.9, a Notice of Proposed Construction or Alteration is required to be filed with the FAA for the construction or alteration of structures that exceed the criteria set forth in 14 CFR Part 77.9, or if otherwise requested by the FAA, including construction cranes, to ensure activities will not impact air navigation or airport operations.

During final design and construction, the Applicant will apply the Part 77.9 criteria to the OnCS–DC and, if required, would submit notice to the FAA to determine if the proposed structures and construction activities would impact air navigation. If the FAA requires, the final design and construction of the new structures would incorporate appropriate mitigation measures (*e.g.*, lighting and/or marking).

### **8.2.3 State Permits, Approvals, and Consultations**

The NYSPSC will lead the review of the SRWEC–NYS and Onshore Facilities within NYS territory under Article VII of the PSL, which will include review under Section 401 of the CWA.

The Project has a design capacity that exceeds 125 kV and extends more than 1 m (1.6 km); therefore, it is considered an electric transmission facility (16 NYCRR Subpart 85-2.1). As such, the Project is subject to review and approval by the NYSPSC under Article VII of the PSL (16 NYCRR Parts 85 through 88), which authorizes the Siting of Major Utility Transmission Facilities.

The Article VII process provides a full review of the need for and environmental impact of the siting, design, construction, and operation of the SRWEC-NYS and Onshore Facilities and results in the issuance of a Certificate of Environmental Compatibility and Public Need (CECPN). The CECPN will include Water Quality Certification (WQC), pursuant to Section 401 of the CWA and Implementing Regulations (6 NYCRR Parts 701, 702, 704, 754 and Part 800 to 941); issuance of Protection of Waters Permit, pursuant to NYECL Article 15 (6 NYCRR Part 608 and 621), Freshwater Wetlands Permit, pursuant to NYECL Article 24 (6 NYCRR Part 663 – 665), Tidal Wetlands Permit, pursuant to NYECL Article 25 (6 NYCRR Part 661); and review under Section 68 and Section 70 of the PSL.

Prior to construction, the NYSPSC must also approve an Environmental Management and Construction Plan (EM&CP) that describes the practices during construction that will demonstrate compliance with the CECPN.

In addition, prior to the start of construction, the Applicant will apply for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity from the NYSDEC, a Utility Work Permit and Highway Work Permit from the NYSDOT, and an Easement to Use New York State Lands Under Water from the NYSOGS, Bureau of Land Management, as described further below.

Consultation and review will also occur with NYSDEC for NYS-listed threatened and endangered species and unique or significant habitats; NYSOPRHP for cultural and historic resources; NYSDOS relative to NYS CZMP; and New York State Department of Agriculture and Markets (NYSDAM) for agricultural lands.

#### **NYSPSC – Approval under Section 68 of the PSL**

Under PSL § 68, the NYSPSC (a) examines a certified copy of the charter of the entity proposing to own or operate electric plant to determine whether the entity has the legal capacity to do so; (b) ensures that the entity is properly registered to do business in NYS, including determining whether the entity is properly registered so that service of process can occur if the entity is difficult to locate; (c) ensures that the entity has received any required consent of the proper municipal authorities for the use of any municipal property or public ROW; and (d) examines the economic feasibility of the entity and the entity's ability to finance improvements, render safe, adequate and reliable service, provide just and reasonable rates, and be in the public interest.

The Applicant intends to file a Petition for a Certificate of Public Convenience and Necessity (CPCN) pursuant to PSL § 68, seeking NYSPSC approval of the exercise of a franchise, namely a road-crossing/road-use agreement between the Applicant and the Town of Brookhaven along the Project ROW. To enable the NYSPSC to make the findings necessary to grant the Petition, the Applicant will file with the NYSPSC a duly certified copy of its charter(s) of incorporation along with proof that it has received the required consent of the proper municipal authorities. Further, the Applicant will establish that the exercise of the franchise is necessary or convenient for the public service.

#### **NYSPSC – Approval under Section 70 of the PSL**

Under PSL § 70, subject to certain thresholds, no gas corporation or electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the NYSPSC.

As described in Exhibit 2: Location of Facilities, the Onshore Interconnection Cable will utilize existing utility ROW and adjacent utility-owned land. The Applicant will acquire the necessary rights from the respective utility's(ies) property and/or ROW through lease or purchase agreements. This acquisition(s) will require NYSPSC approval under PSL § 70, and the Applicant will coordinate with the respective utility(ies) to secure the necessary PSL §70 approval(s).

#### **NYSPSC – Section 401 Water Quality Certification**

A WQC in accordance with Section 401 of the CWA is required before certain other federal and state agencies can issue permits and approvals required to construct the Project. The Applicant will apply for the WQC as a part of the Article VII Application, seeking authorization from NYSPSC.

#### **NYSDEC – SPDES General Permit for Stormwater Discharges from Construction Activities**

Under the Federal CWA as implemented by NYS under NYECL Article 17, stormwater discharge(s) from construction activities that disturb one acre or more are required to be covered under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001) or its successor issued by the NYSDEC. Because construction activities for the Project will result in soil disturbance exceeding the one-acre threshold, a Notice of Intent will be submitted to the NYSDEC seeking coverage under the General Permit prior to commencement of Project construction.

One of the requirements of the SPDES Permit is the development of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements set forth in the SPDES Permit. The SWPPP will address stormwater management and temporary soil erosion, identifying site-specific measures to minimize pollution associated with stormwater runoff. In accordance with the General Permit, the Project

will be subject to the requirements of a regulated traditional land use control, Municipal Separate Storm Sewers System (MS4), in the Town of Brookhaven. As such, the Applicant will have the SWPPP reviewed and the MS4 SWPPP Acceptance form signed by the Town of Brookhaven. The SWPPP will be included in the Project EM&CP.

#### **NYSDOT – Utility Work Permit**

Any utility work within or adjacent to NYS highway ROWs requires a Utility Work Permit from the NYSDOT. The Onshore Transmission Cable will cross several highways under NYSDOT's jurisdiction and the Onshore Interconnection Cable will require a crossing of the Long Island Expressway (I-495). Prior to construction, the Applicant will submit the necessary "Highway Work Permit Application for Utility Work" (Form PERM 32) and obtain highway work permit(s) from the NYSDOT Region 10 pursuant to 17 NYCRR Part 131 for the construction of the Onshore Transmission Cable and the Onshore Interconnection Cable in NYS highway ROWs. The Applicant will also enter into a Use and Occupancy Agreement with NYSDOT, which will provide the conditions for the occupation of the highway ROWs.

#### **NYSOGS – Easement for Lands Under Water**

Pursuant to the New York Public Lands Law, real estate rights to the bed of numerous bodies of water are held in trust for the people of NYS under the jurisdiction of the NYSOGS. An easement from NYSOGS is required to install utilities, including submarine cables, below lands that are under waters of NYS-owned waterbodies. The Applicant anticipates applying for a permit/easement to use underwater NYS-owned lands after submitting the Article VII Application.

#### **8.2.4 Local Permits and Approvals**

As noted above, in the event that the Applicant enters into a road use or other qualifying agreement with the Town of Brookhaven, it will seek NYSPSC approval pursuant to PSL § 68. Due to the pre-emptive effect of PSL § 130, the procedural requirements to obtain any local approval, consent, permit, certificate or other condition for the construction and operation of the Project do not apply.

The Applicant has sited the Project to be consistent with the goals of the Pine Barrens Protection Act (Article 57), overseen by the Central Pine Barrens Joint Planning & Policy Commission, to the extent practicable. The Applicant has coordinated with, and will continue to coordinate with, the Central Pine Barrens Joint Planning & Policy Commission and will request a CPA hardship exemption from the Central Pine Barrens Joint Planning & Policy Commission based on compelling public need for the portion of the Project that will traverse the Central Pine Barrens.

### 8.2.5 Other Agreements and Easements

In addition to the federal and NYS permits, approvals, and consultations identified in Table 8.2-1 and described above, the Applicant plans to enter into a Large Generator Interconnection Agreement with LIPA; easement agreements with the Long Island Rail Road (LIRR) for the two crossing of railroads; easements, leases, and/or purchase agreements from the respective utility(ies) for use of their property and/or ROW; a road use agreement with Suffolk County; and an easement from Suffolk County for use of certain County park lands.

Finally, the Applicant will consult with the appropriate federal and NYS agencies and obtain any necessary approvals to conduct pre-construction surveys along the Project.

### 8.2.6 Other States

For the portions of the SRWF and SRWEC located in federal waters, as applicable, the Applicant would seek concurrence with Federal Consistency Determination with Rhode Island, pursuant to CZMA (16 USC 1451 et seq, 15 CFR 930, and 30 CFR 585.611(b), 627(b)) and Rhode Island Coastal Resources Management Program (Section 400) and with Massachusetts, pursuant to CZMA (16 USC 1451 et seq, 15 CFR 930, and 30 CFR 585.611(b), 627(b)), Massachusetts General Law (21A, Subpart 4A) and Massachusetts Coastal Zone Management Program Policies (310 Code of Massachusetts Regulations 20.00 and 21.00).

### 8.2.7 Filings of Others

The Applicant is unaware of any other entities having an application or filing pending with the NYSPSC, or with any other state or federal governmental department or agency, which concerns the subject matter of this Application.

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