



# **DANSKAMMER ENERGY CENTER**

**Case No. 18-F-0325**

**1001.32 Exhibit 32**

**State Laws and Regulations**

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## Exhibit 32: State Laws and Regulations

Danskammer has consulted with the State agencies and authorities whose requirements are the subject of this Exhibit to ensure that Danskammer has correctly identified all requirements. Danskammer intends to comply substantively with the requirements identified in this Exhibit.

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

Table 32-1 below contains a list of state approvals, consents, permits, certificates, or other conditions of a procedural nature that are applicable to the construction or operation of the Project. As a general matter, state procedural requirements relating to the siting, construction and operation of major electric generating facilities are supplanted by Article 10. As noted in the table below, an exception exists for permits issued by the New York State Department of Environmental Conservation (NYSDEC) or New York State Department of State (NYSDOS) pursuant to authority delegated to it by the federal government under the federal Clean Air Act, Clean Water Act, Coastal Zone Management Act, and Resource Conservation and Recovery Act (New York State Public Service Law § 172 [1]). In such cases, NYSDEC or NYSDOS retains permitting jurisdiction, both procedurally and substantively.

**Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature**

Permits and Approvals/ Consultations	Regulatory Agency	Discussion
Prevention of Significant Deterioration (PSD) Air Permit, Environmental Conservation Law (ECL) Article 19, 6 NYCRR Part 231	NYSDEC	A PSD permit is required prior to the construction of a new or modified stationary source of air emissions. Danskammer has submitted a draft permit application to the NYSDEC for a Part 231 Permit for the Project. The procedural requirements of this permit are not supplanted by Article 10.
Title V Air Permit Modification, ECL Article 19, 6 NYCRR Part 201-6	NYSDEC	A Title V Air Permit is required prior to operation of new or modified sources of air emissions exceeding certain thresholds. The current Danskammer Generating Station operates under a Title V Air Permit issued pursuant to 6 NYCRR Part 201. Danskammer will seek to modify its existing Title V permit (3-3346-00011) under 6 NYCRR Section 201-6 and has submitted a draft permit application to NYSDEC. The procedural requirements for this permit are not supplanted by Article 10.

**Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature**

Permits and Approvals/ Consultations	Regulatory Agency	Discussion
State Pollutant Discharge Elimination System (SPDES) Permit, Modification to Individual Permit for Industrial Activities, ECL Article 3, 6 NYCRR Part 750	NYSDEC	In accordance with requirements of the existing industrial SPDES permit, Danskammer will prepare a SWPPP, file NOI related to construction activity, and prepare application for a modification of its existing permit. A preliminary SWPPP is provided in Appendix 23-4 to the Application. The procedural requirements of the SPDES permit are not supplanted by Article 10.
Coastal Zone Consistency Determination, NYS Executive Law, Article 42, 19 NYCRR Part 600	New York State Department of State (NYSDOS)	NYSDOS manages the New York State Coastal Management Program (CMP) to ensure that projects within or affecting New York's coastal areas requiring federal approval are consistent with CMP Policy ("Coastal Zone Consistency Determination"). In connection with the modification of the MOSF license, Danskammer will submit a Facility Response Plan (FRP) to USEPA for its approval, thereby triggering the requirement for a NYSDOS Coastal Zone Consistency Determination under the federal Coastal Zone Management Act. The procedural requirements are not supplanted by Article 10.
Certificate of Public Convenience and Necessity, NYS Public Service Law (PSL) § 68	New York State Public Service Commission	No electric corporation shall begin construction of an electric plant with a generating capacity of at least 80 megawatts without first having obtained the permission and approval of the PSC. Danskammer anticipates submitting a Petition for PSL Section 68 approval during the course of the Article 10 proceeding. The Siting Board has taken the position that the procedural requirements pertaining to PSL Section 68 approval are not supplanted by Article 10.

**Table 32-1. State Reviews, Permits, and Approvals of a Procedural Nature**

Permits and Approvals/ Consultations	Regulatory Agency	Discussion
Major Oil Storage Facility (MOSF) License Modification/Amendment, Navigation Law Article 12, 6 NYCRR Parts 610 and 613-1, except 613-1.9	NYSDEC	The storage of more than 400,000 gallons of petroleum product requires licensing as a Major Oil Storage Facility. The existing Danskammer Generating Station property operates pursuant to an existing MOSF license. Danskammer is seeking a modification/amendment to that license to construct a new petroleum storage tank to store more than 400,000 gallons of ultra-low sulfur diesel as back-up fuel.
Special Hauling Permit for Oversize/Overweight Vehicles, New York State Vehicle and Traffic Law Section 385	NYSDOT	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, Danskammer requests that the Siting Board authorize the NYSDOT to issue any such permits that may be necessary for the Project. See Section 32(b) below.
Registration, Hazardous Substance Bulk Storage Registration, ECL Article 17, 6 NYCRR Parts 596 through 599	NYSDEC	Hazardous Substance Bulk Storage Regulations require the registration of tanks exceeding 185 gallons containing substances defined as hazardous. Danskammer intends to register its ammonia storage tank that will be used in connection with the Project's air pollution control device.
Consultation pursuant to Section 14.09 of the New York Historic Preservation Act	New York State Office of Parks, Recreation, and Historic Preservation (NYS OPRHP)	Danskammer has initiated (and will continue) consultation with NYS OPRHP to ensure compliance with Section 14.09 of the New York State Historic Preservation Act
Consultation, Endangered and Threatened Species ECL Article 11, 6 NYCRR Part 182	NYSDEC	Danskammer has initiated (and will continue) consultation with the NYSDEC Natural Heritage Program (NHP) to determine the Project's impact on any protected plant or animal species habitat and whether the requirements of an "incidental take" permit might apply. It is not anticipated that such requirements will be applicable to the Project.

Danskammer intends to build and operate the Project in accordance with state laws and regulations as described herein.

### **32(b) Identification of State Procedural Requirements Requested to be Exercised by a State Agency in Lieu of Siting Board**

Danskammer requests that the Siting Board expressly authorize the NYSDOT to issue any special hauling permits required under New York Vehicle and Traffic Law Section 385, if applicable. The procedural requirements associated with a special hauling permit are supplanted by Article 10. The information necessary to obtain a special hauling permit, which is ministerial in nature, may not be fully known until shortly before construction begins. Danskammer anticipates that these permit applications will be submitted once actual loads, specific equipment and other details are finalized, post-certification.

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

Danskammer will construct and operate the Project in manner that conforms to all substantive requirements of applicable state approvals, consents, permits, certificates, or other conditions. The following is a list of all substantive State approvals, consents, permits, or other conditions of a substantive nature that may be applicable to the construction or operation of the proposed Project:

- Prevention of Significant Deterioration Air Permit, ECL Article 19, 6 NYCRR Part 231 (New Source Review for New and Modified Facilities)
- Title V Facility Permit, ECL Article 19, 6 NYCRR Part 201, including Subpart 201-6 (Permits and Registrations, Title V Facility Permits )
- SPDES Individual Discharge Permit for Industrial Activities, ECL Article 3, 6 NYCRR Part 750
- Coastal Zone Consistency Determination, Executive Law, Article 42, 19 NYCRR Part 600
- New York State PSL Section 68, Certificate of Public Convenience and Necessity for Construction of Electric Plant
- License for Major Oil Storage Facility, Navigation Law, Article 12, 6 NYCRR Parts 610 and 613-1, except 613-1.9
- Special Hauling Permit, New York State Department of Transportation, Vehicle and Traffic Law § 385
- Hazardous Substance Bulk Facility Registration, 6 NYCRR Parts 596-599
- Consultation Pursuant to Section 14.09 of the New York State Historic Preservation Act

- Consultation with NYSDEC, Natural Heritage Program, Threatened and Endangered Species, ECL Articles 11 and 13, 6 NYCRR Part 182

**32(d) Summary Table of State Substantive Requirements**

Danskammer will construct and operate the proposed Project in accordance with applicable state substantive requirements identified in Table 32-2 below.

**Table 32-2. Compliance with Applicable State Substantive Requirements**

State Substantive Requirement	Degree of Compliance
ECL Article 19, 6 NYCRR Part 201: Permits and Registrations; Title V Facility Permits	Danskammer will fully comply with the substantive requirements of this provision as addressed more fully in Exhibit 17. Draft permit application materials have been submitted to the NYSDEC demonstrating that the Project will comply with the applicable regulatory provisions. Copies of these application materials are provided as Appendix 17-1 to Exhibit 17.
ECL Article 19, 6 NYCRR Part 231: New Source Review for New and Modified Facilities	Danskammer will fully comply with the substantive requirements of this provision as discussed more fully in Exhibit 17. Draft permit application materials have been submitted to the NYSDEC demonstrating that the Project will comply with the applicable regulatory provisions. Copies of these application materials are provided as Appendix 17-1 to Exhibit 17.
ECL Article 3, 6 NYCRR Part 750, State Pollutant Discharge Elimination System Permits	Danskammer will fully comply with the substantive requirements of this provision through compliance with an individual SPDES Permit modification to be obtained for the Project. A draft SPDES permit modification application, demonstrating that the Project will comply with the applicable regulatory provisions, is provided as Appendix 39-2 to Exhibit 39.

**Table 32-2. Compliance with Applicable State Substantive Requirements**

State Substantive Requirement	Degree of Compliance
Executive Law, Article 42, 19 NYCRR Part 600, Coastal Zone Consistency Determination	Danskammer will fully comply with these regulatory provisions. Danskammer has prepared a consistency statement demonstrating that the Project is consistent with the applicable policies of the NYS Coastal Management Plan. See Appendix 4-2 to Exhibit 4. A Federal Consistency Assessment Form, certifying that the Project is consistent with New York State's Coastal Zone Management Program, is provided as Appendix 4-2 to Exhibit 2 ("Coastal Consistency Certification"). Concurrently with the filing of this Application, Danskammer has submitted to NYS DOS a copy of this Article 10 application along with the Coastal Consistency Certification and necessary data and information sufficient to initiate review by NYS DOS.
Certificate of Public Convenience and Necessity for Construction of Electric Plant, PSL § 68 Certificate	Danskammer will comply with this requirement by making a separate submission to the PSC containing the information required for the PSC 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.
Navigation Law, Article 12, 6 NYCRR Parts 610 and 613-1, except 613-1.9, Licensing of Major Onshore Facilities	Danskammer will fully comply with the substantive requirements of this provision as discussed more fully in Exhibits 23 and 37. A copy of the application form for modification/amendment of the existing MOSF license, demonstrating that the Project will comply with the applicable regulatory provisions, is provided as Appendix 37-1 to Exhibit 37.
Special Hauling Permit, NYS Vehicle and Traffic Law § 385	Danskammer will fully comply with the terms and conditions of any permits issued by NYSDOT consistent with Section (b) above.
ECL, Article 17, 6 NYCRR Parts 596 through 599, Hazardous Substance Bulk Storage Regulations	Danskammer will fully comply with the substantive requirements of these regulations, as discussed more fully in Exhibit 23.
Consultation with NYSDEC, Natural Heritage Program, Threatened and Endangered Species, ECL Article 11, 6 NYCRR Part 182	Danskammer will fully comply with this consultation requirement. Danskammer has consulted with the National Heritage Program and consultations are on-going. For further discussions regarding compliance with these regulatory provisions, please see Exhibit 22, including Appendix 22-4 thereto.



**Table 32-2. Compliance with Applicable State Substantive Requirements**

State Substantive Requirement	Degree of Compliance
Consultation Pursuant to New York Historic Preservation Act § 14.09	Danskammer will fully comply with the substantive requirements of this provision as discussed more fully in Exhibit 20. Danskammer submitted an initial consultation letter via CRIS to OPRHP on December 3, 2018. In response, OPRHP requested the preparation of an Historic Architectural Survey (Survey), which Danskammer has completed and submitted to OPRHP. The Survey is provided herein as Appendix 20-3 to Exhibit 20.

**32(e) List of State Approvals, Consents, Permits, Certificates, or Other Conditions for Offsite Interconnections or Ancillary Features**

The Project does not propose the construction or operation of any off-site interconnection or ancillary feature. As designed, the Project’s electrical, gas, telecommunication, water, and wastewater interconnections are anticipated to occur within the Project Site.

Accordingly, there are no applicable state approvals, consents, permits, certificates or other conditions related to the construction or operation of off-site interconnections or ancillary features.