

Empire Offshore Wind LLC

Empire Wind 2 Project
Article VII Application

Exhibit 8
Other Pending Filings

June 2022

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ACRONYMS AND ABBREVIATIONS

BOEM	Bureau of Ocean Energy Management
Certificate	Certificate of Environmental Compatibility and Public Need
CFR	Code of Federal Regulations
COP	Construction and Operations Plan
CWA	Clean Water Act
CZMA	Coastal Zone Management Act of 1972
EM&CP	Environmental Management & Construction Plan
Empire or the Applicant	Empire Offshore Wind LLC
EPA	Environmental Protection Agency
ESA	Endangered Species Act of 1973
EW 2	Empire Wind 2
HVAC	high-voltage alternating-current
IHA	Incidental Harassment Authorization
km	kilometer
Lease Area	BOEM-designated Renewable Energy Lease Area OCS-A 0512
LIRR	Long Island Rail Road
mi	mile
MS4	Municipal Separate Storm Sewer System
nm	nautical mile
NHPA	National Historic Preservation Act of 1966
N.J.A.C.	New Jersey Administrative Code
NYCRR	New York Codes, Rules and Regulations
NYSDEC	New York State Department of Environmental Conservation
NYSDOS	New York State Department of State
NY Project	EW 2 Project transmission facilities in New York
NYSPPSC or Commission	New York State Public Service Commission
OCS	Outer Continental Shelf
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
PATON	Private Aids to Navigation
POI	Point of Interconnection at an expansion of the Barrett 138-kV Substation
PSL	New York Public Service Law
SPDES	State Pollutant Discharge Elimination System
SWPPP	Stormwater Pollution Prevention Plan

U.S.C.	United States Code
USACE	U.S. Army Corps of Engineers
USCG	U.S. Coast Guard
WQC	Water Quality Certification

EXHIBIT 8: OTHER PENDING FILINGS

8.1 Introduction

Empire Offshore Wind LLC (Empire or the Applicant) proposes to construct and operate the Empire Wind 2 (EW 2) Project as one of two separate offshore wind projects to be located within the Bureau of Ocean Energy Management (BOEM) designated Renewable Energy Lease Area OCS-A 0512 (Lease Area). The EW 2 Project will require an electric transmission system to connect the offshore wind farm to the point of interconnection (POI) to the New York State Transmission System. An electric transmission line with a design capacity of 125-kilovolt (kV) or more, extending a distance of one mile or more, is subject to review and approval by the New York State Public Service Commission (Commission or NYSPSC) as a major electric transmission facility pursuant to Article VII of the New York Public Service Law (PSL). The EW 2 Project transmission system will extend a total of approximately 12.1 miles (mi) (19.5 kilometers [km]) within the State of New York and includes 230-kV export cable circuits and 345-kV interconnection cable circuits. As such, this application is being submitted to the Commission pursuant to Article VII of the PSL for the portions of the EW 2 Project transmission system that are located within the State of New York (collectively, the NY Project).

The NY Project will interconnect to the New York State Transmission System operated by the New York Independent System Operator, Inc. (NYISO) at the Oceanside POI, located at an expansion of the Barrett 138-kV Substation. The Barrett 138-kV Substation is owned by the Long Island Power Authority (LIPA) and operated by PSEG Long Island (PSEG-LI) and is located in Oceanside in the Town of Hempstead, New York. The NY Project will enter LIPA's substation at 345 kV, where the voltage will be converted to 138-kV within the POI. The onshore portion of the NY Project will be located entirely within Nassau County, New York.

The NY Project includes:

- Three three-core 230-kV high-voltage alternating-current (HVAC) submarine export cables located within an approximately 7.7-nautical mile (nm, 14.2-km)-long submarine export cable corridor from the boundary of New York State waters 3 nm (5.6 km) offshore to the cable landfall;
- A cable landfall in the City of Long Beach, New York;
- Three 230-kV onshore export cable circuits, each with three single-core HVAC onshore export cables within an approximately 1.5-mi (2.4-km)-long onshore export cable corridor from the cable landfall to the onshore substation;
- An onshore substation in the Village of Island Park, within the Town of Hempstead, New York, which will step up the voltage to 345-kV for the onshore interconnection cables; and
- Up to three 345-kV interconnection cable circuits, each with three single-core HVAC interconnection cables within an approximately 1.7-mi (2.8-km)-long interconnection cable corridor from the onshore substation to the POI.

This Exhibit addresses the requirements of 16 New York Codes, Rules and Regulations (NYCRR) § 86.9: Other Pending Filings. A note has been provided in Sections 8.2 and 8.3 for pending applications where granting of the application or filing will have an effect on the Commission's grant or denial of a Certificate of Environmental Compatibility and Public Need (Certificate), or where the granting of a Certificate will have an effect upon the grant or denial of any such other application or filing.

In addition to the NY Project that is subject to Article VII, the EW 2 Project includes areas outside of New York State and will involve installation of offshore wind turbines, supporting structures and foundations, interarray cables, and one offshore substation, located within the Lease Area on the Outer Continental Shelf (OCS) in federal waters. The submarine export cable route from the Lease Area to the cable landfall is approximately 26 nm (48 km), of which approximately 18 nm (33 km) is in federal waters, and 7.7 nm (14.2 km) is in New York State waters. For the purposes of this Application, “EW 2 Project” is used to refer to the offshore wind farm and transmission facilities together, inclusive of the components located in federal waters outside of New York State. “NY Project” is used to refer specifically to the Article VII transmission facilities in New York State that are the subject of this Application. An overview is provided in **Figure 8.1-1**. Since the NY Project is connected to the EW 2 Project facilities in federal waters, approvals required for federally jurisdictional portions of the EW 2 Project outside of New York State are also described in this Exhibit.

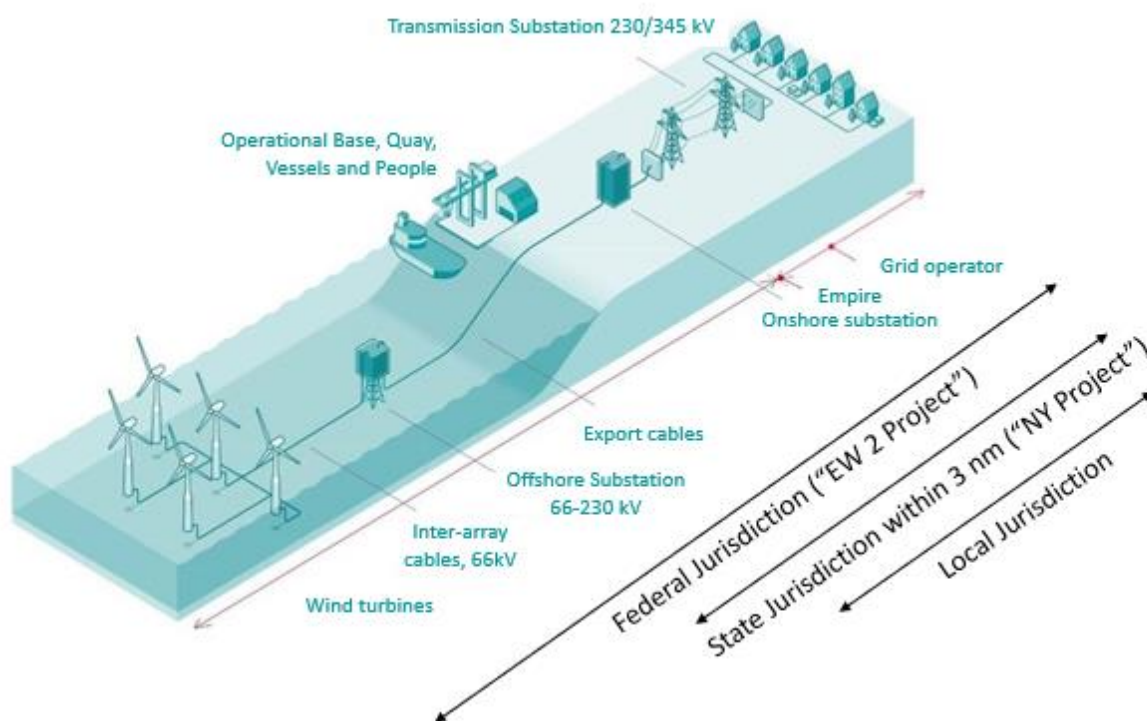


Figure 8.1-1 Overview of EW 2 Project Offshore and Onshore Infrastructure

A list of the approvals, permits, and consultations required by the federal, state, and local agencies that the Applicant has applied for and/or will seek for the EW 2 Project are described in Sections 8.2 through 8.4 and summarized in **Table 8.1-1**. The Applicant is not aware of any other entities and/or pending applications that have been filed with the Commission or other state or federal entities, which are related to and/or may interfere with the authorization of the NY Project.

Table 8.1-1 Federal, State, and Local Authorizations and Consultations for the EW 2 Project

Regulatory Agency	Permit or Approval	Statutory Basis	Regulations	Anticipated Approval
Federal				
BOEM	Outer Continental Shelf Lands Commercial Lease, Site Assessment Plan, and Construction and Operations Plan (COP)	Outer Continental Shelf Lands Act 43 United States Code (U.S.C.) § 1337 Energy Policy Act of 2005	BOEM Final Rule on Renewable Energy Development on the OCS 30 Code of Federal Regulations (CFR) § 585	Q3 2023 (COP)
U.S. Army Corps of Engineers (USACE) New York District	Section 10 Permit for structure in navigable U.S. waters Section 404 Dredge Discharge Permit in navigable U.S. waters Section 408 Permit for activities in a Civil Works Project	Rivers and Harbors Act – Section 10 33 U.S.C. §§ 333(e), 403 Clean Water Act (CWA) Section 404 33 U.S.C. § 1344	33 CFR §§ 320 <i>et seq.</i>	Q3 2023
National Oceanic and Atmospheric Administration’s National Marine Fisheries Service	Section 7 Consultation under the Endangered Species Act (ESA) Marine Mammal Protection Act Incidental Harassment Authorization Magnuson-Stevens Fishery Conservation and Management Act Consultation	ESA 16 U.S.C. § 1536 Marine Mammal Protection Act 16 U.S.C. §§ 1361 <i>et seq.</i> Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. §§ 1801 <i>et seq.</i>	50 CFR § 402 50 CFR § 216 50 CFR § 600	Q3 2023 Q3 2023 Q3 2023
U.S. Fish and Wildlife Service Northeast Region (Region 5)	Section 7 Consultation under ESA	ESA 16 U.S.C. §1531	50 CFR §§ 13, 17, 402 50 CFR §§ 10, 22	Q3 2023

Table 8.1-1 Federal, State, and Local Authorizations and Consultations for the EW 2 Project (continued)

Regulatory Agency	Permit or Approval	Statutory Basis	Regulations	Anticipated Approval
Advisory Council on Historic Preservation	National Historic Preservation Act (NHPA) Section 106 Consultation	NHPA 16 U.S.C. § 470	36 CFR §§ 60, 800	Q3 2023
U.S. Coast Guard (USCG), Sector New York, Sector Long Island Sound, First District, and Fifth District	Approval for Private Aids to Navigation (PATON) Local Notice to Mariners	49 U.S.C. § 44718 33 U.S.C. § 1221	33 CFR § 66	60 days prior to the start of offshore construction. Approximately 2 weeks prior to the start of offshore construction.
U.S. Department of Defense	Consultation	Public Law 114-92, National Defense Authorization Act of 2016, Amendment to § 358, FY11 National Defense Authorization Act	32 CFR § 211	Q3 2023
U.S. Environmental Protection Agency (EPA), Region 2, Air Programs Branch	OCS Air Quality Permit and General Conformity Determination	Clean Air Act 42 U.S.C. §§ 7401 <i>et seq.</i>	40 CFR § 60	Q3 2023
New York				
New York State Public Service Commission	Certificate of Environmental Compatibility and Public Need under Article VII	PSL, Article VII	16 NYCRR §§ 85-88	Q4 2023
	CWA Section 401 Water Quality Certification	CWA, Section 40 New York Environmental Conservation Law Article 15, Title 5	6 NYCRR § 608	Q4 2023

Table 8.1-1 Federal, State, and Local Authorizations and Consultations for the EW 2 Project (continued)

Regulatory Agency	Permit or Approval	Statutory Basis	Regulations	Anticipated Approval
	Environmental Management and Construction Plan(s)	PSL Article VII	16 NYCRR §§ 85-88	Q1 2024
	Section 68 Petition	PSL § 68		Q4 2023
New York State Office of General Services, Bureau of Land Management	License, Grant or Easement for Use of State Lands Underwater	New York Public Lands Law Article 2, Section 3, Subdivision 2	9 NYCRR §§ 270 and 271	Q4 2023
New York State Department of State (NYSDOS), Division of Coastal Resources	Coastal Zone Management Program Concurrence with Federal Consistency Certification	Coastal Zone Management Act (CZMA) 16 U.S.C. § 1451 State Executive Law Article 42	15 CFR §§ 923, 930 6 NYCRR § 617 19 NYCRR § 600	Q3 2023
New York State Department of Environmental Conservation (NYSDEC)	State Pollutant Discharge Elimination System (SPDES) Construction Stormwater Permit	CWA Section 402 New York Environmental Conservation Law Article 17	6 NYCRR § 182	Q3 2023
Office of Parks, Recreation, and Historic Preservation (OPRHP), State Historic Preservation Office	Consultation under Section 106 of the NHPA, Section 14.09 of the New York State Historic Preservation Act of 1980, and Section 233 of the State Education Law (submerged archeological resources)	16 U.S.C. § 470	6 NYCRR § 617	Q3 2023
Metropolitan Transit Authority/Long Island Rail Road	Easement Agreement/Entry Permit	N/A	N/A	Q3 2023

Table 8.1-1 Federal, State, and Local Authorizations and Consultations for the EW 2 Project (continued)

Regulatory Agency	Permit or Approval	Statutory Basis	Regulations	Anticipated Approval
Local				
County of Nassau	Right-of-Way Permit/Agreement	Nassau County Administrative Code § 12-4.0	N/A	Q2 2023
Town of Hempstead	Right-of-Way Permit/Agreement	Town of Hempstead Code § 181-1 to 181-24	N/A	Q2 2023
City of Long Beach	Right-of-way Permit/Agreement and Easement Agreement	Code of Ordinances of the City of Long Beach, Chapter 23	N/A	Q4 2022
Village of Island Park	Right-of-way Permit/Agreement and Easement Agreement and Easement Agreement	Village of Island Park Code Chapter 510	N/A	Q4 2022
New Jersey				
New Jersey Department of Environmental Protection, Coastal Management Program	Concurrence with Federal Coastal Zone Consistency Certification	CZMA	State Coastal Zone Management rules, New Jersey Administrative Code (N.J.A.C.) 7:7, the Freshwater Wetlands Protection Act Rules, (N.J.A.C. 7:7A), Stormwater Management rules, (N.J.A.C. 7:8), New Jersey Pollutant Discharge Elimination Systems rules, (N.J.A.C. 7:14A, Subchapters 1, 2, 5, 6, 11, 12, 13, 15, 16, 18, 19, 20, 21, 24 and 25)	Q3 2023

8.2 Federal Approvals

8.2.1 Bureau of Ocean Energy Management

Through the Outer Continental Shelf Lands Act, as amended, and subsequent delegation by the Secretary of the Interior, BOEM has the authority to issue submerged land leases for alternative energy development on the OCS and regulate activities that occur within them. The Applicant's Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf OCS-A 0512 went into effect on April 1, 2017. BOEM will be the lead federal agency under the National Environmental Policy Act for review of the Construction and Operations Plan (COP) for the offshore wind farm located in the Lease Area and associated facilities and will also authorize an easement that will be necessary for the portion of the submarine export cable route that is located in federal waters outside of the Lease Area. The National Environmental Policy Act review will include the NY Project facilities.

The Applicant submitted a COP for the development of the Lease Area and associated facilities in January 2020, and subsequent revisions in response to agency comments in September 2020, April 2021, July 2021, September 2021, December 2021 and May 2022. The COP was determined to be complete and sufficient on June 24, 2021, and BOEM issued a Notice of Intent to prepare an Environmental Impact Statement for the activities detailed in the COP. BOEM will conduct a consultation and ensure completion of federal agency reviews, including those required under the Coastal Zone Management Act of 1972 (CZMA, see Section 8.3.3), National Historic Preservation Act of 1966 (NHPA), Section 7 of the Endangered Species Act of 1973 (ESA), Bald and Golden Eagle Protection Act of 1940, the Magnuson-Stevens Fisheries Conservation Management Act of 1976 as amended, and the Marine Mammal Protection Act. BOEM will also consult with the Department of Defense (see **Table 8.1-1**). Pursuant to FAST-41,¹ BOEM will work with cooperating agencies, including the U.S. Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency (EPA), the U.S. Coast Guard (USCG), and others, to ensure that the Environmental Impact Statement contains the necessary information to support their permit and approval decisions.

The CZMA requires that federal actions, including the issuance of federal permits or licenses, either within or potentially affecting a state's coastal zone, be consistent with the enforceable policies of that state's federally approved coastal zone management program. As the NY Project occurs within the coastal zone, the Applicant will submit a consistency certification under the New York Coastal Management Program (see **Section 8.3.3**). While a consistency certification is only required for the EW 2 Project facilities occurring within New York State waters and onshore, the Applicant will voluntarily submit a request for the entire EW 2 Project. Furthermore, the Applicant will also file a voluntary consistency determination with the State of New Jersey due to the geographic proximity of the Lease Area.

8.2.2 U.S. Army Corps of Engineers

The Applicant will seek an Individual Permit under Section 10 of the Rivers and Harbors Act and under Section 404 of the Clean Water Act² (CWA) from the USACE New York District. The NY Project will require this authorization for work in New York State, and the EW 2 Project as a whole will also require USACE authorization for work within federal waters. If necessary, the Applicant will also obtain a Section 408 Permit,

¹ Additional information on the FAST-41 process and the status of the Empire Offshore Wind Lease Area OCS-A 0512 Offshore Wind Project can be found on the Permitting Dashboard at:

<https://www.permits.performance.gov/permitting-project/empire-wind-energy-project>.

² The issuance of a permit under Section 404 of the CWA will require issuance of a Water Quality Certification (WQC) in accordance with Section 401 of the CWA. Thus, the Commission's grant of a 401 WQC with the Certificate will affect the grant or denial of the Section 404 permit.

pursuant to 33 United States Code (U.S.C.) § 408, which is issued for activities potentially affecting a Civil Works Project, including federal navigation projects.

8.2.3 National Marine Fisheries Service

The Applicant will seek a Letter of Authorization and/or Incidental Harassment Authorization (IHA) from the National Oceanic and Atmospheric Administration's National Marine Fisheries Service for activities related to the EW 2 Project. A Letter of Authorization and/or IHA is required for activities resulting in the incidental take of marine mammals.

8.2.4 U.S. Coast Guard

As part of the USCG programs for overseeing boating safety, the USCG oversees the placement of Private Aids to Navigation (PATONs), which are buoys, lights, or day beacons owned and maintained by any individual or organization other than the USCG. The USCG determines the type of aid, lighting, and marking for privately owned marine obstructions or other similar hazards to navigation. The USCG is also responsible for establishing any restricted zones (within 12 nm [22 km] from shore) around the facilities that may be desirable and for coordinating vessel traffic during construction of the NY Project. The Applicant will request a Local Notice to Mariners for the NY Project through the USCG, as appropriate, prior to construction.

In addition to authorizations for the NY Project, the Applicant will seek issuance of a USCG PATON for the federal portions of the EW 2 Project associated with the wind turbine and offshore substation foundations, to be located offshore in the Lease Area.

8.2.5 U.S. Environmental Protection Agency

The Applicant will seek issuance of an EPA OCS Air Permit for activities related to the EW 2 Project occurring in federal waters, and a General Conformity Determination for the activities occurring in New York.

8.3 State Approvals

This section describes permits and approvals the Applicant is seeking from New York State and any other states.

8.3.1 New York State Public Service Commission

The Applicant is seeking a Certificate under Article VII of the PSL. Under PSL § 130, the issuance of an Article VII Certificate and related processes supersede most other New York State and local approvals, consents, permits, certificates or other conditions for the construction or operation of a major electric transmission facility.

The NYSPSC is responsible for the review of this Certificate application under Article VII of the PSL and will also review and approve the Environmental Management and Construction Plan (EM&CP) for the NY Project. The NY Project will also require a Water Quality Certification (WQC) in accordance with Section 401 of the CWA and Article 15, Title 5 of the New York Environmental Conservation Law. The Applicant will request the Section 401 WQC³ from the NYSPSC as part of the Article VII Certificate application. After the issuance of the Article VII Certificate, the Applicant will submit its EM&CP for approval.

The Applicant will also file Petitions for a Certificate of Public Convenience and Necessity under § 68 of the PSL, and for Financing Authority under PSL § 69 with the NYSPSC. Under PSL § 68, the NYSPSC is tasked

³ Issuance of a 401 WQC by the Commission will be required in conjunction with the issuance of a Certificate.

with verifying that the entity proposing the NY Project has obtained the consent of the proper municipal authorities for the use of municipal property or rights-of-way, has the economic resources to provide safe, adequate, and reliable service at just and reasonable rates, and that issuance of a Certificate of Public Convenience and Necessity is in the public interest. Under PSL § 69, the NYSPSC is tasked with ensuring that all amounts borrowed by electric corporations are reasonably required for purposes approved by the NYSPSC. The Applicant anticipates filing its Petitions for a Certificate of Public Convenience and Necessity and for Financing Authority concurrent with the Article VII proceedings. The Applicant also anticipates that these petitions will include a request for lightened regulation under the PSL, which the NYSPSC routinely grants to wholesale merchant generators.

In addition to the Certificate, the Applicant is currently seeking or anticipates seeking certain other New York State approvals, as described below in Sections 8.3.2 through 8.3.5. These approvals are either proprietary in nature or involve authority delegated under federal law and are therefore not governed by PSL Article VII.

8.3.2 New York State Office of General Services

The installation and operation of the submarine export cable will require a license, grant, or easement from the New York State Office of General Services⁴, Bureau of Land Management, which will provide the Applicant the right to construct and operate a permanent structure on State-owned land currently or formerly underwater. An application for the license, grant or easement is planned to be submitted before the issuance of an Article VII Certificate.

8.3.3 New York State Department of State

In accordance with the CZMA, and as discussed above, the New York State Department of State (NYSDOS), Division of Coastal Resources, will review the NY Project's consistency with enforceable coastal policies. The enforceable coastal policies applicable to the NY Project are those in State coastal policies in 19 NYCRR § Part 600.5 under the New York Coastal Management Program. Concurrence with the coastal zone consistency certification must be issued by NYSDOS before the issuance of federal permits. An assessment of the consistency of the NY Project with the State's Coastal Management Program is included in **Appendix F Coastal Zone Management Consistency Statement**.

8.3.4 New York State Department of Environmental Conservation

The EPA has delegated authority to issue National Pollutant Discharge Elimination System permits under the CWA to the New York State Department of Environmental Conservation (NYSDEC). Under New York Environmental Conservation Law Article 17, a State Pollutant Discharge Elimination System (SPDES) Construction Stormwater Permit is required prior to commencing construction activities that would disturb one or more acres. The Applicant will seek to obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001, effective January 29, 2020) by submitting a Notice of Intent to the NYSDEC.

To satisfy SPDES Permit requirements, the Applicant will develop a Stormwater Pollution Prevention Plan (SWPPP), which will identify the measures that will be employed onshore to control erosion and avoid the release of pollutants to the water and will outline an implementation and maintenance schedule.

⁴ The New York State Office of General Services is anticipated to require the Certificate prior to issuance of a license, grant or easement.

In addition, communities crossed by the NY Project include small Municipal Separate Storm Sewer Systems (MS4s) in Urbanized or Additionally Designated Areas; therefore, the Applicant anticipates requesting municipal review of the SWPPP and execution of a MS4 SWPPP Acceptance Form prior to submitting the Notice of Intent to the NYSDEC. The SWPPP will be included in the Applicant's EM&CP.

8.3.5 New York Office of Parks, Recreation and Historic Preservation

Under Section 14.09 of the New York State Historic Preservation Act of 1980, Section 233 of the State Education Law, and Section 106 of the NHPA, consultation with the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) is required in its role as the state historic preservation office. BOEM, in its role as lead federal agency, is tasked with leading this consultation for the EW 2 Project.

In 2016, BOEM executed a Programmatic Agreement with the OPRHP to formalize agency jurisdiction and coordination for the review of offshore renewable energy development regarding cultural resources. BOEM's consultations with OPRHP are designed to identify the area of potential effects and potential impact-producing factors to archaeological, architectural, or other cultural resources that are listed on, or are potentially eligible for listing on, the New York State and/or National Registers of Historic Places. The Applicant has been conducting archaeological and architectural investigations and supporting BOEM in these ongoing agency-to-agency consultations, which are described in further detail in Section 4.8 of **Exhibit 4 Environmental Impact**.

8.3.6 Metropolitan Transit Authority/Long Island Rail Road

The Applicant will be required to seek use of public rights-of-way and other land use agreements with the appropriate parties, including the Long Island Rail Road (LIRR), for portions of the NY Project where the interconnection cable route is proposed within the LIRR right-of-way, and for LIRR right-of-way crossings. The Applicant anticipates obtaining an agreement for occupation of the LIRR right-of-way and any appropriate entry permits for work activities.

8.3.7 Other States

As the Lease Area and submarine export cable corridor will be located in proximity to New Jersey State waters, the Applicant will voluntarily seek concurrence with the consistency certification from the State of New Jersey in accordance with the CZMA.

8.4 Local and Municipal Approvals

The Certificate under PSL Article VII precludes the necessity to individually apply for most local approvals under PSL § 130. However, the Applicant will be required to seek use of public rights-of-way and other land use agreements with the appropriate parties, including municipalities. The NY Project onshore export and interconnection cables are proposed to be located within and across roadway rights-of-way under the jurisdiction of Nassau County, the Town of Hempstead, the City of Long Beach, and/or the Village of Island Park. The Applicant anticipates applying for road use or other agreements for occupation within the public street. The Applicant will additionally seek appropriate land use agreements for portions of the NY Project located within Ocean Beach Park in the City of Long Beach⁵ and other municipal land crossings, as necessary.

⁵ A grant of a lease, license, easement or other land conveyance for municipal parkland (e.g., Ocean Beach Park) is expected to require the municipality to obtain authorization from New York State, through enactment and approval of parkland alienation legislation. Additionally, the municipality may need to obtain parkland conversion approval, if it has received funding from the Land and Water Conservation Fund or the Urban Park and Recreation Recovery Program. A conversion requires approval by the National Park Service in coordination with the New York State Office of Parks, Recreation and Historic Preservation, and amendment the original project agreement associated with the federal funding.

As discussed in Section 8.3.1, the Applicant will also file with NYSPSC under § 68 of the PSL for municipal lands.