STATE OF NEW YORK

Department of Public Service

Office of Renewable Energy Siting and Electric Transmission

In the Matter of the Rules and Regulations for the Environmental Review, Permitting, and Siting in this State of Major Renewable Energy Facilities and Major Electric Transmission Facilities Under the Renewable Action Through Project Interconnection and Deployment Act.

Case: 24-M-0433

COMMENTS OF EQUINOR WIND US LLC

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i. Introduction

Equinor Wind US LLC ("Equinor") respectfully submits the following comments in response to the Notice[1] for public comments issued by the Department of Public Service's ("DPS") Office of Renewable Energy Siting and Electric Transmission ("ORES") in Case 24-M-0433 - In the Matter of the Rules and Regulations for the Environmental Review, Permitting, and Siting in this State of Major Renewable Energy Facilities and Major Electric Transmission Facilities Under the Renewable Action Through Project Interconnection and Deployment ("RAPID") Act.

Equinor and its affiliates are grateful for the opportunity offered by DPS and ORES to comment on the new regulations that will oversee future permitting and siting of renewable energy and transmission projects. These projects are essential for New York State to develop and sustain a reliable and resilient energy grid. They play a vital role to meet the growing energy demand of the State and ensure that the State achieves its Climate Leadership and Community Protection Act ("CLCPA") targets. Equinor appreciates the significant time and effort that both DPS and ORES have given to building a nation-leading and feasible renewable energy industry in New York State.

[1] Case 24-M-0433, Notice of Proposed Rulemaking, Acceptance of Draft Generic Environmental Impact Statement, Public Comment Period, and Public Comment Hearings

ii. Background

Equinor is part of a global energy group headquartered in Norway, with operations in over 30 countries. As a global leader in offshore wind development, the Equinor group leverages decades of offshore expertise to develop projects worldwide. In New York State, Equinor is one of two developers that has a contract to build an offshore wind project. The Empire Wind 1 Project, which will deliver 810 MW of domestically produced renewable energy to 500,000 New York homes, has already created over 1,000 construction jobs, – primarily union - and will invest over $1.6 billion in the New York State economy throughout the lifetime of the project. Equinor holds further capacity in the Empire Wind Lease Area (Lease Area OCS-A 0512), with the ability to develop an additional offshore wind project, Empire Wind 2, with a capacity of 1260 MW.

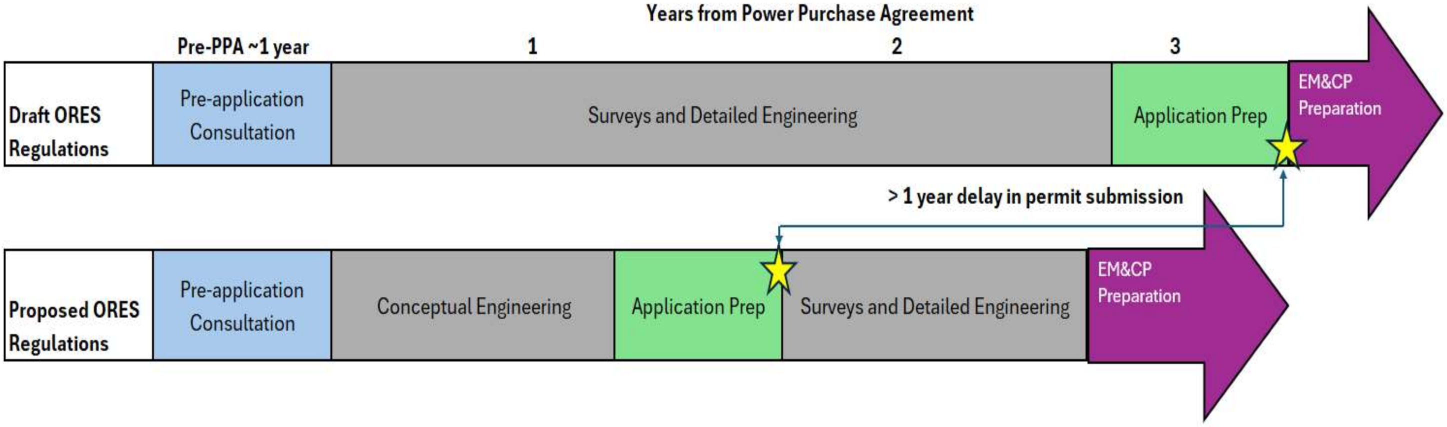
Equinor's experience in developing the Empire Wind 1 offshore wind project has provided the company with valuable insight and a detailed understanding of the current offshore wind and transmission permitting and siting process in New York State. Specifically, Equinor was granted a Certificate of Environmental Compatibility and Public Need (a/k/a Article VII permit) on December 18, 2023 for the transmission project that will deliver power from the Empire Wind 1 offshore wind project. As a direct result of that application process and the state permitting proceeding, Equinor developed a robust understanding of the Article VII process, including the post-Certificate phase involving numerous Environmental Management & Construction Plan ("EM&CP") approvals. Equinor's response is based on this experience and direct knowledge while looking ahead to the development and state permitting of the Empire Wind 2 project.

Recognizing New York State will need to bring a significant amount of new electricity generation online to assure grid reliability and energy security, Equinor understands that Article VIII and the proposed regulations will play an essential role in achieving the CLCPA targets. While Equinor broadly supports the concept of ORES's Article VIII regulations, we believe a number of critical changes must be implemented to create a process that ensures a valuable use of state and ratepayer funds. Any added regulatory risks from the permitting and siting processes for renewable generation and transmission projects will increase project costs and extend project development timelines. This ultimately impacts New York State ratepayers negatively and could delay the timely deployment of generation and transmission capacity. We believe the proposed recommendations will support a fair process that provides rigorous oversight of new projects while maintaining appropriate risk-levels and development timelines.

iii. Key Recommendations

Equinor's comments offer key recommendations to improve the structure and process of ORES's proposed Article VIII regulations, with a primary focus on reducing costs for ratepayers. Key recommendations include the following:

- **<u>ORES should reduce the requirements for advanced engineering and field data in the pre-application phases, as this will help minimize ultimate costs for ratepayers.</u>**
    - Potential Delays and Financial Burden
        - Equinor estimates that the draft ORES regulations could lead to a delay up 2 years in permit acquisition, subsequently pushing back the critical Commercial Operation Date (COD).
        - Prolonged project approvals increase resource consumption—including materials and human capital. Projects involving in-water facilities and/or generation-lead transmission lines are particularly vulnerable to these delays, as they require intricate engineering for points of interconnection, high-capacity substations and extensive in-water survey work, both of which are significantly more costly and complex than any terrestrial renewable generation and transmission projects.
        - The draft regulations proposed by ORES will dramatically (and unnecessarily) increase capital spending in the pre-application phases without improving COD timing, ultimately increasing costs for ratepayers and impacting the ability of New York State to meet its system reliability needs and renewable energy goals.
    - Impact of the Current Industry Environment
        - Given the current and expected industry landscape for offshore wind projects, developers are unlikely to make substantial capital investments without first securing a commercial offtake from the State. As a result, expensive and lengthy pre-application activities—including field surveys and detailed engineering—would not begin until after an offtake award. Considering the extensive information requested during the pre-application phase, the earliest a developer can submit an Article VIII application submission would be approximately 2–3 years after securing an offtake agreement. (as shown in the figure below).
        - <u>Equinor proposes that field surveys, detailed studies, and detailed engineering be submitted to ORES as part of the EM&CPs</u>. With this change, developers could submit an application within approximately 14 months of an offtake award, resulting in earlier CODs. The reduced risk would get reflected in the bid prices that developers propose in NYSERDA's solicitations, ultimately lowering the potential burden on the rate payers.



- **<u>Application completeness review timeframes should be limited and reasonable in meeting the intent of the RAPID Act goals:</u>** The review periods contained in 1100-4.1 (e) do not, as written, meet the intent of the RAPID Act to streamline and expedite permitting. The previous 94(c) regulations under ORES contained similar (in fact much shorter) timelines for application review cycles. However, as shown in the Office of the New York State Comptroller's Audit of ORES *Application Review and Site Permitting for Major Renewable Energy Projects*, Report 2023-S-52 (April 2024), the applications before ORES took, on average, 3 years to get to application completeness. It is unclear how the draft regulations would improve upon this timeframe. ORES should ensure that review periods are both limited and reasonable. For instance, subsequent review periods under section 1100-4.1 (e) should be limited to addressing only the specific deficiencies identified in the initial review and subsequent review times should be 90 days instead of 120 days. An open-ended cycle of subsequent 120-day review periods without limitations could result in years of back-and-forth deficiency reviews, increasing project risks and causing significant schedule delays.

- **<u>System Impact Study (SIS) requirements need to account for the current New York Independent System Operator ("NYISO") process for generation-lead transmission projects</u>**. Equinor recommends that ORES aligns with the language proposed for stand-alone generation under section 1101-21(b) with transmission regulations and allow transmission applicants to demonstrate the reliability of their project using third party analysis. Recent changes to NYISO's Open Access Transmission Tariff ("OATT") have eliminated the requirement that NYISO perform an SIS for generator lead projects meeting the definition of Major Transmission Facility under Article VIII, as well as for certain other transmission upgrades and controllable transmission lines.

- **New York State agencies and NYISO must coordinate on timing to enable financially responsible development.** ORES must collaborate with the NYISO and the New York State Energy Research and Development Authority ("NYSERDA") to align project timelines and maximize synergies in project evaluation. A holistic and integrated approach across all relevant New York State agencies and the NYISO will enhance efficiency, reduce ratepayer impacts, and enable timely deployment of electric generation. As discussed above, the Article VIII timeline should align with the NYSERDA offtake agreement schedule, as well as the NYISO cluster study timeline to ensure projects can advance through permitting concurrently with the Article VIII processes. For example, in the RFP process, NYSERDA requires bidders to provide project timelines and commit to specific CODs. In setting these timelines, NYSERDA and ORES should coordinate to ensure that developers can realistically meet these deadlines, given the extensive permitting requirements and nascency of the new Article VIII process, along with the lengthy pre-application processes under the Draft Article VIII regulations. Similarly, a developer may successfully secure an offtake contract with NYSERDA but would still be required to undergo an extensive "Public Need" analysis under the Draft Article VIII regulations. Part 1102-2.21 should include an "offtake agreement" as a supporting, but not required, documentation to show "Public Need."

- **The alternative route scoping procedure should define "reasonable" and limit participants to municipalities and potential parties.**

  - ORES should define the "reasonable" standard for alternative routes as routes that achieve an equivalent goal as the proposed route, are technically feasible, do not significantly increase environmental impacts, and do not pose a risk to project development in the form of schedule or cost increases. Replacing "reasonable" with this more concrete standard would improve clarity on the evaluation process.

  - The inclusion of "person" in the list of entities who can submit an alternative route is an inappropriate inclusion here, as it creates a significantly low threshold with a significantly high burden for the applicant to comply. The applicant should not be required to respond to any and all persons who may lack the requisite knowledge and expertise to propose an alternative route. The inclusion of "reasonable" does not adequately deter ill-informed or unfounded requests.

    - "Person" should be qualified to "a person who has filed for party status pursuant to …" or be limited to relevant stakeholders.

    - Entities submitting alternative routes should be required to include information that supports the route as "reasonable" using the definition above, including supporting information on the comparative merits and detriments of the alternative route, the cost and environmental impact to the extent feasible, as well as a statement of justification supporting the alternative route.

- <u>**Municipal statement of compliance with local laws is redundant and is not necessary.**</u> The statement of compliance with local laws contained in 1100-8.4(d) is redundant given that a project must comply with all applicable local laws or otherwise must seek a waiver. ORES staff is experienced and fully capable of identifying any perceived application deficiencies without requiring an additional statement of compliance from the municipality. Furthermore, 1100-8.4(c) already provides municipalities with an appropriate remedy to address any concerns regarding ORES Staff's determination of application completeness (whether it disagrees that local law compliance was achieved or otherwise). Thus, this statement will likely at best be an unnecessary *pro forma* exercise for municipalities in most circumstances, but at worst may be manipulated to perform a collateral attack on the application. At a minimum, this statement should be limited to the local laws or regulations for which the applicant seeks waiver and/or submitted by a defined deadline following ORES Staff's issuance of a Notice of Complete Application.

- <u>**Co-located infrastructure ("CI") requirements need to include the scenario where a CI owner is refusing to provide an agreement or a Letter of No Objection.**</u> 1102-3.4(j)(9) requires the permittee to attempt to obtain an agreement from the CI owner, but it fails to address situations where a CI owner refuses to provide an agreement or a Letter of No Objection ("LONO"). To ensure feasibility and fairness, this provision must include this potential circumstance.

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iv. Detailed Comments

a. 1100 General Procedures

i. Process to Expedite Application Reviews

For transmission or generation projects that align with State energy goals and/or public policy needs we strongly recommend ORES includes language in the general regulations that provide a mechanism for applicants to seek expedited permit processing. Such mechanisms are employed commonly in other federal, state and/or local regulatory schemes, in exchange for payment of a fee or other appropriate compensation to facilitate the expedited review and processing. This could include review of the siting application and/or EM&CPs. The regulations should detail the process ORES will use to expedite a project, either through prioritizing the application and EM&CP(s) and/or by providing funding to have a staff member assigned to the project full time. By accepting the use of funds, it would be understood there would be no impact on impartial decision making with respect to permits, either substantively or procedurally. Having such a mechanism in place would be mutually beneficial to both applicants and ORES in that applicants have a means to obtain approvals faster and ORES has additional funding to support additional staff resources. This approach lessens the burden on ORES to complete reviews and ensure timely and effective development of critical infrastructure projects by reducing the risk of project delays and lowering costs that ultimately benefit the New York rate payer. Equinor understands that this process has precedent in many other permitting processes on the federal, state, and local level both in New York and across the country.

ii. General Comments

- **1100-1.1 (d)(5):** Consider adding definition for stand-alone battery storage system.
- **1100-1.2 (l):** Consider striking the last sentence or making it more affirmatively inclusive of railways, highways, etc.
- **1100-1.2 (n):** Consider adding "or removal" after tree cutting.
- **1100-1.2 (ak):** Consider adding language requiring utilities to provide guidance concerning what they consider to be good utility practice.
- **1100-1.2 (ay):** It is unclear what is meant by "any new site-specific standards and conditions" as this does not seem to align with standards of "material increase in any identified adverse environmental conditions" or "significant adverse environmental impact." Consider deleting the last clause of the definition.
- **1100-1.2 (cb):** Consider limiting “potential community intervenor” to those persons who own property or reside within 1 mile of a proposed facility, rather than *all residents* of a particular locality. Persons who reside within the host municipalities that are not within the 1-mile zone are already represented by municipal officials, are entitled to make or file public comments at several project milestones, and to the extent they feel necessary, are free to create or join a non-profit organization for this purpose as contemplated by this provision.

- **1100-1.2 (cf):** Consider eliminating the reference to "beneficial" impacts and leave only potential adverse impacts.
- **1100-1.3(b):** It is not clear what "guidance" will be issued by the office, and such guidance shall not be mandatory for the applicants. Considering deleting "consistent with guidance issued by the office"
- **1100-1.4 (a)(4)(ii) and (iii):** The NYISO study process for generation projects includes a 45-day application window that opens every 18-20 months. As a result, requiring a generation project complete the NYISO cluster study before an application can be deemed complete could introduce significant schedule risks. Equinor recommends that ORES align with the language proposed for stand-alone generation under section 1101-21(b) of its proposed regulation and allow applicants to demonstrate their project's system reliability through a third-party analysis.
- **1100-1.6 (a):** In the spirit of the Paper Reduction Act, ORES should consider striking the requirement for paper copies of the application. In the alternative, paper copies of specific application documents could be provided only upon request of Staff.
- **1100-1.6 (e):** Consider defining a "significant population" based on what percentage of a municipality constitutes a significant population.
- **1100-4.1 (e):** Consider limiting subsequent deficiency reviews to include only specific subjects addressed in the first deficiency letter. Also consider reducing ORES Staff's review period for subsequent deficiencies from 120 days to 90 days to help streamline the process. Allowing an open-ended cycle of subsequent 120-day review periods without limitations could result in years of back-and-forth deficiency reviews, undermining the objectives of the RAPID Act.
- **1100-5.1(h)(6)**: Consider removing "to the extent possible." If experts will be retained by any party to evaluate the application, they should be listed.
- **1100-7.1(a):** This should allow for amendments at any time if they will require the "express written permission" of ORES.
- **1100-8.3(b)(2)(iii)(b**): Consider specifying that the applicant will provide a response for those comments that ORES requests the applicants respond to, as it is possible that comments may be filed that are argumentative, irrelevant or are otherwise unnecessary for response.
- **1100-8.4(d):** This provision is redundant, as applicants are already required to identify local laws and demonstrate compliance with all applicable substantive requirements (within Exhibit 24 and Exhibit 28 under 1101-2.24 and 1102-2.28 for generation and transmission projects, respectively) or otherwise seek a waiver. ORES Staff is well-equipped to assess any perceived deficiencies with respect to Exhibits 24 and 28 without the need for this additional statement of compliance from the municipalities. Furthermore, 1100-8.4(c) already provides municipalities with an appropriate mechanism to address any concerns regarding ORES

Staff's determination of application completeness (whether it disagrees that local law compliance was achieved or otherwise). Thus, this statement will likely be an unnecessary procedural formality for municipalities or, at worst, a tool for collateral attacks on the application, rather than conforming to the procedures established in Sections 1100-8.4 through 1100-8.9. At a minimum, this statement should be limited to the requirements for which the applicant seeks a waiver and/or submitted at a certain time following ORES Staff's issuance of a Notice of Complete Application.

- **1100-8.4(e):** This provision is redundant and contradicts the established electric transmission siting process in New York State. Applicants are already required to demonstrate "Public Need" for a project in detail within Exhibit 21 under Part 1102-2.21. ORES Staff is responsible for evaluating this need based on state policy, NYISO's reliability studies, and the CLCPA. Allowing this provision would create an avenue for landowners to challenge state policy on public need—a determination that ORES Staff is best positioned to make. Furthermore, it could be exploited by opponents of renewable transmission projects as a means to obstruct or indefinitely delay project development.

b. 1102-1 Pre-Application Requirements for Electric Transmission Facilities

i. Timely requirement of field surveys and studies

Desktop and publicly available data are sufficient for pre-application and application analysis. Any field surveys and studies identified during pre-application consultation should be deferred until the EM&CP phase and be limited to the proposed siting corridor. The uniform standards and conditions ("USCs"), along with any project-specific conditions, can appropriately define the scope of field surveys and specify obligations that the applicant must undertake. Furthermore, any reasonable alternative routes that ORES determines should be included in the application should be assessed via desktop analysis. Mandating field studies this early in the process may result in inefficiency and waste, not only in terms of applicants' resources but the Office's valuable time spent in reviewing data that may ultimately be irrelevant or of little value in the context of facility design.

iii. General Comments

- **1102-1.1 (a)(2):**
    - "No less than 30 days from submittal" is unclear if it means 30 days before or 30 days after submittal. Suggest specifying in the language. For "agencies shall determine additional information to be submitted…" ORES should also consider specifying that this additional information should be *desktop* based information to be submitted.
    - Consider adding "if necessary" after "jurisdictional determination ("JD")" as the applicant should only need to obtain a JD if there is some uncertainty or dispute over the jurisdiction or boundary of a resource area.

- Consider clarifying and further delineating the consultation process. Applicants must consult with agencies within 30 days of submitting the preliminary screening, but there is no timeframe for determining what additional information is necessary for the JD. Detailed screening must be submitted six months prior to application filing.

- **1102-1.1 (a)(4):**
  - Consider specifying that this alternative route screening is to be based on desktop data. Doing any field surveys for alternative routes is costly, and perhaps more importantly, necessary access rights would not likely be obtained at this stage, meaning any data obtained would be incomplete. Accordingly, this should be precluded from the pre-application requirements. In addition, an assessment of impacts needs to be very high level as advancing engineering on alternative routes would be costly and time consuming, while providing no additional value to ORES at that stage, beyond a very conceptual level.
  - ORES should limit alternative routes deemed "reasonable" to those that achieve an equivalent project goal, are technically feasible, do not significantly increase environmental impacts, and do not pose risks to project development in the form of schedule delays or cost increases. Replacing "reasonable" with this more concrete standard would improve clarity on the evaluation process. Clarification is also needed on the criteria ORES uses to determine acceptable alternatives and how this process aligns with the six month "intent to file" time period during which interested party may propose alternatives. Without such clarification, the process remains open-ended, creating uncertainty for applicants. (Please refer to the agency consultation process). Aligning alternative route considerations with the agency consultation process would help ensure a more predictable and efficient review.

- **1102-1.1(b)(1)(i):** Consider reducing the 5-year lookback period given the breadth of data to review, if data supports a shorter timeframe, or a reduced obligation for facilities substantially within existing rights-of-way ("ROW") where no structure height increase by more than 10 feet is proposed, and no additional impacts are anticipated (i.e.: no tree clearing, etc.).

- **1102-1.1 (b)(2)(iv):** This regulation indicates that if requested by agencies, field surveys may be required. It is unclear if "within one year" of the meeting is intended to allow applicants to defer field surveys to after filing the application (i.e.: not a prerequisite for application completeness). If not, Equinor suggests reconsideration. Equinor recommends allowing the applicant to conduct the surveys for the EM&CP, if they elect to do them. In 1102-(b)(4), the regulations indicate that the applicant has a choice whether to do field surveys or not. This choice should be reflected in this regulation. Consider adding in "that can be completed, *if the applicant so chooses*, in the appropriate seasonal windows."

- **1102-1.1 (b)(4):** The regulations must account for the unique challenges of estimating take for aquatic threatened and endangered ("T&E") species, such as sturgeon. Based on

Equinor's experience, there is no established, standardized process within the State (among interested agencies, such as DEC) as to how to prepare these types of take estimates. As currently drafted, these provisions create significant uncertainty regarding how applicants should anticipate potential take of aquatic T&E species that can meet compliance requirements. Additionally, conducting field surveys in the ocean environment to demonstrate the absence of species such as sturgeon or winter flounder, to DEC's satisfaction would be exceedingly costly, negatively impacting both applicants and ratepayer. To address these challenges, the regulations should specify that pre-application T&E consultation can be conducted through desktop evaluations, with preliminary take estimates in consultation with ORES, A final Net Conservation Benefit Plan should then be submitted as part of the EM&CP.

- **1102-1.1 (b)(4)(ii):** Agencies should provide the occupied habitat data from their systems as part of the initial wildlife habitat consultation or as soon as practicable thereafter. As currently drafted, this provision suggests that applicants must conduct field surveys over a broad corridor or area that *then* would be assessed by agencies to consider. This approach is inefficient and unnecessarily burdensome. Conducting extensive field surveys beyond the proposed corridor is not only costly but also impractical, as securing field access to such surveys is likely impossible this early in the process.
- **1102-1.1(b)(5):** Consider providing clarification on the timetable for staff approval of preliminary take estimates when an applicant elects not to conduct recommended field surveys.
- **1102-1.1(c):** The "may propose" language throughout this section should be more affirmative. Otherwise, this creates too many unnecessary duplicative efforts.
- **1102-1.1(c)(3):** Consider clarifying that a Phase IB scope of work would not be required if OPRHP/SHPO and/or indigenous nations deem Phase IB unnecessary.
- **1102-1.1 (c)(3)(ii) and (v):** Consider a way to make this process align with federal National Historic Preservation Act ("NHPA") and National Environmental Policy Act ("NEPA") processes for efficiency.
- **1102-1.1 (c)(3)(iii):** As drafted, this provision is unclear with respect to what studies and/or correspondence with State Historic Preservation Office ("SHPO") is necessary for the purposes of application completeness. Equinor contends much, if not all, of these subsequent plans and underlying studies could be submitted as part of the EM&CP. In the alternative, for the purposes of application completeness, these studies should be required for the proposed corridor only; conducting such studies for various alternatives would be prohibitively costly.
- **1102-1.1 (c)(3)(iv):** Consider adding "if necessary."
- **1102-1.1(c)(4):** Consider removing the requirement that "any preconstruction work plans shall be submitted before the start of the survey window." All surveys already must adhere

to the current applicable protocols. In Article VII, in practice, there has been instances where work plans needed to be submitted shortly before surveys began allowing for greater efficiency in the process. If ORES staff reviews and approves the survey plans as they are submitted - rather than making this strict pre-application requirement – the process would remain flexible without imposing unnecessary regulatory prohibition.

- **1102-1.1(c)(5):** Consider clarifying whether areas “where the applicant could not obtain access permissions” are limited to areas containing or adjacent to cultural resources.
- **1102-1.1 (c)(6)(iv):** This provision potentially overlaps so significantly with the NHPA, that compliance with this requirement would be unduly burdensome. This provision should either (1) affirmatively adopt the federal process as sufficient to resolve cultural resource impacts (i.e., that, ultimate mitigation resolution through an Memorandum of Agreement, etc. will be acceptable for state purposes when applicable), as applicable for cultural resources protected or eligible for protection under both federal and state law; or (2) be within an applicants’ discretion, in the event that failure to identify documents, correspondence, and studies prepared pursuant to the NHPA is a criterion for an application deficiency.
- **1102-1.1(d)(1) and (2):** Equinor seeks clarification on preliminary visual impact assessment consultations, specifically the endpoint of such consultations in relation to the sixty (60) day period. As noted above, determination of such level visual impacts at this state of an application is neither practicable nor efficient. Such detailed visual impact assessments rely on extensive fieldwork, and it is unrealistic to complete the required analyses and draw meaningful conclusions this early in the process.
- **1102-1.1 (e):** Consider explicitly stating that any recommended benthic, geotechnical, geophysical, or other such field study or sampling can be done post-application and prior to the EM&CP.
- **1102-1.1 (e)(1)(ii)(a, b, c, and d):** It should be indicated that the processes described under subparts a, b, c, and d can be completed concurrently.
- **1102-1.1 (e)(1)(ii)(b):** Consider adding a definitive time frame to the consultation such as “within 120 days.”
- **1102-1.1(e)(1)(ii)(d):** Consider clarifying what data sources should be used for desktop analysis of fishing activity.
- **1102-1.1(e)(2):** Equinor recommends removing the consultation requirement with adjacent municipalities and counties that fall within, as outlined in 1100-1.2 (cb).
- **1102-1.1(f)(1)(ii):** Equinor seeks clarification the consultation time frame for ORES to conclude no significant adverse impacts would result from the proposal, and whether this would entail field studies or both apart from existing pre-application requirements.
- **1102-1.1(f)(2)(i):**

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- Equinor recommends that meetings with several municipalities may be combined where appropriate, rather than one meeting per affected municipality, given the length of linear transmission projects.
- Equinor proposes adding a specific deadline, such as three months in advance of the anticipated application filing date, by which an applicant may notify ORES that it was unable to meet with certain municipalities despite good faith efforts. This would help an inadvertent reset of the six-month period. Either an unresponsive municipality, or a municipality acting in bad faith to oppose the project, should not be able to unreasonably delay filing of the application by refusing to respond or meet with the applicant. As ORES staff is aware, scheduling meetings with municipalities is often beyond the applicant's control. Implementing this deadline would ensure that municipal inaction does not become an unintended barrier to project progress.

- **1102-1.1(f)(2)(ii):** Consider revisions or clarifications that meetings with community members can take place at the same time as municipality meetings, rather than requiring they take place afterwards, as this essentially pushes the latter outside of the six-month window. Language itself conflicts:

  Meeting with community members. No less than six (6) months before the date on which an applicant files an application, ***and following the meeting(s) held pursuant to subparagraph (i) of this paragraph****, the applicant shall conduct at least one meeting... Meetings required by this paragraph* ***may be conducted together with any other pre-application meetings*** *required by Parts 1100 and 1102 of this Title.(Emphasis Added).*

  Suggest: "*in connection with or following...*" so that, as an example, an applicant can meet at a Town Board meeting or present at a Town Hall-style meeting in either order.

- **1102-1.1(f)(2)(vi):**
  - ORES should define the "reasonable" standard for alternative routes as routes that achieve an equivalent goal as the proposed route, are technically feasible, do not significantly increase environmental impacts, and do not pose a risk to project development in the form of schedule or cost increases. Replacing "reasonable" with this more concrete standard would improve clarity on the evaluation process. Clarification is also needed on how this process aligns with the six month "intent to file" time period during which interested party may propose alternatives. Without such clarification, the process remains open-ended, creating uncertainty for applicants. (Please refer to the agency consultation process). Aligning alternative route considerations with the agency consultation process would help ensure a more predictable and efficient review.
  - "Person" is an inappropriate inclusion here, as it creates a significantly low threshold with a significantly high burden for the applicant to comply. The applicant should not be required to respond to any and all persons who may lack the requisite

knowledge and expertise to propose an alternative route. The inclusion of "reasonable" does not adequately deter ill-informed or unfounded requests. At a minimum, "person" should be qualified to "a person who has filed for party status pursuant to ..." or be limited to relevant stakeholders, as the term defined in this provision.

- Entities submitting alternative routes should be required to include information that supports the route as "reasonable", using the definition above, as well as the information required within Part 1102-2.5(a) (i.e., a description of the comparative merits and detriments of the alternative route, the cost and environmental impact to the extent feasible, as well as a statement of justification supporting the alternative route.) Equinor also posits that the submission of alternatives should be tied to the deadline for seeking intervenor funding and/or party status, to ensure the process is not unduly delayed by additional submissions.

- **1102-1.1 (f)(2)(vii):** ORES should consider specifying what information and what level of detail ORES would like to see in this response. If a proposed alternative requires a detailed response or technical analysis, applicants should be entitled to an extension of time.
- **1102-1.1 (f)(2)(viii):** Consider identifying what ORES will consider in their assessment of "reasonableness."

c. 1102-2 Exhibits

i. Timely requirement of detailed design and equipment plans

Equinor recommends that ORES defer requirements for specific equipment, detailed design, and any plans dependent on such details to the EM&CP phase. Developing this level of design for the application stage would likely result in an approximately 1–2-year delay in application submission to align with offtake agreement awards, ultimately increasing costs for New York State ratepayers. Applicants should be allowed to provide representative drawings with the standard stage of design for capital projects at the time of application submission, which is often in advance of final designs. We strongly recommend this language to modified to clarify that representative facilities can be shown to the degree that enables a reasonable impact assessment. Especially in the context of a phased schedule, it is more appropriate to include this level of detail in the EM&CP. In some instances, EM&CP review and approval may not take place or years after permit issuance, let alone application filing.

ii. General Comments

- **1102-2.1(l):** Consider moving mapping requirements to Exhibit 3 and to the extent feasible, provide the underlying data in an overlay if not already captured by the base map.
- **1102-2.3(g):** Consider adding qualifier "Where applicable," to clarify inapplicability to terrestrial-based projects re: coastal requirements and projects proposed outside of agricultural districts, etc.
- **1102-2.4(c)(2):** Consider striking "avoid."". State parkland should not be avoided at the expense of municipal parkland, private property, etc.
- **1102-2.5(d)(2):**
  - Equinor seeks clarification in the regulations of the level of detail required to the comparative merits and detriments of each route and that a high-level summary is acceptable as opposed to, for example, a cost benefit analysis.
  - Consider deleting the redundant requirements regarding explanation of an applicant's best efforts and reasonable attempts where it was unable to secure a meeting; in the alternative, ORES could incorporate as a figure or appendix copies of documents filed pursuant to 1102-1.1(f)(2)(i).
- **1102-2.6:** Much of the technical information and specifications contained in this section require advanced design that is more appropriate for the EM&CP. Consider revising these provisions to specify that the information required is conceptual, indicative, or representative, and that final plans will be provided and approved in the EM&CP. Requiring this level of information for the application would require significant up front design work and procurement that is at risk, since it would need to be significantly advanced through the permitting process before the alternative route identification process is complete and before indications are provided of potential approval of the proposed route.
- **1102-2.6(a)(4):** Consider clarifying this can be based on desktop and walk-over surveys and details will be provided in the EM&CP, as providing the requested level of detail would require completed surveys along the entire ROW to identify underground utilities.
- **1102-2.6(a)(9):** Consider changing this to a discussion of the potential for mid-span splices and a justification of any such locations being deferred to final plans detailed in the EM&CP.
- **1102-2.6(a)(12):** Consider adding "Indicative at time of application," with the final grading being included in the EM&CP.
- **1102-2.6(a)(13**): Consider changing this to "potential stormwater management features," with final design being provided in EM&CP.
- **1102-2.6(a)(18):** Consider adding "to the extent known" with final design being provided in EM&CP.

- **1102-2.6(c)(4)(i):** Consider changing this to representative fixed equipment with actual details being provided in the EM&CP.
- **1102-2.6(c)(5):** Consider changing this to indicative features with final design required in the EM&CP.
- **1102-2.6(c)(6):** At the time of application, it would be unlikely that an applicant will have enough information to identify whether they are unresponsive or unknown CI owners/operators. Providing generic protections, especially given that the applicant must already comply with good utility practice, is an unnecessary burden at the application stage. Consider moving this request to the EM&CP.
- **1102-2.6(e):** The regulations should be amended to allow the application to identify potential manufacturers with alternatives, as procurement may not have been completed at the time of application.
- **1102-2.7(a)(4)(iii):** Consider indicating that this assessment can be based on conceptual level information with final information being provided in the EM&CP.
- **1102-2.7(a)(5):** Consider indicating that this assessment can be based on conceptual level information with final information being provided in the EM&CP.
- **1102-2.7(a)(6)(iii):** Consider including the word “draft” before this plan.
- **1102-2.7(a)(8):** Consider adding “representative” for the equipment.
- **1102-2.7(b):** As detailed in our key recommendations the unnecessary frontloading of costly, detailed technical information and specifications in the project application may serve the unintended consequence of an increase of the overall cost passed to NY rate payers. We strongly contend that such detail is more appropriate for the EM&CP. We request that ORES revise these regulations to specify that the information required is conceptual, indicative, or representative and that final plans will be provided for approval in the EM&CP for that section.
- **1102-2.7(c):** Equinor seeks clarification on the extent an applicant must propose and describe pre-installation trials, where conditions are known, and best practices have already been established obviating the need for such trials.
- **1102-2.7(d):** Much of the technical information and specifications contained in this section require advanced design that is more appropriate for the EM&CP. Consider revising these regulations to specify that the information required is conceptual, indicative, or representative and that final plans will be provided and approved in the EM&CP for that section. Requiring this level of information for the application would require significant up front design work and procurement that is at risk, since it would need to be significantly advanced before the alternative route identification process is complete and before indications of potential approval of the proposed route.

- **1102-2.7(d):** Rather than an evaluation of all appropriate cable protection measures, consider a statement of justification for an applicant's proposed methods, inclusive of the efficacy of such methods, and a narrative explaining why alternative methods not selected are infeasible or impracticable.
- **1102-2.8(a)(1):** Consider refining what wastes are included – direct vs. indirect emissions, etc.
- **1102-2.8(a)(5):** Maps of these facilities are unduly burdensome to the extent they are captured in other maps and safety plans required to be prepared under this part.
- **1102-2.8(b):** This detail is much better suited for the EM&CP, as it is final design level information. The applicant can commit at that application phase to adhere to local regulations (or request waivers), but it is unrealistic to expect that at the time of application, likely years away from construction starting, to have this level of detail. The EM&CP would still need to be submitted and approved with this information in it.
- **1102-2.8(b)(3):** This level of detail is better suited for the EM&CP phase, as it requires final design-level information. The applicant can commit to adhere to local regulations (or request waivers), but it is unrealistic to expect that at the time of application, likely years away from construction starting, to have this level of detail. The EM&CP would still need to be submitted and approved including this information.
- **1102-2.8(b)(4):** Consider in lieu of an independent auditor, annual certification to the Commission that the facility is compliant with the appropriate current standards.
- **1102-2.9:** Overall, the level of detail required for this exhibit seems more appropriate for the EM&CP, as it is requiring extremely advanced design information. For the application, consider designing the noise study based on anticipated equipment modeled to show how it would comply with regulations. The extremely detailed modeling needs to be done at the EM&CP level when advanced design and final equipment is known.
- **1102-2.9(b):** Regarding design goals, clarify the distinction between existing substations and converter stations and where available, existing ambient noise levels. Consider implementing exceptions for existing facilities where noise limits are already exceeded by existing sources at said facilities.
- **1102-2.9(f)(8):** Reconsider the need for hard copies, instead of providing shapefile overlays, with hard copies being made available to ORES staff upon request.
- **1102-2.9(g):** At the time of the application, applicants will likely not have access, and therefore this requirement should be moved to the EM&CP. Including this requirement in the EM&CP and as part of pre-construction monitoring would be sufficient to ensure compliance; there is no benefit to having the pre-construction ambient noise captured at the time of application. Ambient noise may not even be the same at the time of construction, as the environment might change, and so providing this too far in advance is not an effective use of resources.

- **1102-2.10(b)(2)(i):** This provision requests "a line-of-sight profile" for resources of statewide concern located within one thousand two hundred (1,200) feet on either side of the facility corridor. We recommend deleting this requirement, as line-of-sight profiles are not an effective method for illustrating potential visibility of linear transmission lines, or highways.
- **1102-2.11(b)(1):** This provision should exclude for impacts already accounted for and discussed in Exhibit 10, or in the alternative, allow applicants to cross-reference to obviate the need to prepare duplicative information.
- **1102-2.11(c**): This section refers to documents and correspondence that have been shared with the federal agencies under the National Historic Preservation Act (NHPA) Section 106 during the pre-application phase, along with the Office's determination. If the Office has already issued a determination, it is unclear why this requirement is necessary at the application stage. Additionally, the provision later requires applicants submit the OPRHP's impact determination letter, further duplicating efforts. To streamline the process, a single agency should be responsible in issuing the final determination on cultural resources, rather than creating a cycle of overlapping regulatory approvals from multiple agencies.
- **1102-2.12:** Consider designating that this exhibit can be based on desktop assessment and available information and does not need to be based on field survey information. Detailed information based upon geotechnical survey and subsequent design analysis will be provided in the EM&CP.
- **1102-2.13:** Consider exempting projects substantially within existing ROWs, where vegetation within 100 feet of disturbed areas is already subject to existing vegetation management plans. 1102-2.13(c) also references "rare ecological communities" a term that is not defined in the regulations. This lack of definition could lead to inconsistent interpretation and implementation. Furthermore, Part 1101 regulations for generation projects do not include a similar requirement for rare ecological communities. For consistency, this requirement should be removed from 1102-2.13.
- **1102-2.15(b)(3):** Equinor requests clarification on the inclusion of the nearest intake where it is outside the one-mile study area. ORES should consider exclusion where it is reasonably understood that no significant impacts to this intake will occur due to construction and operation of the project.
- **1102-2.15(b)(4):** Consider clarifying whether components and construction activity may occur within the fifty-foot setback where an applicant cannot avoid all impacts to NYS-protected waters, provided the applicant sufficiently describes appropriate minimization efforts and BMPs.
- **1102-2.16(b)(d):**
    - This is the first time, other than Exhibit 5, a need to analyze alternative routes is included. Consider confining all alternative route analysis to Exhibit 5 to ensure the process is as efficient as possible and limit potential deficiencies.

  - Equinor seeks clarification that wetlands on lands for which an applicant does not have property access may be analyzed based on available data (desktop analysis or remote sensing).

- **1102-2.16(g):** Consider clarifying whether field work may be initiated prior to a completeness determination or permit issuance, assuming property rights are obtained.

- **1102-2.17(b)(6)(i):** Equinor agrees that completing at least one year of pre-construction benthic sampling to establish baseline conditions is appropriate. Please note, however, that because applicants will be doing these surveys, conducting pre-application benthic field surveys would be duplicative and unnecessary as such surveys will need to be completed in advance of construction and incidental activities. Please consider specifying in the USCs, this section, and the pre-application requirements on benthic zones, that the application should be based on desktop information and agency recommendations for field work would be enacted as part of the EM&CP and/or pre-construction phase.

- **1102-2.17(c):** Consider specifying that field surveys are not required and can be based on desktop assessments completed during the pre-application period and consider clarifying that the analysis is only needed within the transmission line corridor.

- **1102-2.17(e)(1, 2, and 3):** These regulations seem to indicate pre-application sediment, geotechnical, and geophysical surveys are required for the application; however, pre-application regulations (1102-1.1(e)(1)(ii)(c and d) indicate desktop assessments are acceptable. Consider conforming these regulations to confirm that field surveys and/or desktop assessments are acceptable for each of these sections.

- **1102-2.19(b)(2**): This provision is problematic with respect to offshore generation projects insofar as portions located in waters beyond the state waters' boundary are outside the jurisdiction of ORES. Vessel traffic outside of New York's territorial waters are not subject to state's jurisdiction, as such, this cannot be a prerequisite for application completeness. Equinor recommends deletion of this provision.

- **1102-2.19(e)(4):** Consider moving this requirement to the EM&CP phase. The pre-construction characteristics of public roadways may change between the time of application preparation and construction start. Additionally, consider putting a distance specifying what "vicinity" is, as "all public roadways within the vicinity" could be an exhaustive list of roadways that would have no bearing on roads used for the project.

- **1102.2.22(a and b):** Consider adding language enabling the applicant, if intending to phase or segment their project, to provide an estimate for the initial phase, if employment estimates for future phases are uncertain or infeasible to produce. In this scenario, ORES could include language enabling supplemental estimates for additional phases as a prerequisite for EM&CP approval.

- **1102-2.24(b):** Consider adding language indicating this should be based on publicly available data along with any additional data able to be obtained through initial CI communications.
- **1102-2.25(b):** The NYISO "Cluster" process adopted by NYISO in May 2024 and required for generating projects with interconnection facilities includes a 45-day application window that opens every 18-20 months. Once a project enters a cluster, its system impact study will only be completed and OC (NYISO's Operating Committee) approved after approximately 20 months, or longer. Given these NYISO timelines, requiring a system impact study from NYISO as part of Exhibit 25 will present significant timing challenges. Equinor recommends that the system impact study required can be conducted by a third-party consultant in accordance with the NYISO's FERC-filed OATT. This analysis should be similar to the approach proposed for stand-alone generation projects under proposed section 1102-21(b) (Exhibit 21(b)).
- **1102-2.25(d):** Consider clarifying that this would be based on the "potential" benefits and detriments, not the “confirmed” benefits and detriments.
- **1102-2.28(b):** Consider embedding the list of substantive requirements and appurtenant statement of justification within the table, with the option to attach additional narrative as necessary.

d. 1102-3 Universal Standards and Conditions

i. General Comments

- **1102-3.1(d):** Consider wording the regulations in this section to specify that construction cannot start in that EM&CP segment until the other permits are in place for that specific segment. In addition, consider changing this regulation to allow onshore construction to start for an EM&CP phase that does not include any federal jurisdictional areas. Suggest adding in “applicable” before “federal” and “for that EM&CP segment”.
- **1102-3.1(i):** Consider changing the expiration timeline to three (3) years from issuance, as it is established for generation projects in Part 1101-3.1., and also consider adding “unless the permittee seeks an extension for the commencement of construction and provides a rationale for the need of such an extension.”
- **1102-3.2(a)(11)(i):** Consider allowing for other similar or compatible charts for the in-water portion of a facility, in lieu of NOAA charts.
- **1102-3.3(ad):** Decommissioning requirements proposed under Part 1102 are similar to what is required for generation projects under Part 1101. While Equinor appreciates ORES Staff’s rationale to secure a decommissioning plan for transmission projects, we respectfully recommend the following revisions to this section:

- Draft Part 1102 3.3(ad)(4) should provide a process for circumstances where the host municipality and the applicant agree that the portions of the infrastructure should be left in place to avoid future disturbance in the vicinity of the project area. Under those circumstances, ORES should honor the hosting municipalities' request that the infrastructure can be left in place, rather than making a decommission plan mandatory.
- In circumstances where an applicant is providing site restoration after a transmission project is built under a separate process such as a "revocable consent" or a separate "road use agreement" outside of the Article VIII process, the host municipality and the applicant should be able to opt out of a duplicative decommissioning process in the Article VIII docket, including elimination of payment of an Article VIII decommissioning security in addition to the security that was already paid under a separate process. Making a decommissioning plan mandatory under these circumstances will be unnecessarily duplicating efforts and draining limited financial resources for renewable energy projects. Both the host municipality and the regulators are already overly burdened with the regulatory review process, and eliminating such duplicative processes will not only help the applicants but also will aid the regulators.
- Draft Part 1102 3.3(ad)(5) should include "parental financial guarantee" and "surety bonds" as alternative methods for providing financial security. Both of these alternative financial methods are widely used in infrastructure projects. (e.g., see NYISO Attachment HH OATT, Sections 40.2.4, 40.2.4.2.3H, allowing use of surety bonds instead of letters of credit in the interconnection cluster study process).

- **1102-3.3(b):** Consider adding in a time frame for review and approval.
- **1102-3.4(a):** Consider adding language indicating that construction work hours do not apply to in-water facilities and specifying that this overrides more restrictive local ordinances. In general, we support these work hours.
- **1102-3.4(a)(1):** Consider adding construction-related meetings and driving construction-related equipment within the project site.
- **1102-3.4(a)(2):** Consider defining "affected landowners" as landowners directly adjacent to the work area. Applicants should not be required to provide notification to "affected landowners" as it would be impractical and unduly burdensome.
- **1102-3.4(a)(3):** Equinor suggests this provision should specify either ORES or DPS, but not both, to prevent applicant confusion and potential conflicts between the two authorities regarding after-hours work approvals. Equinor recommends this authority be retained exclusively by ORES.
- **1102-3.4(b)(3):** Consider specifying that the monitor is required only during the execution of in-water activities, rather than for the entire duration, as in-water activities may span over

multiple years with actual activity occurring only for a few months each year. In addition, consider allowing a single monitor to oversee both onshore and near-shore work from land, if appropriate, as near shore work is often conducted within feet from land.

- **1102-3.4(b)(4):** Equinor suggests adding "where fishing activities take place" as some in-water areas do not support fishing, such as areas between piers.
- **1102-3.4(c):** Recommend deletion of the archeological monitor, as that is not specifically called upon in the previous section and an environmental monitor can handle the responsibilities and duties of an archaeological monitor.
- **1102-3.4(e)(2):** Consider indicating if this is intended to be a daily or one-time meeting.
- **1102-3.4(e)(4):** Consider clarifying if this is intended to capture applicant held inspections or monitor's inspections and if this is intended to take the place of the monthly audit reports.
- **1102-3.4(f)(1):** Consider clarifying that "damage to equipment" does not include damage to permittee equipment if it does not result in impacts to public or private property or the environment.
- **1102-3.4(g):** Correction of typo, "Goofarm" to "good farm" or the intended term in the last sentence.
- **1102-3.4(h):** Recommend adding that the permittee will comply with the PSC's regulations under Part 753, to the extent that such provisions do not conflict with what is requested in the USCs, and Section 1102-3.4 (j). If there is an inconsistency, the USCs should prevail.
- **1102-3.4(i):** As written, this provision would be difficult to fully comply with during construction. There could be instances during construction when co-located infrastructure needs to be taken out of service temporarily while construction progresses (i.e. temporary shutdowns of roads or lanes of roads to install developer's infrastructure, or shutdowns of relocation of third-party below grade utilities). As such, Equinor suggests adding in language such as "except as approved in the EM&CP and IA" To properly provide flexibility.
- **1102-3.4(j):** Section j in general refers to "agreements" with the CI owners, and does not reflect the fact that the CI owner may issue a LONO; consider adding this fact to j(1), j(2) and j(9).
- **1102-3.4(j)(1):** In the last sentence**– "**shall be reflected in the proposal prescribed in subdivision (d) of this section and the notice prescribed in subdivision (e) of this section" **–** It is not clear what subdivision (d) and (e) are referring to. It is likely a typo and should say subdivisions (4) and (5) of Section 1102-3.4 (j).
- **1102-3.4(j)(4):** As drafted, this provision requires the permittee to provide all details of the construction proposal at least 180 days prior to the filing of the EM&CP. Given than the final construction methodology may not be the same as what is initially indicated in the proposal, the permittee should be allowed to make changes to the construction proposal that was shared with the CI owner, once the final permit is issued. Equinor also recommends

shortening the timeline to 90 days prior to filing of the EM&CP, rather than 180 days, as the former time frame is sufficient and will ensure a streamlined process

- **1102-3.4(j)(9):**
  - The ability for an unknown or unresponsive CI owner to step forward and stop work 5 days prior to construction could result in costly delays to the project as the permittee will have likely already mobilized personnel and equipment and have initiated other pre-construction activities. Equinor suggests extending this time frame farther way from construction, recognizing the permittee will have attempted communication for months prior. Additionally, this provision should limit suspension only in instances where a CI owner cites a credible claim that good utility practice is insufficient to protect the CI.
  - (j)(9) requires that the permittee attempts to obtain an agreement from the CI owner, however, it doesn't address the scenario where a CI owner is refusing to provide an agreement or a LONO; this provision must be inclusive of this potential circumstance.
- **1102-3.4(l)(4):** Correction of time "minimizes" and deletion of the extra "s".
- **1102-3.4(n):** If a local contractor's facility may be considered as an acceptable laydown yard, consider seeking clarification on how to comply with this provision if the contractor has its own SWPPP.
- **1102-3.4(o)(1)(v):** Blasting times are limited to 9:00 a.m. to dusk on non-holiday weekdays. Please explain why this limitation exists for transmission projects but not generation projects.
- **1102-3.4(q)(2):** Inspection of vehicles on a daily basis seems burdensome, unless it is a routine inspection that can be done with bare eyes. Otherwise, consider adding "routinely" rather than "every day."
- **1102-3.4(u):** Construction and cleaning crews are not typically trained to identify of a variety of "invasive insects." Equinor recommends adding a note that the sharing photos/pictures of potential insects with instructions to report potential sightings to the environmental monitor is sufficient. The environmental monitor may then verify the findings and relay the relevant information to DEC, if appropriate.
- **1102-3.4(w)(5)(i):** Consider specifying that the T&E monitor can be the same person as the environmental monitor.
- **1102-3.4(w)(7)(ii):** Consider setting a procedure in the regulations for how this approved time of year restriction can be extended by ORES for minor extensions if, during construction, there is an unpredictable, unavoidable need to extend the construction window.
- **1102-3.4(aa)(5):** It is unclear under this regulation if construction can proceed after the results are submitted to ORES or if it has to wait for acceptance as well. Consider specifying that construction does not need to be delayed until ORES has accepted the lab results; if the

intent of the regulation is to wait for acceptance, specify that ORES needs to respond within 48 hours.

- **1102-3.4(aa)(6)(i**): In accordance with previous Article VII precedent, in-water transmission line applicants will conduct a Cable Burial Risk Assessment ("CBRA") that will identify the necessary cable burial depth at all locations to minimize risk of cable exposure. Therefore, consider changing this USC to have target burial depth be based on the CBRA, not a standard 6-foot depth.
- **1102-3.4(aa)(7):** Continuous water quality monitoring during cable installation is extremely costly and may total tens of millions in project costs as well require extra vessels that could increase health and safety risks. In addition, the delay in obtaining lab results, even in the most expeditious manner possible, limits the usefulness for real-time operational modifications. Consider amending the water quality monitoring plan to approve the cable installation equipment and method and then require monitoring during the pre-installation trial and representative periods to document the environmental effects.
- **1102-3.4(aa)(9)(vii):** Consider allowing variation on the 1.3 times rule, based on consultation with DEC.
- **1102-3.5(b)(2):** This subpart requires the permittee to provide any SIS "required" as a result of a future modification or update. That study is to be performed in accordance with the NYISO OATT. As discussed previously, this does not reflect the current NYISO cluster study process and should be adjusted accordingly.
- **1102-3.5(b)(2):** The extra word "for" needs to be deleted. "Submitted ~~for~~ by the permittee."
- **1102-3.5(c)(1):** Consider defining "significant." Consider that a loss of greater than 50% of the nameplate capacity should be considered significant. Additionally, NYISO does not require notice unless the outage is expected to last longer than 180 days. Equinor recommends revising the wording to align with NYISO requirements.

e. 1102-4 EM&CP

i. General Comments

Consistent with prior feedback, Equinor maintains that a number of pre-application requirements should be addressed through the EM&CP phase.

- **1102-4.1(a):**
    - Phased vs. segment: Consider choosing one term over the other and defining to alleviate confusion, or in the alternative, define both terms to explain any inferred distinction as understood by ORES.
    - As drafted, the regulations require each phase to be clearly delineated, which inhibits the ability of the developer to react to construction delays, creates challenges and

delays in obtaining requisite property access rights or municipal approvals, or other unforeseen factors that may arise during development. Put differently, permittees should have the ability to phase or segment the project as needed. To address this, the regulations should include language such as "[t]o the extent practicable, based on existing conditions and construction schedules…" along with language facilitating an updated EM&CP for a new intermediary phase/segment provided that the remaining phases/segments are also updated upon said filing.

- **1102-4.2(i):** *Construction noise*, typo: "Describe any measures to be taken to reduce audible noise levels caused *by* construction equipment."
- **1102-4.2(l):** Consider including language that allows applicants when a facility is substantially within an existing ROW, referencing existing vegetation management controls that are in effect by a third-party, and to incorporate by reference any such plans or policies along with a narrative explaining what arrangements, if any, are made with said third-party with respect to herbicides.
- **1102-4.2(o)(2):** Consider amending this to indicate this information should be filed at least 14 days before Notice to Proceed ("NTP") on that EM&CP segment, as this information is often not known at the time of EM&CP submittal.
- **1102-4.2(q):** Requirements here appear unnecessarily duplicative of what is required under Exhibit 8.
- **1102-4.2(r):** This section requires that the EM&CP demonstrates that all necessary property rights construction have been obtained. However, this timing may not align in cases where eminent domain is required, given that the right to exercise eminent domain does not arise until the EM&CP is approved. This section also requires a waiver for "unresponsive co-colocation" owners, in case the permittee is not able to obtain the crossing agreement before the filing of the EM&CP. Previous Article VII practice allowed DPS Staff to issue limited notices to proceed in certain instances. Revisions adopting this practice could alleviate these concerns or in the alternative, removing the rigid requirement to outline all EM&CP phases/segments upon filing of the first phase/segment. Instead, the approach should allow phased or segmented filings to account for property right timing issues.
- **1102-4.2(s):** Consider allowing the studies to be submitted prior to an NTP for those activities, as negotiations with CI owners and their requested studies may extend beyond the submission of the EM&CP.
- **1102-4.2(s)(1)(iv):** Consider striking "no material interference with the ability of the owners to repair" from this regulation, as the permittee will establish in the crossing agreements with CI owners a maintenance/repair plan that will ensure the integrity of both assets.
- **1102-4.2(s)(1)(ix):** While the language accounts for disputes between the permittee and CI owners/operators, it does not account for unresponsive owners/operators. Consider proposing CI consultations led by ORES where reasonable efforts to contact CI

owners/operators by a certain date have failed to produce an agreement, to help facilitate timely resolution of this compliance obligation.

- **1102-4.3(b)(2):** Consider changing "specific" to "potential" to provide the list of the various methods that could be used to allow contractors some limited flexibility.
- **1102-4.4:** As drafted, this provision appears to require all permits and approvals for the entirety of the project (under subpart a, *Other permits and approvals*, as well as transportation permits and approvals and road use and restoration agreements under subpart c, the *Traffic Control Plan*), as opposed to on a per phase/segment basis. This should be revised to reflect the option of providing segmented EM&CPs and receiving NTPs accordingly.
- **1102-4.4(a):** Consider adding "available at the time of EM&CP submission" as permits, approvals, and IAs often are received after the initial submission of the EM&CP.
- **1102-4.4(c)(2):** Transportation permits and approvals often need to be secured immediately prior to the activity and need to be updated and approved throughout construction. As such consider not requiring these to be included in the EM&CP but to be filed with the Secretary as they are obtained.
- **1102-4.4(e)(1):** The final approvals for SPDES and the Letter of Authorization ("LOA") may not be available at the time of first EM&CP submission. Such approvals should be allowed to be based on EM&CP segment. In addition, the timing of this requirement could be problematic as DEC's issuance of their LOA is procedurally barred until all other DEC permits are issued. As such if the SPDES permit is on a different timeline, the LOA cannot be received without a waiver.
- **1102-4.4(p)(2):** Retention of a qualified landscape architect, arborist, or certified nursery and landscape professional for a two-year period appears unreasonably burdensome in light of the objective to identify failing vegetative screen plantings, and subsequent requirement to support maintenance for the life of the project (subsection 3). In the alternative, Equinor recommends that (i) the permittee should contract such an individual for scheduled visual inspections as milestones during the two-year period following installation, and (ii) at the two-year mark, the permittee should be required to remove/replace any plantings identified during those inspections.
- **1102-4.4(y):** (1) Consider revisions allowing for a permittee to consult on an organizational, rather than individual level with local mariners, DEC-licensed fishermen, and recreational fishermen, or in the alternative, to hold public town hall-style meetings. (2) Consider allowing for DEC-licensed fishermen to opt out of the mailing list upon request.

f. 1102-5 Post Construction Filing

i. General Comments

- **1102-5.1(a):** This language appears to be an overreach, as it requires seeking approval before any changes can be made during the operational stage of the facility. This provision should be clarified to differentiate between routine operational replacements that do not materially impact performance or safety, and significant modifications that would warrant regulatory review.
- **1102-5.1(b):** Consider specifying how these would be filed.
- **1102-5.1(i)(2):** We recommend that Article VIII aligns its definition of 'commercial operations' with the NYISO. The NYISO defines commercial operations as the point when the full nameplate capacity of the site is operational, whereas Article VIII considers it to be when any generation is online. The Article VIII definition triggers extensive reporting requirements during the construction and commissioning of the remaining units for no material benefit to any party or the environment. Consider aligning definitions with NYISO.

v. Conclusion

Equinor is appreciative of the opportunity to provide feedback to DPS and ORES in regard to the drafted Article VIII regulations. Equinor strongly believes that the proposed recommendations and revisions are necessary to ensure a successful permitting and siting process and pave the way for cost-effective projects that are able to meet scheduled in-service dates. We thank you for your consideration of these recommendations and welcome further conversation and dialogue.

Sincerely,

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