

7/1/2024 Siting Board 15-F-0122

NEW YORK STATE BOARD ON  
ELECTRIC GENERATION SITING AND  
THE ENVIRONMENT

CASE 15-F-0122 - Application of Baron Winds, LLC for a  
Certificate of Environmental Compatibility and Public Need  
Pursuant to Article 10 to Construct a Wind Energy Facility.

Siting Board Meeting

Date: Monday, July 1, 2024 @ 2:00 p.m.

TAMMY MITCHELL, Alternate for Rory M. Christian, Chair of  
the New York State Public Service Commission

MARK SANZA, Alternate for Sean Mahar, Interim Commissioner,  
New York State Department of Environmental Conservation

KEVIN MALONE, Alternate for James V. McDonald, M.D.,  
M.P.H., Commissioner, New York State Department of Health

VINCENT RAVASCHIERE, Alternate for Hope Knight,  
Commissioner of the New York State Department of Economic  
Development

JOHN WILLIAMS, Alternate for Richard L. Kauffman, Chair,  
New York State Energy Research and Development Authority

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2                                   (The meeting commenced at 2:00 p.m.)

3                   DIRECTOR MITCHELL:   Good afternoon. My  
4                   name is Tammy Mitchell. I'm the Director of the  
5                   Office of Energy System Planning and Performance at  
6                   the New York State Department of Public Service. I've  
7                   been designated to serve as the alternate representing  
8                   the Chair of the New York State Board on Electric  
9                   Generation Siting and the Environment, or as is also  
10                  known, the Siting Board. I call this meeting of the  
11                  Siting Board to order.

12                                 Before moving to the agenda, I would  
13                   like to introduce the alternates representing the  
14                   permanent members of the Siting Board. When I call  
15                   your name, please confirm that you are present. Mark  
16                   Sanza, alternate representing the Commissioner of the  
17                   Department of Environmental Conservation.

18                                 MR. SANZA: Present.

19                                 DIRECTOR MITCHELL: Kevin Malone,  
20                   alternate representing the Commissioner of the  
21                   Department of Public Health.

22                                 MR. MALONE: Present.

23                                 DIRECTOR MITCHELL: Vincent  
24                   Ravaschiere, alternate representing the Commissioner  
25                   of the New York State Department of Economic

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2           Development.

3                               MR. RAVASCHIERE:   Present.

4                               DIRECTOR MITCHELL:   And John Williams,  
5           alternate representing the Chair of the New York State  
6           Energy Research and Development Authority.

7                               MR. WILLIAMS:   Present.

8                               DIRECTOR MITCHELL:   Thank you all.  
9                               Secretary Phillips, are there any  
10          changes to the agenda?

11                              SECRETARY PHILLIPS:   There are no  
12          changes to the agenda. I would, however, like to note  
13          that due to technical difficulties in New York, we are  
14          now using video conference room B. And I believe  
15          appropriate signage has been put up to direct any  
16          members of the public to that location as opposed to  
17          the boardroom. Thank you.

18                              DIRECTOR MITCHELL:   Thank you,  
19          Secretary Phillips.

20                              We will begin with Case 15-F-0122,  
21          Application of Baron Winds, L.L.C. for a Certificate  
22          of Environmental Compatibility and Public Need  
23          Pursuant to Article 10 to Construct a Wind Energy  
24          Facility, Amendment Petition 2 and Transfer Petition  
25          presented by Dakin Lecakes. Chief Administrative Law

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2           Judge, Department of Public Service, Jason Zehr, Chief  
3           of Environmental Certification and Compliance,  
4           Department of Public Service, and John Sipos, Deputy  
5           General Counsel, Solicitor and Director of the Office  
6           of Investigation Enforcement, Department of Public  
7           Service, are available for questions.

8                   A.L.J. Lecakes, please begin.

9                   A.L.J. LECAKES: Thank you.

10                   Good afternoon, Chair Designee Mitchell  
11           and Siting Board members. I am here to present to you  
12           a draft order on a second amended petition in which  
13           Baron has requested further changes to its Article 10  
14           Certificate that the Board issued to Baron in 2019.

15                   In that September 2019 Certificate, the  
16           Siting Board approved a project that would generate  
17           242 megawatts of clean, renewable electricity by up to  
18           69, 500-foot tall wind turbines placed among four  
19           towns in Steuben County, Cohocton, Dansville, Wayland  
20           and Fremont.

21                   The Siting Board considered and granted  
22           a first amendment to the 2019 certificate in May of  
23           2020. In that first amendment order, the Siting Board  
24           allowed Baron to divide the project into two phases.

25                   Phase one would proceed in three of the

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2           four towns, Cohocton, Dansville and Wayland. Because  
3           there was no conflict with local laws in those towns,  
4           the Siting Board granted to Baron an increase to its  
5           per turbine generating capacity from 3.5 megawatts to  
6           5 megawatts, which, although it increased the turbine  
7           size to 650 feet, allowed the developer to place only  
8           26 turbines in phase one and generate the planned 166  
9           megawatts for that phase.

10                         In his May 2020 presentation on Baron's  
11           requested phase one amendment, General Counsel to the  
12           Siting Board, Bob Rosenthal, noted that if Baron used  
13           the September 2019 authorized 500 foot turbines for  
14           phase two, the project would host a total of 54  
15           turbines to reach its authorized 242 megawatt  
16           generating capacity. Although if the developer was  
17           able to use the 650 foot turbines, the total number  
18           necessary to reach its maximum plan generating  
19           capacity could be reduced to 48.

20                         In July 2022, while phase one was under  
21           construction, Baron submitted an amendment petition  
22           for phase two, requesting, among other things, an  
23           increase to the maximum turbine height that would also  
24           allow for improved per turbine generating capacity. To  
25           accomplish this, Baron also requested that the Siting

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2           Board waive the Town of Fremont's wind turbine siting  
3           laws maximum height restriction of 500 feet.

4                   Of note, phase one began operating in  
5           February 2023. After receiving the phase two  
6           amendment petition, Siting Board Secretary Michelle  
7           Phillips sent a letter to Baron's counsel, informing  
8           them that the request was considered a revision under  
9           the Siting Board's regulations, requiring the  
10          completion of an evidentiary hearing and findings by  
11          administrative law judges. The Secretary's  
12          determination was based in part on Baron's  
13          representations that a number of phase two turbines  
14          would be substantially relocated from their original  
15          planned positions and because the height request was  
16          prohibited by Fremont's local law, which would require  
17          a Siting Board waiver.

18                   For the Department of Public Service, I  
19          assigned the case to Judge Maureen Leary and my  
20          counterpart, Michele Stefanucci, Chief Judge at the  
21          Department of Environmental Conservation, assigned the  
22          matter to Judge Jennifer Ukeritis. I wish to express  
23          my appreciation to Chief Judge Stefanucci and Judges  
24          Leary and Ukeritis for their efforts, allowing me to  
25          present this draft order to you today.

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2                               Ultimately, the judges recommend that  
3       the Siting Board grant the amendment with only slight  
4       modifications to the 2019 certificate's conditions and  
5       restrictions. The most notable disputed issues  
6       concern noise modeling, shadow flicker, stream  
7       crossings for collection lines, and decommissioning  
8       funding requirements. It is not a coincidence that  
9       these issues have been informed by Baron's compliance  
10      filings and other experience related to its phase one  
11      construction and operation.

12                               Starting with noise, the draft order  
13      makes no changes to the 2019 certificate conditions  
14      operational noise limits, as none were sought.  
15      Rather, D.P.S. contested two notable issues related to  
16      noise modeling. The first concerned an issue that was  
17      discovered during the compliance process for phase  
18      one, where Baron had adjusted its modeling protocol  
19      and incorporated noise reduction operations  
20      directionally, meaning that they were only used when a  
21      receptor was downwind of a turbine. Despite the 2019  
22      certificate conditions having been based on a protocol  
23      that accounted for noise reduction operations in all  
24      directions when wind conditions exceeded tolerances.

25                               The Public Service Commission discussed

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2           this issue in a December 2022 compliance order, and  
3           the draft order before you requires Baron for phase  
4           two to apply N.R.O.s consistent with its initial  
5           application sound modeling protocol and the Board's  
6           2019 certificate.

7                   The second noise issue concerns the  
8           reliability of the modeling given that Baron has been  
9           unable to provide the manufacturer's sound power  
10          levels for the specific turbines being considered for  
11          phase two due to their still being newly developed.  
12          Instead, Baron had provided sound power information  
13          for a similar model turbine, but one that has a  
14          slightly lower power generating factor. The judges  
15          determined that the record did not support a  
16          conclusion that the information provided was  
17          substantially similar to allow for the sound power  
18          numbers to be considered sufficiently representative  
19          of the newer turbines.

20                   To resolve this issue, the draft order  
21          requires Baron to either submit as a compliance  
22          filing, the manufacturer's sound power information, if  
23          it becomes available prior to construction, or in the  
24          event the information remains unavailable, Baron will  
25          be required to hire an independent consultant approved



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2           by D.P.S. staff to redo the pre-construction noise  
3           modeling and to submit a revised phase two pre-  
4           construction noise impact assessment and noise  
5           reduction operations plan.

6                   Turning to shadow flicker, once again  
7           the draft order makes no changes to the Siting Board's  
8           2019 certificate limit of 20 hours annually for non-  
9           participating landowners. The draft order requires  
10          Baron to submit updated modeling as a compliance item  
11          to clarify the number of receptors expected to receive  
12          more than 20 hours annually and those expected to  
13          experience more than 30 hours annually from phase two.

14                   We anticipate that the compliance item  
15          will clarify some inconsistencies in the record. In  
16          addition, the draft order requires Baron to clarify  
17          that shadow flicker complaints should be resolved  
18          within 30 days. And if complaints cannot be resolved  
19          by then, absent extraordinary circumstances,  
20          curtailment should be employed to achieve compliance  
21          and complaint resolution.

22                   In addition, the 2019 certificate  
23          requires Baron to consult with the New York Department  
24          of Transportation on a study of potential shadow  
25          flicker impacts to State Route 21, based on concerns

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2           raised back then by the town of Fremont. While Baron  
3           did testify that it contacted the Department of  
4           Transportation, it notes that it received no response.  
5           The draft order requires Baron to continue its efforts  
6           to consult with D.O.T. and notes that D.P.S. staff  
7           should assist, if necessary.

8                   During phase one construction, Baron  
9           experienced nine inadvertent returns in drilling fluid  
10          releases from its use of horizontal directional  
11          drilling and the resulting impacts to protected  
12          wetlands and streams, two of which occurred at Neils  
13          Creek, a protected stream under Title V's permitting  
14          requirements in Environmental Conservation Law,  
15          Article 15. D.E.C. staff noted that crossing Neils  
16          Creek will also be required during phase two  
17          construction. While the draft order reiterates that  
18          horizontal directional drilling should continue to be  
19          the only crossing method used for the phase two  
20          project for most crossings, it accepts Neils Creek  
21          without further study and requires that the crossing  
22          method ultimately used for Neils Creek should be  
23          subject to D.E.C. and D.P.S. consultation and  
24          oversight.

25                   To ensure this takes place, Baron is

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2           required to submit a revised inadvertent return plan  
3           addressing crossing alternatives for Neils Creek in  
4           greater detail and include not only the information  
5           agreed to by the parties in a post-hearing  
6           stipulation, but also identifying the nature and  
7           extent of environmental impacts associated with each  
8           alternative it discusses.

9                   Additionally, the draft order requires  
10           that Baron's revised inadvertent return plan include,  
11           among other things, an independent environmental  
12           monitor with shared responsibilities with the site  
13           supervisor and foreman to oversee horizontal  
14           directional drilling activities and immediately report  
15           to D.E.C. staff and D.P.S. staff any spills, releases,  
16           or inadvertent returns and any remedial activities  
17           undertaken.

18                   As for decommissioning, Baron requests  
19           that the 2019 certificate's \$9.764 million minimum  
20           amount for overall decommissioning and site  
21           restoration costs for both phase one and phase two be  
22           reduced by \$1.25 million based on the expected  
23           reduction in the number of turbines necessary to  
24           achieve its allowed 242 megawatt generating capacity.  
25           Both Fremont and D.P.S. staff opposed Baron's request.

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2                   The draft order notes that as an  
3                   initial consideration, the reduction is inconsistent  
4                   with the Town of Fremont's wind law and Baron did not  
5                   seek a waiver of that particular provision. In  
6                   addition, however, the draft order includes the  
7                   judge's conclusion, that the record was insufficient  
8                   to demonstrate that any reduction was warranted and  
9                   that Baron should provide in compliance a phase two  
10                  decommissioning plan with updated costs, including an  
11                  inflation factor, something that was absent from its  
12                  plan that was included with the amendment petition.

13                  While that ends my review of the most  
14                  significant substantive environmental impact issues,  
15                  there are two more issues that I would like to direct  
16                  your attention to. The first concerns a request to  
17                  transfer a portion of the ownership of the 2019  
18                  certificate from Baron to a newly created company,  
19                  Baron II. The transfer application would keep Baron  
20                  responsible for the now operational phase one project  
21                  and make Baron II responsible only for the  
22                  construction and operation of phase two. While the  
23                  transfer petition asserts that Baron II is qualified  
24                  to carry out the provisions of the 2019 certificate  
25                  and any orders issued with respect to phase two, the

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2           petition acknowledges that Baron II has no investors  
3           and will not until the Siting Board takes action today  
4           on the amendment petition.

5                   However, not to completely frustrate  
6           the proposed transfer, the order finds that the local  
7           communities will be protected, making the transfer in  
8           the public interest if Baron and Baron II file as a  
9           compliance item a written agreement binding each  
10          entity to jointly and separately comply with the  
11          certificate's terms, conditions, and limitations and  
12          with any order issued thereunder without regard to the  
13          two project phases or separate corporate certificate  
14          holders.

15                   Of note, allowing the amendment, the  
16          Siting Board must take consideration of the Town of  
17          Fremont's wind law that imposes a height restriction  
18          on wind turbines of 500 feet. The draft order finds  
19          that a waiver is necessary inasmuch as it is  
20          unreasonably burdensome in light of existing  
21          technology. The judges found Baron's evidence  
22          compelling that the use of 500 foot turbines, even if  
23          they are still available at the time of construction,  
24          would result in greater environmental impacts during  
25          construction, particularly as more sites would need to

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2           be used, a position that was fully supported by D.P.S.  
3           staff.

4                               Before closing, I note that certain  
5           interveners participated in challenging contract  
6           rights previously provided to Baron as participating  
7           landowners. The draft order explains that the Siting  
8           Board is not the proper authority for deciding  
9           contract disputes. It also explains that while  
10          Article 10 requires a developer provide its existing  
11          real property interests sufficient to construct a wind  
12          generating facility, the record demonstrates that  
13          sufficient property interests exist to meet this  
14          requirement regardless of the participation of the  
15          interveners contesting their consents or contracts.

16                              Finally, as a last minute matter, I  
17          would like to bring to your attention comments  
18          received yesterday, Sunday, June 30th at 3:30 p.m.  
19          provided by intervener Chad Zigenfus. The comments  
20          are from residents of the local community that oppose  
21          the Baron project. Having reviewed the comments  
22          today, I note that they do not raise any new issues  
23          and can be considered addressed by the draft order and  
24          that the issues raised therein are included in the  
25          comment summary in that draft order. I understand

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2                   that those comments are being posted to D.M.M. today  
3                   at some point.

4                               Thank you for your time and attention,  
5                   and we are available for any questions.

6                               DIRECTOR MITCHELL: Thank you, A.L.J.  
7                   Lecakes, for your presentation and for the thorough  
8                   order before us today on these matters. And thanks to  
9                   others as well for their contributions. I have no  
10                  questions or comments.

11                              Let me turn to my fellow Board members  
12                  for any comments or questions. Mr. Sanza?

13                              MR. SANZA: No questions or comments.

14                              DIRECTOR MITCHELL: Mr. Malone?

15                              MR. MALONE: No questions or comments.

16                              DIRECTOR MITCHELL: Mr. Ravaschiere?

17                              MR. RAVASCHIERE: No questions or  
18                  comments.

19                              DIRECTOR MITCHELL: Mr. Williams?

20                              MR. WILLIAMS: No questions or  
21                  comments.

22                              DIRECTOR MITCHELL: Thank you.

23                              I now call for a vote. My own vote is  
24                  in favor of the recommendations as described.

25                              Mr. Sanza, how do you vote?

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2   MR. SANZA:    In favor.  
3   DIRECTOR MITCHELL:  Mr. Malone?  
4   MR. MALONE:   I vote in favor.  
5   DIRECTOR MITCHELL:  Mr. Ravaschiere?  
6   MR. RAVASCHIERE:  In favor.  
7   DIRECTOR MITCHELL:  Mr. Williams?  
8   MR. WILLIAMS:   In favor.  
9   DIRECTOR MITCHELL:  The order is  
10   approved and the recommendations therein are adopted.  
11   Secretary Phillips, is there anything  
12   further to come before us today?  
13   SECRETARY PHILLIPS:  There is nothing  
14   further.  However, I will note that the comments  
15   referenced by A.L.J. Lecakes have been posted.  
16   DIRECTOR MITCHELL:  All right.  Thank  
17   you, and we are adjourned.  
18   (The meeting concluded at 2:16 p.m.)  
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2 STATE OF NEW YORK

3 I, DANIELLE CHRISTIAN, do hereby certify that the foregoing  
4 was reported by me, in the cause, at the time and place, as  
5 stated in the caption hereto, at Page 1 hereof; that the  
6 foregoing typewritten transcription consisting of pages 1  
7 through 17, is a true record of all proceedings had at the  
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 3rd day of July, 2024.

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13 DANIELLE CHRISTIAN, Reporter

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<b>A</b>	
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