

1                   15-F-0122    -    9-3-2020       -    Monthly Meeting

2                                   NEW YORK STATE BOARD ON  
3                                   ELECTRIC GENERATION SITING AND  
4                                   THE ENVIRONMENT

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

8

9                                   Siting Board Meeting

10                   Date:   Thursday, September 3, 2020 @ 10:30 am

11

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13    JOHN B. RHODES, Chair

14    LOUIS ALEXANDER, alternate of Basil Seggos, Department of  
15    Environmental Conservation

16    DR. ELIZABETH LEWIS-MICHL, alternate of Dr. Howard Zucker,  
17    Department of Health

18    VINCENT RAVASCHIERE, alternate of Eric Gertler, Empire  
19    State Development Corporation

20    JOHN WILLIAMS, alternate of Richard Kauffman, New York  
21    State Energy Research and Development Authority

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2 (On the record 10:30 a.m.)

3 CHAIRMAN RHODES: I'd like to call  
4 this meeting of the Board on Electric Generation  
5 Siting and the Environment, to give it its full name  
6 to order. Before we get started I would like to note  
7 our arrangements for the meeting today. In line with  
8 the guidelines concerning social distancing and  
9 minimizing large gatherings, in the keeping with the  
10 executive orders suspending provisions of the open  
11 meetings law on an emergency basis, we're conducting  
12 today's meeting remotely.

13 I would like to remind those who are  
14 participating by phone to please mute your lines  
15 except when you are speaking. The public will have  
16 the opportunity to listen to the meeting by going to  
17 the department's webcast page and we will also record  
18 and transcribe the meeting as has been our practice.

19 These arrangements have been reviewed  
20 by our general counsel, and he has found that they  
21 meet the requirements of the executive orders and  
22 that they meet my own expectations of honoring the  
23 intent of the open meetings law.

24 Before moving to the next items and  
25 introductions, can I just do a sound check? Am I

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2 coming through audibly and clearly?

3 THE COURT REPORTER: Yes, you are.

4 CHAIRMAN RHODES: Perfect. Thank you.

5 So then before we move to the agenda, I would like to  
6 introduce the alternates representing the permanent  
7 members of the siting board and I'd like after I name  
8 them to get them to note that they're on the call or  
9 in attendance here or wherever.

10 Louis Alexander, alternate of Basil  
11 Seggos, Department of Environmental Conservation.

12 MR. ALEXANDER: Present.

13 CHAIRMAN RHODES: Thank you. Dr.  
14 Elizabeth Lewis-Michl, alternate of Howard -- Dr.  
15 Howard Zucker, Department of Health.

16 DR. LEWIS-MICHL: Present.

17 CHAIRMAN RHODES: Thank you. Vincent  
18 Ravaschiere, alternate for Eric Gertler, acting  
19 commission -- commissioner, New York State Department  
20 of Economic Development and president and chief  
21 executive officer designate, Empire State  
22 Development.

23 MR. RAVASCHIERE: Present.

24 CHAIRMAN RHODES: Thank you. And John  
25 Williams, alternate of Richard Kauffman New York

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2 State Energy Research and Development Authority?

3 MR. WILLIAMS: Present.

4 CHAIRMAN RHODES: Thank you.

5 Secretary Phillips, are there any changes to the  
6 agenda?

7 SECRETARY PHILLIPS: There are no  
8 changes to the agenda.

9 CHAIRMAN RHODES: Thank you. So with  
10 that, let's get into it. Case 15-F-0122 Application  
11 of Baron Winds, L.L.C. for a Certificate of  
12 Environmental -- Environmental Compatibility and  
13 Public Need Pursuant to Article 10 Construct a Wind  
14 Energy Facility.

15 There are two matters presented for  
16 our consideration. The first concerning a rehearing  
17 petition will be presented by Noreena Chaudari,  
18 assistant counsel, Department of Public Service.  
19 Dakin LeCakes, chief administrative law judge, Robert  
20 Rosenthal, general counsel and Brian Ossias, managing  
21 attorney, Department of Public Service are available  
22 for questions. Ms. Chaudari, please begin.

23 MS. CHAUDARI: Thank you and good  
24 morning Chair Rhodes and board members. Before you  
25 today is an order denying a petition for rehearing of

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2           the board's May 6th, 2020 order, approving  
3           amendment regarding the Baron Winds, L.L.C.  
4           amended petition. On September 12th, 2019 this  
5           board granted a certificate of environmental  
6           compatibility and public need for Baron Winds  
7           pursuant to Public Service Law Section 168. The  
8           certificate approved a wind energy project having  
9           a capacity of up to 242 megawatts to be located in  
10          the Towns of Cohocton, Dansville, Fremont and  
11          Wayland in Steuben County.

12                               Following that on March 9th, 2020  
13          Baron Winds submitted an amendment petition  
14          requesting approval to modify certain projects  
15          component locations and install potentially fewer  
16          turbines by the increased height for up to 26 of  
17          those turbines. That amendment petition did not  
18          seek a waiver of any local laws. On May 6th  
19          amendment order approved Baron Winds request.

20                               Prior to the amended petition the  
21          Town of Cohocton had enacted Local Law Number Four  
22          of 2019 amending the zoning law of the Town of  
23          Cohocton and Local Law Number Two which increased  
24          the allowable turbine height in the town. The  
25          arguments on the rehearing are all with respect to  
                this Local Law Number Four. Briefly the petition

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2           issuing the amendment order, the boards failed to  
3           consider comments regarding Local Number -- pardon  
4           me, Local Law Number Four and the Town of Cohocton  
5           plans to repeal Local Law Number Four unless the  
6           Department of Public Service failed to investigate a  
7           claim questioning the validity of Local Law Number  
8           Four.

9                                As an initial matter, the petition for  
10           rehearing was not filed within the thirty-day  
11           statutory period for petition of rehearing following  
12           that amended order. The order before you  
13           accordingly finds that the petition for rehearing  
14           was not timely and is denied. Notwithstanding  
15           that denial, the order before you finds that the  
16           petition for rehearing failed to make an adequate  
17           showing that the board committed an error of law  
18           or fact or that new circumstances warrant a  
19           different determination.

20                            The board considered Local Law Number  
21           Four when accepting the amended petition. At the  
22           time the record closed on the amended petition and  
23           at the time the amendment order was issued, Local  
24           Law Number Four was in effect. The board  
25           therefore accordingly -- pardon me, appropriately  
          considered Local Law Number Four. Further,

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2           in the petition for rehearing, in the amended order  
3           the board had considered and addressed comments it  
4           received regarding Local Law Number Four.

5                        The amended order notes that some  
6           commenters had filed comments stating that the Town  
7           of Cohocton voted to repeal Local Law Number Four.  
8           After considering those comments, the board  
9           determined that Local Law Number Four was still in  
10          effect.  As to the petition's claims that the Town of  
11          Cohocton may at some point in the future repeal Local  
12          Law Number Four, Article 10 does not require the  
13          board to reevaluate projects for compliance with new  
14          local laws enacted after the board issues a final  
15          determination.

16                       Accordingly, the order before you  
17          denied the petition for rehearing and the alternative  
18          motion.  That concludes my presentation and I am  
19          available for questions.  Thank you.

20                       CHAIRMAN RHODES:  Thank you, Noreena  
21          for that clear summary.  I -- I'm persuaded by -- by  
22          the draft and by your summary.  I find the decision  
23          that you proposed is proper, it's well grounded in  
24          the facts and the record and the rules.  And I am  
25          going to agree.  Do any of my colleagues have any

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2 comments or questions? Louis Alexander?

3 MR. ALEXANDER: Thank you, Mr.

4 Chairman. I have no questions.

5 CHAIRMAN RHODES: Great. Thank you.

6 Betsy Lewis-Michl?

7 DR. LEWIS-MICHL: No questions.

8 CHAIRMAN RHODES: Thank you. And

9 Vincent Ravaschiere?

10 MR. RAVASCHIERE: No questions. Thank

11 you.

12 CHAIRMAN RHODES: Thank you and John  
13 Williams, any comments or questions?

14 MR. WILLIAMS: Thank you. No  
15 questions.

16 CHAIRMAN RHODES: Thank you all. With  
17 that I will proceed to call for a vote. And I will  
18 as per our standard practice do it in a -- a roll  
19 call format. I'm John Rhodes and my own vote is in  
20 favor of the recommendations and not to deny the  
21 petition for rehearing as just described. Mr.  
22 Alexander, how do you vote?

23 MR. ALEXANDER: I vote in favor.

24 CHAIRMAN RHODES: Thank you. Dr.  
25 Lewis-Michl, how do you vote?

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2 DR. LEWIS-MICHL: I vote in favor.

3 CHAIRMAN RHODES: Thank you. Mr.

4 Ravaschiere, how do you vote?

5 MR. RAVASCHIERE: In favor.

6 CHAIRMAN RHODES: Thank you. And Mr.

7 Williams, how do you vote?

8 MR. WILLIAMS: I vote in favor.

9 CHAIRMAN RHODES: Thank you. The  
10 matter is approved and the recommendation is adopted.  
11 We'll proceed now to the second matter and this next  
12 matter presented to us today concerns several  
13 compliance filings and will be presented by Heather  
14 Behnke, assistant counsel, Department of Public  
15 Service. Dakin LeCakes, chief administrative law  
16 judge, Robert Rosenthal, general counsel, and Brian  
17 Ossias managing attorney are again available for  
18 questions. Ms. Behnke, please begin.

19 MS. BEHNKE: Good morning Chair Rhodes  
20 and members of the board. I'm going to present a  
21 discussion of the compliance filing that is in  
22 front of you today. As noted by my colleague  
23 Noreena Chaudari, on September 12th, 2019 this  
24 board granted a certificate of environmental  
25 compatibility and public need to Baron Winds,  
L.L.C. pursuant to Public

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2           Service Law Section 168.

3                           The certificate ordered contains  
4           certificate conditions that require several  
5           compliance filings by the certificate holder  
6           including conditions for construction and operation  
7           impact mitigations to be approved by the siting board  
8           or the Public Service Commission once the siting  
9           board's jurisdiction has ceased.

10                          Under Public Service Law Section 168,  
11           subsection 7, quote, following any rehearing and any  
12           judicial review of the board's decision, the board's  
13           jurisdiction over an application shall cease  
14           provided, however, that the permanent board shall  
15           retain jurisdiction with respect to the amendment,  
16           suspension or revocation of a certificate, end quote.

17                          For purposes of the compliance filings  
18           before you today, the siting board's jurisdiction has  
19           not ceased as the rehearing petition on the board's  
20           recent certificate amendment was pending before you  
21           today. The certificate holder submitted compliance  
22           filings on April 2nd, June 26th and July 10th, 2020  
23           pursuant to certificate conditions forty-five, sixty  
24           and forty-three respectively. Each of these  
25           compliance filings is required to be made prior to

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2           construction.

3                           I will now briefly summarize what each  
4           of those compliance filings contain.  Certificate  
5           condition forty-three requires the certificate holder  
6           to submit a project communications plan which  
7           identifies the certificate holder's protocol for  
8           communication within the project organizational  
9           structure and the contact information for the  
10          individuals responsible at this time for project  
11          oversight.

12                          Pursuant to certification condition  
13          forty-three, the project communications plan was  
14          submitted on July 10th, 2020 by the certificate  
15          holder and was reviewed by D.P.S. staff.  The project  
16          communications plan as filed reasonably assures  
17          compliance with the certificate condition forty-three  
18          of the certificate order.

19                          Certificate condition forty-five  
20          requires the certificate holder to submit a complaint  
21          resolution plan for both construction and operation  
22          phases of the project including a separate procedure  
23          to address operational noise complaints developed in  
24          consultation with the town.  The plan must contain  
25          the methodology for submittal of complaints, the

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2           protocol for the company response to received  
3           complaints and acknowledgement that if the project  
4           affects television coverage then cable television or  
5           equivalent service will be provided.

6                        Pursuant to certificate condition  
7           forty-five, the complaint resolution plan was  
8           submitted on April 2nd, 2020 by the certificate  
9           holder and was reviewed by D.P.S. staff. The  
10          complaint resolution plan as filed reasonably assures  
11          compliance with certificate condition forty-five of  
12          the certificate order.

13                      Certificate condition sixty requires  
14          the certificate holder to make available 20,000  
15          dollars for recreational or aesthetic mitigation for  
16          the benefit of Loon Lake in the Town of Wayland. The  
17          certificate holder is required to work with the Town  
18          of Wayland to develop such mitigation plans.

19                      Pursuant to certificate condition  
20          sixty, the Loon Lake mitigation plan was submitted on  
21          June 26th, 2020 by the certificate holder and was  
22          reviewed by D.P.S. staff. The Loon Lake mitigation  
23          plan as filed reasonably assures compliance with  
24          certificate condition sixty of the certificate order.

25                      In conclusion, staff recommends that

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2           the board adopt the proposed order approving the  
3           compliance filings.  Thank you for your attention  
4           this morning and I'm available for any questions the  
5           board may have.

6                           CHAIRMAN RHODES:  Thank you very much,  
7           Ms. Behnke.  It's John Rhodes.  Thank you for the  
8           work and thank you for, again, a very clear and  
9           straightforward summary.  And both of those persuade  
10          me that the compliance filings before us are  
11          reasonable and sure -- and assure a good accordance  
12          with the certificate conditions.  And my own vote --  
13          and I am going to be likely voting in favor of this  
14          recommendation.  But before we proceed to vote, can I  
15          ask if there are any comments or questions from my  
16          fellow board members?  Mr. Alexander?

17                           MR. ALEXANDER:  I have no questions.  
18          Thank you.

19                           CHAIRMAN RHODES:  Thank you.  Dr.  
20          Lewis-Michl?

21                           DR. LEWIS-MICHL:  No questions.

22                           CHAIRMAN RHODES:  Thank you.  Mr.  
23          Ravaschiere?

24                           MR. RAVASCHIERE:  I have no questions.  
25          Thank you.

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2 CHAIRMAN RHODES: Thank you. And Mr.  
3 Williams?

4 MR. WILLIAMS: Thank you. No  
5 questions.

6 CHAIRMAN RHODES: Thank you all. I  
7 will now proceed to call for a vote and, again, we'll  
8 do the roll call method. It's John Rhodes just to  
9 confirm my identity and my vote is in favor of the  
10 recommendation to approve the compliance filings as  
11 just described.

12 Mr. Alexander, how do you vote?

13 MR. ALEXANDER: I vote in favor.

14 CHAIRMAN RHODES: Thank you. Dr.  
15 Lewis-Michl, how do you vote?

16 DR. LEWIS-MICHL: In favor.

17 CHAIRMAN RHODES: Thank you very much.  
18 Mr. Ravaschiere, how do you vote?

19 MR. RAVASCHIERE: I vote in favor.

20 CHAIRMAN RHODES: Thank you. And Mr.  
21 Williams, how do you vote?

22 MR. WILLIAMS: I vote in favor.

23 CHAIRMAN RHODES: Thank you. The  
24 matter is approved and the recommendation is adopted.  
25 Secretary Phillips, is there anything further to come

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2           before us today?

3                           SECRETARY PHILLIPS:  There is nothing  
4           further for today.

5                           CHAIRMAN RHODES:  Thank you very much.  
6           With that we will adjourn.  Appreciate everybody's  
7           work and attendance and thank you all.

8                           (Off the record 10:45 a.m.)

9                           (The meeting concluded.)

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2    STATE OF NEW YORK

3    I, TRACY WILLIAMS, do hereby certify that the foregoing  
4    was reported by me, in the cause, at the time and place,  
5    as stated in the caption hereto, at Page 1 hereof; that  
6    the foregoing typewritten transcription consisting of  
7    pages 1 through 15, is a true record of all proceedings  
8    had at the hearing.

9                                IN WITNESS WHEREOF, I have hereunto  
10   subscribed my name, this the 8th day of September, 2020.

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13   TRACY WILLIAMS, Reporter

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| A                                      | B                                      |
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