

1 Siting Board - 15-F-0122 - 9-12-19

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.

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SITING BOARD

12

Thursday, September 12, 2019

13

Albany, New York

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16 JOHN B. RHODES, Chair

17 LOUIS ALEXANDER, alternate of Basil Seggos, Department of
18 Environmental Conservation,

19 DR. ELIZABETH LEWIS-MICHL, alternate of Dr. Howard Zucker,
20 Department of Health

21 VINCENT RAVASCHIERE, alternate of Eric Gertler, Empire
22 State Development Corporation

23 JOHN WILLIAMS, alternate of Richard Kauffman, New York
24 State Energy Research and Development Authority

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2 CHAIRMAN RHODES: Thank you. I'd like
3 to call this meeting of the Board on Electric
4 Generation Siting and the Environment to order.

5 Before moving to the agenda, I would
6 like to introduce the alternates representing the
7 permanent members of the Siting Board. We have Louis
8 Alexander, alternate of Basil Seggos, Department of
9 Environmental Conservation, Dr. Elizabeth Lewis-
10 Michl, alternate of Dr. Howard Zucker, Department of
11 Health, on the screen, Vincent Ravaschiere, Alternate
12 of Eric Gertler, Empire State Development Corporation
13 and John Williams, alternate of Richard Kauffman, New
14 York State Energy Research and Development Authority.
15 Secretary Burgess, are there any changes to the
16 agenda?

17 MS. BURGESS: Good morning, there are
18 no changes to the agenda today.

19 CHAIRMAN RHODES: Great. So, with
20 that, we will get into the business. 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, presented by James Costello, Administrative
25 Law Judge, Department of Public Service. Anthony

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2 Belsito, Administrative Law Judge of D.P.S., James
3 McClymonds, Chief. A.L.J., Department of
4 Environmental Conservation and Maria Villa,
5 Administrative Law Judge, Department of Environmental
6 Conservation are available for questions. Jim,
7 please begin.

8 A.L.J. COSTELLO: Good morning
9 Chairman Rhodes and members of the Siting Board. My
10 name is James Costello and I am one of the two
11 assigned presiding examiners in this case. My co-
12 presiding examiner, Administrative Law Judge, Anthony
13 Belsito and the Associate Examiner, Administrative
14 Law Judge, Maria Villa of the Department of
15 Environmental Conservation are present with me this
16 morning. Also present, is Department of
17 Environmental Conservation Chief Administrative Law
18 Judge, James McClymonds, who will be available for
19 questions.

20 I will offer brief remarks on the item
21 before you, which is a proposed order of the Siting
22 Board, granting a Certificate of Public Convenience
23 and Necessity to Baron Winds, L.L.C., the Applicant
24 in this case. The grant of the Certificate would be
25 subject to the detail conditions that are included as

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2 Appendix A to the proposed order. Baron Winds
3 proposes to construct and operate a commercial scale
4 wind/electric generating facility, within the Towns
5 of Cohocton, Dansville, Fremont and Wayland in
6 Steuben County, New York.

7 The project will include up to 68 wind
8 turbines, having a total maximum generating capacity
9 of 242 megawatts. The proposed order is based upon
10 an extensive evidentiary record that supports all of
11 the findings the Siting Board must make under Article
12 10 of the Public Service Law.

13 The evidentiary record was compiled
14 during an evidentiary hearing that was held over a
15 period of four days. Although this is a fully
16 litigated case, the Applicant was able to resolve the
17 issues raised by various parties throughout the
18 course of the proceeding. At the evidentiary
19 hearings, the Department of Agriculture and Markets,
20 Intervener Martin Oehlbeck and the Towns of Cohocton
21 and Wayland, indicated that their specific issues
22 with the project, were addressed and resolved by the
23 Applicant's rebuttal testimony.

24 In addition, the Applicant has agreed
25 to many of the Certificate conditions proposed in

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2 this case by the Department of Public Service Staff
3 and that are included as part of Appendix A to the
4 draft order. And, although the Town of Fremont
5 continued to litigate certain issues, overall, the
6 Town has indicated its willingness to host the
7 project.

8 The Article 10 review process, was
9 lengthy, fair and open and included both pre-
10 application and post-application phases. Public
11 notice was provided with respect to all significant
12 milestones in the case. There were multiple
13 instances of community outreach and education and
14 numerous opportunities for public participation.

15 The Applicant sponsored five open
16 house events, maintained a website and established a
17 toll free telephone number for public comments and
18 questions. The Department held two information
19 sessions, followed by on-the-record public statement
20 hearings, held near the project area.

21 Pre-application intervener funding was
22 awarded to the Towns of Cohocton, Dansville, Wayland,
23 Avoca, Howard and Naples. An application stage
24 intervener funding was awarded to the Towns of
25 Fremont, Wayland, Cohocton and Dansville and to

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2 individual party, Martin Oehlbeck.

3 Project information has been widely
4 available to the public through various means,
5 including the Department of Public Services' Document
6 and Matter Management System, the Applicant's project
7 website at local libraries, at the open houses hosted
8 by the Applicant and at the information sessions held
9 in conjunction with the public statement hearings.

10 Approximately 65 comments were
11 submitted by the public throughout the Article 10
12 review process, starting in 2015 and continuing
13 through the summer of 2019. Those who -- who support
14 the project, cited the need for renewable energy and
15 the economic benefits to the local area, including
16 new temporary and permanent jobs and PILOT payments.

17 Project opponents cited, among other
18 things, the disruption of the natural beauty of the
19 project area, adverse impacts on wildlife, concerns
20 about health impacts, due to noise and shadow
21 flicker, increased traffic during construction and
22 cumulative impacts from other nearby windfarms. In
23 general, those that opposed the project, view the
24 adverse impacts, as outweighing the benefits of the
25 project.

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2 The proposed Certificate conditions
3 seek to address the identified environmental impacts
4 of the project, including those that have been the
5 subject of public comment. Pursuant to Public
6 Service Law Section 168(3)(C), the order includes a
7 finding by the Board, that the probable environmental
8 impacts of the construction and operation of the
9 facility, will be minimized or avoided, to the
10 maximum extent practicable, based upon the
11 Applicant's compliance with their Certificate
12 conditions contained in Appendix A to the Order.
13 And, pursuant to Public Service Law Section
14 168(3)(e), the Order includes a finding that the
15 project will be constructed and operated in
16 compliance with all applicable State environmental,
17 public health and safety laws.

18 The Order also includes a finding by
19 the Board, that the construction and operation of the
20 project, will serve the public interest, based on the
21 consistency of the construction and operation of the
22 facility, with the energy policies and long-range
23 planning objectives and strategies, contained in the
24 most recent State energy plan, as well as additional
25 social, economic and other factors deemed relevant by

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2 the Board.

3 To ensure the public interest benefits
4 of the project are realized, Certificate Condition
5 35, requires that the Applicant track actual jobs
6 created during project construction and operation and
7 to attract -- and to track tax payments to local
8 jurisdictions.

9 The proposed order differs from our
10 recommended decision in certain respects. For
11 example, unlike the recommended decision, which
12 recommended a curtailment speed of between 6 and 6.9
13 meters per second, the proposed Order finds that the
14 Applicant established that a curtailment speed of 6.9
15 meters per second, which would result in the full
16 avoidance of a take of the threatened Northern Long-
17 Eared Bat, was impracticable because of the impacts
18 that such a curtailment speed would have on the
19 project's net present value.

20 The proposed order imposes a
21 curtailment speed of 6 meters per second and requires
22 the Applicant to submit an endangered or threatened
23 species mitigation plan. The curtailment regime
24 would be subject to review -- to review by the
25 Departments of Public Service and Environmental

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2 Conservation, at least every five years.

3 As requested by the Applicant,
4 supported by D.P.S. Staff and recommended by the
5 examiners, the proposed Order grants the Applicant a
6 waiver of the Town of Fremont's local law,
7 prohibiting wind farm construction during Saturdays,
8 on the ground that the Application of such a
9 prohibition was unreasonably burdensome, with respect
10 to this project, which has to be coordinated over
11 several towns.

12 Although the examiners also
13 recommended that the Applicant be granted a waiver of
14 the Town of Fremont local law requiring the Applicant
15 to offer well testing to non-participating landowners
16 within 3,500 feet of a turbine, the proposed Order
17 concludes that the Applicant failed to establish that
18 compliance with that section of the local law would
19 be unreasonably burdensome.

20 The examiners recommend that the Board
21 adopt the proposed Order, including the Certificate
22 conditions attached as Appendix A and the site
23 engineering and environmental plan specifications,
24 attached as Appendix B.

25 Thank you, that concludes my

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2 presentation. We are available for any questions
3 that the members of the Siting Board may have.

4 MS. BURGESS: If it's okay, we'd like

5 --

6 CHAIRMAN RHODES: Take a break.

7 MS. BURGESS: -- can we take a break
8 and go off the record, so we can just recall please?

9 CHAIRMAN RHODES: Thank you.

10 MR. BURGESS: Thank you.

11 (Off the record)

12 CHAIRMAN RHODES: We're back on the
13 record. So, thank you Jim for that presentation. My
14 own view, is that this is a good recommendation for a
15 project that's a good project on the conditions that
16 are included here. It's had a very good level of --
17 of local participation, with good agreement --
18 agreement achieved with local members of the
19 communities and local towns. It's within the record,
20 including some of the issues that you mentioned, like
21 noise and -- and the bats, both Northern Long-Eared
22 and Migratory and various local conditions. It
23 demonstrates a good application of the expectation of
24 mitigation, when that's necessary. It strongly
25 encourages ongoing, valuable engagement with the

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2 Towns. It's properly protective of health,
3 environment and community concerns and it's good for
4 the energy system. I am going to be in favor of this
5 application. Let me ask -- ask if my colleagues have
6 any comments or questions? Mr. Alexander?

7 MR. ALEXANDER: I have no questions.

8 CHAIRMAN RHODES: Dr. Lewis-Michl?

9 DR. LEWIS-MICHL: I have no questions.

10 CHAIRMAN RHODES: Mr. Ravaschiere?

11 MR. RAVASCHIERE: No questions.

12 CHAIRMAN RHODES: And, Mr. Williams?

13 MR. WILLIAMS: No questions.

14 CHAIRMAN RHODES: With that, I think
15 we're ready for a vote. My vote is in favor of the
16 recommendation to approve the Application of Baron
17 Winds, L.L.C. for a Certificate of Environmental
18 Compatibility and Public Need, with conditions as
19 described. Mr. Alexander, how do you vote?

20 MR. ALEXANDER: I also vote in favor.

21 CHAIRMAN RHODES: Dr. Lewis-Michl?

22 DR. LEWIS-MICHL: In favor.

23 CHAIRMAN RHODES: Mr. Ravaschiere?

24 MR. RAVASCHIERE: In favor.

25 CHAIRMAN RHODES: And, Mr. Williams?

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2 MR. WILLIAMS: In favor.

3 CHAIRMAN RHODES: The matter is
4 approved and the recommendation is adopted.

5 MS. BURGESS: Mr. Ravaschiere,
6 unfortunately is frozen, at this moment.

7 CHAIRMAN RHODES: Okay.

8 MS. BURGESS: I'm sorry.

9 CHAIRMAN RHODES: We'll go off the
10 record and --

11 MS. BURGESS: Can -- can -- can we go
12 off the record, please, so we can have a legitimate
13 vote.

14 (Off the record)

15 CHAIRMAN RHODES: So, I am in favor.
16 Mr. Alexander?

17 MR. ALEXANDER: In favor.

18 CHAIRMAN RHODES: Dr. Lewis-Michl?

19 DR. LEWIS-MICHL: In favor.

20 CHAIRMAN RHODES: Mr. Ravaschiere?

21 MR. RAVASCHIERE: In favor.

22 CHAIRMAN RHODES: Mr. Williams?

23 MR. WILLIAMS: In favor.

24 CHAIRMAN RHODES: The matter is
25 approved and the recommendation is adopted.

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Secretary Burgess, is there anything further to come before us today?

MS. BURGESS: There's nothing further today and thank you for your patience with the little technology glitches.

CHAIRMAN RHODES: Yes, thank you everybody for their patience and we are adjourned.

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2 STATE OF NEW YORK

3 I, JANET AXTON WALLRAVIN, do hereby certify that the
4 foregoing was reported by me, in the cause, at the time
5 and place, as stated in the caption hereto, at Page 1
6 hereof; that the foregoing typewritten transcription
7 consisting of pages 1 through 14, is a true record of all
8 proceedings had at the hearing.

9 IN WITNESS WHEREOF, I have hereunto
10 subscribed my name, this the 19th day of September 2019.

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13 JANET AXTON WALLRAVIN, Reporter

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