

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE
OFFICE OF RENEWABLE ENERGY SITING
AND ELECTRIC TRANSMISSION

ORES DMM Matter Number 24-03058 - Application of HOWARD WIND LLC for a Declaratory Ruling that Article VIII of the Public Service Law Does Not Apply to the Proposed Repowering of the Existing Howard Wind Facility.

DECLARATORY RULING OF THE EXECUTIVE DIRECTOR

(Issued December 11, 2025)

ZERYAI HAGOS, Executive Director:

INTRODUCTION

By verified petition filed September 20, 2024, Howard Wind LLC requests a declaratory ruling from the Office of Renewable Energy Siting and Electric Transmission (Office or ORES) that Public Service Law article VIII (Article VIII) does not apply to the proposed repowering of the existing Howard Wind facility.¹ The existing facility is a 55.35-megawatt (MW) wind energy facility located in the Town of Howard, Steuben County. For the reasons that follow, if Howard Wind repowers the facility with the higher-capacity 2.3 MW turbines, I conclude that the repowering project is subject to Article VIII. I also

¹ See DMM Item No. 1, verified petition of Howard Wind LLC for a declaratory ruling (Howard Wind petition).

conclude that if Howard Wind proceeds with the higher-capacity turbines, the permit modification procedures at 16 NYCRR 1100-11.1 apply to the repowering project.

I. BACKGROUND

A. Existing Facility

According to the verified petition, the existing Howard Wind facility is a 55.35 MW wind energy facility located in the Town of Howard (the Town), Steuben County. The facility consists of 27 Senvion MM92 2.05 MW wind turbines and related infrastructure.²

The construction and operation of the facility was originally approved under applicable federal, State, and local permitting procedures after a coordinated environmental review conducted pursuant to the State Environmental Quality Review Act (ECL article VIII [SEQRA]). SEQRA review of the originally proposed facility, which at the time included 25 wind turbines, was commenced by the Steuben County Industrial Development Agency (SCIDA) as lead agency and culminated in the issuance of a final environmental impact statement (FEIS) in October 2007, and a statement of SEQRA findings by the SCIDA in March 2008.³

² See id. at 2-4, 6.

³ See DMM Item No. 1, Steuben County Industrial Development Agency (SCIDA), Final Environmental Impact Statement for the Howard Wind Power Project, Oct. 25, 2007, Howard Wind petition, appendix A at 3; id., SCIDA, Findings Statement, Howard Wind Power Project, March 27, 2008, Howard Wind petition, appendix A at 250.

In June 2008, the Town of Howard Planning Board, as an involved agency under SEQRA, issued its own statement of SEQRA findings, and in July 2008, issued a special use permit with conditions authorizing the construction and operation of a 25-turbine wind energy facility with related infrastructure.⁴ In March 2010, the Town Planning Board approved a 20-year license to Howard Wind for the facility.⁵

In January 2011, Howard Wind obtained approval from the Town Planning Board to amend the special use permit to allow for the construction and operation of two additional wind turbines and related infrastructure as an expansion of the facility.⁶ Other State and federal approvals were also obtained from, or consultations were conducted with, the New York State Department of Environmental Conservation, the New York State Department of Parks, Recreation and Historic Preservation, and the United States Army Corp of Engineers.⁷

⁴ See id., Town of Howard Planning Board Findings Statement Howard Wind Power Project, June 19, 2008, Howard Wind petition, appendix A at 359; id., Town of Howard Planning Board, Special Use Permit for the Howard Wind Power Project, July 24, 2008, Howard Wind petition, appendix A at 394.

⁵ See id., Town of Howard Planning Board Resolution Approving Issuance of License with Howard Wind LLC, March 16, 2010, Howard Wind petition, appendix A at 406.

⁶ See id., Town of Howard Planning Board Resolution Concerning the Howard Wind LLC Two Turbine Expansion Project, Jan. 20, 2011, Howard Wind petition, appendix A at 408.

⁷ See Howard Wind petition at 4.

The facility began commercial operation in the fourth quarter of 2011 with 25 turbines, and the two additional turbines went into operation in 2012.⁸

B. Proposed Repowering Project

As stated in the petition, to extend the useful life of the facility, Howard Wind proposes to replace the nacelle (housing the generator and gearbox), hub, blades, and associated internal turbine components for up to 27 of the wind turbines comprising the facility, while retaining the existing foundations and towers for each turbine. Because the Senvion MM92 2.05 MW turbines are no longer commercially available, Howard Wind is considering multiple alternative turbine models to replace them. Howard Wind states that one alternative under consideration is a 2.0 MW model. If this model is selected, Howard Wind states that it would replace and repower all of the existing 27 turbines with the new 2.0 MW turbine equipment resulting in a system-wide capacity of 54.0 MW, which would be 1.35 MW less than the existing system-wide 55.35 MW capacity of the facility.⁹

In the alternative, Howard Wind is considering use of a 2.3 MW capacity turbine. If this model is selected, Howard Wind states that it would repower 24 turbines with the 2.3 MW

⁸ See id. at 5. Howard Wind notes that in 2022, Greenbacker Wind, LLC, an affiliate of Greenbacker Renewable Energy Corporation, purchased Howard Wind, LLC, and its assets, including the facility, from Everpower Wind Holdings, Inc. See id. at 5 n 10.

⁹ See id. at 5-6.

turbine components, and decommission and remove the three remaining turbines, resulting in a 55.2 MW capacity for the overall facility, which is 0.15 MW below the existing capacity of the facility.¹⁰

With respect to the remainder of the repowering project, Howard Wind states:

Although the overall height of the repowered turbines would minimally increase based on the new models, the overall footprint of the Facility will either remain the same or may be reduced if the Project includes removal of turbines. For the Project, Howard will utilize the existing access roads within the Facility site and will avoid creating any new access roads to the maximum extent practicable. There will be no other changes to the Facility's components other than like-for-like replacements, as necessary, and potential upgrades within the existing substation footprint. The point of interconnection will remain the same.¹¹

C. Proceedings

On September 20, 2024, Howard Wind filed its verified petition seeking a declaratory ruling pursuant to New York State Administrative Procedure Act (SAPA) § 204. In its petition, Howard Wind requests that the Executive Director issue a declaratory ruling that the project, as proposed, does not require review and approval by ORES under Article VIII. Instead, Howard Wind states that it intends to seek all necessary local approvals and permits from the Town of Howard

¹⁰ See id. at 6.

¹¹ Id.

and any applicable State and federal environmental permits for the project, following environmental review under SEQRA.¹²

On October 24, 2024, the Chief Administrative Law Judge issued a notice of request for declaratory ruling and public comment period.¹³ The notice set a deadline of December 9, 2024, for the filing of written comments on the request. The notice also set December 24, 2024, as the deadline for Howard Wind's submission of responses to any comments, and January 8, 2025, for ORES staff's submission of a response to the petition, any public comments, and Howard Wind's response to comments. On request of ORES staff, the January 8, 2025, response date was later extended to January 15, 2025.

One written comment was submitted on the request.¹⁴ Howard Wind filed its response to the comment on December 24, 2024,¹⁵ and ORES staff filed its brief in response on January 15, 2025.¹⁶ On February 5, 2025, on request of the Chief ALJ, Howard Wind supplemented the record on its request by filing the

¹² See id. at 2, 12-13.

¹³ See DMM Item No. 2, notice of request for declaratory ruling and public comment period.

¹⁴ See DMM Comment No. 1.

¹⁵ See DMM Item No. 3, Howard Wind response to comments on the verified petition.

¹⁶ See DMM Item No. 4, ORES staff response to petition for declaratory ruling (ORES staff response).

February 27, 2007, draft environmental impact statement accepted by the SCIDA.¹⁷

II. DECLARATORY RULING REQUEST

In its request, Howard Wind references Public Service Law (PSL) § 140(1), the applicability section of Article VIII for major renewable energy facilities, which provides that "[n]o person shall . . . increase the capacity of an existing major renewable energy facility[] without having first obtained a major renewable energy facility siting permit pursuant to this article." Howard Wind argues that under either repowering scenario described above, the proposed repowering project "does not result in an increase of the capacity of the overall Facility, the jurisdiction of ORES is not triggered, and Article VIII does not apply to the Project."¹⁸ Howard Wind further asserts that to the extent deemed relevant, the proposed repowering project "would not result in any material increase in environmental impacts, or new or different environmental impacts from those previously studied and reviewed."¹⁹ Accordingly, Howard Wind requests that the Executive Director issue a declaratory ruling holding that the proposed repowering project

¹⁷ See DMM Item Nos. 7, 8, 10.

¹⁸ Howard Wind petition at 8 (emphasis added).

¹⁹ Id.

does not require review and approval by ORES under Article VIII.²⁰

III. LEGAL AUTHORITY

SAPA § 204 states, in relevant part, that “[o]n petition of any person, an agency may issue a declaratory ruling with respect to (i) the applicability to any person, property, or state of facts of any rule or statute enforceable by it.”²¹ Pursuant to Public Service Law § 3-c, the Office exercises its authority by and through the Executive Director.²²

New York State enacted the Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA)²³ effective April 3, 2020, to further meet the renewable energy targets of the 2019 Climate Leadership and Community Protection Act (CLCPA).²⁴ AREGCBA established a transparent and efficient permitting process for major renewable energy facilities with a nameplate generating capacity of 25 MW or more. To accomplish these goals, the Legislature enacted Executive Law § 94-c and established ORES as a separate State-level permitting authority within the New York State Department of State (DOS).

²⁰ See id. at 12-13.

²¹ SAPA § 204(1)(i).

²² Public Service Law (PSL) § 3-c(2)(a).

²³ Accelerated Renewable Energy Growth and Community Benefit Act (AREGCBA), L 2020, ch 58, part JJJ, as amended by L 2021, ch 55, part BBB.

²⁴ Climate Leadership and Community Protection Act (CLCPA), L 2019, ch 106.

Subsequently, effective April 20, 2024, New York State enacted the Renewable Action through Project Interconnection and Deployment (RAPID) Act.²⁵ The RAPID Act repealed Executive Law § 94-c, repealed the then-current Public Service Law (PSL) article VIII, and enacted a new PSL article VIII entitled “Siting of Renewable Energy and Electric Transmission” (Article VIII).²⁶ The RAPID Act also changed the name of the Office from the Office of Renewable Energy Siting to the Office of Renewable Energy Siting and Electric Transmission, transferred the Office from DOS to the Department of Public Service, continued all existing functions, powers, duties, and obligations of the Office under the former Executive Law § 94-c, and added new functions, powers, duties, and obligations related to major electric transmission siting.²⁷

The purpose of Article VIII regarding renewable energy facilities, like the former Executive Law § 94-c before it, is “to consolidate the environmental review, permitting, and siting” of major renewable energy facilities subject to Article

²⁵ Renewable Action through Project Interconnection and Deployment (RAPID) Act, L 2024, ch 58, part 0.

²⁶ See RAPID Act §§ 2, 11.

²⁷ See id. §§ 3, 4. With respect to ORES’s regulations at 19 NYCRR part 900 (Part 900), the RAPID Act transferred Part 900 to 16 NYCRR chapter XI, and continued Part 900 in full force and effect subject to conforming changes, such as the substitution of numbering, names, titles, citations, and other non-substantive changes to be filed with the Secretary of State (see RAPID Act § 7). The conforming changes were filed with the Secretary of State as a new 16 NYCRR part 1100 (Part 1100) and became effective July 17, 2024.

VIII, and "to provide ORES as a single forum for the coordinated and timely review of such projects to meet the state's renewable energy goals . . . while also ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors in the decision to permit such projects."²⁸ A major renewable energy facility is defined in PSL § 137(4) as "any renewable energy system . . . with a nameplate generating capacity of twenty-five thousand kilowatts or more."²⁹ Nameplate generating capacity is defined in regulation as "the maximum electrical generating output that the facility is capable of production on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings) as specified by the manufacture of the generating units."³⁰

The Legislature directed ORES to "accept applications and evaluate, issue, amend, and approve the assignment and/or transfer of siting permits" for major renewable energy facilities.³¹ While Article VIII does not apply to a major renewable energy facility if an application has been made or granted for a license or permit "on or before the effective date of this article," a siting permit must be obtained under Article

²⁸ PSL § 136; see also Executive Law former § 94-c(1).

²⁹ See also 16 NYCRR 1100-1.2(ag); see also Executive Law former § 94-c(2)(h); 19 NYCRR former 900-1.2(ag).

³⁰ 16 NYCRR 1100-1.2(an); see also 19 NYCRR former 900-1.2(an).

³¹ PSL § 3-c(2)(b); see also Executive Law former § 94-c(3)(a).

VIII if a person proposes to "increase the capacity of an existing major renewable energy facility."³²

IV. DISCUSSION

A. Increase in Capacity of Existing Major Renewable Energy Facility

As noted above, Howard Wind argues that under either scenario described in its petition, the proposed repowering project would not result in an increase of the capacity of the "overall Facility" over the existing 55.35 MW and, therefore, would not fall within the terms of PSL § 140(1). With respect to the use of the lower capacity 2.0 MW generators, Howard Wind notes that repowering all 27 existing turbines would result in a capacity of 54.0 MW, which is below the current system-wide capacity of 55.35 MW. With respect to the use of the 2.3 MW capacity generators for the repowering project, Howard Wind argues repowering only 24 of the existing turbines with the higher capacity generators and decommissioning the remaining three turbines would result in "a 55.2 MW capacity for the overall Facility, which is slightly below the existing [55.35 MW] capacity of the Facility."³³

In making the argument that there will be no increase in capacity under PSL § 140(1) even if the higher capacity generators are used, Howard Wind references the declaratory ruling in Matter of AES Clean Energy Develop., LLC, in which the

³² PSL § 140(1), (5)(b); see also Executive Law former § 94-c(4)(a).

³³ Howard Wind petition at 6.

ORES Executive Director interpreted former Executive Law § 94-c(4)(a), the predecessor to PSL § 140(1).³⁴ In that ruling, the Executive Director held that AES's proposal to repower six distinct wind generating facilities with higher capacity generators would result in an increase in capacity at both the individual turbine level as well as system wide for each facility, notwithstanding AES's proposal to use powerplant system controls to keep the output of each facility below its originally approved capacity and, thus, required a permit under former section 94-c.³⁵ Howard Wind distinguishes AES Clean Energy on the ground that its proposal to remove three of the existing turbines would result in a decrease in capacity at the facility level, even though there would be increases in capacity at the individual turbine level. Howard Wind concludes that accordingly, because the replacement of the turbine components with the higher-capacity generators would not result in a facility-wide increase in capacity, the proposed repowering project is not subject to Article VIII.³⁶

In its response, ORES staff essentially agrees with Howard Wind and concludes that without an increase in capacity, a repowering project is not subject to Article VIII.³⁷

³⁴ ORES DMM Matter No. 22-02970, Matter of AES Clean Energy Develop., LLC, Declaratory Ruling Concerning Jurisdiction Over Proposed Repowering Projects, Sept. 27, 2023.

³⁵ See id. at 13-17.

³⁶ See Howard Wind petition at 10-11.

³⁷ See ORES staff response at 6.

Analysis

As noted in AES Clean Energy, answering Howard Wind's request requires interpretation of the term "increase the capacity of an existing major renewable energy facility" in Article VIII's applicability section at PSL § 140(1). In interpreting that term, the clear and unambiguous language of the statute must be given its plain meaning and effect. Moreover, the language must be analyzed in the context of the larger statutory scheme and in a manner that harmonizes and renders compatible the related provisions of that scheme. Further, the general spirit and purpose of the underlying legislative enactment are examined and the preferred construction is the one that furthers the object, spirit, and purpose of the statute.³⁸

Applying the above settled principles of statutory interpretation, I agree with Howard Wind and ORES staff that if Howard Wind repowers all 27 turbines with the lower-capacity 2.0-MW generators, there will be a decrease in capacity of the facility at both the individual turbine level and facility-wide. Repowering all 27 generators with the 2.0-MW models would result in a facility-wide capacity of 54.0 MW, which is 1.35 MW below the existing facility's capacity. Accordingly, under this scenario, the proposed repowering project would not "increase the capacity of an existing major renewable energy facility" and, therefore, an Article VIII permit is not required pursuant to PSL § 140(1).

³⁸ See AES Clean Energy, Declaratory Ruling at 11-12 and cases cited therein.

In contrast, if Howard Wind repowers 24 of the turbines with the higher-capacity 2.3-MW generators, the proposed repowering project would result in an increase in capacity both at the individual turbine level and facility-wide. Replacing the 24 2.05-MW generators with 2.3-MW generators would result in a facility-wide capacity of 55.2 MW, which represents an increase of 6 MW over the existing 49.2 MW capacity of the existing 24 turbine facility, a facility that is above the 25 MW threshold established for a "major renewable energy facility" in Article VIII. Thus, under the plain terms of PSL § 140(1), increasing the capacity of the existing 24-turbine facility by 6 MW would "increase the capacity of an existing major renewable energy facility" and, thus, requires a permit pursuant to Article VIII.

Howard Wind's proposal to remove three existing turbines if the higher capacity 2.3-MW generators are used in support of its argument that there will not be an "increase in the capacity of an existing major renewable energy facility" is misplaced and does not change the above analysis. As the Executive Director noted in the AES Clean Energy declaratory ruling, the statutory term "increase the capacity of an existing" major renewable energy facility is not qualified by an increase in capacity in reference to the facility-wide capacity of the existing facility in the most recently issued permit for the facility or any other threshold. As noted in AES Clean Energy, this is in contrast, for example, to PSL article 10 (Article 10), which applies to repowering projects involving increases in "the capacity of an existing electric generating facility by more than twenty-five thousand kilowatts," an

express reference to a facility-wide increase in capacity over the existing facility's capacity.³⁹ Inasmuch as the Legislature did not include any such facility-wide minimum threshold in Article VIII, in contrast to Article 10, it must be presumed that the Legislature did not intend such a threshold to apply.

Accordingly, there is no basis in the plain language of PSL 140(1) for concluding that there must be an increase in capacity over the 55.35 MW capacity of the original 27 turbine facility for Article VIII to apply. Rather, as ORES staff argued in AES Clean Energy, and the Executive Director accepted, Article VIII applies to "any increase in capacity of an existing major renewable energy facility."⁴⁰ This would include the proposed repowering of 24 existing turbines with 2.3 MW generators resulting in an increase in capacity at both the individual turbine level as well as facility-wide for the 24 repowered turbines.

This reading of the plain language of PSL 140(1) is further supported by the general spirit and purposes underlying the enactment of both the former Executive Law § 94-c and Article VIII. The statutory "purposes" of Article VIII encapsulates the legislative and executive intent of that article and demonstrates that the plain language reading noted above, coupled with the absence of the Article 10 prescriptive language expressly indicating a project-wide examination of increase in capacity, provides a basis for evaluating the extent

³⁹ AES Clean Energy, Declaratory Ruling at 17-18 (emphasis added).

⁴⁰ Id. at 15.

of ORES's jurisdiction over repowering projects. As noted in AES Clean Energy, among the purposes of former Executive Law § 94-c, and continued by Article VIII, are the establishment of a consolidated and streamlined State-level permitting process for both new and repowered major renewable energy facilities to meet the State's renewable energy goals, while assuring that the environmental, and public health and safety impacts associated with such facilities are addressed consistent with standards developed pursuant to Article 10, Executive Law § 94-c, and Article VIII.⁴¹ As further recognized in AES Clean Energy, Article VIII is not only concerned with impacts facility-wide, but with the impacts associated with the individual turbines operating in their worst-case scenario.⁴² To conclude that the repowering of 24 turbines with higher capacity generators is not subject to Article VIII simply because the facility-wide output is less than the existing 55.35 MW 27 turbine facility ignores the fact that it is the individual generators that have potential environmental and public health and safety impacts, and is at odds with Article VIII's requirement that all potential adverse impacts associated with the individual higher capacity generators meet current standards and are otherwise avoided, minimized, and mitigated to the maximum extent practicable, taking into account the CLCPA targets and the

⁴¹ See id. at 27-32.

⁴² See id. at 16-17.

environmental benefits of the facility, among other requirements.⁴³

Finally, to conclude that Article VIII's applicability may be avoided by removing turbines to lower the facility output below the existing output is inconsistent with State renewable energy policy. Both the State Clean Energy Standard (CES) established by the Public Service Commission, and the AREGCGA recognized the role repowering of existing renewable energy facilities has in the attainment of the CLCPA targets and the need to incentivize those repowering projects to increase their generating output to further these State energy policies.⁴⁴ Interpreting Article VIII to allow repowering projects to lower their output to avoid Article VIII's application is at odds with these policies.

⁴³ Note that when the Legislature enacted Article VIII, which occurred after the issuance of the AES Clean Energy declaratory ruling, it did not change either the "increase in capacity" standard or the purposes of the State's major renewable energy facility siting law. Accordingly, it may be presumed that the AES Clean Energy ruling correctly interpreted the plain language and legislative intent of the former § 94-c (see Matter of Knight-Ridder Broadcasting, Inc. v Greenberg, 70 NY2d 151, 157-158 [1987] [it is a recognized principle that where a statute has been subject to judicial interpretation, the continued use of the same language by the Legislature subsequent to the judicial interpretation is indicative that the legislative intent has been correctly ascertained]).

⁴⁴ See id. at 21 n 50, 27-28, citing DPS Case 15-E-0302, Matter of Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard (NYSPSC); AREGCBA § 4(a).

In sum, Howard Wind's proposal to repower 24 turbines with the higher-capacity generators would "increase the capacity of a major renewable energy facility" and, therefore, requires an Article VIII permit pursuant to PSL § 140(1). The circumstance that the existing 27-turbine facility has a facility-wide capacity of 55.35 MW is not relevant to whether the proposed repowering project with the higher capacity generators will result in an increase in capacity within the meaning of Article VIII.

B. Permit Modification Procedures

Howard Wind argues that to the extent deemed relevant, the repowering project as proposed is not anticipated to result in any material increase in environmental impacts over those previously studied and reviewed for the construction of the facility, nor is it anticipated to result in any new or different environmental impacts previously studied and reviewed. Specifically, Howard Wind asserts:

[a]s proposed, the vast majority of environmental impacts resulting from the Project will occur during construction and thus, will be temporary in nature. This is because, apart from any potential turbines slated to be decommissioned and removed, the turbines that will be repowered will remain in their same locations. Howard does not anticipate changes in location to the point of interconnection, the access roads or electrical collection lines or other support systems presently in place. Although the replacement of the equipment on the turbines slated for repowering will result in a modest height increase due to longer blades and a tower adapter, Howard does not anticipate any material increase in impacts from those impacts that were previously studied for the turbines at their current heights. As part of the [permit review process], Howard will engage one or more consultants

to perform the necessary analyses to confirm no additional significant impacts to avian populations, visual impacts, or noise impacts will result from the proposed Project as compared to the Facility as currently operating.⁴⁵

While I concluded that Howard Wind's assertions regarding the potential impacts associated with its repowering proposal are not relevant to the applicability of Article VIII, for the following reasons, they are nonetheless relevant to the procedures to be used for reviewing Howard Wind's proposal to repower the facility with the higher-capacity generators.

PSL § 140(3) provides:

ORES or a permittee may initiate an amendment to a major renewable energy facility siting permit under this section. An amendment initiated by ORES or a permittee that is likely to result in any material increase in any adverse environmental impact or involves a substantial change to the terms or conditions of a major renewable energy facility siting permit shall comply with the public notice and hearing requirements of this [Article].

The regulations implementing section 140(3) are found at 16 NYCRR 1100-11.1 (Permit modifications requested by Permittee). Pursuant to section 1100-11.1, an application to modify an existing permit is initiated by a permittee filing a statement, including supporting information: (1) setting forth the proposed permit modifications; (2) identifying the existing conditions the permittee is requesting to be modified and whether the permittee considers the proposed changes to be a minor or major modification; and (3) stating that there are no

⁴⁵ Howard Wind petition at 12.

outstanding permit violations at the facility.⁴⁶ ORES staff reviews the statement and supporting materials, and makes a determination whether the proposed changes constitute a minor modification to be processed by the Office administratively, or a major modification subject, among other requirements, to the notice and hearing requirements of Part 1100. Those requirements include notice, service, and filing of the permit modification application pursuant to section 1100-1.6, public comment hearings pursuant to section 1100-8.3(a) limited to comments only on the proposed changes, and adjudicatory hearings pursuant to subpart 1100-8 limited to only those proposed changes for which substantive and significant issues have been identified.⁴⁷ For purposes of section 1100-11.1, a major permit modification is a "change to an existing permit standard or condition likely to result in any material increase in any identified adverse environmental impact or any significant adverse environmental impact not previously addressed by uniform or site-specific standards or conditions or otherwise involves a substantial change to an existing permit standard or condition."⁴⁸

Here, Howard Wind has a siting permit for the existing facility in the form of the Town's special use permit and local license, and supporting documentation including the FEIS and SEQRA findings statements issued by the Town and the SCIDA.

⁴⁶ See 16 NYCRR 1100-11.1(a) .

⁴⁷ See 16 NYCRR 1100-11.1(b) , (c) .

⁴⁸ 16 NYCRR 1100-1.2 (af) .

Accordingly, if Howard Wind proceeds with the project using the higher-capacity generators, consistent with PSL § 140(3), it is appropriate to use the permit modification procedures at subpart 1100-11 to process the application.⁴⁹ Howard Wind may submit the statement required by section 1100-11.1(a), together with the local permits and supporting materials, any other State permits issued for the existing facility, and any other supporting information it deems appropriate to support its contention that the changes to the facility will not result in any material increase in environmental impacts over those previously studied and reviewed for the construction of the facility, or result in any new or different environmental impacts previously studied and reviewed. If ORES staff determines that the proposed changes to the existing facility and permits are not likely to result in any material increase in any identified adverse environmental impact or otherwise do not involve a substantial change to an existing permit standard or condition, or that any significant adverse environmental impact are addressed by the Part 1100 uniform standards and conditions or site-specific

⁴⁹ Note that in the Office's currently proposed regulations implementing the RAPID Act, the use of Part 1100's permit modification procedures (denominated "permit amendments" under the proposed regulations) to process repowering projects subject to Article VIII is being formally codified. See Case No. 24-M-0433, 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, Chapter XI Title 16 of NYCRR Part 1100 General Procedures REVISED 2025-10-22, proposed 16 NYCRR 1100-11.2 (NYSDPS).

conditions in the existing permits or approvals, the Office will process the application as a minor permit modification and issue the Article VIII permit administratively. If ORES staff determines that the proposed changes constitute a major permit modification, the Office will process the application pursuant to the notice and hearing procedures under section 1100-11.1(c). That review, however, would be limited only to the changes proposed for the facility.

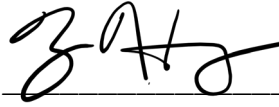
V. CONCLUSION

Upon consideration of Howard Wind's request pursuant to SAPA § 201(1)(i) for a declaratory ruling that Article VIII of the Public Service Law does not apply to the proposed repowering of the existing Howard Wind facility, IT IS HEREBY DECLARED THAT:

1. If Howard Wind selects a 2.0 MW model turbine generator for the repowering project, there will be no increase in the capacity of the existing major renewable energy facility within the meaning of PSL § 140(1) and, therefore, Article VIII does not apply.

2. If Howard Wind selects a 2.3 MW model turbine generator for the repowering project, there will be an increase in the capacity of the existing major renewable energy facility within the meaning of PSL § 140(1) and, therefore, Article VIII applies. Accordingly, if the higher capacity generators are selected, Howard Wind is required to obtain an Article VIII siting permit using the permit modification procedures at 16 NYCRR 1100-11.1.

3. This proceeding is closed.

A handwritten signature in black ink, appearing to read 'ZAH', is positioned above a horizontal line.

Zeryai Hagos
Executive Director
Office of Renewable Energy Siting
and Electric Transmission
New York State Department of Public
Service

Dated: December 11, 2025
Albany, New York

cc: Party List - ORES DMM Matter No. 24-03058