

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits & Pollution Prevention

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September 1, 2016

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, New York 12223-1350

Re: Case No. 15-F-0122: DEC comments on the Preliminary Scoping Statement for the Baron Winds, LLC (Baron Winds)

Dear Secretary Burgess:

The Department of Environmental Conservation (“DEC”) has reviewed the Article 10 Preliminary Scoping Statement (“PSS”) in relation to the above-referenced matter (“Project”), dated August 16, 2016, and submits the following staff comments on it.

1. General

- a. The Project, as described in the PSS, would likely result in impacts to DEC-regulated freshwater wetlands and the 100-foot DEC-regulated wetland adjacent areas. DEC staff will ask the Baron Winds to first avoid or second to minimize impacts to these wetlands and adjacent areas.
- b. The Project, as described in the PSS, would impact numerous protected small streams. Baron Winds will need to first avoid or second to minimize impacts to these small streams.
- c. Construction and operation of this Project must meet the substantive requirements of 6 New York Code Rules and Regulations (“NYCRR”) Part 182.

2. Specific Concerns by Section

- a. Section 1.4 Potential Impacts

Baron Winds states (PSS, page 6) that habitat fragmentation and other impacts from the construction of the project “will be addressed through detailed multi-year studies that will assess potential impacts to wildlife and terrestrial habitats associated with the construction of the Facility.” DEC expects that the Baron Winds will consult with DEC staff to determine the need for and scope of such studies.

Direct impacts to wildlife (mortality) as a result of the operation of the project is mentioned. DEC staff expects that Baron Winds will commit to multi-year post-construction monitoring studies to evaluate the impact on wildlife, specifically birds and bats. Baron Winds should consult with DEC staff in the design of these studies.

To ensure an accurate assessment can be made of potential impacts the project may have on natural resources, GIS data and other information should be provided to DEC for all aspects of the project as detailed in Section 2c of DEC's 2016 Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects, June 2016. Additionally, Baron Winds should provide shapefiles showing the location of all bird and bat survey points and transects.

b. Section 1.5 Impact Avoidance Measures

This section should include impact avoidance, minimization and mitigation measures for direct and indirect loss of habitat, and direct mortality state and federally listed threatened and endangered species (T&E), New York State Species of Special Concern (SCC), and State Species of Greatest Conservation Need (SGCN). Examples of such measures include date restrictions on construction activities to avoid impacts to breeding birds and bats, and turbine curtailment at certain times and under certain environmental conditions to minimize direct impacts to bats.

c. Section 2.9 Alternatives

- i. Description of Reasonable Alternatives to the Proposed Facilities at the Proposed Location
 1. Alternative Turbine Layouts

On page 47 of the PSS, the list of factors considered during the layout design process should also include wildlife and wildlife habitat, particularly habitat known or suspected to be utilized by state and federally listed T&E species, SCC, and SGCN.

3. Section 2.22 Terrestrial Ecology and Wetlands

- a. Vegetation, Wildlife, and Wildlife Habitats
 - i. Wildlife-Mammals

The bat survey outlined in the 2013 work plan predated the listing of the Northern Long-Eared Bat (NLEB) as threatened by US Fish and Wildlife Service (USFWS) and DEC in April 2015. DEC staff recommends a summer presence-absence survey for listed bat species using methods following the latest USFWS guidance for Indiana Bat summer surveys. The Baron Wind project is also located between a known NLEB winter hibernaculum and summer maternity roost sites.

ii. Wildlife-Birds

In addition to the sources of information mentioned in this section regarding birds occurring in or near the project area, DEC and USFWS staff should also be consulted for any records or knowledge of state listed T&E, SCC, or SCGN that may be utilizing the project area at some point during the year.

iii. Impacts to Vegetation, Wildlife, Wildlife Habitats, and Wildlife Travel Corridors

When referencing and evaluating species of greatest conservation need (SGCN) in this section and all others of the application, the SGCN list found in the 2015 State Wildlife Action Plan (SWAP) should be used. The SWAP is available at:
<http://www.dec.ny.gov/animals/7179.html>

Baron Winds should consult with DEC regarding potential presence of and impacts to state listed T&E, SCC and SGCN species.

iv. Measures to Avoid or Mitigate Impacts to Vegetation, Wildlife, and Wildlife Habitat

Baron Winds should include in this section measures to minimize operational impacts to wildlife, including but not limited to turbine curtailment at certain times and under certain environmental conditions.

Baron Winds should also include a plan addressing the control of invasive species during development, construction, operation and maintenance of the project. .

v. Avian and Bat Impact Analysis and Monitoring Program
1. Avian and Bat Impacts

A discussion and evaluation of all potential direct and indirect cumulative impacts to birds, bats, and other wildlife, and their habitats, as a result of the construction, operation and maintenance of the project should include an estimate of bird and bat fatalities, as well as direct habitat loss (development/clearing/change in vegetation) and indirect habitat loss (avoidance/edge effects). In addition to conducting a cumulative impact analysis utilizing data from across New York State and the region, Baron Winds should separately consider all data from operating and proposed wind energy projects located in the vicinity of the proposed project.

vi. Avian and Bat Post-Construction Monitoring

Baron Winds should have a multi-year post-construction monitoring plan designed to evaluate the direct and indirect impacts of the project.

vii. Avian and Bat Impact Avoidance and Mitigation Plan

This section should note that construction and operation of the project must comply with the substantive requirements of 6 NYCRR Part 182 for impacts to state listed threatened and endangered species.

4. Section 2.23 Water Resources and Aquatic Ecology
a. Surface Waters
i. Impacts to Surface Waters

Baron Winds should describe how facility components will be sited to avoid or minimize impacts to surface waters, especially to C(t) and C(ts) streams. A decision matrix should be used to avoid sites that will require numerous or particularly destructive crossings and to choose sites with the fewest crossings or those using already established roads

There are 14 protected streams within the project area. There are also five class C streams in which wild trout populations were recently documented as follows:

- Reynolds Creek (PA-3-58-44)
- Oilwell Hollow Creek (PA-3-58-44-3)
- Fairbrothers Brook (PA-3-58-40)
- Page Brook (PA-3-58-38-7)
- Stony Brook (ONT-117-66-25)

All of the protected streams and these five additional streams should be avoided whenever possible. The PSS addresses BMP's that will be used to minimize impacts to these streams. Specific project details would be needed to assess avoidance but nearby wind projects have utilized the tops of ridges and avoided most streams. It appears that the same could be done in this project area depending on the project layout.

ii. Measures to Avoid or Mitigate Surface Water Impacts

The PSS states that special crossing techniques will be utilized. Baron Winds will need to specify the techniques the crossing techniques. Baron Winds should investigate the practicability of the use of directional drilling for collection line drilling, as well as the probability of a frack out given the substrate types in this area. If Baron Winds chooses to utilize directional drilling, a detailed frack out plan must also be in place. In addition,

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this section should also note that date restrictions may apply to work in C(t) and C(ts) protected waters.

Respectfully submitted,

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