

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 11, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

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.

ORDER APPROVING COMPLIANCE FILINGS
50(a-e), 52, AND 52(a) SUBJECT TO CONDITIONS

(Issued and Effective August 11, 2022)

BY THE COMMISSION:

INTRODUCTION

On September 12, 2019, the New York State Board on
Electric Generation Siting and the Environment (Siting Board)
granted a Certificate of Environmental Compatibility and Public
Need, With Conditions (Certificate)¹ to Baron Winds, LLC (Baron
Winds or Certificate Holder) pursuant to Public Service Law
(PSL) §168. The Certificate Order authorizes Baron Winds to
construct and operate a 242 megawatt (MW) utility-scale wind

¹ Case 15-F-0122, Order Granting Certificate of Environmental
Compatibility and Public Need, With Conditions (issued
September 12, 2019).

energy facility (the Project) in Towns of Cohocton, Dansville, Fremont and Wayland, in Steuben County, New York. On May 6, 2020, the Siting Board issued an Order approving an amendment to the Certificate, which modified the Project to allow construction of the Project to be split into two phases and allows Baron Winds to install up to 33 turbines in Phase I, none of which are in the Town of Fremont.² The Certificate, as amended, contains Certificate Conditions that require several compliance filings by the Certificate Holder, to be approved by the Siting Board or the Public Service Commission (Commission), in the event the Siting Board's jurisdiction has ceased, including conditions for construction and operational impact mitigation.³

As detailed in this Order, the Certificate Holder filed requirements of Certificate Condition 50(a-e), 52, and 52(a) for the purpose of constructing the Operation and Maintenance (O&M) building. The Certificate Holder filed Compliance Filings 52 and 52(a) on June 9, 2022, and Compliance Filing 50(a-e) on June 28, 2022. The Certificate Holder supplemented Compliance Filing 52 on June 28, 2022.

Through this Order, the Commission approves Compliance Filings 50(a-e), 52, and 52(a) for the purposes discussed below only.

² Case 15-F-0122, Order Approving Amendment (issued May 6, 2020).

³ Under 16 NYCRR §1002.2, "[t]he applicant may not commence construction of all or any portion of the facility or interconnections for which the Board has required approval of a compliance filing as a condition precedent to such construction until the applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased."

BACKGROUND

Condition 50 (a-e)

Certificate Condition 50 (a-e) requires the Certificate Holder to submit the following:

Prior to the commencement of construction of the O&M building, collection substation, a detailed Facility Exterior Lighting Plan or Plans shall be submitted for review and approval by the Siting Board; the Plan shall address:

a) security lighting needs at wind turbine sites, substation, the Facility Operations and Maintenance building site and any exterior equipment storage yards;

b) plan and profile figures to demonstrate the lighting area needs and proposed lighting arrangement at the collection substation site, the Facility Operations and Maintenance building site, any exterior equipment storage yards; and plan, elevation, and details for lighting;

c) lighting should be designed to provide safe working conditions at appropriate locations;

d) exterior lighting design shall be specified to avoid off-site lighting effects, by:

(i) use of task lighting as appropriate to perform specific tasks; task lighting shall be designed to be capable of manual or auto-shut off switch activation rather than motion detection; and

(ii) for lighting other than turbine door safety lighting, full cutoff fixtures, with no dropdown optical elements (that can spread illumination and create glare), shall be required for permanent exterior lighting;

e) manufacturer's cut sheets of all proposed lighting fixtures.

Condition 52

Certificate Condition 52 requires the Certificate Holder to submit the following:

The Certificate Holder shall submit a Site Engineering and Environmental Plan (SEEP) or equivalent documents that, as applicable, shall contain the informational requirements stated in the SEEP Specifications. The Certificate Holder may submit a separate SEEP or equivalent documents for each phase of construction (i.e., tree clearing, civil, turbine erection). The Certificate Holder may submit the SEEP(s) or equivalent documents as a single document accompanied by necessary plans, drawings or other documents, or as a series of separate documents. Where the Applicant previously submitted information as part of its Application that fulfills a particular SEEP obligation, the Certificate Holder must resubmit that information as part of the SEEP or equivalent documents. If the SEEP Specifications conflict with any of these Certificate Conditions, or if the Certificate Conditions require more information than required by the SEEP specifications, the Certificate Conditions shall be controlling.

Condition 52(a)

Certificate Condition 52(a) requires the Certificate Holder to submit the following:

a) Maps, site plans, profile figures, and environmental controls and construction details incorporating all components of the final layout of the Project shall be provided as compliance filings and shall comply with the requirements set forth in the SEEP Specifications to the extent such requirements are applicable to the Project.

PUBLIC NOTICE

The Certificate Holder filed Compliance Filings 52 and 52(a) on June 9, 2022, Compliance Filing 50(a-e) on June 28, 2022, and supplemented Compliance Filing 52 on June 28, 2022, for the purpose of O&M building construction. Pursuant to 16 NYCRR §1002.2(d), "[a]ny interested person or party may file comments regarding any compliance filing within 21 days of the filing and service of such compliance filing done in accordance with subdivision (c) of this section." No comments were filed during the 21-day comment period, or thereafter, related to Compliance Filings 50(a-e), 52, or 52(a).

LEGAL AUTHORITY

Under PSL §168(7), "[f]ollowing any rehearing and any judicial review of the Board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent Board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate." For purposes of the subject compliance filings described here, the Siting Board's jurisdiction has ceased, as such, pursuant to 16 NYCRR §1002.2(f)⁴ the Commission has the jurisdiction to approve these compliance filings.⁵

Public Service Law §168(5) includes a delegation of authority to the Commission for compliance administration. That

⁴ "Compliance filings will not be effective until approved by the Board or by the Commission after the Board's jurisdiction has ceased."

⁵ Specifically, PSL §168(7) states that "[f]ollowing any rehearing and any judicial review of the board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate."

section states "[t]he department [of Public Service] or the [Public Service] Commission shall monitor, enforce and administer compliance with any terms and conditions set forth in the [Siting] board's order [Order Granting Certificate of Environmental Compatibility and Public Need]."

The Siting Board's regulation at 16 NYCRR §1002(1), establishes procedures and requirements for a certificate holder to comply with the "terms, conditions, limitations, or modifications of the construction and operation of the facility authorized in the certificate." The regulation at 16 NYCRR §1002.2 describes the procedures that a certificate holder must comply with, including filing requirements and notice procedures, and outlines the jurisdiction of the Siting Board and the Commission in approving compliance filings. The regulation at 16 NYCRR §1002.2(b) establishes that a phased approach to compliance filings can occur so long as the "applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased."

Pursuant to 16 NYCRR §1002.3, a certificate holder is required to submit "(a) a description of and citation to the requirement in a certificate or an order for which compliance is to be demonstrated; (b) a description of how the applicant will comply with the requirements of the certificate or order; and (c) final maps, plans, diagrams, drawings, studies, reports or other documents demonstrating compliance." Under 16 NYCRR §1002.2(g), the Siting Board, or the Commission if the Siting Board's jurisdiction has ceased, may approve compliance filings subject to specified terms, conditions, limitations, or modifications. Finally, pursuant to 16 NYCRR §1002.2(i), the standard of review for compliance filings shall be whether the

"compliance filing reasonably assures compliance with the Certificate."

DISCUSSION

Condition 50(a-e)

Pursuant to Certificate Condition 50(a-e), the Certificate Holder filed Compliance Filing 50(a-e), the Exterior Lighting Plan for the construction of the O&M building, on June 28, 2022. The filing includes the manufacturer specifications and plans showing the location/elevation details for the exterior lights to be used at the O&M building. Department of Public Service (DPS) Staff advises that the Certificate Holder's Compliance Filing 50(a-e) satisfies the requirements of Certificate Condition 50(a-e).

Accordingly, the Commission finds that the Exterior Lighting Plan reasonably assures compliance with Certificate Conditions 50(a-e) of the Certificate Order and is approved for the purpose of O&M building construction.

Condition 52

Pursuant to Certificate Condition 52, the Site Engineering and Environmental Plan (SEEP) was filed and supplemented for the purpose of construction of the Project's O&M building. Required filings of Certificate Condition 52 were submitted on June 9, 2022. The SEEP was supplemented on June 28, 2022, to include the Exterior Lighting Plan for the O&M building as required by Certificate Conditions 50(a-e) as discussed above.

Accordingly, the Commission finds that the SEEP filings, as filed and supplemented, reasonably assure compliance with Certificate Condition 52 of the Certificate Order for the purpose of O&M building construction.

Condition 52(a)

Pursuant to Certificate Condition 52(a), the site plans and profile drawings were filed for the purpose of construction of the Project's O&M building. The site plans and profile drawings were filed on June 9, 2022. DPS Staff advises that the Certificate Holder's Compliance Filing 52(a) satisfies the requirements of Certificate Condition 52(a).

Accordingly, the Commission finds that the site plans and profile drawings, as filed, reasonably assure compliance with Certificate Condition 52(a) of the Certificate Order for the purpose of O&M building construction.

CONCLUSION

The Commission finds that Compliance Filings 50(a-e), 52, and 52(a) as filed and/or supplemented, reasonably assure compliance with the corresponding Certificate Conditions in the Certificate Order and are approved for the purposes detailed below. Additional Compliance Filings will be required for future phases of construction.

The Commission orders:

1. Compliance Filing 50(a-e) as filed by Baron Winds, LLC on June 28, 2022, pursuant to Condition 50(a-e), is approved for the purpose of O&M building construction.

2. The Site Engineering and Environmental Plan (SEEP) as filed by Baron Winds, LLC on June 9, 2022, and supplemented on June 28, 2022, pursuant to Condition 52, is approved for the purpose of O&M building construction.

3. Compliance Filing 52(a) as filed by Baron Winds, LLC on June 9, 2022, pursuant to Condition 52(a), is approved for the purpose of O&M building construction.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary