

NEW YORK STATE BOARD ON ELECTRIC  
GENERATION SITING AND THE ENVIRONMENT

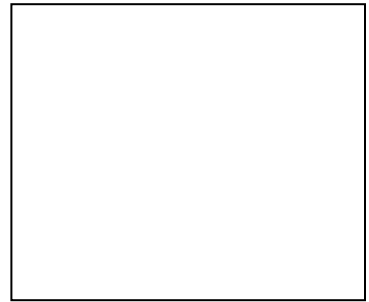
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Application of Baron Winds LLC for  
a Certificate under Article 10 of the Public Service Law

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Case No. 15-F-0122

REBUTTAL TESTIMONY OF  
BENJAMIN R. BRAZELL  
PRINCIPAL  
ENVIRONMENTAL DESIGN & RESEARCH,  
LANDSCAPE, ARCHITECTURE, ENGINEERING  
& ENVIRONMENTAL SERVICES, D.P.C.  
217 MONTGOMERY STREET, SUITE 1000  
SYRACUSE, NEW YORK, 13202



1    **Q:    Please state your name, employer, and business address.**

2    A:    Benjamin R. Brazell, Environmental Design & Research, Landscape, Architecture,  
3           Engineering & Environmental Services, D.P.C. (EDR), 217 Montgomery Street, Suite 1000,  
4           Syracuse, NY 13202-1942.

5    **Q:    Did you file pre-filed testimony in this matter?**

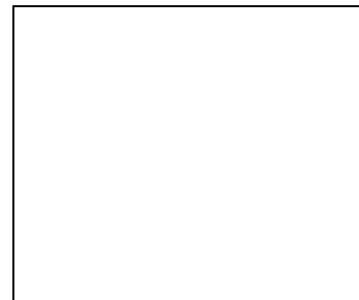
6    A:    Yes.    Please see attached as Exhibit \_\_\_\_ (BRB-1) my pre-filed testimony and  
7           credentials.

8    **Q:    Do you have any additional experience conducting environmental impact**  
9           **assessments for wind power projects in New York State and elsewhere since filing**  
10          **your pre-filed testimony that you would like to add?**

11   A:    Yes. Specific to New York State, I am serving as Principal-in-Charge of the Bluestone Wind  
12          Farm (Case No. 16-F-0559), and the Article 10 Application for this project was found to  
13          comply with PSL 164 on December 27, 2018. Elsewhere, I am serving as Principal-in-  
14          Charge and recently prepared testimony for the Icebreaker Wind Project, the testimony for  
15          which was filed with the Ohio Power Siting Board (OPSB) in September 2018 (OPSB Case  
16          No. 16-1871-EL-BGN).

17   **Q:    What is the purpose and scope of your testimony in this proceeding?**

18   A:    To provide rebuttal testimony for certain environmental impacts associated with the Baron  
19          Winds Project (“Project” or “Facility”), proposed by Baron Winds LLC (the “Applicant”).  
20          Specifically, this rebuttal addresses certain portions of direct testimony provided by Scott



1 Jones from the New York State Department of Environmental Conservation (“NYSDEC”)  
2 and Lilly Schelling from the New York State Department of Public Service (“NYSDPS”).

3 **Q. Are you sponsoring any additional evidence with your testimony?**

4 A. Yes. The following additional documents are included as part of my testimony.

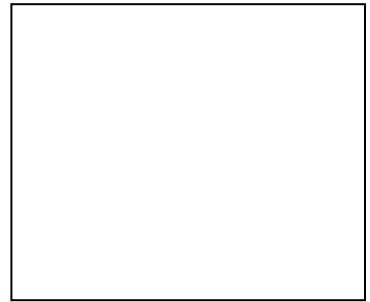
- 5 - Exhibit \_\_\_\_ (BRB-2): Applicant IR-4 to NYSDEC  
6 - Exhibit \_\_\_\_ (BRB-3): NYSDEC Freshwater Wetlands Determination Issued in  
7 November 2017.  
8 - Exhibit \_\_\_\_ (BRB-4): Applicant’s Joint Application for Permit wetland and stream  
9 detailed impact drawings (Figure 6. Federal  
10 Wetland/Stream Impacts; Figure 7. State Regulated  
11 Impact; Figure 8. Culvert Crossing Details)

12 Wetlands and Streams

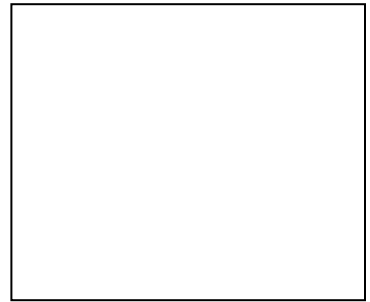
13 **Q: Can you briefly describe where in the record information can be found regarding the**  
14 **Facility’s impacts to wetlands and streams?**

15 A: A significant amount of information is in the record regarding the identification of wetlands  
16 and streams and an evaluation of impacts on such resources. This information is briefly  
17 summarized as follows:

- 18 • Exhibit 22 of the November 2017 Application identifies wetland resources and  
19 discusses wetlands impacts,  
20 • Exhibit 22, Table 22-8 (Wetland Impacts) of the November 2017 Application,



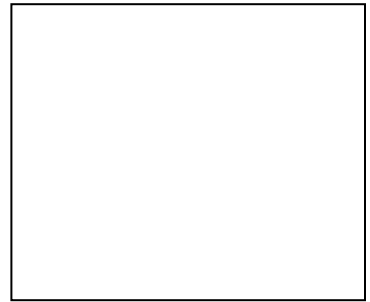
- 1           • Exhibit 22, Figure 22-2 of the November 2017 Application depicts delineated
- 2           wetlands,
- 3           • Exhibit 23 of the November 2017 Application identifies stream resources and
- 4           discusses stream impacts,
- 5           • Exhibit 23, Table 23-3 (Impacts to Streams) of the November 2017 Application,
- 6           • Exhibit 23, Figure 23-3 of the November 2017 Application depicts surface waters,
- 7           including delineated streams,
- 8           • Appendix M of the November 2017 Application contains detailed Preliminary Design
- 9           Drawings that includes wetland and stream resources,
- 10          • Appendix BBB of the November 2017 Application contains the Wetland Delineation
- 11          Report,
- 12          • Appendix CCC of the November 2017 Application contains detailed Wetland and
- 13          Stream Impact Drawings,
- 14          • Appendix EEE of the November 2017 Application contains photographs of existing
- 15          access examples, which depict and briefly describe some areas where
- 16          wetland/stream resources will be avoided or impacts will be minimized,
- 17          • An updated Wetland Delineation map set (Figure 22-2) and associated
- 18          memorandum was filed on August 2, 2018 as a supplement to the Application,



- 1                   • An update to Table 22-8 (Wetland Impacts) reflecting updates to the Project layout  
2                   was included in the February 2019 Application Update,  
3                   • An update to Table 23-3 (Impacts to Streams) reflecting updates to the Project  
4                   layout was included in the February 2019 Application Update,  
5                   • Updated Figure 22-2 of the February 2019 Application Update depicts delineated  
6                   wetlands based on the updated Project layout,  
7                   • Updated Figure 23-3 of the February 2019 Application Update depicts surface  
8                   waters, including delineated streams, based on the updated Project layout.  
9                   • Following review of the Direct Testimony of Scott Jones, Applicant IR-4 was served  
10                  on the NYSDEC on February 28, 2019 (Exhibit \_\_\_\_ (BRB-2)), and the NYSDEC  
11                  has not provided a response.

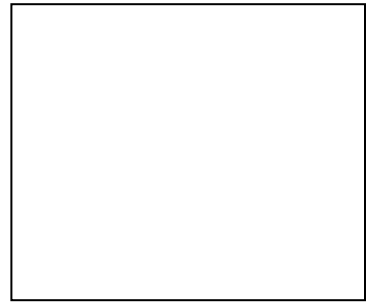
12   **Q: Can you describe how wetland and stream resources were identified within the**  
13   **Facility Site?**

14   A: Yes. Investigations were first conducted in the summer of 2016, associated with an initial  
15   Facility layout provided by the Applicant, which included a total of 120 turbines. In support  
16   of these investigations, EDR created a set of field maps (depicting the preliminary location  
17   of Project components along with mapped wetlands and streams on aerial base mapping)  
18   and conducted reconnaissance-level field investigations of the initial layout. EDR provided  
19   the results of our field investigations to the Applicant, along with specific layout/component  
20   alignment changes that were recommended to avoid/minimize impacts to resources such as



wetlands and streams. Subsequently, wetland and stream delineations were conducted by EDR personnel during the fall of 2016 and the spring/summer of 2017, in accordance with the three-parameter methodology described in the U.S. Army Corps of Engineers (Corps) *Wetland Delineation Manual* (Environmental Laboratory, 1987), and further described by the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: North Central and Northeastern Region* (USACE, 2012). Wetland boundaries were defined in the field by sequentially numbered pink surveyor's flagging marked "wetland delineation," the locations of which were documented using Global Positioning System (GPS) technology with sub-meter accuracy. The results of the on-site wetland delineations are summarized in Exhibit 22 of the November 2017 Application, the results of the stream delineations are summarized in Exhibit 23 of the November 2017 Application, and the results of the total delineation effort (both wetlands and streams) is further detailed in the stand-alone Wetland Delineation Report, which was included as Appendix BBB to the November 2017 Application. Additional wetland boundary flagging was conducted during the 2018 growing season, and as a result Figure 22-2 (Wetland Delineations) was updated and filed as a supplement to the Application on August 2, 2018.

**Q: Did representatives from the NYSDEC conduct site visits of the Facility to review wetland and stream delineations?**



1 A: Yes. Following receipt of maps depicting the results of wetland and stream delineations, on  
2 August 30, 2017, Steven Miller, Biologist with the NYSDEC Region 8 office, conducted a  
3 site visit with EDR personnel.

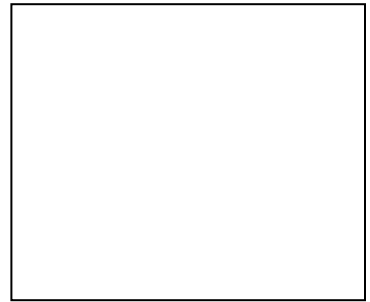
4 **Q: Were other NYSDEC representatives present during the August 30, 2017 site visit that**  
5 **was conducted specifically to review wetland and stream delineations?**

6 A: No. However, the direct testimony of Scott Jones indicates that he personally conducted a  
7 site visit on August 30, 2017 (Jones Testimony P 4, L 18; P 17, L 14). As discussed more  
8 below, not only was Mr. Jones not present at the August 30, 2017 site visit, contrary to his  
9 testimony, but also, the Jones testimony is not consistent with the observations made by the  
10 DEC personnel at site visit on August 30, 2017 and the NYSDEC Freshwater Wetlands  
11 Determination included as Exhibit \_\_\_\_ (BRB-3).

12 **Q: Did the August 30, 2017 site visit with Steven Miller, Biologist Region 8, result in a**  
13 **NYSDEC determination of wetland and stream jurisdiction?**

14 A: Yes. The NYSDEC issued a Freshwater Wetlands Determination in November 2017,  
15 included as Exhibit \_\_\_\_ (BRB-3), which identified State-regulated wetlands and streams  
16 associated with the Facility. Specifically, the Freshwater Wetlands Determination indicated  
17 NYSDEC jurisdiction over the following resources:

- 18 • NYSDEC Wetland HK-3
- 19 • NYSDEC Wetland HK-8



- 1           • NYSDEC protected stream Seeley Creek north of State Route 21 near Conderman
- 2           Road, and its tributaries along Canfield Road (the Freshwater Wetlands Determination
- 3           specifically noted that the headwaters of the tributary to Seely Creek located north of
- 4           Canfield Road does not extend into the Facility Study Area).
- 5           • NYSDEC protected stream unnamed tributary (UT) to the Cohocton River north of State
- 6           Route 21.
- 7           • NYSDEC protected stream UT to the Cohocton River north of Gruber Road.

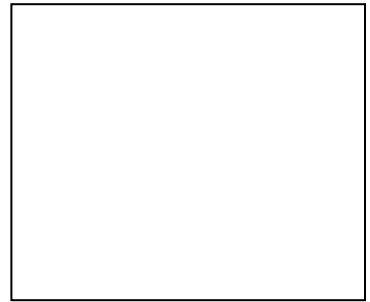
8   **Q: Is the Direct Testimony of Scott Jones consistent with the NYSDEC Freshwater**  
9   **Wetlands Determination with respect to wetlands?**

10 A: No. Mr. Jones identified an additional NYSDEC wetland (wetland HK-4) (P 18, L 1-3) not  
11 included in the NYSDEC Freshwater Wetlands Determination. However, no impacts to this  
12 wetland or 100-foot adjacent area have been proposed or are anticipated.

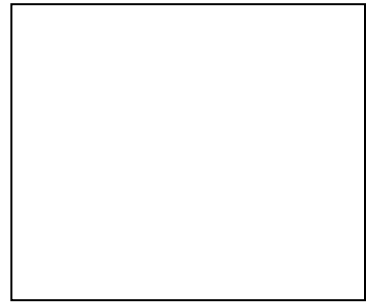
13 **Q: Are there other aspects of the Direct Testimony of Scott Jones relating to wetlands**  
14 **that you have concerns with?**

15 A: Yes. Mr. Jones indicates that the Project as proposed does not avoid State-regulated  
16 wetlands and adjacent areas (P 18, L 12-14). This statement is incorrect. As set forth in the  
17 February 2019 Application Update, the Project will not temporarily or permanently impact  
18 any State-regulated wetlands, and would only result in 0.05 acre of temporary impact to a  
19 State-regulated Adjacent Area and 0.34 acre of permanent forest conversion within a State-  
20 regulated Adjacent Area (both associated with a HDD bore pit for installation of buried





1       electrical collection under State Wetland HK-3). Subsequent to the February 2019  
2       Application Update, additional engineering and impact avoidance/minimization has taken  
3       place, which has reduced these impacts to 0.03 acre of temporary impact and 0.07 acre of  
4       permanent forest conversion, as depicted on Figure 7, Sheet 6.3 of Exhibit \_\_\_\_ (BRB-4).  
5       Based on the detailed impact drawings included in Exhibit \_\_\_\_ BRB-4, temporary and  
6       permanent wetland impacts will only occur in USACE-regulated wetlands and total only 0.27  
7       acre and 0.10 acre, respectively. In my experience, this is a very small amount of wetland  
8       impacts, particularly for a 242 MW project containing up to 69 turbines. In designing the  
9       Project layout, the Applicant continuously assessed the potential impact of Project  
10      components on wetlands and other sensitive resources and endeavored to avoid those  
11      impacts where possible. As indicated in Exhibit 9 of the November 2017 Application, "Field  
12      reconnaissance and associated analysis conducted on the 120-turbine layout determined  
13      that wetland impacts would be significantly greater under this scenario. In order to  
14      approximate the impacts associated with this early 120-turbine layout, the location of  
15      wetlands were estimated based on field notes taken during the reconnaissance level site  
16      review, and standard impact assumptions were applied to the various project components.  
17      This analysis resulted in approximately 68 acres of temporary wetland impact and 11.5 acres  
18      of permanent wetland impact associated with the initial 120-turbine layout. See Exhibit 22  
19      of this Application for more detailed information on impacts to wetlands from the proposed  
20      Facility, which have been significantly reduced..."



1       Where crossing wetlands could not be avoided, the Applicant has proposed impact  
2       avoidance measures that are clearly described in the record. For instance, the February  
3       2019 Application Update, when discussing wetland impacts in Exhibit 22(m), states “It is  
4       currently anticipated that wetland HK-3 will be crossed by underground electrical collection,  
5       using HDD installation. Therefore, no direct impacts to this wetland are anticipated during  
6       construction or operation...” In addition, the February 2019 Application Update, when  
7       discussing wetland impact avoidance and minimization in Exhibit 22(n), states “...HDD  
8       installation will be used where buried interconnect crosses forested wetlands and NYSDEC-  
9       protected streams, and buried interconnect is the only component crossing such features.”  
10      Therefore, the Applicant anticipates using HDD installation as practicable to avoid/minimize  
11      impacts.

12      **Q:    Are there additional inaccuracies in the Direct Testimony of Scott Jones with respect**  
13      **to wetlands?**

14      A:    Yes. With respect to Article 24 permitting standards, Mr. Jones states that such permitting  
15      standards have not been met because the Applicant needs to submit plans and  
16      specifications detailing how wetland impacts would be avoided, and if unavoidable, mitigated  
17      through a properly designed construction plan, including a frac-out risk assessment and  
18      contingency plan, and a Stormwater Pollution Prevention Plan (P 20, L 9-13). However, as  
19      previously stated detailed wetland and stream impact drawings were prepared and provided  
20      as Appendix CCC of the November 2017 Application. These impacts are based on the



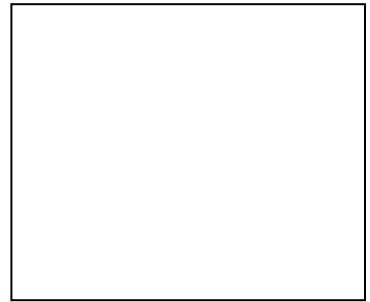
1 preliminary engineering assessment and associated limits of disturbance defined in relation  
2 to the Preliminary Design Drawings provided as Appendix M of the November 2017  
3 Application. All resulting impacts are quantified in Appendix CCC and also in Table 22-8  
4 (Wetland Impacts) of Exhibit 22. Avoidance and minimization measures were discussed  
5 and described in Exhibit 22(n). In addition, the November 2017 Application contained a Draft  
6 Inadvertent Return Plan for directionally drilled installations (Appendix JJ) and a Preliminary  
7 Stormwater Pollution Prevention Plan (Appendix II). Therefore, the information that Mr.  
8 Jones identifies as outstanding was, in fact, included with the Application.

9 **Q: Do you believe the Project as proposed meets the standards for permit issuance**  
10 **under ECL Article 24?**

11 A: Yes. Based on the identification of resources, analyses associated with avoidance and  
12 minimization, quantification of temporary and permanent impacts (as summarized above),  
13 and identification of appropriate mitigation measures.

14 **Q: Is the Direct Testimony of Scott Jones consistent with the NYSDEC Freshwater**  
15 **Wetlands Determination with respect to State-regulated waterbodies (i.e., protected**  
16 **streams)?**

17 A: No. Mr. Jones indicates that a Class A state-protected stream (referenced by Mr. Jones as  
18 stream PA-3-57-5-49-9-2) was not delineated or mapped by the Applicant and this stream  
19 will be impacted by the access road and electrical collection line between turbines 76 and  
20 87 (P 19, L 10-14). However, during on-site delineations EDR personnel investigated the

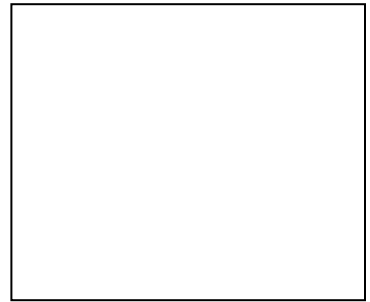


1 access road/collection line corridor between proposed turbines 76 and 87 and determined  
2 no wetlands or streams were present along this corridor. Regardless, because a state-  
3 protected stream is mapped in this location EDR personnel specifically visited this area with  
4 Mr. Miller, during the August 30, 2017 site visit, and it was confirmed that no stream was  
5 present. As stated above, Mr. Jones was not present during this site visit. The NYSDEC  
6 documented the confirmation that a stream does not exist in this location in the attached  
7 Freshwater Wetlands Determination, which on page 2 states “the headwaters of the tributary  
8 to Seely Creek located north of Canfield Road does not extend into the Facility Study Area.  
9 (Exhibit \_\_\_\_ (BRB-3 at P 2).

10 **Q: With respect to this stream, do you believe that the Direct Testimony of Scott Jones**  
11 **is inaccurate?**

12 A: Yes. As indicated above, site-specific delineations were conducted by EDR personnel  
13 during the fall of 2016 and the spring/summer of 2017, this location was specifically  
14 investigated, and during the site-specific delineations it was concluded that there is no  
15 stream located along the access road/collection line corridor between proposed turbines 76  
16 and 87. This conclusion was confirmed with NYSDEC Region 8 biologist Steven Miller  
17 during the August 30, 2017 site visit, and subsequently documented in the NYSDEC  
18 Freshwater Wetlands Determination (see Exhibit \_\_\_\_ BRB-3).

19 **Q: Does this inaccuracy have any implications for the Direct Testimony of Scott Jones?**



1     A:     Yes. With respect to meeting permitting standards associated with Article 15 and 6 NYCRR  
2           Part 608, Mr. Jones states that the Applicant has not demonstrated that it considered  
3           reasonable alternatives to the access road/collection line between turbines 76 and 87, and  
4           has not quantified the direct and indirect impacts to this stream (P 20, L 5-9). With respect  
5           to meeting water quality standards associated with Environmental Conservation Law (ECL)  
6           Article 15, Title 5, Mr. Jones states that the Applicant has failed to minimize impacts to Class  
7           A protected stream PA-3-57-5-49-9-2 (P 20, L 16-19). With respect to meeting standards  
8           for permit issuance associated with 6 NYCRR Part 608.8 (Protection of Waters) Mr. Jones  
9           indicates that the Project as proposed does not meet its statutory and regulatory burden (P  
10          21, L 14-18). Lastly, with respect to Article 15, Part 608, Mr. Jones states that the Project  
11          as proposed does not meet water quality standards (P 21, L 19-20; P 22, L 1-2).

12     **Q:     Are those portions of the Direct Testimony of Mr. Jones referenced immediately above**  
13           **accurate?**

14     A:     No. According to his Direct Testimony, Mr. Jones's basis for the Project not meeting the  
15           various standards for permit issuance associated with Article 15 and 6 NYCRR Part 608 are  
16           based on an incorrect claim that the Class A stream PA-3-57-5-49-9-2 was not delineated  
17           and will incur impacts. However, as stated above, this stream is not present in the location  
18           where Mr. Jones claims impacts will occur. This lack of presence was confirmed in the field  
19           by NYSDEC Biologist Mr. Miller and documented in the NYSDEC Freshwater Wetlands  
20           Determination (Exhibit \_\_\_\_, BRB-3).



1    **Q:    Do you believe that the proposed Project meets the various standards for permit**  
2           **issuance associated with ECL Article 15 and 6 NYCRR Part 608?**

3    A:    Yes. If the Siting Board ignores the portion of the Jones' Testimony that is erroneously  
4           based on the existence of a Class A stream to be crossed by Project components, the  
5           Application meets all applicable standards for issuance of an ECL Article 15 permit.

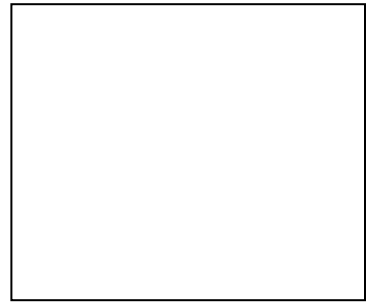
6    **Q:    Have you reviewed the proposed certificate conditions included in the Direct**  
7           **Testimony of Scott Jones?**

8    A:    Yes.

9    **Q:    Does the Direct Testimony of Scott Jones include proposed certificate conditions**  
10          **related to wetlands and streams?**

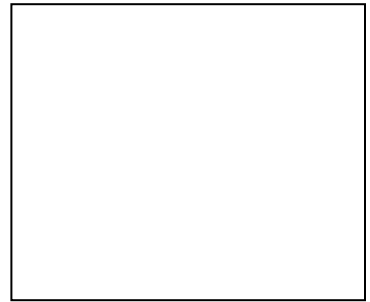
11   A:    Yes. It should first be noted that essentially all conditions proposed by the NYSDEC in the  
12          Direct Testimony of Scott Jones have already been addressed by conditions proposed by  
13          the Applicant and provided to the parties, as reflected in Exhibit \_\_\_\_ (SPP-2) of the Direct  
14          Testimony prepared by the DPS Staff Panel Policy. As such, the Applicant requests that the  
15          language set forth in the Staff Panel Policy Exhibit \_\_\_\_ (SPP-2) supersede similar language  
16          proposed by the NYSDEC. Generally, the Applicant is in agreement with the proposed  
17          conditions included in the Direct Testimony of Scott Jones with the exception of the following:

- 18           • The Certificate Holder must submit a "Stream Crossing Plan (Cables)  
19           that...addresses the following:



- 1                   ○ Site-Specific Constructability Assessment...shall include a detailed  
2                   analysis of the site-specific conditions that lead to the conclusion that all  
3                   trenchless crossing methods are not constructible or not feasible at the  
4                   particular stream crossing (Jones Testimony P26, L15-20). Trench Stream  
5                   Crossing Assessment...a site-specific trench crossing assessment must be  
6                   conducted.” (Jones Testimony P27, L1-9).

7                   **Response:** As previously indicated, the Article 10 record contains a significant  
8                   amount of information regarding the Applicant’s identification of resources and  
9                   proposed impact avoidance and minimization (e.g., Appendix CCC of the  
10                  November 2017 Application contains detailed Wetland and Stream Impact  
11                  Drawings, Table 23-3 (Impacts to Streams) of the November 2017 Application,  
12                  an update to Table 23-3 (Impacts to Streams) in the February 2019 Application  
13                  Update). As such, the Applicant has already conducted all analyses necessary  
14                  to identify proposed impacts to streams. Most recently, in support of the Joint  
15                  Application for Permit (JAP) to be submitted to the U.S. Army Corps of  
16                  Engineers (Corps) and Siting Board in relation to Section 404 and 401 of the  
17                  Clean Water Act, the Applicant has further advanced engineering and quantified  
18                  impacts to streams and wetlands. The Applicant anticipates submitting the JAP  
19                  to the Corps and the Siting Board in March 2019, and in support of the JAP the  
20                  Applicant has updated detailed wetland and stream impact drawings, which are

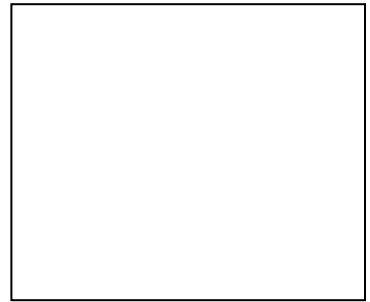


1 included with this rebuttal as Exhibit \_\_\_\_ (BRB-4). These plans indicate where  
2 the Applicant intends on using HDD (trenchless) crossing methodology and  
3 where the Applicant intends on installing buried electrical collection lines  
4 through use of a trench.

- 5 ○ For all trench crossings a site-specific Vertical Adjustment Potential (VAP)  
6 analysis and Lateral Adjustment Potential (LAP) for each stream crossing  
7 not located in bedrock...The “Exposure of Cable by Stream Report” shall  
8 be conducted by a certified and qualified engineer licensed to work in New  
9 York and must include all calculations associated with the VAP and LAP...  
10 (Jones Testimony P 27, L 10-21).

11 **Response:** This is a very unusual condition, which EDR has not previously  
12 seen associated with any permits issued for wind power projects. A condition  
13 similar to this was originally proposed by the NYSDEC in direct testimony  
14 prepared for Case No. 14-F-0490 (Cassadaga Wind); however, the respective  
15 condition was mistakenly taken by NYSDEC from a permit associated with a  
16 pipeline facility (NYSDEC’s proposed condition in this case called for  
17 preparation of an “Exposure of Pipe by Stream Report” by a New York State-  
18 licensed engineer that includes a Vertical Adjustment Potential [VAP] analysis  
19 and a Lateral Adjustment Potential [LAP] analysis). For a pipeline facility that  
20 has the potential to release pollutants/hazardous material directly into streams,

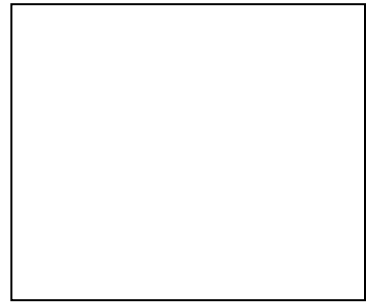




1 this may be a reasonable condition. However, any exposure of buried electrical  
2 cables associated with the proposed Baron Winds Facility will not present a risk  
3 of releasing pollutants into streams. Additionally, the Siting Board rejected  
4 NYSDEC's proposed condition and did not impose a VAP/LAP condition in  
5 Case No. 14-F-0490. It is my opinion that it is not an appropriate condition in  
6 this proceeding. Please also note that the Application contains typical civil  
7 details, including a Collection Line Cable Trench detail, which indicates a typical  
8 minimum burial depth, typical compaction of material above the buried cable,  
9 etc. (see Sheet C-601 of Appendix M of the November 2017 Application).

- 10 ○ A Wetland Crossing Plan (Cables) shall be submitted and include the  
11 following information... (Jones Testimony P 29, L 1-15).

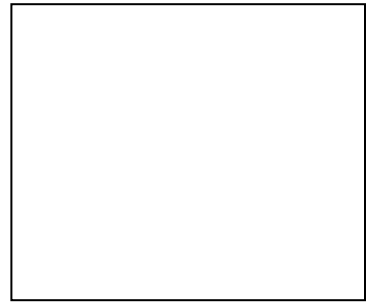
12 **Response:** Consistent with to the response above associated with the  
13 proposed "Stream Crossing Plan (Cables)", the Applicant anticipates submitting  
14 the JAP to the Corps and the Siting Board in March 2019, and in support of the  
15 JAP the Applicant has updated detailed wetland and stream impact drawings,  
16 which are included with this rebuttal as Exhibit \_\_\_\_ (BRB-4). These plans  
17 indicate where the Applicant intends on using HDD (trenchless) crossing  
18 methodology and where the Applicant intends on installing buried electrical  
19 collection lines through use of a trench. Please also note that Exhibit \_\_\_\_  
20 (SPP-2) of the Direct Testimony prepared by the DPS Staff Panel Policy allows



1 for installing buried cable in wetlands through use of a trench. Specifically, DPS  
2 Staff Panel Policy proposed condition 107 identifies the requirements that must  
3 be met associated with trench installation in wetlands, and the Applicant is  
4 agreeable to all such requirements.

- 5 ○ The Certificate Holder shall notify the NYSDEC Region 8 Supervisor of  
6 Natural Resources via e-mail one week prior to the start of (i) ground  
7 disturbance in each state-regulated wetland or adjacent area, or (ii) any  
8 clearing within 100 feet of streams and/or installation of temporary or  
9 permanent stream crossing for access or travel routes (Jones Testimony  
10 P29, L16-21).

11 **Response:** The proposed condition required individual notifications prior to  
12 each individual activity associated with stream/wetland crossings. Rather than  
13 multiple individual notifications, the Applicant proposes the following condition:  
14 “The Certificate Holder shall submit a Notice of Intent to Commence Work to  
15 the Region 8 Supervisor of Natural Resources, DEC Region 8 Headquarters,  
16 6274 E. Avon-Lima Road, Avon, NY 14414-9519, the NYSDEC Chief of the  
17 Major Project Management, Division of Environmental Permits, 625 Broadway,  
18 Albany , and NYS DPS at least 72 hours in advance of the commencement of  
19 construction and shall also notify them within 10 business days in writing of the  
20 completion of work.”

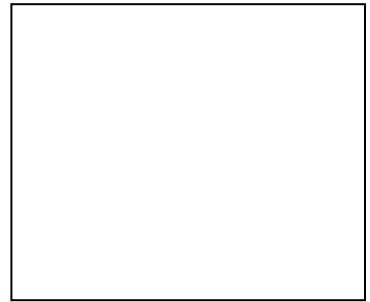


- 1                   ○ Fuel or other chemical storage tanks shall be contained and located at all  
2                   times in an area greater than 300 feet landward of the regulated wetland...  
3                   (Jones Testimony P 31, L 11-16).

4                   **Response:** The Applicant supports the more specific language set forth in the  
5                   Exhibit \_\_\_\_ (SPP-2) of the Direct Testimony prepared by the DPS Staff Panel  
6                   Policy. Specifically, DPS proposed Condition 99 requires “Fuel or other  
7                   chemical storage containers shall be located at least 100 feet from wetlands  
8                   and waterbodies.”

- 9                   ○ In areas containing amphibian breeding areas, work in wetlands and  
10                  adjacent areas should not occur during the peak amphibian breeding  
11                  season (April 1 to June 15) (Jones testimony P 34, L 1-3).

12                  **Response:** There is no indication from NYSDEC that potential impacts to  
13                  amphibian breeding areas are an issue in this proceeding. Thus, the proposed  
14                  condition is unnecessary. As indicated in the Article 10 record (i.e., an update  
15                  to Table 22-8 [Wetland Impacts] in the February 2019 Application Update) this  
16                  Facility will result in only 0.12 acre of permanent wetland impact and 0.65 acre  
17                  of temporary wetland impact. This is extremely minor in comparison to the total  
18                  extent of wetland resource within the 500-foot wetland delineation study area  
19                  as depicted on Figure 22-2 of the February 2019 Application Update. In addition,  
20                  according to the Applicant this timeframe represents a critically important



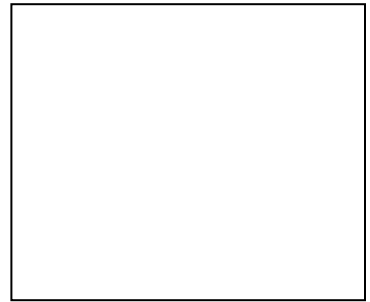
1 construction period over the course of the construction season, which will likely  
2 begin close to April 1 for access road construction followed by turbine pad and  
3 collection line installation. According to the Applicant, road building must begin  
4 in the early spring to allow for appropriate construction sequencing, culminating  
5 in turbine erection in mid-to late summer. Therefore, the Applicant is not  
6 agreeable to this condition.

- 7 ○ Before trenching occurs, upland sections of the trench shall be backfilled or  
8 plugged to prevent drainage of possible turbid trench water from entering  
9 the stream or wetland (Jones Testimony P 34, L 4-6).

10 **Response:** The Applicant prefers flexibility with respect to how turbidity will be  
11 controlled. As such, the Applicant supports the specific language set forth in  
12 DPS proposed Certificate Condition 103 of Exhibit \_\_\_\_ (SPP-2) of the Direct  
13 Testimony prepared by the DPS Staff Panel Policy.

- 14 ○ Wide-track or amphibious excavators shall be used for wetland installation  
15 (Jones Testimony P 34, L 19-20).

16 **Response:** This is in conflict with the following condition proposed by Mr.  
17 Jones: Swamp mats must be used in any regulated freshwater wetlands for  
18 construction activities (Jones Testimony P 35, L 15-16). Conditions associated  
19 with wetland installations should not restrict such installations to only wide-track



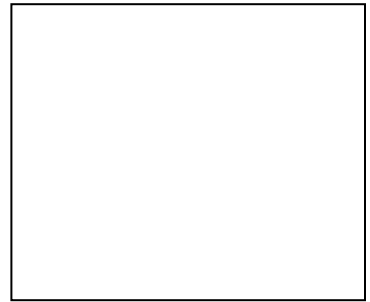
1 or amphibious excavators, and should not conflict with other conditions that  
2 allow for the use of timber mats/swamp mats.

- 3 ○ Disturbed areas will be monitored for 5 years following installation to assure  
4 an 85% cover of native species, unless the invasive species baseline  
5 survey indicates a smaller percentage of native species exists prior to  
6 construction (Jones Testimony P 38, L 1-4).

7 **Response:** The Applicant supports the specific language set forth in the Exhibit  
8 \_\_\_\_ (SPP-2) of the Direct Testimony prepared by the DPS Staff Panel Policy.  
9 Specifically, DPS proposed Condition 105 requires “monitoring shall continue  
10 until 80% cover of appropriate species has been reestablished...”

- 11 ○ Temporary stream crossings are not authorized at waterbodies utilizing  
12 trenchless pipeline installation techniques (Jones Testimony P 39, L 5-7).

13 **Response:** Given the fact that no pipelines are proposed in association with  
14 the Baron Winds Project, the Applicant requests clarification on this condition.  
15 Nevertheless, equipment crossing may be necessary, regardless of the use of  
16 trenchless installation, if multiple resources are located between a given access  
17 point (e.g. two or more streams are present along a section of collection line  
18 connecting project turbines).



- 1                   ○ Before trenching through stream banks occurs, upland sections of the  
2                   trench shall be backfilled or plugged to prevent drainage of possible turbid  
3                   trench water from entering the stream (Jones Testimony P 42, L 11-13).

4                   **Response:** The Applicant prefers flexibility with respect to how turbidity will be  
5                   controlled. As such, the Applicant supports the specific language set forth in  
6                   DPS proposed Condition 103 of Exhibit \_\_\_\_ (SPP-2) of the Direct Testimony  
7                   prepared by the DPS Staff Panel Policy.

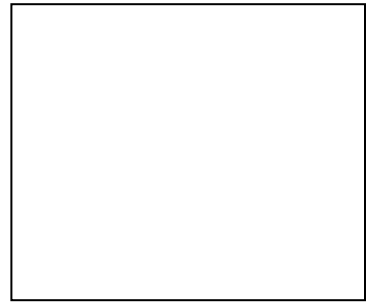
- 8                   ○ Width of the structure must be a minimum of 1.25 times (1.25X) width of the  
9                   mean high-water channel (Jones testimony P 48, L 1-2).

10                  Response: The Applicant prefers to include flexibility in this condition that may  
11                  be needed due to site-specific design constraints. As such, the Applicant  
12                  supports the specific language set forth in DPS proposed Condition 115(c) of  
13                  Exhibit \_\_\_\_ (SPP-2) of the Direct Testimony prepared by the DPS Staff Panel  
14                  Policy.

15   **Q: Have you reviewed the Direct Testimony of Lilly Schelling (NYSDPS)?**

16   A: Yes. In her Direct Testimony, Ms. Schelling describes her role in this case as being  
17       responsible for reviewing the Project's probable environmental impacts on terrestrial  
18       ecology, wetlands, and streams for NYSDPS (P 2, L 14-20).

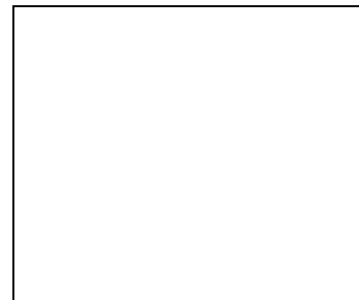
19   **Q: Does Ms. Schelling believe that all information necessary to show the probability of**  
20       **environmental impacts was provided by the Applicant?**



1 A: Yes. In her Direct Testimony Ms. Schelling indicates that the Applicant adequately  
2 performed studies to show the probability of environmental impacts (P 3, L 11-13). When  
3 discussing avoidance, minimization, and mitigation Ms. Schelling states that “Based on the  
4 information provided in the Application and supplements, I believe the Applicant has done  
5 its due diligence to avoid, minimize and mitigate impacts in consultation with the NYSDEC...”  
6 (P 4, L 6-10). Further, Ms. Schelling states that “...the Application also proposes mitigation  
7 for any impacts that are unavoidable” (P 5, L 5-7). Lastly, with respect to mitigation, Ms.  
8 Schelling also indicates that the Applicant will prepare a wetland mitigation plan to address  
9 permanent wetland impacts in accordance with proposed ordering condition 65 (P 6, L 16-  
10 19). Recognizing the potential for further reductions of permanent wetland impacts for the  
11 Project, the Applicant agrees with this statement as the Project is currently proposed but  
12 indicates that additional impact avoidance could result in the Project reducing wetland  
13 impacts below 0.1 acre and may not require mitigation.

14 **Q: In her Direct Testimony, Ms. Schelling describes an alternate electrical collection**  
15 **route and her preference for the route that runs northeast from turbine 78. Do you**  
16 **agree with her opinion that this route is preferable?**

17 A: Yes. This collection route would ultimately connect the turbines in the southwestern portion  
18 of the Facility with the point of interconnect (POI) substation. Absent this route, the only  
19 other option identified to date runs between turbines 81 and 46, and this route has numerous  
20 constraints and engineering/construction challenges (i.e., a portion of this route would need



1 to be located between a state-protected stream and the right-of-way of Dereeves Road west  
2 of State Route 21, and subsequent bore pits/HDD crossings of a State-regulated  
3 stream/wetland complex on the east side of State Route 21).

4 Invasive Species

5 **Q: In her Direct Testimony, Ms. Schelling indicates that the Applicant conducted a**  
6 **baseline study of invasive species (included in Application Appendix MM). However,**  
7 **she indicates that the Applicant did not provide an updated invasive species survey**  
8 **for the alternate collection routes identified in the Application Update. Is this correct?**

9 A: Yes. A comprehensive invasive species baseline survey was conducted during the growing  
10 season of 2017 in association with the Facility layout as presented in the November 2017  
11 Application. In the February 2019 Application Update, alternate collection lines were  
12 identified in addition to minor Facility layout shifts/updates, as described in the Application  
13 Update Overview Section (b). These alternate collection lines and minor Facility  
14 shifts/updates were not subject to the baseline invasive species survey.

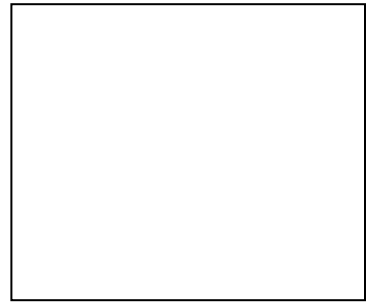
15 **Q: In relation to those portions of the Facility that were not subject to the baseline**  
16 **invasive species survey, Ms. Schelling indicates that the Applicant should perform a**  
17 **pre-construction invasive species survey. Do you agree with this recommendation?**

18 A: I agree that a pre-construction invasive species survey should be conducted in those  
19 portions of the Facility that were not subject to previous invasive species surveys. The results  
20 of these surveys will be depicted on the final plans developed for the Project.



Case No. 15-F-0122

Benjamin R. Brazell  
EDR

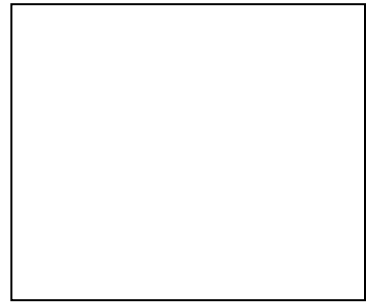


1    **Q:**    **Does this conclude your testimony?**

2    **A:**    Yes.

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EDR



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BRB-4 Applicant's Joint Application for Permit wetland and stream detailed impact drawings, 63

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