

BEFORE THE
STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

In the Matter of

Baron Winds LLC

Case 15-F-0122

March 24, 2023

Prepared Testimony of Staff
Environmental Panel:

Jeremy Flaum
Utility Supervisor
Office of Electric, Gas, and
Water

Chase Chaskey
Utility Analyst 3
(Environmental)
Office of Electric, Gas, and
Water

Jeremy Rosenthal
Utility Analyst 3
(Environmental)
Office of Electric, Gas, and
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Marcy Sammons
Utility Analyst 2
(Environmental)
Office of Electric, Gas and
Water

State of New York
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

1 Q. Please state the names, employer, and business
2 address of the Staff Environmental Panel.

3 A. Our names are Jeremy Flaum, Chase Chaskey,
4 Jeremy Rosenthal, and Marcy Sammons. We are
5 employed by the New York State Department of
6 Public Service (DPS or Department). Our
7 business address is Three Empire State Plaza,
8 Albany, New York 12223.

9 Q. Mr. Flaum, what is your position with the
10 Department?

11 A. I am employed as a Utility Supervisor in the
12 Environmental Certification and Compliance
13 Section of the Office of Electric, Gas and
14 Water.

15 Q. Please briefly describe your educational
16 background and professional experience.

17 A. I graduated from the State University of New
18 York College at Cortland in 2003 with a Bachelor
19 of Science degree in Geology. I also received a
20 Master of Science degree in Environmental
21 Management from the University of Maryland,

1 University College, in 2008. I joined the
2 Department in 2009. Prior to joining the
3 Department, I held Geologist positions at two
4 environmental consulting firms where I performed
5 field investigations, oversight, and data
6 analysis for multiple environmental remediation
7 sites.

8 Q. Please describe your responsibilities with the
9 Department.

10 A. My primary responsibilities include evaluating
11 environmental impacts and construction
12 feasibility issues for electric generating
13 facilities under Article 10 of the Public
14 Service Law (PSL) and electric and gas
15 transmission facilities under Article VII of the
16 PSL. Additionally, I have reviewed utility
17 property site contamination investigation and
18 remediation (SIR) matters and provided
19 recommendations for SIR cost recovery in utility
20 rate cases before the Public Service Commission
21 (Commission).

1 Q. Have you provided testimony in previous
2 proceedings before the New York State Board on
3 Electric Generation Siting and the Environment
4 (Siting Board)?

5 A. Yes. I provided testimony regarding geologic
6 and water resource impacts of proposed major
7 electric generation wind energy facilities in
8 Cases 14-F-0490, 15-F-0122, 16-F-0062, 16-F-
9 0328, 16-F-0559, 16-F-0205, 17-F-0282, and 16-F-
10 0267. I also testified as part of the Staff
11 Policy Panels for all of those cases, except 16-
12 F-0267, and as part of the Staff Panel in
13 Support of Settlement for Case 18-F-0262.
14 Further, I have submitted testimony as part of
15 the Staff Panel in Support of Settlement for
16 major solar electric generating facilities
17 proposed pursuant to PSL Article 10 in Cases 17-
18 F-0619, 17-F-0182, 17-F-0617, 17-F-0599, 17-F-
19 0597, 18-F-0087, 19-F-0366, 19-F-0299, and 20-F-
20 0043, and as part of the Staff Policy Panel in
21 Case 17-F-0598.

1 Q. Have you provided testimony in any other
2 proceedings as a member of Department Staff?

3 A. Yes. I have testified before the Commission as
4 part of Department Staff's SIR Panels for
5 numerous rate cases, including, most recently:
6 Cases 20-E-0380 and 20-G-0381, Niagara Mohawk
7 Power Corporation d/b/a National Grid; Cases 19-
8 G-0309 and 19-G-0310, KeySpan Gas East
9 Corporation and Brooklyn Union Gas Company; and
10 Cases 18-E-0067 and 18-G-0068, Orange and
11 Rockland Utilities, Inc. I have also testified
12 before the Commission regarding the water
13 quality issues and environmental impacts of
14 proposed major electric transmission projects in
15 Cases 08-T-0034 and 10-T-0139, and as part of
16 the Department Staff Panel in Case 18-T-0604.

17 Q. Mr. Chaskey, what is your position with the
18 Department?

19 A. I am a Utility Analyst III (Environmental), in
20 the Office of Electric, Gas and Water's
21 Environmental Certification and Compliance

1 section.

2 Q. Mr. Chaskey, please state your educational
3 background and professional experience.

4 A. I received a Master of Science in Environmental
5 Planning and Management from Johns Hopkins
6 University's Whiting School of Engineering in
7 December 2016 and a Bachelor of Arts in
8 Environmental Studies from Siena College in May
9 2006. Before joining the Department, I worked
10 for three and a half years at the New York State
11 Department of Transportation as an Environmental
12 Specialist I. I also have three years of prior
13 experience with the New York State Office of
14 Parks, Recreation and Historic Preservation as a
15 Water Quality Program Specialist. In 2018, I
16 started with the Department in the Office of
17 Electric, Gas and Water's Environmental
18 Certification and Compliance section. My
19 primary responsibilities include evaluating the
20 environmental impacts associated with siting,
21 construction, and operation of gas and electric

1 transmission lines under Article VII and
2 electric generation facilities under Article 10
3 of the PSL.

4 Q. Have you testified before the Commission or the
5 Siting Board previously?

6 A. Yes. I have testified and/or been involved with
7 wetland and surface water issues in numerous
8 Article 10 cases that include: Cases 16-F-0205,
9 16-F-0267, 16-F-0328, 16-F-0559, 17-F-0282, 17-
10 F-0597, 17-F-0599, 17-F-0617, 17-F-0619, 17-F-
11 0087, 17-F-0598, 18-F-0262, 19-F-0299, 19-F-
12 0366, and 20-F-0043.

13 Q. Please describe your role in this case and the
14 purpose of your testimony.

15 A. I am responsible for reviewing the Application
16 and evaluating the probable environmental
17 impacts from the construction, operation, and
18 maintenance of the proposed Project to
19 terrestrial ecology. My review is focused on
20 the potential impacts of the proposed Project on
21 wetlands and surface waters, including an

1 evaluation of proposed actions to avoid,
2 minimize and mitigate impacts to wetlands and
3 surface waters.

4 Q. Mr. Rosenthal, what is your position with the
5 Department?

6 A. I am employed by the Department as a Utility
7 Analyst 3 (Environmental), in the Office of
8 Electric, Gas and Water, Environmental
9 Certification and Compliance Section.

10 Q. Mr. Rosenthal, please state your educational
11 background and professional experience.

12 A. I received a Master of Public Administration
13 from the State University New York at Albany;
14 Rockefeller College of Public Affairs and Policy
15 in May 2005 with concentrations in Government
16 Fiscal Management and Environmental Management
17 and Policy. My undergraduate degree is a
18 Bachelor of Arts in Environmental Sciences from
19 the State University of New York, Plattsburgh
20 received May 1993. Before joining the
21 Department, I worked for four years as an

1 Environmental Analyst at the New York State
2 Department of Environmental Conservation. In
3 2009, I joined the Department's Office of Energy
4 Efficiency and the Environment and was assigned
5 to work on the Energy Efficiency Portfolio
6 Standard, Environmental Disclosure Program, and
7 related issues. In 2016, I transferred to my
8 current position in the Office of Electric, Gas
9 and Water, Environmental Certification and
10 Compliance Section. My primary responsibilities
11 include evaluating the environmental impacts
12 associated with siting, construction, and
13 operation of electric transmission facilities
14 under Article VII and electric generation
15 facilities filed under Article 10 of the Public
16 Service Law (PSL).

17 Q. Have you testified before the New York State
18 Public Service Commission (Commission) or the
19 Board on Electric Generation Siting and the
20 Environment (Siting Board)?

21 A. Yes, I have testified on threatened and

1 endangered species and local laws on several
2 Article 10 cases, either individually or as part
3 of a panel, including Case 15-F-0122, and most
4 recently in Cases 17-F-0598 and 20-F-0043.

5 Q. Ms. Sammons, what is your position with the
6 Department?

7 A. I am employed by the Department as a Utility
8 Analyst 2 (Environmental), in the Office of
9 Electric, Gas and Water, Environmental
10 Certification and Compliance Section.

11 Q. Please state your educational background and
12 professional experience.

13 A. I received a Bachelor of Science degree in
14 Landscape Architecture from Cornell University
15 in May 2002 and am a Registered Landscape
16 Architect with the State of New York.
17 Before joining the Department, I worked for
18 eleven years as a Landscape Architect at the New
19 York State Department of Transportation,
20 commencing service in 2006, where my work was
21 focused on Visualization and Visual Impacts in

1 the transportation field. In 2017, I joined the
2 Department's Office of Electric Gas and Water as
3 a Utility Analyst 2 (Environmental) in the
4 Environmental Certification and Compliance
5 Section. My primary responsibilities include
6 evaluating the visual impacts and mitigation
7 strategies associated with gas and electric
8 transmission facilities under Article VII and
9 electric generation facilities filed under
10 Article 10 of the PSL.

11 Q. Have you testified before the Commission or the
12 Siting Board?

13 A. No. However, I am currently involved in the
14 review of multiple PSL Article 10 cases and
15 affiliated PSL Article VII cases.

16 Q. Is the Panel sponsoring any exhibits to
17 accompany or support its testimony?

18 A. No.

19 Q. Please summarize the scope of the Panel's
20 testimony.

21 A. The Panel is presenting DPS Staff's overall

1 findings on the probable environmental impacts
2 associated with Baron Winds' proposed changes to
3 the previously certificated Project for its
4 Phase II Facility, as described in Joint
5 Petition of Baron Winds LLC and Baron Winds II
6 LLC for an Amendment to the Certificate of
7 Environmental Compatibility & Public Need for
8 the Baron Winds Project, filed with the
9 Secretary on September 6, 2022 ("Phase II
10 Amendment Petition"), as well as DPS Staff's
11 recommendations on the Petitioner's request to
12 seek a waiver from the Town of Fremont's local
13 law height provision, which limits turbine
14 heights to 500 feet.

15 Q. Please describe the Panel's review, and
16 summarize its understanding, of the Phase II
17 Amendment Petition.

18 A. We reviewed the Phase II Amendment Petition,
19 including the appendices. Baron Winds proposes
20 several changes to the previously approved
21 Facility design and layout, specifically for the

1 Phase II portion of the Project (i.e., the
2 "Phase II Facility"). As proposed in the Phase
3 II Amendment Petition, the Phase II Facility
4 would consist of up to 26 wind turbines, each
5 with a nameplate capacity of up to 4.5-megawatts
6 (MWs), along with associated access roads,
7 collection lines, and other facility components
8 previously approved in the Order Granting
9 Certificate of Environmental Compatibility and
10 Public Need, issued by the Siting Board on
11 September 12, 2019 ("Certificate Order"). The
12 proposed Phase II Facility, which will have a
13 capacity of up to 117 MW, is primarily within
14 the Town of Fremont, but also includes limited
15 segments of underground collection lines and
16 operations and maintenance facilities in the
17 Town of Wayland, and underground collection
18 lines and a collection substation in the Town of
19 Cohocton. The Phase II Amendment Petition
20 proposes several changes to the previously
21 approved layout and design, including

1 installation of taller turbines up to 650 feet
2 in height, shifting and elimination of several
3 turbine locations, two newly-proposed turbine
4 locations, a newly proposed collection
5 substation location, and revised layouts for
6 collection lines and access roads to accommodate
7 the revised turbine layout. Overall, the Phase
8 II Amendment Petition proposes the installation
9 of higher capacity, taller turbine models,
10 elimination of ten turbine locations, the
11 addition of two new turbine locations, and
12 numerous facility component modifications that
13 would result in the reduction of 1.5 miles of
14 access roads and 1.1 miles of collection lines.

15 Q. Will the proposed changes have an adverse impact
16 on wetlands and streams?

17 A. Upon review of the Phase II Amendment Petition,
18 DPS Staff does not expect the Project
19 modifications to result in any significant
20 increase to adverse environmental effects to
21 wetlands or streams. The Phase II Amendment

1 Petition states that the design changes in the
2 revised layout will result in a reduction of
3 both temporary and permanent wetland and stream
4 impacts. Impacts to wetlands in the Baron Winds
5 Phase II Facility have been minimized as
6 compared to the corresponding area of the
7 Certificated Baron Winds Project (i.e., Table
8 22-3, Appendix H). The reduction of temporary
9 wetland impacts represents a decrease of 2.796
10 acres and permanent wetland impacts would be
11 decreased 0.226 acre. Impacts to streams from
12 Baron Winds Phase II Facility have also been
13 minimized as compared to the corresponding area
14 of the Certificated Baron Winds Project (i.e.,
15 Table 23-1, Appendix H). Temporary stream
16 impacts would be decreased by 2,036 linear feet
17 and the reduction of permanent stream impacts
18 would be a decrease of 256 linear feet.

19 Q. Would the proposed changes to the Facility
20 design and layout result in any increase in
21 adverse impacts to cultural resources?

1 A. No. In support of its proposed changes to the
2 Phase II Facility, Baron Winds' consultant,
3 Environmental Design & Research, D.P.C, prepared
4 an Addendum Phase IB Archaeological Survey
5 Report for the Project. Following its review of
6 the report, the New York State Historic
7 Preservation Office (NYSHPO), by letter dated
8 September 22, 2022, indicated its concurrence
9 that based on Baron Winds' proposed avoidance
10 measures for specific sites identified in the
11 report, it has no remaining archaeological
12 concerns for the Phase II Facility and no
13 additional archaeological work is warranted.
14 Additionally, by letter dated October 6, 2022,
15 the NYSHPO further indicated that following its
16 review of the August 31, 2022 Supplemental
17 Historic Resources Effects Analysis, it concurs
18 that no additional historic resource surveys or
19 revisions are required, Baron Winds' proposed
20 additional mitigation plan is appropriate, and
21 that Baron Winds should move forward with

1 drafting of a Letter of Resolution (LOR) that
2 will memorialize the agreed upon mitigation
3 plan.

4 Q. Does the Panel have any recommendations with
5 respect to correspondences from NYSHPO?

6 A. Yes, we recommend that, prior to the
7 commencement of any construction activities for
8 the Phase II Facility, Baron Winds should file
9 with the Secretary a copy of the fully executed
10 LOR.

11 Q. Will construction and operation of the proposed
12 Phase II Project result in any significant new
13 or increased adverse impacts to wildlife
14 habitat, threatened or endangered species as
15 compared to the certificated Project?

16 A. The Siting Board assessed impacts to wildlife in
17 the Certificate Order before concluding that,
18 apart from impacts to bats and bald eagles, the
19 potential adverse impacts to wildlife and
20 habitat from the Facility's construction and
21 operation have been minimized or avoided to the

1 maximum extent practicable. The Phase II
2 Amendment Petition does not modify the Project
3 in any manner that should lead to a differing
4 conclusion. The amount of disturbed acreage
5 proposed in the Phase II Amendment Petition is
6 decreased compared to the Certificated Project,
7 and no new significant impacts are anticipated.
8 The Siting Board considered potential impacts
9 from the use of taller wind turbines to eagles
10 and bats in the Baron Winds Phase I Order
11 Approving Amendment issued and effective May 5,
12 2020. That discussion concluded that the use of
13 taller towers would not have a material effect
14 on risk to either eagles or bats. Those same
15 conclusions are equally applicable to the Phase
16 II Facility. Major points supporting this
17 conclusion include the facts that risk
18 assessment to eagles is based on multiple
19 factors other than turbine height and take
20 calculations for Northern Long-eared Bats are
21 based on per MW-rate, independent of turbine

1 design. As such, the proposed Project changes
2 are not anticipated to result in a significant
3 adverse increase in impacts to threatened and
4 endangered species, as compared to the
5 certificated Project.

6 Q. Would the Phase II Facility cause a significant
7 increase in shadow flicker impacts as compared
8 to the Certificated Facility?

9 A. Appendix B to the Phase II Amendment Petition
10 includes an updated Shadow Flicker Analysis.
11 According to the updated analysis, the proposed
12 Project modifications may result in two
13 additional receptors that are anticipated to
14 receive more than 30 hours of shadow flicker per
15 year, neither of which are located in the Town
16 of Fremont, if no mitigation measures were
17 implemented. However, DPS Staff notes that
18 Baron Winds will still be required to comply
19 with Certificate Condition 57, which establishes
20 a shadow flicker limit of 20 hours annually for
21 non-participating residents in the Town of

1 Fremont, and 30 hours annually for non-
2 participating residents in other municipalities.
3 No changes to these limits are proposed in the
4 Phase II Amendment Petition.

5 Q. Please describe the Petitioner's visual analysis
6 for the Phase II Facility.

7 A. For Phase II of the Project, EDR performed a
8 revised visibility and visual impact analysis
9 that focuses on the cumulative Project
10 visibility of the Phase I and Phase II
11 facilities (Phase II Amendment Petition,
12 Appendix I). As compared to the Certificated
13 Facility, the overall area within the Visual
14 Study Area with potential views of the Facility
15 would increase by 1.8 percent. This equates to
16 an additional 10.3 square miles. EDR further
17 noted that increases in turbine height will be
18 noticeable in certain locations, as will the
19 decrease in turbine number and density.

20 Q. Does the increase in height of the proposed
21 turbines for the Phase II Facility comply with

1 existing local laws and ordinances?

2 A. No. As part of the Phase II Amendment Petition,
3 Baron Winds has requested that the Siting Board
4 refuse to apply the Town of Freemont's wind
5 turbine height restriction. Town of Freemont
6 Local Law Number 1 of 2017 states that no Wind
7 Energy Conversion System shall be greater than
8 500 feet in height.

9 Q. Please describe the height of the currently
10 proposed turbines and the anticipated visual
11 impacts that would result from their
12 installation, as compared to the Certificated
13 Project.

14 A. The proposed towers are 640 feet in height,
15 which exceeds the Town of Fremont's limit.
16 However, based on DPS Staff's review of the
17 Phase II Amendment Petition, including the
18 revised visibility and visual impact analysis
19 included in Appendix I, the increase in turbine
20 height will be discernible but will not result
21 in a significant adverse increase in visual

1 impacts as compared to the Certificated Facility
2 Layout. As noted in the Phase II Amendment
3 Petition (p. 14), the proposed Phase II layout
4 would require approximately 120 less acres (4.5
5 acres per turbine) of tree clearing which would
6 otherwise be required in order to meet the
7 required ground clearances for turbines that are
8 less than 500 feet in height. This reduction in
9 tree clearing would comparatively decrease the
10 overall ecological impact of the Project, while
11 also maintaining vegetative cover and reducing
12 overall visual impacts to the landscape.

13 Q. Please describe the Petitioner's waiver request
14 regarding the Town of Fremont's local law height
15 provision for wind turbines.

16 A. The Phase II Amendment Petition proposes
17 constructing up to 26 wind turbines in the Town
18 of Fremont and entails modification of the
19 Project design and layout of certain components
20 of the Phase II Facility. These changes include
21 increases in turbine height to up to 650 feet.

1 As such, the Petitioner is requesting waiver of
2 a provision in the Town of Fremont's local law
3 that limits the height of wind turbines to no
4 greater than 500 feet.

5 Q. Does the Panel oppose this waiver request?

6 A. No, we do not oppose the Petitioner's waiver
7 request. Deliberation as to whether the Town of
8 Fremont's local law height provision should be
9 waived should be done within the framework of
10 PSL Article 10 §168(3)(e) on Board decisions.
11 This section provides a standard for the Siting
12 Board to use if determining to elect not to
13 apply, in whole or in part, any local ordinance.
14 Specifically, it states that a local law may be
15 waived if the Siting Board "finds that, as
16 applied to the proposed facility, such is
17 unreasonably burdensome in view of the existing
18 technology or the needs of or costs to
19 ratepayers whether located inside or outside of
20 such municipality." It is DPS Staff's opinion
21 that the Phase II Amendment Petition provides a

1 cogent argument that the height restriction is
2 unreasonably burdensome due to changes in
3 technology. The Petitioner emphasizes that
4 available turbines that comply with the height
5 restriction are less efficient and have a lower
6 capacity factor. Use of these turbines would
7 require siting more wind turbines and result in
8 increased impacts associated with a larger
9 disturbance area and additional clearing. The
10 Petitioner also explains that the proposed
11 taller towers are better suited in their ability
12 to produce electricity utilizing the wind
13 conditions at the Facility Site. Additionally,
14 despite requesting a waiver of the height
15 provision, Baron Winds designed the Phase II
16 Facility to meet or exceed the Town of
17 Freemont's setback requirements. PSL §168(3)(e)
18 further states, "The board shall provide the
19 municipality an opportunity to present evidence
20 in support of such ordinance, law, resolution,
21 regulation or other local action issued

1 thereunder." At this time, the Case record does
2 not include input from the Town of Fremont in
3 response to the Petition. As such, although DPS
4 Staff's opinion is that waiver of the height
5 restriction is justified based on state of
6 existing technology, Staff expects that the
7 Siting Board will consider the full record of
8 this proceeding in making its decision.

9 Q. Does this conclude the Panel's testimony?

10 A. Yes.