

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

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.

THIRD NOTICE OF AVAILABILITY OF PRE-APPLICATION INTERVENOR
FUNDS AND DEADLINE FOR SUBMITTING FUNDING REQUESTS

(Issued November 23, 2016)

On August 10, 2016, Baron Winds LLC, a subsidiary of Everpower Wind Holdings, Inc. (Baron), filed a Preliminary Scoping Statement in connection with its proposal to construct a commercial-scale 300 MW wind power project located within the Towns of Avoca, Cohocton, Dansville, Fremont, Howard, and Wayland, in Steuben County. Construction would consist of up to 120 wind turbines, together with the associated collection lines (below grade and overhead), access roads, meteorological towers, and an operation and maintenance building. To deliver power to the New York State power grid, Baron proposes to construct a collection substation adjacent to an existing interconnection substation, which will interconnect with the New York State Electric and Gas (NYSEG) 230 kV transmission line in the Town of Cohocton. (Collectively, the new wind farm, substation, and associated lines, roads and structures are referred to as "the Project.")

Baron states that the Project is proposed to be located on leased private land that is generally rural in nature. The actual footprint of the proposed facilities, Baron asserts, is not determined at this point in the process, but will be located within the leased land and will enable farmers and landowners to continue with farming operations or other land uses such as forestry and recreation.

With the Preliminary Scoping Statement, Baron submitted the required intervenor fee of \$105,000 to be used to defray certain expenses that may be incurred by municipal and local parties in connection with their involvement as intervenors in the pre-application scoping phase of this proceeding. Pursuant to the provisions of Article 10 of the Public Service Law, at least 50% of the funds must be reserved for potential awards to municipalities.

On August 15, 2016, an initial Notice of Availability of Pre-Application Intervenor Funds and Deadline for Submitting Funding Requests was issued, setting a deadline of September 14, 2016 for filing initial funding requests. No requests for intervenor funds were filed.

On October 5, 2016, a procedural conference was conducted at the Hornell City Courtroom. Normally, an award of intervenor funds must precede initiation of the stipulations process. However, because no requests for intervenor funds had been filed, during the procedural conference, the Examiners ruled that project sponsor could initiate the stipulations process.

On October 12, 2016, a Second Notice of Availability of Pre-Application Intervenor Funds and Deadline for Submitting Funding Requests was issued, setting a deadline of November 2, 2016 for filing funding requests. In response, one request was filed on November 2, 2016 seeking additional time to file a complete request for funds, prompting issuance of this third notice.

TAKE NOTICE that a third opportunity for requesting pre-application intervenor funds is available. Eligible municipal and local parties may request funds by submitting the requests to the Examiners, Administrative Law Judges Kevin Casutto (Kevin.Casutto@dps.ny.gov) of the Department of Public

Service and Administrative Law Judge Maria E. Villa (Maria.Villa@dec.ny.gov) of the Department of Environmental Conservation. Requests for funds must be submitted by the close of business, Friday, December 16, 2016. Parties intending to request intervenor funding must use the "RFIF Form" available on the New York State Board on Electric Generation Siting and the Environment's (Siting Board) web page at <http://www.dps.ny.gov/SitingBoard> (please follow the "Forms" link on the left side of the page).

Copies of requests also must be filed with Hon. Kathleen H. Burgess, Secretary of the New York State Board on Electric Generation Siting and the Environment, at secretary@dps.ny.gov, and served on the other parties to the proceeding. (The party list can be accessed at the Siting Board's web page, by following the "DPS Home" link on the left side of the page, then clicking the "Search" link on the upper center area of the page, then using the "Search by Case Number" feature, to search for case "15-F-0122," then clicking the "Party List" tab). Persons without e-mail access may send their documents to the Examiners and Secretary Burgess by first class mail at the New York State Board on Electric Generation Siting and the Environment, 3 Empire State Plaza, Albany, New York 12223.

Guidance regarding the Article 10 siting process and intervenor funds is available at the Siting Board's web page. To access Frequently Asked Questions, please click the FAQ link on the left side of the page; to access a Guide to Intervenor Funding, please follow the "Guides" link on the left side of the page.

(SIGNED)

KATHLEEN H. BURGESS
Secretary



NEW YORK STATE BOARD ON ELECTRIC
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RULING ON REQUEST FOR EXTENSION
OF INTERVENOR FUND SCHEDULE

(Issued November 23, 2016)

KEVIN CASUTTO (DPS) AND MARIA VILLA (DEC), Examiners:

INTRODUCTION

On August 10, 2016, Baron Winds LLC (Baron), a subsidiary of Everpower Wind Holdings, Inc., filed a Preliminary Scoping Statement (PSS) in connection with its proposal to construct a commercial-scale 300 MW wind power project located within the Towns of Avoca, Cohocton, Dansville, Fremont, Howard, and Wayland, in Steuben County. Construction would consist of up to 120 wind turbines, together with the associated collection lines (below grade and overhead), access roads, meteorological towers, an operation and maintenance building, and a collection substation (the Project). To deliver power to the New York State power grid, Baron proposes to construct the collection substation adjacent to an existing interconnection substation, which will interconnect with the New York State Electric and Gas 230 kilovolt (kV) transmission line in the Town of Cohocton.

During the pre-application phase of a major electric generating facility siting case such as this one, pursuant to Public Service Law (PSL) Article 10 and the implementing regulations issued pursuant thereto,¹ the project sponsor,

¹ 16 NYCRR Part 1000 et seq.

Department of Public Service Staff (DPS Staff), and other interested persons may engage in discussions on any aspect of the preliminary scoping statement and any study or program of studies made or to be made by the project sponsor to support the project sponsor's application. If the project sponsor reaches agreement with any such interested persons, the project sponsor would then conduct such studies or program of studies, to be included as part of the application for that particular project. The studies may include evaluation of the potential impacts of the proposed project on the environment, public health, and other issues of public interest.² If the project sponsor and interested persons reach any agreements, the project sponsor must file any proposed stipulation, and a public comment period would then provide participants and other interested persons with an opportunity to comment upon the proposed stipulation(s). After the conclusion of the comment period, the project sponsor and persons in agreement may enter into the final stipulation(s) setting forth the agreement(s).

Pursuant to PSL §163(4), a pre-application intervenor fund of \$105,000 has been established for this proceeding.³ The purpose of the pre-application intervenor fund is to enable municipal and local parties to better participate in review of the PSS and the stipulations process by allowing them to defray

² See generally 16 NYCRR Part 1001.

³ The term "Intervenor" refers to a person or entity that joins a case or proceeding as a third party, other than the project sponsor and the Siting Board Staff, for the protection of an interest. Some intervenors join as a matter of right established in the Article 10 statute; others are permitted to join at the discretion of the Examiners or the Siting Board.

expenses for expert witnesses, consultants, legal representation, and administrative fees.⁴

Pursuant to PSL §163(4), only municipal and local parties may receive intervenor funds. To encourage early and effective public participation during the pre-application stage of project review, the Examiners must award the funds on an equitable basis upon a determination that the funds will be used to make an effective contribution to review of the Preliminary Scoping Statement and the development of an adequate scope of the application to be submitted by the project sponsor.

A request for intervenor funds must contain all of the information required by the Siting Board's rules set forth in 16 NYCRR, Section 1000.10(c). A party receiving a pre-application award of funds must use the awarded funds only for the purpose(s) that have been specified in the particular award of intervenor funding. A party receiving an award of funds must also comply with certain quarterly reporting requirements.⁵

A Notice of Availability of Intervenor Funds was issued August 15, 2016, inviting eligible municipal and local parties participating in the pre-application process of this proceeding to submit requests for pre-application phase intervenor funding by September 14, 2016. No responses to that notice were submitted.

On October 5, 2016, the Examiners held a public pre-application procedural conference at the Hornell City Hall, located in Hornell, to discuss availability of intervenor funds and the stipulations process. Participants at the conference included Baron, DPS Staff, New York State Department of

⁴ The Examiners must reserve at least 50% of the funds for potential awards to municipalities. 16 NYCRR 1000.10(a)(5).

⁵ See 16 NYCRR 1000.10(a)(11).

Environmental Conservation, New York State Department of Health, and New York State Department of Agriculture and Markets.

Following the procedural conference, a second Notice Availability of Intervenor Funds was issued on October 12, 2016, inviting requests for funds by November 2, 2016. On November 2, 2016, Robin Phenes, on behalf of Steuben County Citizens for Responsible Wind Siting (Citizens for Responsible Wind), filed an incomplete request for intervenor funds, and requested additional time to file a revised request for funds.

On November 9, 2016, Baron filed a letter objecting to the funding request of Citizens for Responsible Wind and opposing an extension of time to allow Citizens for Responsible Wind to submit a revised request for funds.

The purpose of this ruling is to decide Citizens for Responsible Wind's motion for extension of time to request intervenor funds.

THE MOTION FOR EXTENSION OF TIME
TO REQUEST INTERVENOR FUNDS

Citizens for Responsible Wind acknowledges that the Request for Intervenor Funds is incomplete and explains that it is currently forming and intend to represent residents and landowners within the Baron Winds Project site and in the areas surrounding the project footprint. Citizens for Responsible Wind states that an attorney has been retained and that it intends to retain an acoustical engineer and a wildlife biologist. The acoustical engineer, Citizens for Responsible Wind asserts, would monitor and assess noise impacts at existing wind facilities in the towns of Cohocton and Howard near the proposed Baron project site and conduct a post-construction noise study within the existing wind facilities in those towns. Further, the acoustical engineer would assess potential noise impacts of the Baron project.

Baron objects to the funding request of Citizens for Responsible Wind and opposes an extension of time to allow Citizens for Responsible Wind to submit a revised request for funds. Baron initially asserts that it is unclear whether Citizens for Responsible Wind meets the requirement of "local party" as defined by PSL 160 and 16 NYCRR 1000.2(s) to be entitled to intervenor funds, because the request does not include a statement that any members of the organization are actually residing in the "facility area" identified in the PSS or within any proposed study area. Next, Baron asserts that the request for funds fails to provide the specific details regarding the attorney and experts it intends to hire, scopes of studies that those experts will perform during the pre-application phase, the need for such studies during the pre-application phase, qualifications of those experts, services those experts will provide, or the basis and fees for those services. Lastly, Baron asserts that the Citizens for Responsible Wind's request for an extension of time does not indicate any reason why an extension is necessary to provide additional information.

DISCUSSION

Although two notices inviting requests for funds have been issued, the full amount of the pre-application intervenor fund remains available. The Examiners must award the funds on an equitable basis upon a determination that the funds will be used to make an effective contribution to review of the PSS and the development of an adequate scope of the application to be submitted by the project sponsor, Baron. In our view, as long as funds remain available, it is appropriate to consider a request for funds. However, the stipulations negotiation process should not be delayed by a late new participant joining the pre-application process. In the event pre-application

intervenor funds have been awarded to a participant, but remain unused, those funds may be used in the application phase of the case, assuming that the project sponsor goes forward and files a sufficient application, and assuming that the pre-application participant is granted party status in the application phase of the proceeding.

Citizens for Responsible Wind acknowledges that its request for funding is incomplete. We find Baron's objections regarding whether Citizens for Responsible Wind is a "local party" and whether the request for funds addresses the pre-application PSS and stipulations process to be premature, because Citizens for Responsible Wind has stated its intent to file a revised request for funds. At this early stage in the proceeding, during the pre-application phase, it is not appropriate or prudent for a participant to use intervenor funds to conduct intervenor-sponsored studies. In preparing a revised request for funds, Citizens for Responsible Wind should also consider Baron's criticisms of its current request for funds. In addition, we suggest Citizens for Responsible Wind review the guidance regarding the Article 10 siting process and intervenor funds that is available at the Siting Board's web page: <http://www.dps.ny.gov/SitingBoard>.⁶

In the event Baron does file an application that complies with the filing requirements of PSL 164, then review of the application would include a public statement hearing, one or more procedural conferences, and the opportunity for an evidentiary hearing during which parties would present evidence including testimony and exhibits, and cross examination of other

⁶ To access a Guide to Intervenor Funding, please follow the "Guides" link on the left side of the page. Citizens for Responsible Wind should also review the Article 10 Frequently Asked Questions. To do so, please click the FAQ link on the left side of the Siting Board web page.

parties' witnesses. In that event, application-phase intervenor funds would be available to eligible local and municipal parties, to defray costs of participation in the application-phase proceedings. In the event Citizens for Responsible Wind is granted party status in the application phase, it could participate in review of the application as a party and could offer relevant evidence at that time as part of Citizens for Responsible Wind's direct case.

In sum, the purpose of the intervenor fund is to encourage participation by local and municipal parties. We find Baron's objections to Citizens for Responsible Wind's request for extension of time to be unpersuasive. However, rather than extend the schedule set in the second Notice Availability of Intervenor Funds, as Citizens for Responsible Wind has requested, we will request that the Secretary issue a third notice inviting requests for intervenor funds.

CONCLUSION

The motion of Steuben County Citizens for Responsible Wind Siting is granted, as modified, in that we will request that the Secretary issue a third notice of availability of pre-application intervenor funds.

(SIGNED)

KEVIN J. CASUTTO

(SIGNED)

MARIA E. VILLA

