

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

Joint Petition of Baron Winds LLC and
Baron Winds II LLC for Approval of the
Transfer of the Certificate of Environmental
Compatibility and Public Need for the Baron
Winds Energy Project

Case 15-F-0122

**JOINT PETITION OF BARON WINDS LLC AND BARON WINDS II LLC FOR
APPROVAL OF THE TRANSFER OF THE CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR THE BARON WINDS ENERGY
PROJECT**

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Albany, NY

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On September 12, 2019, the New York State Board on Electric Generation Siting and the Environment (the “Siting Board”) granted a Certificate of Environmental Compatibility and Public Need (“CECPN”) to Baron Winds LLC (“Baron Winds”) for a commercial scale wind energy project.¹ The CECPN authorizes Baron Winds to construct and operate up to 68 turbines with a total generating capacity of 242 megawatts (“MW”) in the Towns of Cohocton, Dansville, Fremont, and Wayland, in Steuben County, New York (the “Project” or “Facility”). Subsequently, on March 9, 2020, Baron Winds Petitioned the Siting Board to amend the CECPN to construct the Project in phases² and to modify certain project component locations for Phase I of the Facility.

¹ Case 15-F-0122: *Application of Baron Winds LLC for a Certificate of Environmental Compatibility and Public Need*, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (September 12, 2019).

² Phase I of the Project is primarily located in the Towns of Cohocton, Dansville, and Wayland. Phase II of the Project is in the Town of Fremont.

On May 6, 2020, the Siting Board granted Baron Winds an amendment to its CECPN for Phase I of the Facility.³

Baron Winds and Baron Winds II LLC (“Baron Winds II”) now hereby file this joint petition respectfully requesting Siting Board approval under Section 1000.17 of the Siting Board’s rules (16 NYCRR § 1000.17) for the partial transfer of the CECPN from Baron Winds to Baron Winds II for Phase II of the Facility (the “Transfer”). Baron Winds and Baron Winds II are also separately petitioning the Siting Board to amend Phase II of the Facility pursuant to 16 NYCRR §1000.16.

Baron Winds and Baron Winds II have also separately petitioned the Public Service Commission (the “Commission”) for approval under Public Service Law Section 70 for the partial transfer of the CECPN from Baron Winds to Baron Winds II for Phase II of the Facility. If the transfer Petitions are granted Baron Winds will construct and operate Phase I and Baron Winds II will construct and operate Phase II.

I. BACKGROUND

A. The Facility

The CECPN authorizes Baron Winds to construct and operate a 242 MW wind-powered electric generating facility of up to 68 utility-scale wind turbines (23 in the Town of Cohocton, 3 in the Town of Dansville, 33 in the Town of Fremont, and 9 in the Town of Wayland), approximately 16.5 miles of temporary and permanent access roads, approximately 31.0 miles of underground collection lines, an approximate 3-acre collection substation, an Operations & Maintenance (O&M) building with a footprint of 4,000 to 6,000 square feet, and two temporary laydown areas occupying 5.3 and 9.4 acres.

³ Case 15-F-0122: *Application of Baron Winds LLC for a Certificate of Environmental Compatibility and Public Need*, Order Approving Amendment (May 6, 2020).

Phase I of the Facility is located in the Towns of Cohocton, Dansville, Fremont, and Wayland and consists of up to 33 utility-scale wind turbines (23 in the Town of Cohocton, 2 in the Town of Dansville, 8 in the Town of Wayland, and 0 in the Town of Fremont), temporary and permanent access roads, underground collection lines, the collection substation, the O&M building, a laydown yard, three permanent meteorological towers, and public road intersection improvements. Baron Winds commenced construction of Phase I in October 2021.

Phase II of the Facility will primarily be located in the Town of Fremont (“Town”) and will consist of up to 26 utility-scale wind turbines each with a nameplate capacity rating of 4.5 megawatts (“MW”), depending on the final turbine model selected, and a maximum facility size for Phase II of 117 MW. A portion of the Facility is also located in the Town of Wayland (underground collection line) and the Town of Cohocton (underground collection line and new collection substation). Baron Winds II expects construction of Phase II to commence in the Fall of 2022.

B. Baron Winds

Baron Winds is a Delaware limited liability company formed in June 2012 to develop, own and operate the Project. Baron Winds is registered to do business in New York as a foreign limited liability company. At the time the Article 10 application was filed, Baron Winds was a wholly-owned subsidiary of Everpower Wind Holdings, Inc. (“Everpower”). On July 7, 2018, the Commission approved the transfer of 100% of the upstream ownership interests in Baron Winds from Everpower to innogy Renewables US LLC (“innogy”) through a subsidiary, IRUS Wind Development LLC,⁴ and on September 10, 2019, the Commission approved the transfer of

⁴ Case 18-E-0333: *Petition of Cassadaga Wind LLC, Trireme Energy Development LLC, and Innogy Renewables US LLC for a Declaratory Ruling That Public Service Law Section 70 Does Not Apply to a Proposed Acquisition or, That No Further Review of the Acquisition is Required*, Declaratory Ruling on Transfer Transactions (July 17, 2018).

innogy’s renewable portfolio, including Baron Winds, to the German-based energy company RWE Aktiengesellschaft (“RWE AG”). Baron Winds is currently a wholly-owned subsidiary of RWE Renewables Development, LLC (“RWE”), a Delaware limited liability company, which is a wholly-owned subsidiary of RWE Renewables Americas, LLC (“RWERA”). RWERA is also a Delaware limited liability company, and a subsidiary of RWE AG.

If this Petition is granted, Baron Winds will construct and operate Phase I of the Facility.

C. Baron Winds II

Baron Winds II is a Delaware limited liability company originally formed in March 2011 as Kimberley Run LLC, and renamed as Baron Winds II LLC in June 2020, to develop, own, construct and operate Phase II of the Project. Baron Winds II is registered to do business in New York as a foreign limited liability company.

Like Baron Winds, Baron Winds II is also a wholly-owned subsidiary of RWE, which is a wholly-owned subsidiary of RWERA, a subsidiary of RWE AG.

If this Petition is granted, Baron Winds II will construct and operate Phase II of the Facility.

D. Upstream Affiliates (RWE, RWERA, and RWE AG)

Baron Winds and Baron Winds II are both subsidiaries of RWE, which is a wholly-owned subsidiary of RWERA, a subsidiary of RWE AG.

RWERA is a developer of utility-scale wind, solar and battery storage projects in the United States and Canada, with the intent to be the long-term owner and operator of renewable generation projects. RWERA ranks among the top 10 onshore wind companies in the U.S. and the number of projects in the U.S. is growing.⁵ In the Americas, RWERA has dozens of wind projects

⁵ <https://americas.rwe.com/rwe-renewables-americas>

in various stages of development, including the Baron Winds Project, and 29 projects in operation including the Cassadaga Wind Project, in Chautauqua County.

RWE AG is one of the leading international providers of renewable energy. The company owns more than 9 gigawatts of renewable energy capacity with another 2.6 GW under development. RWE AG thus ranks as the number 4 global renewables player and is number 2 in offshore wind capacity.⁶

RWE AG is a publicly listed German company founded in 1898 and headquartered in Essen, Germany. RWE AG has approximately 3,500 employees developing and operating onshore and offshore wind farms, photovoltaic plants and battery storage systems in over 20 countries on five continents.

II. DISCUSSION

A. Overview of Transfer

As outlined above, if the transfer Petitions are granted Baron Winds will construct and operate Phase I of the Facility and Baron Winds II will construct and operate Phase II of the Facility.

Phase I of the Facility is located in the Towns of Cohocton, Dansville, Fremont, and Wayland and consists of up to 33 utility-scale wind turbines (23 in the Town of Cohocton, 2 in the Town of Dansville, 8 in the Town of Wayland, and 0 in the Town of Fremont), temporary and permanent access roads, underground collection lines, the collection substation, the O&M building, a laydown yard, three permanent meteorological towers, and public road intersection improvements.

⁶ <https://americas.rwe.com/rwe-renewables-americas>

Phase II of the Facility is primarily located within the Town of Fremont with a portion of the Facility (collection line and new collection substation) located in the Towns of Wayland and Cohocton. The Facility will consist of up to 26 utility-scale wind turbines with associated temporary and permanent access roads, underground collection lines, collection substation, permanent met tower, and temporary laydown area, including a temporary batch plant. The collection substation for Phase II of the Facility will be located adjacent to the collection substation currently under construction for Phase I of the Facility. The Phase II collection substation will connect to the Phase I collection substation and utilize a shared underground 230KV transmission line.

Attached hereto as **Exhibit A** is a figure further describing Phase II of the Facility to be transferred to Baron Winds II.⁷ Baron Winds and Baron Winds II will share the interconnection facilities, and the O&M building, and may also share the aircraft detection lighting system and communication system for Phase I and Phase II.

B. Certificate Conditions and Compliance Filings

Both Baron Winds and Baron Winds II will comply with the terms, limitations and conditions contained in the CECPN. Petitioners are requesting that Baron Winds be authorized to construct and operate Phase I of the Facility and Baron Winds II be authorized to construct and operate Phase II of the Facility in accordance with the existing CECPN and Certificate Conditions.

Although Baron Winds and Baron Winds II are requesting authorization to construct and operate Phase I and Phase II, respectively, under the existing CECPN, there are certain Certificate Conditions that will be or have been satisfied by a single filing applicable to the Facility as a whole. For example, Condition 63 requires a final Endangered or Threatened Species Mitigation Plan

⁷ The Section 70 Petition to the Commission addresses the transfer or assignment of property interests, as necessary for Phase II including agreements, leases, options, and ownership, for the real property associated with Phase II.

(“ETSMP”) for the take of bald eagles and Northern Long Eared Bats (“NLEB”). The CECPN and ESTMP requirements address the take of bald eagles and NLEB from the Facility, as a whole, and are not broken down by either Phase or Facility component (i.e., specific turbine(s)) or component location (i.e., specific Town(s)). Therefore, only one ETSMP will be submitted for the Facility that is applicable to both Phase I and Phase II. Another example is Condition 60 which requires mitigation for the benefit of Loon Lake. The Loon Lake Mitigation Plan was submitted on June 26, 2020, and approved by the Commission on September 3, 2020, therefore no additional mitigation or plans are required to be submitted for either Phase I or Phase II of the Facility related to Loon Lake.

Baron Winds II will work with DPS Compliance Staff to ensure that all necessary filings and approvals are identified for Phase II prior to proceeding with construction with Phase II, as required by the CECPN.

C. The Transfer is in the Public Interest and Should be Approved by the Siting Board

According to the Siting Board’s rules, “[a] certificate may only be transferred to a person who agrees to comply with the terms, limitations, or conditions contained therein and in every subsequent order issued thereunder.”⁸ As explained above Baron Winds II will comply with the terms, limitations and conditions contained in the CECPN. The rules further require that any request made to the Siting Board to transfer a certificate (1) state the reasons for the transfer, and (2) show that the transferee is qualified to carry out the provisions of the certificate and any orders issued thereunder.⁹

⁸ 16 NYCRR § 1000.17(a).

⁹ 16 NYCRR § 1000.17(b)(1) and (2).

1. Reason for Transfer

The proposed transfer of Phase II of the Facility to Baron Winds II is necessary to facilitate the tax equity financing of both phases of the Facility. Tax equity financing for Phase I is under negotiation and is tentatively scheduled to close in December 2022. However, the tax equity investors for Phase II have not yet been selected as Phase II is not scheduled to close until December 2023. It is currently not known whether the tax equity investors for the two phases will be the same investor, but it is reasonable to assume different investors may be involved in the tax equity financing for each phase. Given the complexities of separating the Facility into two phases, tax equity investors will require the ownership and structure for each phase to be in place prior to their investment. Each investor will have a member ownership interest in either Baron Winds or Baron Winds II, and the valuation of each ownership interest will depend on the assets to be owned and operated by each entity. Accordingly, absent the approval of the transfer and the associated assignment of the development assets for Phase II to Baron Winds II, the closing for Phase I could be delayed while the final permits and approvals for Phase II are pending, thereby potentially reducing or removing the ability of Baron Winds to monetize federal tax credits included as part of the project pro forma.

2. Qualifications of Baron Winds II

In addition to this Petition, Baron Winds II has also petitioned the Commission for a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Public Service Law § 68. Baron Winds II’s Section 68 Petition provides further details regarding Baron Winds II’s financial resources to construct Phase II of the Project and significant expertise to operate it.

Baron Winds II is also a wholly-owned subsidiary of RWE, which is a wholly-owned subsidiary of RWERA, a subsidiary of RWE AG. RWE and its parent companies RWERA and RWE AG, have substantial experience in the construction and operation of competitive renewable energy projects all over the globe, and that experience will ensure that the Project remains competitive and financially viable throughout its lifespan.

RWERA is a developer of utility-scale wind, solar and battery storage projects in the United States and Canada, with the intent to be the long-term owner and operator of renewable generation projects. RWERA ranks among the top 10 onshore wind companies in the U.S. and the number of projects in the U.S. is growing.¹⁰ In the Americas, RWERA has dozens of wind projects in various stages of development, including the Baron Winds Project, and 29 projects in operation including the Cassadaga Wind Project, in Chautauqua County.

RWE AG is one of the leading international providers of renewable energy. The company owns more than 9 gigawatts of renewable energy capacity with another 2.6 GW under development. RWE AG thus ranks as the number 4 global renewables player and is number 2 in offshore wind capacity.¹¹

Baron Winds II's upstream parent companies, RWE, RWERA, and RWE AG, have substantial experience in the construction and operation of renewable energy projects in the United States, and that experience will ensure that Phase II of the Facility remains competitive and financially viable throughout its lifespan.

Baron Winds II is qualified to carry out the provisions of the CECPN and any orders issued thereunder with respect to Phase II of the Facility just as the Siting Board and Commission have

¹⁰ <https://americas.rwe.com/rwe-renewables-americas>

¹¹ <https://americas.rwe.com/rwe-renewables-americas>

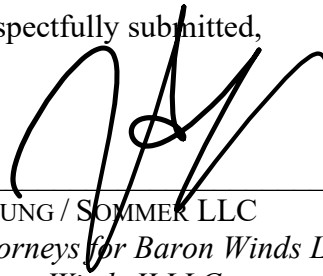
already determined that Baron Winds is qualified to carry out the provisions of the CECPN and any orders issued thereunder.¹²

III. CONCLUSION

For the foregoing reasons, Baron Winds and Baron Winds II respectfully request that the Siting Board approve the transfer of Phase II of the Facility from Baron Winds to Baron Winds II.

Dated: September 6, 2022

Respectfully submitted,



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¹² The Commission granted a Certificate of Public Convenience and Necessity pursuant to Section 68 of the Public Service Law to Baron Winds on April 23, 2020 (Case N. 19-E-0277).

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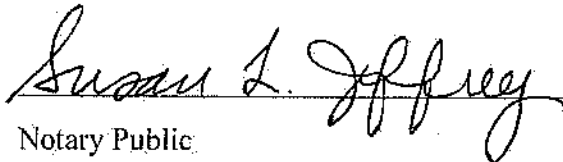
Alison Gardner, being duly sworn according to law, upon their oath, deposes and says:

1. I am the Secretary of Baron Winds LLC and Baron Winds II LLC ("Baron Entities") and I am authorized to make this Verification on behalf of the Baron Entities.
2. I have read the contents of the foregoing Petition and hereby verify that the statements contained therein are true and correct to the best of my knowledge and belief.



Sworn to and subscribed before me

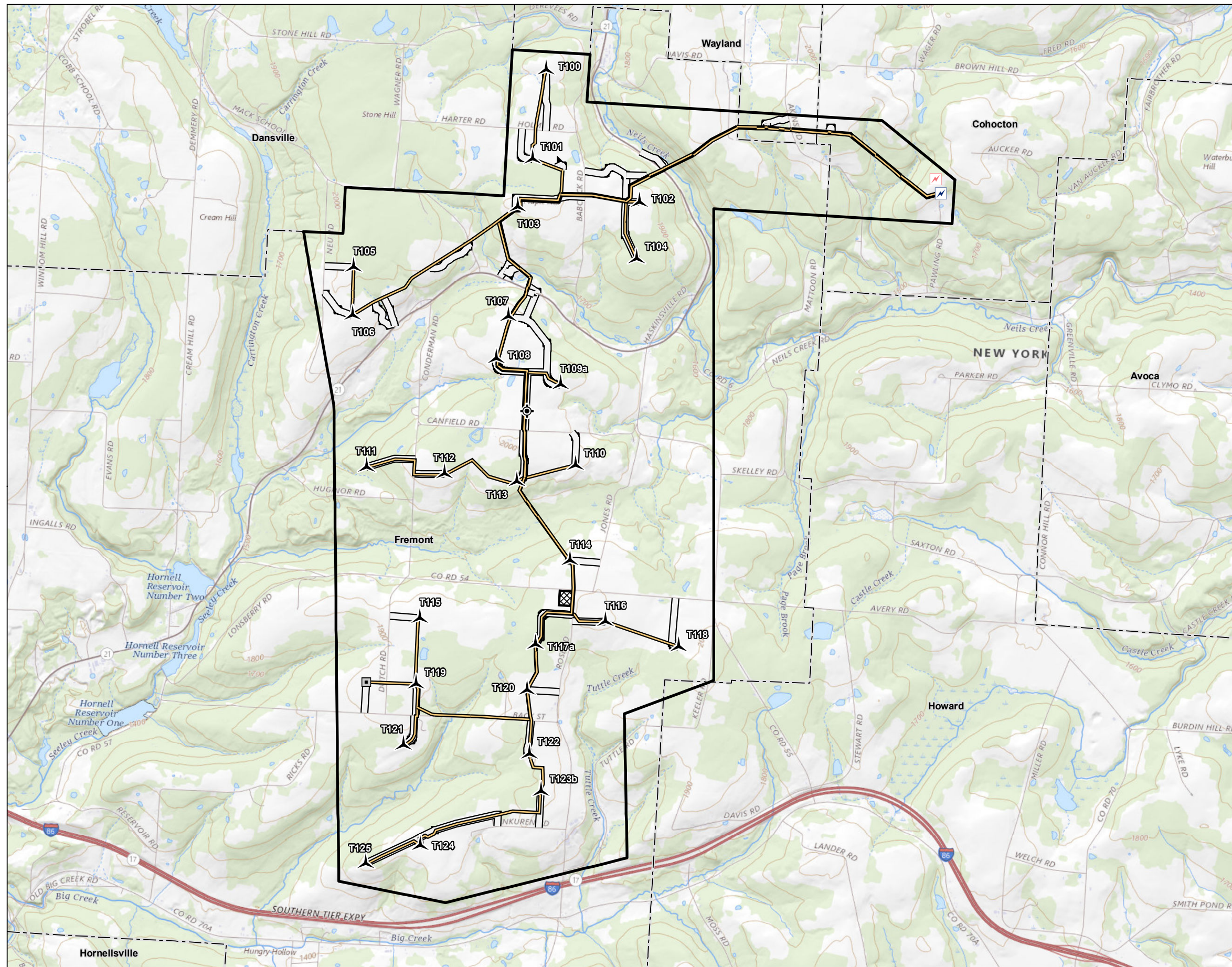
This 31st day of AUGUST, 2022



Notary Public



U:\195602390\03_data\gis_cad\gis\MXDs\Article 10\Figures\02390_1-3_Phase II Turbine Location.mxd Revised: 2022-08-23



Legend

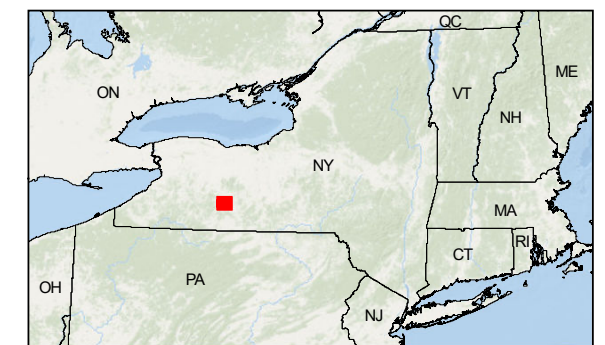
- Turbine Location
- MET Tower
- ADLS Tower
- Collector Substation
- Existing Substation
- Access Road
- Collection Line
- Batch Plant / Laydown Area
- Phase II Facility Area
- Town Boundary



0 3,500 Feet
 (At original document size of 11x17)
 1:42,000

Notes

1. Coordinate System: NAD 1983 UTM Zone 18N
2. Data Sources: Stantec, Innoqy
3. Background: USGS The National Map web mapping service.



Project Location: Town of Fremont, New York
 Prepared by GC on 2022-07-20
 Reviewed by SBG on 2022-07-21

Client/Project: Baron Winds 2 LLC, Baron Winds II Project
 Case Number: 15-F-0122
 195602390

Figure No.

1-3

DRAFT

Title

Phase II Turbine Locations