

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case No. 17-F-0282, Application of Alle-Catt Wind Energy LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a 340 MW Wind Energy Project

BRIEF OPPOSING EXCEPTIONS
BY THE COALITION OF CONCERNED CITIZENS

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Dated: April 16, 2020

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PRELIMINARY STATEMENT

The Coalition of Concerned Citizens (“CCC” or the “Coalition”) respectfully submits the following points in opposition to exceptions to the Recommended Decision in this matter taken by the applicant, ACWE.

OPPOSITION TO ACWE’S EXCEPTIONS REGARDING NOISE AND HEALTH

1. ACWE’s “K4” weather correction from CONCAWE does not apply to wind turbine noise.

ACWE argues that “[t]he RD accepts the arguments of DPS and CCC that ACWE’s proposed protocol for post-Certificate, pre-construction noise modeling is unreliable because it combines the ISO 9613-2 modeling standard with a meteorological correction known as K4.”¹ This is not CCC’s position. CCC argues instead that ACWE has not applied the ISO 9613-2 modeling standard, but has replaced that standard’s meteorological adjustment protocol with the K4 meteorological correction found in the 1981 guideline known as CONCAWE. This approach results in a “hybrid” methodology that simply applies a 2 dB discount to ISO 9613-2’s noise prediction.²

CONCAWE is a 1981 guideline developed by an oil industry study group for assessing noise based on a study of “three typical petrochemical plants”.³ To model the distance propagation of petrochemical plant noise CONCAWE’s K4 adjustment includes six different meteorological categories.⁴ Each category corresponds to a combination of wind speed and the stability of the air in

1 ACWE Br. on Exceptions, 2.

2 Hrg. Ex. _____ [Schomer Direct Testimony, 19:10-11 (ACWE’s noise study “uses a hybrid of a petroleum plant assessment protocol and ISO 9613-2 (instead of using ISO 9613-2).”), and 20:7-12]. Consideration of tolerance levels for elevated noise sources would also be applied under ISO 1913-2.

3 Hrg. Ex. 365, para. 4. (at p. 19).

4 Hrg. Ex. 76, at 55. See Hrg. Ex. 365, para. 4. (at p. 21, table).

the “lower atmosphere”, defined as the first 30 meters of atmosphere.⁵ Thus, CONCAWE is limited to assessing the meteorological effects of the air speed and temperature found at a height of 30 meters or below. This has no applicability to wind turbine noise because the conditions of interest include much higher noise sources, operating when near-ground-level wind speeds are much lower but turbine hub height winds are sufficient to operate the turbines at full power (and maximum noise level).⁶ This is also known as a wind shear condition.⁷

As DPS Staff notes, “16 NYCRR §1001.19(d) requires an application to ignore any attenuation of sound that results from transient changes of weather and temperature.”⁸ The same provision requires operational project noise to be predicted “assuming wind-induced background noise or stable atmospheric conditions, as appropriate”. Here, it is appropriate to assume stable atmospheric conditions, as previously noted.

ACWE’s use of the K4 meteorological correction does not assume stable atmospheric conditions. ACWE assumed CONCAWE’s “atmospheric stability class of D”.⁹ According to CONCAWE, this stability class describes the air “1 hour before Sunset or after Sunrise”, thus excluding nighttime conditions.¹⁰ Class D includes a wide variation in ground-level wind speeds, from less than 1.5 m/s to over 6 m/s.¹¹ ACWE also chose Category 5 among the six meteorological categories available under CONCAWE.¹²

An example calculation using the same choices (Stability Class D, Meteorological Category

5 *Id.*, at p. 20.

6 Hrg. Ex. _____ [Schomer Direct Testimony, 9:4-8; Schomer Surrebuttal Testimony, 8].

7 *Cf.* Coalition Initial Br., 24-25.

8 Hrg. Tr. 889-890.

9 Hrg. Ex. 76, at 56.

10 Hrg. Ex. 365, para. 4. (at p. 20, table).

11 *Id.*

12 Hrg. Ex. 76, at 55-56. In its brief, ACWE suggests these were not choices. *See* ACWE Br. on Exceptions, 3 (“There are no additional meteorological corrections available within the CONCAWE modeling method that ACWE did not use.”).

5) is provided in CONCAWE. This shows that these choices allow ACWE to reduce predicted noise by up to 4.5 dB (for the 1,000 Hz octave band center), before reporting any other adjustments.¹³ This approach is unreliable because it abandons the “relationship between noise and community response” that has been established in acoustics in the years since CONCAWE, and is reflected in the standard noise propagation model, ISO 1996-2.¹⁴

Unlike ISO 9613-2, the use of K4 to predict wind turbine noise has not been peer-reviewed.¹⁵ None of the World Health Organization guidelines (1999, 2009, 2018) adopt or even mention CONCAWE’s noise assessment method. The method has not been adopted by any international standards organizations or by the American National Standards Institute.¹⁶ The Siting board should therefore reject ACWE’s method and order ACWE to simply comply with available and applicable acoustic standards.

2. ACWE’s monitoring protocol is arbitrary, as it departs from the generally accepted standard.

ACWE urges the Siting Board to adopt a novel approach to operational sound testing, combining “(i) the need to match, in time, the sound meter measurements with the concurrent weather and turbine operations data and (ii) the need to identify those periods in which the

13 Hrg. Ex. 365, at 30-31 (example 1).

14 Hrg. Ex. _____ [Schomer Direct Testimony, 20:20 to 21:3].

15 *Id.*, 19:20 to 20:2.

16 Port of Vancouver, Information Request IR7-01 Atmospheric Noise – Modelling Using Worst-Case Meteorological Conditions (November 20, 2017), at 16 (“The CONCAWE method has not been adopted by international standards organisations, such as CSA (Canadian Standard Organisation), ISO (International Organization for Standardization), or ANSI (American National Standards Institute).”), available at <<https://aeic-iaac.gc.ca/050/documents/p80054/121347E.pdf>>. The Port of Vancouver is here evaluating noise impacts of a proposed marine container terminal on Canada’s west coast led by the Vancouver Fraser Port Authority, where there are no elevated noise sources. See <<http://www.robertsbankterminal2.com/about-the-project/project-overview/>>.

combination of weather conditions and wind speed create conditions favorable to turbine noise being the dominant sound factor”.¹⁷ However, a generally accepted acoustic standard exists for measuring the pre-existing background sound level in the project area that recognizes no such needs,¹⁸ and the record establishes that commonly occurring wind shear allows wind turbine noise to be measured when background sound levels are too low to affect the measurements.¹⁹

Prolonged unattended recording and the need for extensive post-recording processing are serious demerits of ACWE’s recommended approach to post-construction monitoring. In the first instance, conditions favorable to wind turbine noise are very common and do not require extensive post-processing to ferret them out. The technician can measure wind turbine noise during wind shear conditions, when ground-level wind speeds are minimal and do not generate spurious noise that would approach making or interfering with the measurement. The need to shut down turbines to obtain accurate pre-existing background sound tests will be minimal or be obviated altogether. Indeed, ACWE should have already conducted background sound tests in the project, following the 2014 standard for quiet rural areas. ACWE’s complicated non-standard method is not reliable.

OPPOSITION TO ACWE’S EXCEPTIONS REGARDING AVIAN WILDLIFE

1. ACWE’s exception to Upland Sandpiper protections is purely legal.

ACWE emphasizes the lack of evidence that project area grasslands are in fact occupied, but evidence is not the issue. ACWE must demonstrate compliance with state laws, including the

¹⁷ ACWE Br. on Exceptions, 8.

¹⁸ See Coalition Br. on Exceptions, 24-25 (discussing ANSI S12.100 (2014); Hrg. Tr. ____ [Schomer Direct Testimony, 21-23].

¹⁹ Hrg. Tr., ____ [Punch Direct Testimony, 9:3-4 (wind turbine noise “occurs against low background noise levels in rural areas at nighttime, when it is most bothersome because it disturbs sleep”); Hrg. Tr., ____ [James Direct Testimony, 31:3-10 (supporting Punch testimony)].

regulations implementing the state's laws protecting endangered species like the Upland Sandpiper.²⁰ As explained in the RD, the applicable rules deem suitable habitat occupied when it has been occupied in the past, remains at present suitable habitat, and there is no demonstration of absence of the species.²¹ There is no real dispute that all three factual elements have been met in this case. ACWE's effort to turn the issue into a battle of experts is therefore misplaced.

In its Brief on Exceptions, ACWE disputes DEC's finding (based in part on observations in the field) that suitable Upland Sandpiper habitat exists in the project area. However, it offers no proof to support any dispute.

ACWE points to "the absence of sightings in the surveys conducted by ACWE during two breeding seasons",²² but ACWE's surveys never looked for the presence of Upland Sandpiper. In response to an information request from CCC, noting that "[t]he upland sandpiper . . . has been found in several NYS Breeding Bird Atlas blocks in the project area", ACWE did not dispute the assertion.²³ ACWE responded that because detailed locational information within Atlas blocks was not provided, it determined it was "impractical to look at specific locations from that data".²⁴ ACWE took the position which it takes now, that "certainty of recent presence of consistent habitat" must be established based on available historical information before it would undertake site surveys for occupied habitat.²⁵

Since suitable habitat exists in the project area, ACWE was required to demonstrate Upland

20 PSL § 162(1).

21 RD, 85-86.

22 ACWE Br. on Exceptions, 23.

23 Hrg. Ex. 547 (IR CCC-12, Q12).

24 *Id.*

25 *Id.* All 42 questions and responses in this IR provide compelling evidence that ACWE failed to survey the project site for threatened and endangered plant communities, aquatic wildlife, and avian wildlife despite acknowledging that available information indicates the likelihood of their presence within the project area.

Sandpiper no longer occupies the habitat. ACWE notes that “[s]uitable habitat exists in most rural areas of Western New York given that hayfields and pastureland are not uncommon”,²⁶ but these other areas have not been demonstrated to have been previously occupied. Without proof that, in light of the historical observations of Upland Sandpiper in the project area, the species is unlikely to occupy suitable habitat,²⁷ ACWE cannot avoid the legal conclusion that the habitat in the project remains occupied.

2. Compared to the RD, ACWE has not supported an alternative wetlands classification.

“In ACWE’s Reply Brief, ACWE argued that because wetlands PUM1 and PUM6 are unmapped they have not been assigned one of the classifications provided in 6 NYCRR § 663.5(e).”²⁸ The RD agrees, and provides the Siting Board with a recommended classification.²⁹ In its Brief on Exceptions, ACWE disagrees with the recommendation.

As the RD notes:

A wetland is a Class I wetland if it has any one of seven enumerated characteristics, including: (1) it is resident habitat of endangered or threatened animal species, (2) it contains endangered or threatened plant species, or (3) it is hydraulically connected to an aquifer which is used for public water supply.³⁰

ACWE’s application reports that Wetlands PUM1 and PUM6 contain threatened or endangered species habitat.³¹ However, ACWE acknowledges that notwithstanding its finding, it “did not take into account exact locations of species within the Facility Site.”³²

26 ACWE Br. on Exceptions, 22.

27 RD, 86 (citing 6 NYCRR §182.2(o)).

28 ACWE Br. on Exceptions, 32.

29 RD, 5-51.

30 RD, 50 (citing 6 NYCRR § 664.5(a)(1)-(7)).

31 *Id.*

32 ACWE Br. on Exceptions, 33-34.

These wetlands are also hydraulically connected to an aquifer used for public water supply, contrary to ACWE.³³ ACWE acknowledges that private water wells in the project area “penetrate through the impermeable layer and tap into the unconfined aquifers”.³⁴ These wells therefore provide conduits to “the sole or principal drinking water source for the area . . . which, if contaminated, would create a significant hazard to public health”.³⁵

No field survey of these wetlands was conducted by ACWE, the New York National Heritage Program,³⁶ or by DEC when compiling information found in DEC’s Environmental Resource Mapper.³⁷ By contrast, DEC Staff are familiar with the project area. ACWE cannot reasonably rely on the paucity of site specific data to conclude the seven unmapped wetlands PUM1 through PUM6 cannot be classified based on information in the record.

3. Whether the project area contains Critical Wildlife Habitat Areas is irrelevant to whether protections for species of conservation concern apply.

ACWE asserts that it should not be required to protect threatened and endangered species because the project area “does not include any Critical Wildlife Habitat Areas identified by the United States Fish and Wildlife Service, nor any National Audubon Important Bird Areas, nor any DEC Bird Conservation Areas.”³⁸ Because the state’s environmental laws are not limited to those

33 ACWE Br. on Exceptions, 34 (“neither PUM1 nor PUM6 is associated with an aquifer”).

34 Hrg. Ex. 23, at 23-1.

35 52 Fed. Reg. 36100 (1987) (EPA designating the Cattaraugus Creek Basin Aquifer System in Cattaraugus, Erie, Wyoming and Allegany Counties, New York, as a federal Sole Source Aquifer). *See* Coalition Initial Br., 33-34.

36 Referenced in Hrg. Ex. 93 (Applic. Appx. 22a), at 3.

37 ACWE relies on the Environmental Resource Mapper. *See* ACWE Br. on Exceptions, 34.n.15.

38 ACWE Br. on Exceptions, 21. However, the NYS Wildlife Action Plan provides details about upland sandpiper habitat and threats, noting that the species is sensitive to disturbance from wind turbines. *See* Hrg. Tr., 235-236; _____ [Schneller-McDonald Supplemental Rebuttal Testimony, 5-7.

areas, this point is not relevant. Moreover, as the RD notes, “According to DEC Staff, the Project area is a USFWS Category 1 - High Mortality Risk to Eagles because the Project area includes important use areas (nesting, foraging, and migration) and there are Project components within the eagle nesting territory boundary.”³⁹ If ACWE seeks an excuse for violating those laws because the project area does not happen to enjoy special protection, the assertion should be disregarded as irrelevant.⁴⁰

Based on its assertions that no taking of endangered upland sandpiper or bald eagle⁴¹ would occur, ACWE has not considered how to avoid impacts to these species and their habitats, such as observing protective setbacks from sensitive areas in siting turbines and access roads. ACWE proposes that decisions about where to site project components would be made only after a certificate is awarded.⁴² ACWE urges the same approach to wetland impacts.⁴³ Accordingly, for project components the Siting Board lacks sufficient locational information to determine impacts and thereby support its required findings.⁴⁴

OPPOSITION TO ACWE’S “POLICY” ARGUMENT

1. Preliminary statement

Throughout its Brief on Exceptions, ACWE asserts that the state’s energy policy outweighs

39 RD, 79 (citing Tr. 1301-1302; Hrg. Exh. 402).

40 *Cf. id.* (discussing protections for Bald Eagles under ECL § 11-0537).

41 DEC’s position on bald eagles is provided in DEC Staff’s Initial Brief, 37-46. *See also* Hrg. Tr., ___ [Schneller-McDonald, Supplemental Rebuttal Testimony, 2:6-21, 3:1-3, 3:10-18, 4:1-10]. (This testimony was inadvertently omitted from the hearing transcript.) *Compare* DEC Staff Reply Br., 2-3.

42 RD, 75.

43 RD, 49 (“According to ACWE, the Siting Board’s determination can be made after ACWE submits its compliance filings.”).

44 *Cf.* RD, 93 (noting that DEC Staff concludes that changes to ACWE’s proposed project layout necessary to protect wildlife “requires revision of the Project”). The RD concludes: “The choice of turbine model and final turbines sites depends on location factors”. RD, 97.

identified adverse impacts.⁴⁵ As the Coalition previously emphasized, ACWE declined to undertake any analysis of alternative sites or technologies, and it has offered no description of the character of the community. ACWE refused to provide the Coalition with any information about the project's contribution to energy goals after the first year of operations, when the contribution is greatest. These actions of the applicant are reflected in a broad strategy adopted throughout ACWE's Brief on Exceptions: emphasize the absence of information about adverse local impacts, then recite the general proposition that the project is consistent with the state's energy "policy". This is like injecting a tiny bit of colored gas into a relative vacuum: the color of the volume changes, but the vacuum remains. The Siting Board should not hold ACWE's hand down this road; it must address serious energy system issues and, if ACWE has not met its burden to prove specific environmental benefits, admit that the paucity of evidence prevents the Board from reasonably making required findings.

2. ACWE's reliance on the state's energy goals explains too much.

The state's energy policy is not a substitute for information and analysis. As stated in the Coalition's initial brief, the state's primary energy goal is to reduce emissions to targeted levels. All other "goals" are secondary strategies advanced as means to achieve the primary goal. The ACWE project's output cannot reach downstate customers. Nor can it efficiently increase the utilization of zero-emissions power upstate, which has reached 90%. In a closed or bottled upstate grid, the addition of each new large-scale intermittent energy project puts pressure on other upstate projects to curtail generation.

ACWE's assertion that its project can meaningfully advance the state's primary energy goals

⁴⁵ See RD, 91 (noting ACWE's reliance on "competing policy imperatives" to justify taking species of conservation concern). See also ACWE Br. on Exceptions, 15 (arguing that Northern Long-Eared Bats (and thousands of other bats) must die to avoid "sacrificing generation capacity").

was rebutted by the Coalition's expert and by reports on the state's energy system by NYISO, all of which show that under bottled grid conditions there will be little or no net emissions reduction that results from siting ACWE's project. There is no indication in the record whether and when transmission upgrades will unbottle New York's energy system. Until those upgrades are actually planned and advanced, it is not rational to expect zero-emission electricity sited upstate will assist in altering the energy system for the good. Grid transformation is necessary if electrification of other sectors of the economy is adopted as a decarbonization strategy. For example, without new transmission capacity upstate, nuclear and renewable power cannot power zero-emissions cars, and cannot stimulate development of widespread expertise in electric vehicle maintenance and repair downstate. Nor will any zero-emissions generation upstate reduce any NOx or SOx pollution downstate.⁴⁶ For the foreseeable future, ACWE cannot assist in altering how we heat our homes, businesses and industries downstate.

3. Article 10 does not require all large-scale wind energy projects to be certified.

ACWE appears to believe that simply avoiding this inconvenient truth is a winning strategy because the "policy" behind Article 10 dictates approval of any project that is merely *consistent* with the policy. However, if ACWE cannot demonstrate it would make a meaningful contribution to the state's energy goals, by approving the project the Siting Board may be hindering progress.

For example, grid reliability will be taxed by the project, in addition to the current burdens of managing the grid, by addition of a large capacity intermittent generator in a bottled grid.⁴⁷ To manage ACWE's generation, the grid operator will be required to call up backup power more often,

⁴⁶ By far, most disadvantaged communities are located downstate. The CLCPA requires all state agencies to ensure that 35% of the benefits from clean energy be realized by disadvantaged communities, with a goal that 40% of the benefits from investments, including energy, transportation, workforce development, housing, low-income energy assistance, economic development, and pollution reduction, accrue to these communities.

⁴⁷ See Coalition Initial Br., 36.

and order other intermittent generators to curtail operations more often than without ACWE. With these additional services, the project will not adversely affect grid reliability. Without those services, reliability would be adversely affected. While taxing the system by requiring additional services to accommodate the project's operations will not cause a system breakdown, the project could not operate without additional management and additional ancillary power sources.⁴⁸ Thus, while the project can ultimately be managed without compromising reliability, it does not improve grid reliability.⁴⁹

4. State energy policy does not mandate more wind power upstate.

There is no clear and compelling target for onshore wind power in the state's energy plan. The plan is being modified to incorporate the more aggressive emissions reduction goals of the CLCPA, and the new law provides for a planning process to determine the most effective ways forward. This will take about one year. But even the current target, 50% renewable energy in the power sector by 2030, cannot be met unless and until substantially more is done to plan for upgrading the bulk transmission system. Planning for these upgrades has yet to begin.⁵⁰ It seems obvious that, compared to siting new generation projects, adding transmission capacity will be far more effective in achieving a "rapid transition to clean renewable energy sources".⁵¹

48 Hrg. Ex. ____ [Kreutz Direct Testimony, 10-11].

49 ACWE has not offered to prove its project would improve grid reliability. ACWE says only that there would be "no negative impacts on electrical reliability in the state". Hrg. Ex. 32, sec. 10.b (citing Hrg. Ex. 24, sec. 5.a).

50 See Governor Andrew M. Cuomo, "Making Progress Happen," 2020 State of the State (January 8, 2020), at 34 ("A successful transition to fully renewable energy will demand substantial improvement to the transmission system and reconfiguration of the electric grid. The State will put together a plan for authorizing and building new transmission capacity to bring clean and renewable power from to areas that need additional electricity capacity . . ."), at <<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2020StateoftheStateBook.pdf>>.

51 NYSERDA, "New York State Announces Passage of Accelerated Renewable Energy Growth and Community Benefit Act as Part of 2020-2021 Enacted State Budget", press release available at <<https://www.wnypapers.com/news/article/current/2020/04/03/140857/nys-announces-passage-of-accelerated-renewable-energy-growth-and-community-benefit-act-as-part-of-2020->

Nothing in the law requires the Siting Board to approve a poorly sited project. The State Energy Law specifically authorizes the Board to deny approval for such projects.⁵² Approval should be denied for this one because it is not likely sufficient infrastructure will be in place to effectively and efficiently utilize ACWE's generation capacity.

5. Certifying poorly sited projects erodes public faith in government.

If the Siting Board allows sympathy for ACWE's "policy" argument (*i.e.*, renewables are good) to cloud its judgment, New York policies will continue to face opposition from the communities asked to host projects like ACWE's. In other words, without a more nuanced approach to the state's "policy", the Siting Board may unintentionally fan the flames of opposition to its work.

Citizens want their governments to act effectively to achieve agreed policy goals. When they learn that government's effort to pick winners is not effective, faith in government erodes. An example is the CLCPA itself. It was not developed in consultation with all stakeholders, only with a few. Energy trade associations and large environmental membership groups were heard from, but not the Association of Towns and several county governments. NYSERDA, PSC, and DEC were heard from, but NYISO's call to halt siting large-scale renewables until real transmission planning is advanced was not heeded. (NYISO is supportive of the CLCPA's inclusion of transmission planning among its mandates.) Effective strategies to achieve the state's policy goals will be stymied if upstate continues to be excluded.

Nowhere does New York policy say wind projects should be sited everywhere they can physically be installed. However, ACWE would like the Siting Board to find such a policy.

[21-enacted-state-budget](#)> (quoting NYSERDA president and CEO Alicia Barton).

52 See Energy L. § 6-104(5)(c) ("Nothing in this section shall limit the authority of any state agency, board, commission or authority to deny an application to construct, operate or modify an energy facility on environmental or public health and safety grounds, or that alternate means of energy procurement or alternate location for an energy facility can be secured.").

Fortunately, Article 10 does not allow decisions to be hijacked by mere “policy” assertions. Article 10 requires an *evaluation* of the role a project plays in the state’s *energy system*. Any such evaluation must start with the way the system is configured now and will be for the foreseeable future. The effect of siting additional generation capacity upstate under the circumstances will predictably fail to spur rapid emissions reduction, and is likely to saddle customers with much higher energy costs.⁵³ Generation siting is only part of an energy system transformation, it does not itself transform the system.

Unfortunately, the Recommended Decision’s opinion that the transmission infrastructure needed “can and will” be built in time to ensure the ACWE project can contribute to state energy goals appears to be a full-throated endorsement of ACWE’s “policy” approach. The vagueness of that approach, however, masks the real assumption behind the approach: siting large-scale renewables is the policy.

The CLCPA’s goal of a decarbonized *economy* will require a much broader approach. A plan to achieve the goal is now underway, as previously noted, but whether the plan will recommend continued aggressive siting of large scale wind projects upstate before adequate transmission capacity can be anticipated is unknown. Given ACWE’s refusal to provide adequate information on

53 See Coalition Initial Br., 37. This outcome may be avoided by replacing out-of-market payments to generators with carbon pricing tied to customer rebates, that is, where carbon pricing revenues are passed through as dividends to customers. Eliminating capacity markets in New York is a strategy “to harmonize the state’s energy policies and the operation of . . . wholesale markets.” NYISO, “integrating Public Policy Task Force”, available at <nyiso.com/ipptf>. This strategy competes with the alternative of expanding out-of-market payments for struggling “must-run” and ancillary resources. See Susan F. Tierney & Paul J. Hibbard, Clean Energy in New York State: The Role and Economic Impacts of a Carbon Price in NYISO’s Wholesale Electricity Markets, Analysis Group (Oct. 3, 2019), available at <<https://www.nyiso.com/documents/20142/2244202/Analysis-Group-NYISO-Carbon-Pricing-Report.pdf/81ba0cb4-fb8e-ec86-9590-cd8894815231>>. This is consistent with the CLCPA, which authorizes the development of a “Carbon Adder” to reflect the value of providing carbon-free generation.

project impacts on the energy system, the Siting Board should not resolve the “competing policy imperatives”⁵⁴ in this case against the community and the natural resources it hosts.

6. Ensuring the ACWE project is economic is not the sole basis for determining the project’s public interest.

ACWE’s Brief on Exceptions asks “how a wind facility (or any facility) could withstand a loss of [a confidential amount] of its profit or why it would be prudent for achieving the State’s renewable energy goals to forgo [a confidential amount of generation] annually”.⁵⁵ Implicit in the way the question is asked is an assumption that the Siting Board should ensure certification of all renewable energy projects in a manner that makes them economic.⁵⁶ However, a very different perspective follows with equal logic: if the constraints on a large-scale wind project’s ability to achieve the State’s renewable energy goals are significant, and there is no evidence of a plan or program in place to relieve those constraints sometime during the operational life of the project, the project should not be sited. Only where such a project is sited so as to avoid such constraints on the utilization of its generation capacity should it be certified. That, it would seem, is what the public interest requires.⁵⁷

The Coalition rebutted ACWE’s assertion that it will meaningfully advance the state’s energy policy by efficiently reducing New York emission reductions. Specifically the Coalition demonstrated two facts: the applicant’s modeling results for 2023 are not an accurate indication of

54 RD, 91.

55 ACWE Br. on Exceptions, 11 (citing RD at 68).

56 ACWE has not been required to file a business case demonstrating the economic feasibility of its proposed project. Indeed, the applicant has consistently avoided questions asking for a dollar-and-cents assessment of various mitigation measures. As a result, it cannot be determined what measures to avoid and minimize adverse impacts would make the project uneconomic.

57 Section 7(2) of the CLCPA requires all state agencies to consider whether their decisions regarding permits, licenses and other approvals are inconsistent with or interfere with achieving the CLCPA’s statewide greenhouse gas limits and, if so, identify alternatives.

the “estimated average annual and monthly production output for the facility” over its anticipated lifetime;⁵⁸ and, more seriously, unresolved transmission constraints result in ACWE’s project displacing other energy generators upstate, and only from other zero- or low-emitting sources.⁵⁹

If because the upstate grid to which it would inject its energy is bottled, and has achieved a near-maximum utilization of zero-emissions energy, injecting new zero-emissions energy approaches a zero-sum proposition, requiring curtailment of other zero-emissions generators, certifying ACWE’s proposed project would not be in the public interest.

Humphrey New York

_ /s/

Dated: April 16, 2020

Gary A. Abraham, Esq.

cc: Service List, via email

⁵⁸ 16 NYCRR § 1001.8(a)(5).

⁵⁹ CCC Br. on Exceptions, 37.