

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

At a session of the New York State
Board on Electric Generation Siting
and the Environment held in the City
of Albany on June 23, 2026

BOARD MEMBERS PRESENT:

TAMMY MITCHELL, Alternate for
Rory M. Christian, Chair
New York State Public Service Commission

MARK SANZA, Alternate for
Amanda Lefton, Commissioner
New York State Department of Environmental Conservation

KEVIN MALONE, Alternate for
James V. McDonald, M.D., M.P.H., Commissioner
New York State Department of Health

DAVID WHIPPLE, Alternate for
Hope Knight, Commissioner
New York State Department of Economic Development

SARAH OSGOOD, Alternate for
Charles Bell, Acting Chair
New York State Energy Research and Development Authority

CASE 17-F-0282 - Application of Alle-Catt Wind Energy LLC for a
Certificate of Environmental Compatibility and
Public Need Pursuant to Article 10 for a
Proposed Wind Energy Project, Located in
Allegany, Cattaraugus, and Wyoming Counties,
New York, in the Towns of Arcade, Centerville,
Farmersville, Freedom, and Rushford.

ORDER DENYING AMENDMENT AND PROVIDING CLARIFICATION

(Issued and Effective June 23, 2026)

BY THE BOARD:

INTRODUCTION

On June 3, 2020, the New York State Board on Electric Generation Siting and the Environment (Siting Board or Board) granted a Certificate of Environmental Compatibility and Public Need (Certificate) to Alle-Catt Wind Energy, LLC (ACWE) pursuant to Public Service Law (PSL) §168.¹ The Certificate authorizes ACWE to construct and operate a utility-scale wind electric generating facility (the Facility or Project) for up to 340 megawatts (MW), located in Allegany, Cattaraugus, and Wyoming Counties (the Facility). On November 28, 2023, the Siting Board issued an Order amending the Certificate to modify the Facility layout without changing the generating capacity and to modify the expiration date of the Certificate.² On January 27, 2026, ACWE filed a Petition for Amendment (Petition) primarily requesting that the Siting Board amend the Certificate to remove Certificate Condition 68(d)(vi). Certificate Condition 68(d)(vi) obligates ACWE to design the Facility to limit Facility noise to a "40 dBA L(night-outside), annual equivalent continuous average nighttime sound level from the Facility outside any existing non-participating residence and 50 dBA L(night-outside) for participating residences." The Siting Board refers to this as the L(night) Design Goal.

By letter dated February 12, 2026, the Secretary to the Siting Board (Secretary) notified ACWE that the Petition did not contain sufficient information to determine whether the changes constituted a "revision" or "modification" under the

¹ Case 17-F-0282, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions (issued June 3, 2020) (Certificate Order).

² Case 17-F-0282, Order Granting Petition, in Part, Subject to Conditions (issued November 29, 2023).

regulations at 16 NYCRR §1000.16(b). On March 3, 2026, ACWE supplemented the Petition via letter (Supplement Letter). On March 17, 2026, the Secretary issued a letter notifying ACWE that ACWE's requested amendment is not expected to result in an increase in the environmental impacts as compared to the Certified Facility and, therefore, does not constitute a "revision" under 16 NYCRR §1000.16(b).

The Siting Board has reviewed the Petition, the Supplement Letter, the pre-Certificate record, public and party comments on the Petition, and ACWE compliance filings submitted pursuant to the Certificate. The Siting Board denies ACWE's request for an Amendment, as detailed below. The Siting Board provides clarification on the methodology that ACWE shall employ to demonstrate compliance with Certificate Condition 68(d)(vi).

BACKGROUND

The Certificate and Compliance Filings

In granting ACWE's Certificate, the Siting Board made specific findings in accordance with PSL §168. The Siting Board based its findings on an extensive review of the pre-Certificate record, including the probable environmental impacts of the construction and operation of the Facility, including potential impacts on ecology, air, ground and surface water, wildlife, and habitat (PSL §168[2][a]); public health and safety, including noise (PSL §168[2][b]); cultural, historic, and recreational resources, including aesthetics and scenic values (PSL §168[2][c]); and transportation, communication, utilities, and other infrastructure (PSL §168[2][d]).

In accordance with PSL §168(3), the Siting Board issued a Certificate based on a determination that the Facility would be a beneficial addition to, or substitution for, the electric generation capacity of the State (PSL §168[3][a]); the

construction and operation of the Facility would serve the public interest (PSL §168[3][b]); the adverse environmental impacts of the Facility's construction and operation have been adequately minimized or avoided to the maximum extent practicable, including those from noise (PSL §168[3][c]); the Certificate requires ACWE to avoid, offset, or minimize to the maximum extent practicable for the duration of the Certificate using verifiable measures with respect to any potential significant and adverse disproportionate environmental impact - such as noise - on the community in which it would be located (PSL §168[3][d]); and the Facility is designed to operate in compliance with applicable State and local laws and regulations (PSL §168[3][e]).

ACWE has submitted three compliance filings pursuant to Certificate Condition 68(d)(vi) that model compliance with the L(night) Design Goal for non-participating residences.³ On November 18, 2024, ACWE submitted its Pre-Construction Noise Impact Assessment (PNIA). In that PNIA, ACWE modeled annual nighttime noise using a 1.5m receptor height and a ground absorption factor of 0.5.⁴ ACWE did not add the 2 dBA uncertainty factor⁵ required by Certificate Condition 68(d)(iii). Subsequently, on March 17, 2025, and April 10, 2025, ACWE submitted revised PNIAs assessing its conformance with the

³ Residences come in three categories: Category 1, which are year-round residences; Category 2, which are seasonal homes; and Category 3, which are infrequently inhabited and not suitable for long-term use. Case 17-F-0282, Receptor Analysis Summary (filed December 12, 2024), p. 2.

⁴ Case 17-F-0282, Appendix H - Pre-Construction Noise Impact Assessment (filed November 18, 2024), pp. 4-5.

⁵ The uncertainty factor requires ACWE to add 2 dBA to all modeling results. For example, if the modeling results in a 30 dBA impact, the uncertainty factor will increase the result to 32 dBA.

L(night) Design Goal using 1.5m receptor height and a ground absorption factor of 1.0.⁶ The two revised PNIAs added the 2 dBA uncertainty factor as the Certificate required. All three PNIAs used the Van den Berg modeling method. According to ACWE, all three PNIAs report that no non-participating residence would experience average nighttime noise of 40 dBA or higher, and all but eleven non-participating residences⁷ would experience average nighttime noise at or below 38 dBA. ACWE has not received New York State Public Service Commission (Commission) approval for its PNIAs for demonstrating compliance with the L(night) Design Goal.⁸

On March 20, 2025, ACWE filed a letter requesting approval of its PNIAs (the PNIA Letter). In the PNIA Letter, ACWE asserted that Certificate Condition 68(d) prescribes some, but not all, of the methodology applicable to modeling conformance to the L(night) Design Goal. ACWE continued that "Certificate Condition 68 includes no other instructions concerning pre-construction noise modeling and, in particular, no specified factor to be used for ground absorption and no instruction that modeling for conformance with the annual equivalent continuous nighttime sound level must be performed identically to short term modeling." ACWE explains why it chose

⁶ Case 17-F-0282, Appendix H - Pre-Construction Noise Impact Assessment Update (filed March 17, 2025), pp. 4-5; Appendix H - Pre-Construction Noise Impact Assessment Updated (filed April 10, 2025), pp. 4-5 (April 10 PNIA).

⁷ These are receptors 69, 417, 1565, 1974, 1980 (Category 1 permanent residences); 1981 (a Category 2 seasonal residence); and 2727, 2728, 2739, 2740, and 2741 (Category 3 infrequently inhabited residences not suitable for long-term use). These receptors would experience 39 dBA average annual nighttime noise. April 10 PNIA, Table C.1.

⁸ Under PSL §168(7) and 16 NYCRR §1002.2(f), the Commission has the jurisdiction to approve compliance filings.

certain methodological inputs when calculating conformance with the L(night) Design Goal pursuant to Certificate Condition 68(d) (vi). ACWE alludes to disagreements with Department of Public Service staff (DPS staff) over ACWE's methodology for calculating compliance with the L(night) Design Goal, such as the appropriate ground absorption factor and how to incorporate noise from nearby wind energy facilities.

The Petition and Supplement Letter

In the Petition, ACWE requests that the Siting Board amend the Certificate to remove Certificate Condition 68(d) (vi) and therefore remove the L(night) Design Goal. ACWE provides three reasons for its requested amendment.

First, ACWE argues "[r]emoving the requirement to predict the annual average noise level is consistent with determinations reached by the Siting Board and the Commission concerning similar wind energy projects." ACWE cites to the Siting Board's May 26, 2021 Order Approving Amendment in Case 14-F-0490, in which the Siting Board granted Cassadaga Wind LLC's (Cassadaga Wind) requested certificate amendment and removed the requirement for Cassadaga to monitor long-term nighttime noise.⁹ ACWE argues that because the Siting Board eliminated the requirement to monitor long-term nighttime noise after construction, the Siting Board here should eliminate the requirement for ACWE to design the Facility to produce no more than 40 dBA average

⁹ Case 14-F-0490, Article 10 - Cassadaga Wind LLC, Order Approving Amendment (issued May 26, 2021), pp. 9-10 (granting an amendment to monitor long-term noise after construction but leaving intact the requirement to design the Cassadaga wind facility to limit average annual nighttime noise to no more than 40 dBA at participating residences) (Cassadaga Amendment Order).

annual continuous nighttime noise at non-participating residences in conformance with the L(night) Design Goal. ACWE also cites the newly adopted PSL Article VIII implementing regulations, which do not include a continuous average nighttime noise design goal for wind facilities, as reason to remove the L(night) Design Goal for its Facility.

Second, and relatedly, ACWE argues that average annual nighttime noise modeling is not necessary given the other noise protections with which it must comply. ACWE lists the suite of noise protections in its Certificate and argues that these are sufficient protection without the L(night) Design Goal. ACWE interprets the Cassadaga Amendment Order as supporting its claim that the L(night) Design Goal is not necessary given ACWE's other noise obligations. Additionally, ACWE interprets the Commission's Order Approving Compliance Filings 68(a-e) Subject to Conditions in Case 15-F-0122 as supporting its position.¹⁰ Finally, ACWE argues that the absence of an L(night) Design Goal in the PSL Article VIII implementing regulations for wind facilities reflect a move away from an L(night) Design Goal. Ultimately, ACWE argues that these decisions support removing Certificate Condition 68(d)(vi) from the Certificate.

Third, ACWE claims that "[u]ncertainty concerning the methods to be used in conducting annual average sound level modeling creates needless uncertainty in how the results are to be reported and applied." ACWE references the PNIA Letter discussed above as an example, but does not

¹⁰ Case 15-F-0122, Article 10 - Baron Winds Phase I, One Commissioner Order Approving Compliance Filings 68(a-e) Subject to Conditions (issued December 29, 2022, confirmed January 23, 2023) (Baron Sound Order).

further elaborate the methodological difficulties it claims it faces in the Petition.

On February 12, 2026, the Secretary issued a letter to ACWE explaining that the Petition contains insufficient information to determine whether the requested amendment constitutes a "revision" requiring a hearing or is a "modification" that can be addressed on the papers. The Secretary observed that while the Petition alluded to methodological uncertainties, the Petition did not provide any further detail. ACWE filed the Supplement Letter in response. In the Supplement Letter, ACWE states that, "Condition 68 does not prescribe assumptions to be employed for wind speed or wind direction, atmospheric conditions, or ground absorption values in conducting the required modeling. The assumptions made to represent these factors greatly affect modeling results." ACWE asserts that there is no standardized methodology for accounting for several variables that impact the results of noise modeling. ACWE concludes that "[i]n the absence of an agreement on what adjustments should be made, annual average modeling is left with the uncertainties to which ACWE referred in the Petition."

LEGAL AUTHORITY

Under PSL Article 10, the Chair of the Siting Board has the authority to grant amendments to a certificate of environmental compatibility and public need after consultation with the permanent members of the Siting Board, provided no party opposes such request within 30 days.¹¹ If an amendment is deemed "likely to result in any material increase in any environmental impact of the facility or a substantial change in

¹¹ PSL §161(1).

the location of all or a portion of such facility," the Siting Board is required to conduct "a hearing in the same manner" as on the initial Application.¹² Under the regulations implementing this provision, if an amendment is deemed a "revision," it is subject to such a hearing.¹³ Correspondingly, if an amendment is not a "revision," the amendment can be addressed on the papers.

Under PSL §168(7), "[f]ollowing any rehearing and any judicial review of the board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate." Therefore, for purposes of this amendment request, the permanent Siting Board's jurisdiction has not ceased, and it will consider the instant request.

Pursuant to the regulations,¹⁴ the Secretary consulted with DPS staff and staff of the Department of Environmental Conservation and the Department of Health. Following this consultation, the Secretary concluded that the proposed amendment would not result in a significant adverse increase to environmental impacts and, thus, does not constitute a "revision" that would require a hearing under the regulations. The Siting Board denies ACWE's Petition as discussed herein and makes no amendment to the Certificate. "Siting Board actions that make no changes to a certificate cannot be modifications or revisions."¹⁵ Therefore, the Siting Board does not adopt the Secretary's finding that the proposed amendment does not constitute a revision.

¹² PSL §165(5).

¹³ 16 NYCRR §1000.16(c).

¹⁴ 16 NYCRR §1000.16(a).

¹⁵ Case 17-F-0282, Order Denying Rehearing (issued March 26, 2024), p. 6.

COMMENTS

On March 24, 2026, the Secretary issued a notice soliciting comments on the Petition and the Letter Supplement by May 8, 2026.¹⁶ The Siting Board received party comments from the Coalition of Concerned Citizens (CCC), Cattaraugus County Legislators Brenda Hanson and Ginger Schoder, Stephanie Milks, and the Town of Freedom. The Siting Board received 173 public comments on the Amendment Petition. At the outset, the Siting Board must clarify the issue before it. Commenters have raised issues with a host of matters in addition to ACWE's Petition to amend Certificate Condition 68(d)(vi) to remove the L(night) Design Goal, including blade deliveries, turbine and blade specifications, deliverability of the Facility's electricity, wildlife impacts, and shadow flicker. However, the Petition and Supplement Letter are limited to the issue of whether the Siting Board should eliminate the L(night) Design Goal. The Siting Board does not address comments that raise issues beyond whether to remove Certificate Condition 68(d)(vi) and thereby remove the L(night) Design Goal.¹⁷

Party comments universally oppose ACWE's petition, all for much the same reasons. Stephanie Milks emphasized the deleterious impacts to sleep of continuous exposure to noise. She supported maintaining the L(night) Design Goal,

¹⁶ The Siting Board notes that all public comments pertaining to the Amendment Petition were considered regardless of filing date.

¹⁷ Public and party comments also take issue with the Secretary's decision that ACWE's requested amendment does not constitute a revision and thus no hearing is warranted. The Siting Board denies ACWE's Petition in this Order, makes no modifications to the Certificate, and does not adopt the Secretary's finding that the proposed amendment does not constitute a revision. The Siting Board thus does not address comments concerning whether the requested amendment is a revision.

characterizing it as a measure to protect the health of those exposed to the Facility's noise. Stephanie Milks requested that the Siting Board deny ACWE's proposed amendment.

Cattaraugus County Legislators Hanson and Schroder also emphasized the negative public health impacts of continuous exposure to noise. They requested that the Siting Board deny the proposed amendment because granting it would constitute a public health risk. Legislator Hanson also took issue with ACWE's arguments in the Petition. First, she disagreed with ACWE's argument that because it is subject to other conditions concerning noise, the L(night) Design Goal in Certificate Condition 68(d)(vi) is not necessary. She countered that short-term and long-term noise limits are not equivalent because they protect against different harms: short-term noise limits protect against peak exposure, whereas long-term limits protect against continuous exposure. Second, she observed that while the Siting Board supported its approval of the L(night) Design Goal based on review of expert testimony and technical evidence, ACWE has presented neither expert testimony nor technical evidence in support of its requested amendment. For these reasons, she requested that the Siting Board deny the Petition.

The Town of Freedom also requested that the Siting Board deny the Petition, or in the alternative, amend the Certificate to provide a clear, enforceable, transparent, and conservative model for modeling continuous average nighttime noise. The Town of Freedom provided three main arguments for its position. First, the Town characterized the L(night) Design Goal as preventive. Whereas post-construction noise monitoring detects and attempts to rectify noise above certain standards as it occurs, pre-construction noise modeling seeks to ensure that the Facility avoids noise impacts altogether. The Town thus took issue with ACWE's argument that because it is subject to

other standards, the L(night) Design Goal is not necessary. Second, the Town disagreed with ACWE's impetus for requesting the amendment. According to the Town, the uncertainty that ACWE invokes is not sufficient basis to eliminate a protective measure. Instead, uncertainty supports conservative modeling, such as the L(night) Design Goal, to ensure sufficient protection. Finally, the Town disagrees with ACWE's analysis of the Cassadaga Amendment Order. The Town observed that the Cassadaga Amendment Order eliminated the requirement to monitor continuous average nighttime noise after construction but left intact the L(night) Design Goal to which Cassadaga is subject. According to the Town, the Cassadaga Amendment Order supports denying, not granting, the Petition.

CCC also requested that the Siting Board deny the Petition for the reasons proffered by the other commenters: ACWE's reliance on precedent is misplaced, and long-term noise standards are not redundant but rather complementary with short-term noise standards because they are different, equally important means to protect against noise exposure. Additionally, CCC disagreed with ACWE's argument that the PSL Article VIII implementing regulations support eliminating the L(night) Design Goal. CCC argued that PSL Article VIII does not apply to the Facility, and thus the regulatory standards in its implementing regulations are not applicable to this proceeding. Finally, CCC included with its comments a detailed examination of modeling inputs for average annual nighttime noise.

Of the 173 public comments, 135 opposed the Petition. Generally, opposing public comments disagreed that the other noise protections in the Certificate are sufficiently protective, or that the L(night) Design Goal does not offer additional protection. Many of these commenters explained that they live and work in the vicinity of the Facility and must live

with the noise the Facility produces, including the continuous nighttime noise the L(night) Design Goal minimizes. These commenters request that the Siting Board deny the Petition. The remaining 38 public comments were filed in support of the Facility generally because of the benefits renewable energy provides. However, these comments did not speak to the Petition specifically.

ACWE responded to party comments on May 8, 2026. In its response comments, ACWE reiterated its position that limits on short-term noise in the Certificate provide ample protection from noise exposure, and that the L(night) Design Goal provides no additional protection. ACWE further disagreed with commenters that Siting Board and Commission precedent does not support removing the L(night) Design Goal, citing again the Cassadaga Amendment Order and Baron Sound Order as examples.

Finally, the Siting Board received over 100 requests to participate in this proceeding. Requests to participate in this proceeding are not comments and generally do not contain any position on the Petition or its Letter Supplement, although some express an intent to oppose the requested amendment. The Siting Board takes notice that potential changes to the L(night) Design Goal have engendered intense interest and opposition from the public.

DISCUSSION

Wind Turbine Noise Law and Policy

Siting Board and Commission precedent support maintaining the L(night) Design Goal. To issue a certificate, the Siting Board must find that a wind energy facility would minimize or avoid adverse environmental impacts - including

those arising from facility noise - to the extent practicable.¹⁸ To minimize or avoid impacts arising from wind turbine noise per PSL §168(3)(d), the Siting Board has developed a suite of noise-related design goals and regulatory limits with which all wind facilities must comply.¹⁹ Regulatory limits are measured and enforced during operation, and are intended to detect and remediate noise impacts as they happen. Design goals are modeled and enforced prior to construction and are intended to ensure a facility is designed to minimize impacts. Among these design goals is the L(night) Design Goal that ACWE seeks to remove from its Certificate. All Article 10 wind facilities are subject to an L(night) Design Goal similar, if not identical, to ACWE's L(night) Design Goal.

The Cassadaga Amendment Order and the Baron Sound Order reinforce the Siting Board's approach to minimizing wind turbine noise impacts. In the Cassadaga Amendment Order, the Siting Board eliminated the requirement for post-construction long-term monitoring of 40 dBA average annual nighttime noise at non-participating residences, but left intact Cassadaga Wind's L(night) Design Goal.²⁰ The Siting Board reasoned that the other noise limits to which the Cassadaga Wind facility is subject - including its own L(night) Design Goal - adequately protect public health and safety.²¹ As the Cassadaga Wind facility was

¹⁸ PSL §168(3)(d).

¹⁹ E.g., Certificate Order, pp. 59-70; Certificate Conditions 68-75.

²⁰ Cassadaga Amendment Order, pp. 10-11 (concluding that the 40 dBA L(night) Design Goal was sufficiently protective). Cassadaga Wind submitted a compliance filing demonstrating that its facility is designed in conformance with its L(night) Design Goal. Case 14-F-0490, Final Sound Propagation Modeling (filed March 1, 2019).

²¹ Cassadaga Amendment Order, pp. 10-11.

designed in conformance with its L(night) Design Goal, long-term monitoring did not provide additional benefits.²² The Baron Sound Order also reinforces that maintaining the L(night) Design Goal is consistent with precedent. Baron Wind is also subject to an L(night) Design Goal.²³ The Commission reiterated that Baron Wind's L(night) Design Goal was part of a suite of protective certificate conditions when approving the noise compliance filing, and did not alter Baron Wind's obligation to model conformance with its L(night) Design Goal.²⁴

We are persuaded by commenters that ACWE's requested amendment is inconsistent with Siting Board and Commission precedent. All Article 10 wind facilities are subject to an L(night) Design Goal that is similar, if not identical, to ACWE's L(night) Design Goal. ACWE provides no precedential support for the Siting Board not adopting in the first instance or later amending a certificate to remove an L(night) Design Goal. Indeed, the Cassadaga Amendment Order that ACWE cites in support of its requested amendment comes to precisely the opposite conclusion as ACWE's interpretation of the Cassadaga Amendment Order in the Petition; the Siting Board approved Cassadaga Wind's amendment because Cassadaga is subject to its own L(night) Design Goal.²⁵ ACWE's requested amendment lacks legal support.

Similarly, the Siting Board reiterates that ACWE's L(night) Design Goal is a component of a larger suite of noise

²² Id.

²³ Case 15-F-0122, Article 10 - Baron Winds, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued September 12, 2019), at Appendix A, Certificate Condition 68(e)(i).

²⁴ Baron Sound Order, pp. 13-14.

²⁵ Cassadaga Amendment Order, pp. 10-11.

protections necessary to minimize or avoid adverse public health impacts. The Siting Board explained this approach of complementary noise protections when granting Cassadaga Wind a certificate. The Siting Board distinguished between several types of impacts arising from wind turbine noise, including: low-frequency and infrasound,²⁶ long-term exposure to noise,²⁷ amplitude-modulated sounds,²⁸ and short-term exposure to noise.²⁹ Minimizing or avoiding these impacts required certificate conditions specific to each impact.³⁰ Cassadaga Wind's L(night) Design Goal addressed long-term noise exposure,³¹ whereas the regulatory limit on amplitude modulation addressed the impacts of amplitude modulation.³² The L(night) Design Goal did not address amplitude modulation impacts, nor did the amplitude modulation limits address long-term exposure to noise. For this reason, the Siting Board found that amending Cassadaga Wind's certificate was appropriate because the suite of noise protections discussed above addressed the identified noise impacts.³³

The Siting Board repeated this approach for ACWE. In granting ACWE its Certificate, the Siting Board reviewed the range of noise impacts and adopted a similar suite of protections to minimize or avoid each independent impact arising

²⁶ Case 14-F-0490, Article 10 - Cassadaga Wind, Order Granting Certificate of Environmental Compatibility and Public Need, with Conditions (issued January 17, 2018), p. 64.

²⁷ Id., pp. 64-65.

²⁸ Id., p. 60.

²⁹ Id., pp. 62-63.

³⁰ Id., p. 68.

³¹ Id., pp. 68-71.

³² Id., p. 75.

³³ Cassadaga Amendment Order, p. 10.

from wind turbine noise.³⁴ The Siting Board adopted the L(night) Design Goal to specifically address long-term noise exposure.³⁵ No other Certificate Condition addresses continuous long-term noise exposure.³⁶

Commenters such as Stephanie Milks, Cattaraugus County, CCC, and the Town of Freedom articulate well the role of the L(night) Design Goal in protecting public health and safety. These commenters observe that the L(night) Design Goal's purpose is to protect against specific impacts arising from wind turbine noise. Commenters stressed that the L(night) Design Goal is a preventative measure that protects against continuous, cumulative exposure to noise. The Siting Board agrees with this articulation. Each of the noise Certificate Conditions protect against a specific impact. The L(night) Design Goal seeks to prevent the adverse noise impacts that other Certificate Conditions do not address. It complements the other protections in Certificate Conditions 68-75 to create a complete suite of noise protections that each minimize or avoid a specific adverse noise impact.

The Siting Board is persuaded by commenters that ACWE's argument that the L(night) Design Goal is redundant with the other noise Certificate Conditions and thus offers no additional protection is contrary to Siting Board policy. The L(night) Design Goal protects against continuous, long-term

³⁴ Certificate Order, pp. 59-70 (reviewing pre-construction noise modeling, design goals, regulatory limits, amplitude modulation, and post-construction monitoring).

³⁵ See Case 17-F-0282, Recommended Decision (issued February 27, 2020), p. 131 (observing that wind turbine noise possesses unique characteristics that must be addressed with a conservative methodology) (Recommended Decision). The Recommended Decision is incorporated into the Certificate Order. Certificate Order, p. 4.

³⁶ See generally Certificate Conditions 68-75.

exposure to noise as part of a suite of protections against noise impacts. ACWE did not argue that long-term noise exposure does not impact public health and safety. Rather, ACWE referenced Certificate Conditions that protect against short-term noise exposure as sufficiently protective. ACWE made no demonstration that short term protections, such as a maximum limit of 45 dBA over an 8-hour period, address the same impacts as a continuous average nighttime maximum limit of 40 dBA. Furthermore, ACWE did not address that the L(night) Design Goal is a preventative measure and made no demonstration that short-term protections measured during operation offer the same protection as a preventative design goal applied prior to construction. Granting the Petition would result in removing protections against long-term noise exposure without an adequate replacement.

ACWE also cited the PSL Article VIII implementing regulations as demonstrating a policy shift away from modeling long-term noise prior to construction, and thus supporting its request to eliminate the L(night) Design Goal.³⁷ The PSL Article VIII wind facility noise limits are not comparable to the noise protections applicable here. The Article VIII regulations are not the Certificate Conditions to which ACWE is subject with the L(night) Design Goal removed. Instead, the Article VIII regulations are a different package of complementary noise limits and methodologies for evaluating compliance that achieve the same objective as these Article 10 Certificate Conditions --

³⁷ Petition, p. 4. ACWE cites to 16 NYCRR §1100-2.8 as an example. *Id.*, pp. 6-7. However, these are not the PSL Article VIII implementing regulations, but rather the implementing regulations for former Executive Law §94-c. PSL Article VIII implementing regulations for major renewable energy facilities are codified at 16 NYCRR Parts 1100 and 1101. ACWE's incorrect citation does not impact the Siting Board's analysis.

a suite of protections to ensure that adverse impacts to public health and safety are avoided or minimized to the extent practicable. ACWE did not address any of the differences between its Certificate Conditions and the PSL Article VIII implementing regulations other than the absence of an L(night) Design Goal. Without a comprehensive analysis of the differences between the approach in Article VIII and the Certificate Conditions here, ACWE has not demonstrated a shift in policy that justifies eliminating the L(night) Design Goal.

Finally, Cattaraugus County Legislator Brenda Hanson observed that neither the Petition nor the Supplement Letter included technical analysis or expert testimony in support of the requested amendment. She noted that developing the L(night) Design Goal involved testimony, expert analysis, and several rounds of briefing. The Siting Board also observes that the Petition does not include any expert and technical support. As the requested amendment is insufficient on its face, the Siting Board does not address whether ACWE satisfied its burden of proof.

In sum, ACWE's Petition is inconsistent with Siting Board and Commission precedent on noise impact minimization and avoidance. ACWE's Petition is inconsistent with Siting Board policy on protecting against long-term noise exposure. Granting the Petition would remove protections against long-term noise exposure with no replacement. It would, as commenters note, pose a public health risk. The Siting Board therefore denies ACWE's Petition to remove the L(night) Design Goal.

Methodological Clarification

The record amply demonstrates that there is methodological uncertainty.³⁸ ACWE has thrice filed PNIAs to meet its obligations under Certificate Condition 68(d)(vi). The November 18, 2024 PNIA uses different methodological parameters to calculate compliance than the March 17, 2025 and April 10, 2025 PNIAs, but with similar results. "Different input assumptions may be equally reasonable,"³⁹ resulting in lengthy discussions between ACWE and DPS staff concerning which inputs are appropriate with no consensus reached.⁴⁰ CCC comments further illustrate the uncertainties of sound modelling. Technical comments submitted on February 7, 2026, disagreed with methodological parameters such as assumed inflow turbulence, the assumed ground absorption factor, topography and terrain concavity, wind speed modeling, and the use of an icing factor, among others. Sound compliance methodologies are highly input dependent.⁴¹ Changing even one of these inputs, as both CCC and ACWE indicate, can materially impact modeling.

The Siting Board agrees with ACWE: "In the absence of an agreement on what adjustments should be made, annual average modeling is left with the uncertainties to which ACWE referred in the Petition."⁴² The record demonstrates that there is not agreement on the inputs required for modeling conformance with the L(night) Design Goal. Clarification is required to resolve

³⁸ Petition, p. 4.

³⁹ Case 16-F-0559, Article 10 - Bluestone Wind, Order Granting Certificate of Environmental Compatibility and Public Need (issued December 16, 2019), pp. 58-59 (Bluestone Order).

⁴⁰ PNIA Letter.

⁴¹ Bluestone Order, pp. 58-59.

⁴² Supplement Letter, p. 3.

the methodological uncertainties. The Siting Board provides the necessary clarification.

A substantial portion of the Certificate Order is devoted to examining how ACWE must calculate compliance with noise-related Certificate Conditions. The Siting Board considered a host of meteorological corrections, whether to employ the CONCAWE or Van de Berg corrections, the assumed height of sound sources, the assumed height of the receptors, and the degree to which noise protections account for uncertainty, among other inputs.⁴³ The Siting Board ultimately chose a methodology for modeling compliance with the L(night) Design Goal that was sufficiently conservative to ensure that noise impacts are avoided or minimized to the extent practicable.⁴⁴ Certificate Condition 68(d) prescribes the modeling requirements to which ACWE must adhere:

Revised sound modeling with the specifications of the wind turbine model selected for construction to demonstrate that the Project is modeled to meet the Local Laws on Noise and the regulatory limits of Condition 72. The revised sound modeling will include a cumulative noise assessment that includes noise from any proposed, existing, or approved Wind Generation Facility adjacent to the approved project area. In this case, the evaluation will include any adjacent wind turbine within a 2-mile radius from any wind turbine from the Facility.

- (i) If noise reduction operations (NRO's) are used to demonstrate conformance with any Certificate Condition or local law on noise in a compliance filing, those NRO's shall be implemented at the start date of operations;
- (ii) a compliance filing shall use less than half of the maximum NRO available for each turbine model;
- (iii) Sound levels shall be evaluated at either 4.0 meters with no uncertainty added, or a 1.5 meters with a 2 dBA correction for uncertainty added.

⁴³ Certificate Order, pp. 59-70; Recommended Decision, pp. 123-135.

⁴⁴ Recommended Decision, p. 131 (recommending a conservative methodology because of the uncertainties of modeling noise).

Additionally, the Siting Board prescribed that ACWE must apply either the entire suite of CONCAWE corrections or the Van den Berg corrections.⁴⁵ The Siting Board did not provide other requirements for modeling conformance with the L(night) Design Goal, such as ground absorption factor, whether the modeling must be identical to short-term modeling, an icing factor, or how to account for the noise of other nearby wind facilities. With these clarifications, the Siting Board concludes that ACWE has the certainty necessary to model whether the Facility is designed to conform to Certificate Condition 68(d)(vi): "40 dBA L(night-outside), annual equivalent continuous average nighttime sound level from the Facility outside any existing non-participating residence and 50 dBA L(night-outside) for participating residences."

The Siting Board is assured that these clarifications do not impact the noise protections the Siting Board established. ACWE has characterized the L(night) Design Goal as "overly conservative," "over-predicting the annual average noise level," and "greatly overpredict[ing] noise levels." The Siting Board acknowledges the conservative nature, and emphasizes that this is precisely the intent of the L(night) Design Goal. When determining how to avoid or minimize noise impacts, the Siting Board considers "whether or not the proposed modeling methodology is sufficiently 'conservative.'"⁴⁶ A computer model is dependent on its inputs, and different inputs can be equally reasonable. The Siting Board therefore adopted as part of noise modeling certificate conditions a conservative methodology "that

⁴⁵ Certificate Order, p. 62.

⁴⁶ Bluestone Certificate Order, p. 58.

tends to overstate actual noise levels" because doing so is more protective of human health.⁴⁷

The Siting Board applied such an approach when granting ACWE a Certificate. As discussed above, the Siting Board selected from "equally reasonable" parameters the required parameters for modeling conformance with the L(night) Design Goal to produce a conservative methodology that likely overstates actual noise impacts to maximize public health protections.⁴⁸ In this Order, the Siting Board makes no changes to the methodological parameters mandated in the Certificate; the conservative and protective L(night) Design Goal remains in effect. Accordingly, if ACWE complies with its Certificate, the result of its L(night) Design Goal modeling will be an appropriately conservative assessment that protects human health.

CONCLUSION

As discussed above, the Siting Board denies ACWE's request to remove Certificate Condition 68(d)(vi) and makes no changes to ACWE's Certificate. Siting Board and Commission precedent and Siting Board policy support retaining the protections against long-term exposure to noise in Certificate Condition 68(d)(vi). The Siting Board agrees that methodological uncertainty requires resolution and provides methodological clarification.

The Siting Board notes that denial of the Amendment Petition does not relieve ACWE of the need to comply with the terms, conditions, limitations, or modifications of the construction and operation of the facility authorized in the

⁴⁷ Id., p. 59.

⁴⁸ See Certificate Order, pp. 59-60.

certificate, and ACWE is required to comply with the procedures for compliance filings, including filing and notice requirements prior to any related construction.

The Board on Electric Generation Siting and the Environment orders:

1. The January 27, 2026 Petition of Alle-Catt Wind Energy, LLC requesting removal of Certificate Condition 68(d)(vi), as supplemented by letter filed March 3, 2026, is denied.
2. All provisions of the Certificate remain in full force and effect.
3. This proceeding is continued.

By the New York State Board
on Electric Generation Siting
and the Environment,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary