



## CATTARAUGUS COUNTY LEGISLATURE

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New York State Board on Electric Generation Siting and the Environment  
Department of Public Service  
Russell King  
Assistant Counsel  
Three Empire State Plaza Albany, New York  
12223-1350

**Re: Case 17-F-0282 — Alle-Catt Wind Energy LLC — Denial of Amendment Petition to Remove Certificate Condition 68(d)(vi) — Obligations of Certificate Holder, Compliance, and Enforcement**

Dear Mr. King,

I write as a duly elected Cattaraugus County Legislator representing constituents who reside in close proximity to the Alle-Catt Wind Farm project in the Towns of Farmersville and Freedom. My constituents and I welcome the Siting Board's June 23, 2026 denial of Alle-Catt Wind Energy LLC's petition to amend its Certificate of Environmental Compatibility and Public Need to remove Certificate Condition 68(d)(vi) — the requirement to demonstrate, through pre-construction noise modeling, conformance with the L(night) Design Goal of 40 dBA annual equivalent continuous average nighttime sound level outside any existing non-participating residence.

That denial raises three urgent and distinct questions that I respectfully ask the Board and DPS staff to answer in writing: (1) What is Alle-Catt now obligated to do? (2) Does that obligation extend to turbines already erected in Rushford and Farmersville? (3) What happens if Alle-Catt fails to comply, and who enforces it? I set out those questions in full below.

**I. Alle-Catt's Obligation Following Denial of the Amendment Petition**

The Siting Board's denial means Certificate Condition 68(d)(vi) stands as written and as accepted by the Certificate Holder upon its July 2, 2020 acceptance of the Certificate. Certificate Condition 68 requires that, no fewer than sixty (60) days before Commencement of Full Construction, Alle-Catt file with the Secretary a Pre-Construction Noise Impact Assessment ("PNIA") demonstrating, through sound modeling, that the project as finally designed is modeled to meet the 40 dBA L(night-outside) annual equivalent continuous average nighttime sound level at all existing non-participating residences.

The Coalition of Concerned Citizens' attorney, Gary Abraham, has stated in filings that Alle-Catt's own December 3, 2025 PNIA predicts that noise at most receptors will exceed the 40 dBA L(night) goal. In light of the Board's denial and the condition as written, I respectfully ask:

1. Is Alle-Catt now obligated to redesign or reconfigure its project — including turbine selection, layout, or operational parameters — so that a properly conducted L(night) model demonstrates conformance with the 40 dBA standard before full construction may be authorized?

2. If the project as currently designed cannot meet that standard, is the Certificate Holder required to modify the design — including turbine selection, siting, or operational parameters — until a compliant model can be produced?
3. If the project as currently designed cannot meet that standard and no compliant model is produced, is the Certificate Holder prohibited from proceeding to full construction?
4. Does the Board confirm that the L(night) Design Goal of 40 dBA is a mandatory pre-construction modeling requirement — not a discretionary target — and that Alle-Catt cannot escape that obligation by redefining or reinterpreting the applicable metric?

## **II. Turbines Already Erected in Rushford and Farmersville: What Is the Scope of the Pre-Construction Obligation?**

Alle-Catt has already commenced construction activities, including the erection of turbines in the Towns of Rushford and Farmersville. The Commission's April 29, 2025 Order approved Compliance Filings 68(a), (c)(i), (d)(v), (vii), and (viii) for the excavation and pouring of foundations and the erection of wind turbines. Critically, that same Order specified that "Alle-Catt Wind Energy LLC cannot commission or operate any wind turbines until Compliance Filings required pursuant to Certificate Condition 68(b), (c)(ii), (d)(i), (ii), (iii), and (vi) are approved." Certificate Condition 68(d)(vi) is explicitly listed among those conditions.

In light of the above, I respectfully ask:

1. Does the Board confirm that no wind turbine erected in Rushford, Farmersville, or anywhere else in the project area may be commissioned or operated until a compliant PNIA demonstrating conformance with Certificate Condition 68(d)(vi) — including the 40 dBA L(night) standard — has been filed and approved, without exception for turbines already physically erected?
2. If Alle-Catt's final design — with turbines now in the ground — cannot produce a compliant L(night) model at 40 dBA, what options are available to the Certificate Holder? Specifically:
  - a. Is the Certificate Holder required to implement operational mitigation measures (e.g., curtailment, operational parameter adjustments) sufficient to achieve compliance before any turbine may be commissioned?
  - b. If operational mitigation is insufficient, is the Certificate Holder required to implement physical mitigation — including modification or replacement of turbine equipment — before the project may be commissioned or operated?
  - c. If neither operational nor physical mitigation can achieve compliance, what is the Board's authority and intended course of action with respect to the project?

## **III. Enforcement: What Happens If Alle-Catt Does Not Comply?**

The Certificate and applicable New York State law provide a layered enforcement framework. I seek written confirmation from the Board and DPS staff regarding the activation and use of each layer.

### **A. No Authorization to Operate**

The Commission's April 29, 2025 Order already prohibits Alle-Catt from commissioning or operating any wind turbines until Compliance Filing 68(d)(vi) is approved.

1. Does DPS confirm that this prohibition is self-executing — meaning no further order is required to prohibit operation — and that DPS staff will actively monitor and enforce it?
2. What specific steps will DPS staff take to ensure that no Notice to Proceed to commission or operate turbines is issued until Compliance Filing 68(d)(vi) is reviewed and approved?

### **B. Stop-Work and Stop-Operation Authority**

Certificate Condition [10/Staff Authority Condition] provides that DPS Staff may issue a stop-work order for any location or activity where a specific construction or maintenance activity violates the terms of the Certificate or any DPS order.

1. If Alle-Catt were to attempt to commission or operate turbines without an approved Compliance Filing 68(d)(vi), would DPS Staff issue a stop-operation order? Under what standard and timeline would that order be issued?
2. The Certificate also establishes a noncompliance remediation timeline — within 60 days of a noncompliance finding, Alle-Catt must file operational and physical minimization options; within 90 days, implement operational mitigation; within 150 days, implement physical mitigation; and if minimization measures are not timely implemented, the turbines causing the violation must not be operated until compliance is demonstrated. Does DPS confirm this framework applies to any noncompliance with Condition 68(d)(vi), and that DPS will enforce it on that timeline?

### **C. Penalties, Revocation, and Suspension**

Certificate Condition 17 states that the Siting Board may seek to recover penalties for any violation of the Certificate and orders issued in this proceeding — not only from the Certificate Holder but also from its contractors. Under 16 NYCRR §1000.16(e), the Permanent Board retains jurisdiction over the amendment, suspension, and revocation of a Certificate at any time before the final compliance filing is deemed approved.

1. Does the Board confirm that penalty recovery under Certificate Condition 17 and revocation or suspension proceedings under 16 NYCRR §1000.16(e) are available enforcement tools in the event Alle-Catt proceeds in a manner that disregards the Board's denial and the plain terms of the Certificate?
2. Under what circumstances would the Board initiate an Order to Show Cause proceeding with respect to Alle-Catt's Certificate?

### **D. DPS Monitoring and Enforcement Duty Under PSL §168(5)**

Public Service Law §168(5) mandates that the Department of Public Service "shall monitor, enforce and administer compliance with any terms and conditions set forth in the board's order."

1. How does DPS intend to fulfill its statutory monitoring and enforcement duty under PSL §168(5) with respect to Condition 68(d)(vi) going forward? Specifically, will DPS actively monitor compliance, or will it rely on self-reporting by Alle-Catt or complaints from third parties?

## **IV. Requests for Written Responses and Action**

In light of the foregoing questions, I respectfully request that the Board and DPS staff:

1. Provide written answers to each of the numbered questions above, addressed to all parties of record in Case 17-F-0282 as well as to affected municipalities and county legislatures.

2. Issue written confirmation that Certificate Condition 68(d)(vi) remains in full force and effect as a binding pre-construction condition that must be satisfied — and approved — before any turbine may be commissioned or operated, without exception for turbines already physically erected.
3. Require Alle-Catt to submit, within a defined timeframe, either (a) a revised PNIA that demonstrates conformance with the 40 dBA L(night) Design Goal using appropriate modeling methodology, or (b) a redesign proposal demonstrating how the project will be modified to achieve compliance.
4. Provide written notice to affected municipalities, counties, and legislatures of any compliance filing submitted by Alle-Catt under Condition 68(d)(vi), and afford an opportunity for public comment before any such filing is approved.
5. Confirm in writing the full range of penalty and enforcement tools available to the Board and DPS — including stop-operation orders and revocation proceedings — and commit to their use in the event of noncompliance.

The residents of Cattaraugus County County participated in years of Article 10 proceedings in reliance on the conditions negotiated and imposed in this Certificate. Those conditions are not optional. I respectfully ask the Board and DPS to make that clear — in writing, and through active enforcement.

Thank you for your attention to these matters.

Respectfully submitted,



Brenda S. Hanson