

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 24, 2025

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

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 APPROVING MULTIPLE
COMPLIANCE FILINGS SUBJECT TO CONDITIONS

(Issued and Effective April 29, 2025)

BY THE COMMISSION:

INTRODUCTION

On June 3, 2020, the New York State Board on Electric Generation Siting and the Environment (Siting Board) granted a Certificate of Environmental Compatibility and Public Need, With Conditions (Certificate Order)¹ to Alle-Catt Wind Energy LLC (Alle-Catt Wind or Certificate Holder) pursuant to Public Service Law (PSL) §168. The Certificate Order authorizes Alle-

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

Catt Wind to construct and operate a utility-scale wind electric generating facility (the Project) in Allegany, Cattaraugus, and Wyoming Counties. The Certificate Order contains Certificate Conditions that require several compliance filings by the Certificate Holder, including conditions for construction and operational impact mitigation, to be approved by the Siting Board, or the Public Service Commission (Commission) once the Siting Board's jurisdiction has ceased.²

Through this Order, Compliance Filing Attachment A Nos. 9 and 25(b), in part, and Compliance Filings required by Certificate Conditions 45, and 68(a), (c)(i), (d)(v), (vii), and (viii) are approved for the purposes identified below. Pursuant to the Certificate Order, and as described in further detail below, additional compliance filings are required prior to future stages of construction.

BACKGROUND

Compliance Filing Attachment A No. 9

Compliance Filing Attachment A No. 9 requires the Certificate Holder to submit the following:

Noise Package. Refer to Certificate Conditions on Noise and Vibration.

Compliance Filing Attachment A No. 25(b)

Compliance Filing Attachment A No. 25(b) requires the Certificate Holder to submit the following:

² Under 16 NYCRR §1002.2, "[t]he applicant may not commence construction of all or any portion of the facility or interconnections for which the Board has required approval of a compliance filing as a condition precedent to such construction until the applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased."

Operations Package Compliance Filing. Must be approved before COD. Portions of plans that present contact information shall be considered information reports. Required contents:

- b) Decommissioning Plan, including proof of required security, or plans to have security in place by the date required in the plan.

Certificate Condition 45

Certificate Condition 45 requires the Certificate Holder to submit the following:

Prior to commencement of construction, a Final Decommissioning Plan shall be submitted as a compliance filing for approval by the Siting Board. Letters of credit will be established by the Certificate Holder to be held by each town hosting Facility components. The total amount of the letters of credit created for the Towns of Arcade, Centerville, Rushford, Farmersville, and Freedom will represent the total final decommissioning and site restoration estimate, as described below with each town holding a separate letter of credit based on the number of turbines it is hosting. Decommissioning and site restoration costs associated with the proposed collection substation will be included in the Town of Freedom's letter of credit. The letters of credit shall remain active until the Facility is fully decommissioned. The Final Decommissioning Plan will include the following:

- a) A final decommissioning and site restoration estimate (no offset for projected salvage value is permitted in the calculation of the estimate). The estimate will be calculated by multiplying the decommissioning and site restoration cost per turbine (which includes the dollar amount estimate for removal of one turbine and foundation in addition to the other overall decommissioning and site

restoration costs (including removal of meteorological towers and removal and restoration of access roads) spread out equally among the total proposed turbines of the Facility) by the total number of turbines proposed for the Project. The estimate shall be updated by a qualified independent engineer licensed to practice engineering in the State of New York to reflect inflation and any other changes after one year of Facility operation, and every fifth year thereafter. Updated estimates will be filed with the Secretary after one year of Project operation and every fifth year thereafter;

b) Documentation indicating approval by the Towns of Arcade, Centerville, Rushford, Farmersville, and Freedom of an acceptable form of letter of credit;

c) Proof that the letters of credit have been obtained in the final decommissioning and site restoration estimate amount, as calculated pursuant to the Final Decommissioning Plan;

d) Letters of credit shall be updated after one year of Facility operation and every fifth year thereafter, based on updated estimates described in subsection a of this condition.

Documentation shall be filed with the Secretary after one year of Project operation and every fifth year

thereafter specifying changes to the structure of the letters of credit;

e) Copies of agreements between the Certificate Holder and the Towns, establishing a right for each Town to draw on the letters of credit dedicated to its portion of the Facility;

f) Prior to the commercial operation date, the Certificate Holder shall file with the Secretary wind turbine design verification information reports for each model proposed for the Project, verifying that the wind turbines were designed in accordance with International Electrotechnical

Commission (IEC) 61400; however, any wind turbine model(s) failing to be design verified, and therefore, not adhering to applicable IEC 61400 criteria shall be decommissioned prior to commercial operation at the Certificate Holder's expense; and
g) Procedures for notifying host communities and landowners of decommissioning and restoration activities

Certificate Condition 68(a), (c)(i), (d)(v), (vii), and (viii)

Certificate Condition 68(a), (c)(i), (d)(v), (vii), and (viii) requires the Certificate Holder to submit the following:

The Certificate Holder shall present to the Siting Board, or the Commission after the Siting Board's jurisdiction has ceased, by filing with the Secretary at a minimum of 60 days prior to the start of construction:

- a) Final drawings and details of the Wind Generating Facility, as well as final construction drawings incorporating any appropriate changes to the design and details, including:
 - (i) Location of the turbines identified with Geographic Information System (GIS) coordinates and GIS files.
 - (ii) Turbine dimensions to include hub height and diameter of tip blades rotation. . . .
- c) Sound Power levels from the turbines by following these provisions:
 - (i) Sound Power levels from the turbines selected for the project shall be documented with information from the manufacturers based on tests that determined sound power levels following the International Electrotechnical Commission (IEC) 61400-11 standard and Technical Specification IEC TS 61400-14 (2005-1st edition), if available.

d) 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.

In addition, the revised sound modeling will show conformance with the following design goals:

- (v) 45 dBA Leq (8- hour) at any permanent or seasonal non-participant residence existing as of the issuance date of this Certificate and 55 dBA Leq (8-hour) for any participant residence existing as of the issuance date of this Certificate.
- (vii) 55 dBA Leq (8- hour), equivalent continuous average sound level from the Facility across any portion of a non-participating property except for portions delineated as wetlands. This shall be done by rendering sound contour drawings for the final design including all boundary lines within the Project Area, participating status, and wet land delineations. Statements indicating whether the final design complies with this Certificate Condition will also be included.
- (viii) 65 dBZ L(1-hour), maximum 1-hour equivalent continuous average sound level from the Facility at the 16 Hz, 31.5 Hz,

and 63 Hz full octave bands
outside any existing
nonparticipating residence.

PUBLIC NOTICE AND COMMENT

The Certificate Holder filed Compliance Filing Attachment A No. 9 and the Compliance Filing required by Certificate Condition 68(a), (c)(i), (d)(v), (vii), and (viii) on November 18, 2024, and Compliance Filing Attachment A No. 25 and the Compliance Filing required by Certificate Condition 45 on November 18, 2024. The Certificate Holder filed supplements to Compliance Filing Attachment A No. 9 and Compliance Filing 68(a), (c)(i), (d)(v), (vii), and (viii) on March 17, 2025, and April 10, 2025, and Compliance Filing Attachment A No. 25 and Compliance Filing 45 on March 5, 2025.

Pursuant to 16 NYCRR §1002.2(d), "[a]ny interested person or party may file comments regarding any compliance filing within 21 days of the filing and service of such compliance filing done in accordance with subdivision (c) of this section."

On March 17, 2025, the Certificate Holder filed a revised Compliance Filing Attachment A No. 9 and Compliance Filing 68 in response to comments from the Department of Public Service (DPS) staff. On March 28, 2025, the Coalition of Concerned Citizens (CCC) filed comments related to noise compliance. Specifically, CCC noted concerns related to turbine noise specifications, the lack of an effective ice detection methods available for the selected turbine model, improper categorization of existing receptors, problems with methods utilized in the noise modeling, and the potential that the Project may not meet the 45/40 dBA limits under the current project configuration. Additionally, on March 30, 2025, an individual submitted a comment on DMM raising general concerns

with wind projects and noting noise impacts from wind projects. Comments related to the Project's short-term noise impacts are considered in the discussion below.

On March 5, 2025, the Certificate Holder filed a revised Compliance Filing Attachment A No. 25(b) and Compliance Filing 45. The filing included executed decommissioning agreements and letters of credit for decommissioning activities in the Towns of Centerville, Farmersville, Rushford, and Arcade. Members of the public submitted comments on DMM raising general concerns related to the proposed financial assurance amount.

LEGAL AUTHORITY

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." For purposes of the subject compliance filings described here, the Siting Board's jurisdiction has ceased, as such, pursuant to 16 NYCRR §1002.2(f)³ the Commission has the jurisdiction to approve these compliance filings.⁴

Public Service Law §168(5) includes a delegation of authority to the Commission for compliance administration. That section states "[t]he department [of Public Service] or the [Public Service] Commission shall monitor, enforce and

³ "Compliance filings will not be effective until approved by the Board or by the Commission after the Board's jurisdiction has ceased."

⁴ Specifically, PSL §168(7) states that "[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."

administer compliance with any terms and conditions set forth in the [Siting] board's order [Order Granting Certificate of Environmental Compatibility and Public Need]."

The Siting Board's regulation at 16 NYCRR §1002(1), establishes procedures and requirements for a certificate holder to comply with the "terms, conditions, limitations, or modifications of the construction and operation of the facility authorized in the certificate." The regulation at 16 NYCRR §1002.2 describes the procedures that a certificate holder must comply with, including filing requirements and notice procedures, and outlines the jurisdiction of the Siting Board and the Commission in approving compliance filings. The regulation at 16 NYCRR §1002.2(b) establishes that a phased approach to compliance filings can occur so long as the "applicant has submitted the required compliance filing for that portion of the facility and received approval of it by the Board, or by the Commission after the Board's jurisdiction has ceased."

Pursuant to 16 NYCRR §1002.3, a certificate holder is required to submit "(a) a description of and citation to the requirement in a certificate or an order for which compliance is to be demonstrated; (b) a description of how the applicant will comply with the requirements of the certificate or order; and (c) final maps, plans, diagrams, drawings, studies, reports or other documents demonstrating compliance." Under 16 NYCRR §1002.2(g), the Siting Board, or the Commission if the Siting Board's jurisdiction has ceased, may approve compliance filings subject to specified terms, conditions, limitations, or modifications. Finally, pursuant to 16 NYCRR §1002.2(i), the standard of review for compliance filings shall be whether the "compliance filing reasonably assures compliance with the Certificate."

DISCUSSION

Compliance Filing Attachment A No. 9 and Compliance Filing 68(a), (c)(i), (d)(v), (vii), and (viii)

On November 18, 2024, the Certificate Holder filed Compliance Filing Attachment A No. 9 and Compliance Filing 68(a), (c)(i), (d)(v), (vii), and (viii), which requires the submission of a Noise Package. On March 17, 2025, the Certificate Holder filed a supplement to Compliance Filing Attachment A No. 9 and Compliance Filing 68(a), (c)(i), (d)(v), (vii), and (viii) in response to DPS staff comments. As summarized above, on March 28, 2025, CCC filed comments on the Noise Package. On April 2, 2025, the Certificate Holder filed a response on DMM addressing the concerns raised by the CCC. The Certificate Holder asserts that the CCC's claims that Alle-Catt Wind misclassified certain receptors as "Other" instead of a permanent or seasonal residences, potentially underestimating noise impacts, are based on outdated or incorrect data. Regarding CCC's concerns that the noise modeling methods for the V150-4.5 STE turbines were outdated and do not align with the Siting Board standards, the Certificate Holder defends its modeling, stating that the turbines were appropriately modeled and that CCC ignores updated turbine technology. Additionally, the Certificate Holder states that the CCC claim that the noise levels at certain receptors will exceed the 45 dBA regulatory limit is incorrect because it includes cumulative noise impacts and only noise levels from the Project are applicable.

DPS staff reviewed the filings and determined that the information submitted by the Certificate Holder supports the finding that the facility has been designed to comply with the overall dBA short-term noise goals at both participating and non-participating receptors, the low frequency design goals at non-participating receptors, and the design goals at the

boundary lines. DPS staff agree with the Certificate Holder's position that the regulatory noise limit only applies to the Project's noise levels. In summary, DPS staff determined that the Noise Package includes the required information, details, and specifications related to the final design and reasonably assures compliance with the short-term design goals specified in the Certificate from the turbines.

DPS staff does advise, however, that the Pre-Construction Noise Impact Assessment (PNIA) refers to residences as Category 1, 2, and 3 receptors to distinguish permanent residences, seasonal residences, and buildings which are not used or equipped to be used as seasonal residences and do not meet applicable municipal law definitions of "Residence," respectively. While Alle-Catt Wind filed a memo on December 12, 2024, in which its consultant explained how these receptors were classified, Alle-Catt Wind did not provide complete evidence of the types of structures designated as Category 3 to allow DPS staff to evaluate such classifications. Although Alle-Catt Wind's designations did not follow the language of the Certificate, DPS staff advises that the PNIA shows that all Category 3 residences, whether participating or not, are within the required short-term design goals of Certificate Condition 68(d) (v).

Accordingly, the Commission finds that the Noise Package, as filed and supplemented, reasonably assures compliance with the requirements of Attachment A No. 9 and Certificate Condition 68(a), (c) (i), (d) (v), (vii), and (viii) of the Certificate Order and are approved for the excavation and pouring of foundations and erection of turbines. Given Alle-Catt Wind's use of terminology that does not align with the Certificate, any structure included in the list of receptors, regardless of classification, or not included in the revised

sound modeling as required by Certificate Condition 68, that is either a permanent or seasonal non-participating or participating residence existing as of the issuance date of the Certificate will continue to be subject to the required design goals and regulatory noise limits, as well as post-construction sound testing and noise complaint resolution protocols adopted by the Certificate Order.

Compliance Filing Attachment A No. 28(b) and Compliance Filing 45

The Certificate Holder filed Compliance Filing 45, the Final Decommissioning Plan, and Attachment A No. 28 on November 18, 2024. DPS staff reviewed the filing and found that certain information, including executed decommissioning agreements with each municipality, was not presented in the compliance filing package. On March 5, 2025, the Certificate Holder filed executed decommissioning agreements and letters of credit with Towns of Rushford, Farmersville, Centerville, and Arcade. DPS staff notes that, on the record, the Town of Freedom has not executed a decommissioning agreement or letter of credit with Alle-Catt Wind. DPS staff determined that all requirements of Certificate Condition 45 have been fulfilled for the Towns of Rushford, Farmersville, Centerville, and Arcade.

As noted above, public comments were submitted raising general concerns of the proposed decommissioning estimates. However, DPS staff reviewed the filings and concluded that the decommissioning plans and proposed financial instruments provide adequate assurance and are comparable to plans recently approved by the Commission in other Article VII proceedings.

Accordingly, the Commission finds that the Final Decommissioning Plan reasonably assures compliance with Certificate Condition 45 and is approved for all construction

phases specifically within the Towns of Rushford, Farmersville, Centerville, and Arcade.

CONCLUSION

The Commission finds that Compliance Filing Attachment A Nos. 9 and 25(b), in part, and Compliance Filings required by Certificate Conditions 45, and 68(a), (c)(i), (d)(v), (vii), and (viii), as filed and supplemented, reasonably assure compliance with the corresponding Attachment A requirements and Certificate Conditions in the Order and are approved for the purposes identified below.

The Commission orders:

1. Compliance Filing Attachment A No. 9, as filed by Alle-Catt Wind Energy LLC on November 18, 2024, and supplemented on March 17, 2025, pursuant to the requirements of Attachment A No. 9 is approved, in part, for the excavation and pouring of foundations and the erection of wind turbines.

2. The Compliance Filing submitted pursuant to Certificate Condition 68(a), (c)(i), (d)(v), (vii), and (viii), as filed on November 18, 2024, and supplemented on March 17, 2025, and April 10, 2025, are approved for the excavation and pouring of foundations and the erection of wind turbines.

3. 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.

4. Compliance Filing Attachment A No. 28(b) as filed by Alle-Catt Wind Energy LLC on November 18, 2024, and supplemented on March 5, 2025, pursuant to the requirements of Attachment A No. 28(b) are approved for all construction phases in the Towns of Rushford, Farmersville, Centerville, and Arcade.

5. The Compliance Filing submitted pursuant to Certificate Condition 45, as filed on November 18, 2024, and supplemented on March 5, 2025, is approved for all construction phases in the Towns of Rushford, Farmersville, Centerville, and Arcade.

6. The Certificate Holder shall request a "Notice to Proceed" prior to commencing the construction activities described herein. The Certificate Holder shall not commence any construction activities until it receives such "Notice to Proceed" sent by the Chief of Environmental Certification and Compliance of the Office of Renewable Energy Siting and Electric Transmission, or by a designee.

7. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary