

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on July 20, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
Diane X. Burman  
James S. Alesi  
Tracey A. Edwards  
John B. Howard  
David J. Valesky  
John B. Maggiore

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 COMPLIANCE FILING  
ATTACHMENT A No. 24, SUBJECT TO CONDITIONS

(Issued and Effective July 21, 2023)

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)<sup>1</sup> to Alle-Catt Wind Energy LLC (Alle-Catt Wind or Certificate Holder) pursuant to Public

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

Service Law (PSL) §168. The Certificate Order authorizes Alle-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.<sup>2</sup>

As detailed in this Order, the Certificate Holder filed Compliance Filing Attachment A No. 24 on May 4, 2023, pursuant to Certificate Condition 63, and supplemented Compliance Filing Attachment A No. 24 on May 24, 2023, pursuant to Certificate Condition 62.

Through this Order, the Commission approves this Compliance Filing, as discussed below.

#### BACKGROUND

##### Compliance Filing Attachment A No. 24

Environmental Package - Operation.  
Compliance Filing. Must be developed in consultation with DEC and DPS Staff, and approved before COD. Required contents:

a. If deemed to be required by the Siting Board, Net Conservation Benefit Plans for Listed Species, including a demonstration that the plan results in a net positive benefit on applicable species containing, at

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<sup>2</sup> 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."

minimum, the contents described in Certificate Conditions 62, 63 and 64.

b. Post-Construction Bird and Bat Monitoring and Adaptive Management Plan, based in part on DEC's June 2016 Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects, acceptable to DEC (or in the absence of DEC concurrence, submitted to the Siting Board or PSC for resolution of matters in dispute), which shall include direct impact fatality studies, habituation/avoidance studies, breeding bird surveys and identify the types of studies to be performed, the number of years that they will be performed, and details such as the start date, number and frequency of turbine searches, search areas, bat, bald eagle and grassland bird monitoring, duration and scope of monitoring, methods for observational surveys, and reporting requirements.

#### PUBLIC NOTICE AND COMMENT

As detailed in this Order, the Certificate Holder filed Compliance Filing Attachment A No. 24 on May 4, 2023, pursuant to Certificate Condition 63, and supplemented Compliance Filing Attachment A No. 24 on May 24, 2023, pursuant to Certificate Condition 62. 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 May 25, 2023, comments on the Net Conservation Benefit Plan for Bald Eagles (NCBP - Bald Eagles) filed by Alle-Catt Wind pursuant to Certificate Condition 62, were received from the Coalition of Concerned Citizens (Coalition), Concerned Citizens of Cattaraugus County (Concerned Citizens), the Lake Hiram Club, Inc. (Lake Hiram Club), and Cattaraugus County Legislator Ginger Schroder. These comments oppose the proposed NCBP - Bald Eagles and assert that the

proposed plan would not result in a net conservation benefit to bald eagles within the vicinity of the Project; the plan does not demonstrate that increased survival of individuals or a benefit to the species; the proposed \$2 million contribution to fund the cost of an eagle rehabilitation program planned at Cornell University will not adequately mitigate for the take of up to 41 bald eagles; mitigation strategies, such as the development of suitable habitat within the vicinity of the Project, should be required; and the proposed adaptive management plan for bald eagles will not provide a net benefit.

In addition to those comments described above, over 125 public comments have been received since the NCBP - Bald Eagles was filed on May 4, 2023, primarily from individuals and residents of the host communities. These public comments generally oppose the Project's take of up to 41 bald eagles, assert that the proposed \$2 million contribution to fund the cost of an eagle rehabilitation program planned at Cornell University does not constitute a net conservation benefit to the species or adequately mitigate the Project's impacts, and recommend that on-site mitigation that establishes suitable habitat within the vicinity of the Project be required.

#### 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 filing described here, the Siting Board's jurisdiction has ceased, as such, pursuant to

16 NYCRR §1002.2(f),<sup>3</sup> the Commission has the jurisdiction to approve this compliance filing.<sup>4</sup>

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 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, establish 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 describe the procedures that a certificate holder must comply with, including filing requirements, notice procedures, and outlines the jurisdiction of the Siting Board and the Commission in approving compliance filings. In addition, 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."

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

<sup>4</sup> 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."

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

Through this Order the Commission approves, as discussed herein, the Certificate Holder's Compliance Filing Attachment A No. 24 (Environmental Package - Operation), pursuant to Certificate Conditions 62 and 63.

#### Condition Attachment A No. 24

Pursuant to Condition Attachment A No. 24 and Conditions 62 and 63 of the Certificate Order, the Certificate Holder's Compliance Filing Attachment A No. 24, as filed and supplemented, includes the Net Conservation Benefit Plan for Listed Bats, specifically the Northern Long-Eared Bat (NCBP - NLEB), the NCBP - Bald Eagles, and the Post-Construction Bird and Bat Monitoring and Adaptive Management Plan. The NCBP - NLEB, including the attached Post-Construction Bird and Bat Monitoring and Adaptive Management Plan, and the NCBP - Bald Eagles were developed through extensive consultation between

Alle-Catt Wind and the New York State Department of Environmental Conservation (NYSDEC) staff. NYSDEC staff have advised that each of the plans are acceptable and meet the requirements of 6 NYCRR §182.11. The NCBP - NLEB, including the attached Post-Construction Bird and Bat Monitoring and Adaptive Management Plan, was reviewed by DPS Staff and determined to be compliant with both Attachment A No. 24 and Condition 62 of the Certificate Order.

The concerns expressed in the public comments filed by Coalition, Concerned Citizens, Lake Hiram Club, Cattaraugus County Legislator Ginger Schroder, and the individuals and residents of the host communities, express opposition to the proposed take of up to 41 bald eagles and further oppose the proposed mitigation of a \$2 million contribution to fund the cost of an eagle rehabilitation program planned at Cornell University, as accepted by NYSDEC staff. As an initial matter, the Commission may not disturb the Siting Board's determination that Alle-Catt Wind must provide a net conservation benefit plan for the take of 41 bald eagles.<sup>5</sup> Moreover, the expressed concerns do not demonstrate any conflict with the substantive requirements of 6 NYCRR Part 182, and the proposed NCBP - Bald Eagles includes the information required by 6 NYCRR Part 182.11 and demonstrates a net conservation benefit to the species, as defined by 6 NYCRR Part 182.2. Further, DPS Staff reviewed the NCBP - Bald Eagles and determined it is compliant with both Attachment A No. 24 and Condition 63 of the Certificate Order.

Accordingly, the Commission finds that the NCBP - NLEB, NCBP - Bald Eagles, and Post-Construction Bird and Bat Monitoring and Adaptive Management Plan, as filed, reasonably

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<sup>5</sup> Case 17-F-0282, Certificate Order, p. 48.

assure compliance with Condition Attachment A No. 24 and Conditions 62 and 63 of the Certificate Order.

CONCLUSION

The Commission finds that Compliance Filing Attachment A No. 24, as filed and supplemented, pursuant to Certificate Conditions 62 and 63, reasonably assures compliance with the corresponding Condition Attachment A No. 24 and Conditions 62 and 63 of the Certificate Order and is approved as described below.

The Commission orders:

1. Compliance Filing Attachment A No. 24, as filed by Alle-Catt Wind Energy LLC on May 4, 2023, and supplemented on May 24, 2023, pursuant to Certificate Condition Attachment A No. 24 and Certificate Conditions 62 and 63, is approved for all phases of construction and operation.

2. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary