

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

**PETITION BY COALITION OF CONCERNED CITIZENS FOR DECLARATORY RELIEF
REGARDING SITING BOARD JUNE 23, 2026 ORDER DENYING
ALLE-CATT WIND ENERGY (ACWE) PETITION**

PRELIMINARY STATEMENT

Pursuant to Public Service Law (“PSL”) Section 161 and Part 8 of the Public Service Commission’s (the “Commission”) rules (16 NYCRR Part 8), the Coalition of Concerned Citizens (the “Coalition”), hereby seeks a declaratory ruling from the New York State Board on Electric Generation Siting and the Environment (“Siting Board”) that fully answers a series of questions posed to Russell King, Assistant Counsel to the Siting Board by letter dated June 24, 2026 from Cattaraugus County Legislator Brenda Hanson, and filed on June 30. DMM No. 905. In short, Legislator Hanson asks what obligations remain before ACWE can be authorized to commence operations, in light of the Siting Board’s June 23, 2026 Order, which denied ACWE’s petition to remove the requirement to design its project to meet an annual average night goal of 40 dBA.¹ In the alternative, or in addition, the Coalition seeks a rehearing upon the Siting Board’s June 23, 2026 Order.

By identifying no less than 20 questions that remain about ACWE’s obligations in light of the June 23 Order, and about the Commission’s or the Siting Board’s ability to enforce ACWE’s obligations, Legislator Hanson’s letter establishes that considerable uncertainty

¹ Cf. DMM No. 904.

remains as to what ACWE's obligations are and how the Commission or the Board can enforce them following the issuance of the Siting Board's June 23 Order. *Cf.* 16 NYCRR § 8.2(2)(i). These uncertainties are distinct from "the uncertainties of sound modeling" discussed in the Order, at pp. 20-23, and are not addressed here.

The Coalition requests (1) a declaratory ruling answering the questions in Legislator Hanson's June 24 letter, and (2) in the alternative or concurrently, rehearing of the June 23 Order, while fully adopting and incorporating the County's petition. The County's petition sets forth the background and grounds for relief. This Petition supplements the County's.

The Coalition's members are non-participating residents whose homes, including seasonal homes, are located in all five towns and three counties within the ACWE facility site.

BACKGROUND

Condition 68 in the June 3, 2020 Certificate authorizing the ACWE project requires ACWE to submit a demonstration that Certificate Condition 68(d)(vi) can be satisfied at least 60 days prior to commencing full construction. Certificate Condition 68(d)(vi) requires that the project be designed to achieve an annual night noise level of 40 dBA, where noise modeling incorporates a 10 decibel penalty applied to the results to reflect the added sensitivity to noise at night, when it is very quiet.² Condition 68 establishes preconstruction requirements that must be satisfied by means of a preconstruction noise impact assessment (PNIA) that Department Staff or the Commission determines provides reasonable assurance that the project can comply with the requirements. It is well-known that wind turbines operate mostly

² Certificate Order, 62-63, DMM No. 399. In its initial PNIA, ACWE reported that measured long-term pre-existing winter nighttime sound levels in the project area average 22 decibels (dBAi). See ACWE PNIA (December 12, 2018), p. 87, Table 8-5 (DMM No. 86, filename "acwe_19_noise_and_vibration.pdf").

at night, and mostly in the winter.

Having failed to obtain acceptance of previous PNIAs purporting to show that the project is designed to achieve the night noise goal under Certificate Condition 68(d)(vi), on January 27, 2026 ACWE filed a petition requesting that the Siting Board remove the night noise goal from its Certificate.³

On March 17, 2026, the Board determined that removing the night noise goal from ACWE's Certificate would not result in significant adverse impacts to residents and therefore the petition, if granted, would not require a hearing.⁴

On June 23, 2026, the Board issued an Order denying ACWE's petition.⁵ In the Order, the Board notes that the company "has not received [Commission] approval for its PNIAs for demonstrating compliance with the L(night) Design Goal."⁶ The Board notes also that Staff disagrees with "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."⁷ The Board identifies long-term exposure to night noise exceeding the 40 dBA design goal as "necessary to minimize or avoid adverse public health impacts."⁸ The Board concluded that the night noise goal can be distinguished from short-term noise limits in the Certificate as providing "a preventative measure that protects against

3 DMM No. 756.

4 DMM No. 868.

5 DMM No. 904.

6 *Id.*, at 5.

7 *Id.*, at 6.

8 *Id.*, at 15-16. *See also id.*, at 18-19.

continuous, cumulative exposure to noise.”⁹

Prior to the Siting Board’s June 23 Order, on April 6, 2026 Department Staff issued a Notice to Proceed “to commence full construction of the Project.”¹⁰

Following the Siting Board’s June 23 Order, ACWE has not submitted a new PNIA and has made no effort to demonstrate compliance with Condition 68(d)(vi).

On June 12, 2026, ACWE sought approval from the Commission for an “Operations Package”, Compliance Filing Attachment A No. 25, required prior to obtaining a notice to proceed to commence operations.¹¹ On July 21, 2026, the Commission issued an Order approving the Operations Package for the Project’s operations phase.¹² The July 21 Order directs ACWE to request a “Notice to Proceed” with Facility operations, which would be issued by the Executive Director of the Office of Renewable Energy Siting and Electric Transmission (“ORES”), or by an ORES designee.

At this time, ACWE has commenced or completed construction of wind turbines in the towns of Rushford, Centerville, Freedom, and Farmersville.

DISCUSSION

The practical uncertainty created by the Board’s June 23 Order is illustrated by Staff’s April 6 Notice to Proceed, which is inconsistent with ACWE’s failure to comply with the night noise goal. ACWE has not demonstrated compliance with the goal, which is a preconstruction requirement.

⁹ Id., 17.

¹⁰ DMM No. 883.

¹¹ DMM No. 900.

¹² DMM No. 907.

The Board's June 23 Order is also inconsistent with the Board's own March 17, 2026 determination that ACWE's petition requesting removal of Certificate Condition 68(d)(vi) did not require a hearing, because granting the petition would not have created any significant adverse impacts.¹³ The June 23 Order identifies long-term exposure to night noise in excess of 40 dBA averaged on an annual basis as a public health risk.¹⁴ A hearing on the petition could have resolved many if not all of Legislator's Hanson's questions.¹⁵

The Board's June 23 Order also calls into question the ability of ACWE to obtain a notice to proceed with operations, notwithstanding the Commission's July 21 approval of ACWE's Operations Package. The Order states that the company must demonstrate compliance with Certificate Condition 68(d)(vi), the night noise goal. Condition 68 makes the demonstration a *preconstruction* requirement. ACWE is not currently authorized to operate the project as proposed. Without approval of a demonstration of compliance with the night noise goal, the Commission (or ORES) cannot legally authorize operations.

Any new PNIA must also demonstrate compliance with Condition 68(d) requiring the company to show that it can achieve Condition 68's goals and limits considering cumulative noise from an adjacent proposed wind energy project. Certificate Condition 68(d) requires noise modeling to "include a cumulative noise assessment that includes noise from any proposed, existing, or approved Wind Generation Facility . . . within a 2-mile radius from any wind turbine from the Facility." The proposed Valcour Bliss NewCo wind energy turbine sites are within a half-mile of ACWE's turbine sites. The Bliss Valcour Newco proposal includes decommissioning and replacing 67 1.5 megawatt (MW) 450-foot tall wind turbines with up to

13 DMM No. 868.

14 DMM 904, at 15-16, 18-19.

15 See Coalition Comments and Motion (April 2, 2026), at 1-2, DMM No. 882.

34 new 4.5-MW or 6.1-MW wind turbines each with a maximum height of 650 feet (50 feet taller than turbines proposed by ACWE).¹⁶ Previous PNIAs submitted by ACWE evaluate “project only” noise and decline to evaluate cumulative noise impacts considering the proposed Valcour Bliss NewCo project.

ACWE has proceeded with full construction, enabling it to continue its practice of creating facts on the ground that prejudice any enforcement of Certificate Condition 68(d)(vi). For example, ACWE may need to relocate or eliminate some turbine sites, and/or it may need to install more effective noise reducing turbine blades. No relocation of turbine sites compared to the existing design has occurred. No updated PNIA demonstrating compliance with Certificate Condition 68(d)(vi) has been submitted. Has ACWE tied the Commission’s and Board’s hands?

ACWE’s conduct seriously prejudices the Commission’s and the Siting Board’s ability to enforce Certificate Condition 68(d)(vi) and thereby protect host communities from excessive night noise. The company has left replacement of turbine blades, removal of already built turbines clustered around some residents, and curtailment of nighttime operations as about the only means to bring the project design into compliance.

CONCLUSION

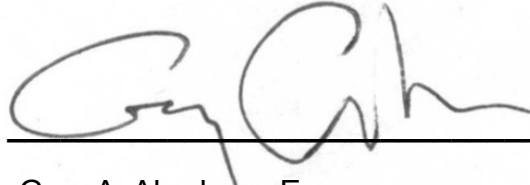
Based on the facts and legal requirements identified above and identified in the County’s petition filed on this date, the Coalition requests the same relief identified at the conclusion of the County’s petition. This includes a stay on the issuance of any Notice to

¹⁶ See PSC ORES No. 23-03030, *Application of Valcour Bliss NewCo, LLC, for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law to Repower and Operate the Bliss Wind Repowering Project, a 110.5 megawatt (MW) Wind Generation Facility Located in the Town of Eagle, Wyoming County, New York*, Exhibit 2 (Overview and Public Involvement), Section 2.1.

Proceed with operations and on any pre-operational testing that produces noise. The Coalition also requests that the Siting Board answer Cattaraugus County Legislator's reasonable questions regarding the practical impact of its June 23 Order on the ability of ACWE to advance its project.

Dated: July 23, 2026

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Gary A. Abraham', is written over a solid horizontal line.

Gary A. Abraham, Esq.
Attorney for the Coalition of Concerned Citizens
Law Office of Gary A. Abraham
4939 Conlan Rd., Great Valley, NY 14741
(716) 790-6141

cc: Service List, via DMM and email