NEW YORK STATE
BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

In re the Matter of

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.

CASE 17-F-0282

PETITION FOR REHEARING AND DECLARATORY RULING AND MOTION FOR STAY

Dated: July 23, 2026
Webster, New York

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TABLE OF CONTENTS

INTRODUCTION

Cattaraugus County (the "County") respectfully submits this Petition for Rehearing and Declaratory Ruling concerning the Siting Board's Order Denying Amendment and Providing Clarification, issued June 23, 2026 (the "June 23 Order"). The June 23 Order correctly denied Alle-Catt Wind Energy LLC's ("ACWE") petition to remove Certificate Condition 68(d)(vi)—the L(night) Design Goal requiring the Facility to be designed so that the annual equivalent continuous average nighttime sound level does not exceed 40 dBA outside any existing non-participating residence. The County welcomes that denial as it promised to protect residents from noise impacts that would risk public health.

The Order, however, leaves a critical and dangerous vacuum. It does not order ACWE to submit a revised Pre-Construction Noise Impact Assessment ("PNIA"). It does not confirm that the turbines already erected in Centerville, Rushford and Farmersville may not be commissioned or operated until a compliant PNIA is approved. It does not address ACWE's ongoing construction of wind turbines without demonstrating compliance with Condition 68(d)(vi), a posture that appears to assume compliance based on the current facility design is a foregone conclusion.

ACWE has shown no interest in submitting any new noise compliance filing. The project is fully built. ACWE is proceeding as if the June 23 Order confirms that a new PNIA is not required, and the Commission appears to be acquiescing. That conduct is inconsistent with the Certificate, with the Board's own recognition that the L(night) Design Goal is a necessary pre-construction condition, and with the public-health findings that supported retention of the goal.

The County therefore petitions the Board, in the alternative or concurrently:

(1) for rehearing of the June 23 Order pursuant to Public Service Law ("PSL") § 170, on the ground that the Order is incomplete and creates a vacuum that ACWE is already exploiting; and

(2) for a declaratory ruling interpreting Certificate Condition 68(d) and the June 23 Order to require ACWE to submit a revised PNIA that employs the Certificate's conservative methodology, and to confirm that no turbine may be commissioned or operated until such a PNIA is approved.[1]

The specific modeling parameters discussed below (ground absorption, terrain corrections, receptor classification, low-frequency content, and icing) are not ends in themselves. They are the concrete means by which the Board's own Certificate Order is given effect and by which past non-compliant PNIAs are distinguished from a compliant one.

This dual request is timely. The petition is filed within thirty days of the June 23 Order's issuance. The County is an aggrieved party and an interested municipality whose residents live in close proximity to the Facility and who have participated extensively in this proceeding.

BACKGROUND

On June 3, 2020, the Siting Board granted ACWE a Certificate of Environmental Compatibility and Public Need authorizing construction and operation of a utility-scale wind facility of up to 340 MW in Allegany, Cattaraugus, and Wyoming Counties. Among the Certificate's noise protections is Condition 68(d)(vi), which requires the Facility to be designed to meet a 40 dBA L(night-outside) annual equivalent continuous average nighttime

[1] The County is aware that the June 23 Order already requires approval of a PNIA prior to commencing. Through this Petition, the County seeks clarification that the approved PNIA must be an entirely new PNIA, and not a reconsideration of a prior PNIA.

sound level outside any existing non-participating residence (and 50 dBA for participating residences), incorporating a 10 decibel penalty for sensitivity to noise at night (the "L(night) Design Goal"). Cert. Order, 62-63 ("the 40 dBA (Lnight) goal . . . incorporates a 10-dB nighttime penalty").

On January 27, 2026, having failed to obtain approval for its design after three successive PNIAs with regard to the night noise goal, ACWE filed a Petition for Amendment seeking to remove Condition 68(d)(vi) entirely. After a supplement to the Petition for Amendment and public comment period, the Siting Board issued the June 23 Order denying ACWE's petition. The Board correctly held that the L(night) Design Goal is a necessary, non-redundant component of the Certificate's suite of noise protections; that removing it would be inconsistent with precedent and would pose a public-health risk; and that ACWE had offered no expert or technical support for elimination of the goal.

In the same Order, the Board provided limited methodological clarification. It restated that modeling must employ either the full suite of CONCAWE corrections or the Van den Berg corrections; that sound levels shall be evaluated at either 4.0 meters with no uncertainty added or 1.5 meters with a +2 dBA uncertainty factor; that a cumulative assessment of turbines within a two-mile radius is required; that noise-reduction operations, if used, must be limited to less than half the maximum available and implemented from the start of operations; and that noise modelling inputs not addressed in the Certificate Order must be considered conservative, while declining to provide fixed values for ground absorption factor, icing, or other inputs.

That limited clarification, combined with the complete absence of any direction requiring a revised PNIA or confirming that already-erected turbines may not be

commissioned, has left a vacuum. As documented in the technical comments of Robert W. Rand, ASA, INCE (Member Emeritus) of Rand Acoustics, LLC (Exhibit B), and as underscored in the June 24, 2026 letter of Cattaraugus County Legislator Brenda S. Hanson (Exhibit A), ACWE's prior PNIAs rely on non-conservative assumptions that understate actual long-term nighttime levels. Legislator Hanson has already sought written confirmation of ACWE's ongoing obligations and the status of turbines already erected; those questions remain unanswered. Further guidance from the Siting Board is therefore necessary to confirm that the already filed PNIA's do not demonstrate compliance when considering the "clarifications" in the June 23 Order, that a new PNIA demonstrating compliance with Condition 68(d)(vi) is required, and that the project cannot become operational, or engage in any pre-operational testing that produces noise, until a satisfactory PNIA compliance filing is submitted and approved.

ARGUMENT

I. THE COUNTY IS ENTITLED TO REHEARING AND/OR A DECLARATORY RULING

PSL § 170(1) provides that any party aggrieved by the Board's decision may apply for rehearing within thirty days after issuance of the aggrieving decision. The County is aggrieved by the incomplete June 23 Order and by the vacuum it creates. While the Board correctly retained the L(night) Design Goal, its silence as to what ACWE must do next leaves the County's residents exposed to the risk that the protective standard will be rendered ineffective through ACWE's continued disregard of its pre-construction obligations.

In the alternative, or concurrently, the County seeks a declaratory ruling pursuant to Section 161(1) of the Public Service Law, which provides the Siting Board with, "exclusive

jurisdiction to issue declaratory rulings regarding the applicability of, or any other question under, this article and rules and regulations adopted hereunder . . .” NY PSL § 161(1). Rules governing a petition for declaratory ruling are governed by 16 NYCRR § 1000.3, which adopts by reference the Public Service Commission’s rules of procedure, including 16 NYCRR Part 8 governing declaratory rulings.[2] A live controversy exists concerning the proper application of Condition 68(d) in light of the technical record and ACWE’s post-Order conduct. A declaratory ruling that requires a revised PNIA and confirms that no commissioning or operation may occur until such a PNIA is approved will provide the certainty the Board itself recognized was lacking, and is warranted by the public interest.

Finally, the Board retains jurisdiction under PSL § 168(7) with respect to the Certificate. Ordering a revised PNIA and clarifying the consequences of non-compliance is well within that retained authority and does not require a formal amendment of Certificate text. It is an interpretive act that gives effect to the Certificate as written and to the Board’s own June 23 Order.

II. THE JUNE 23 ORDER LEAVES A DANGEROUS VACUUM THAT ACWE IS ALREADY EXPLOITING

The Board acknowledged in the June 23 Order that “there is methodological uncertainty” and that lengthy discussions between ACWE and DPS Staff had produced no consensus on key inputs. The Board’s response was to restate high-level rules already in the Certificate while providing no direction as to next steps. That approach is insufficient and is already being exploited. For example, on June 21, 2026, Commission Staff approved ACWE’s Operations

[2] *See* 16 NYCRR 1000.3 “Unless a provision of PSL Article 10, Section 306 of the State Administrative Procedure Act, or this Part conflicts therewith, the Rules of Procedure of the Public Service Commission (contained in Subchapter A of Chapter I of this Title) that are in force on the effective date of this Part shall apply in connection with each certification proceeding under PSL Article 10. When such regulations indicate that the Commission is the decision maker, such reference shall be deemed to apply to the Board.”); 16 NYCRR 8.1.

Package compliance filing without any demonstration of compliance with Condition 68(d(vi)). Order Approving Compliance Filing Attachment A No. 25, DMM Item No. 907.[3]

ACWE has not submitted a new PNIA. Yet turbines have already been erected in Rushford, Farmersville, Centerville and Freedom. ACWE is proceeding as if the June 23 Order removed any remaining obstacle. The Commission appears to be acquiescing by continuing to review compliance filings and approving the facility operations package. This posture is inconsistent with the Certificate and with the Board's recognition that the L(night) Design Goal is a necessary pre-construction protection.

The Board has already affirmed that the mandated methodology is intentionally conservative, and designed to ensure that adverse health impacts are avoided to the maximum extent practicable, and risks to public health are minimized. Past PNIAs fail that standard. A revised PNIA is therefore required before any turbine may be commissioned or operated.

III. THE BOARD SHOULD ORDER A REVISED PNIA AND BAR COMMISSIONING UNTIL APPROVAL

The L(night) Design Goal is a preventative measure. Its purpose is to ensure, before construction and operation, that the Facility is designed so that continuous long-term nighttime exposure remains within protective limits. That purpose is frustrated if ACWE is allowed to commission and operate the project without first demonstrating compliance through a PNIA that employs the Certificate's conservative methodology.

In resolving the uncertainty over whether an updated PNIA is required, the Siting Board

[3] More troubling than the Commission's approval of a facility operations package before the noise compliance issue has been settled is the July 21 Order's direction that the Executive Director of the Office of Renewable Energy Siting and Electric Transmission issue a Notice to Proceed with operations for the ACWE project. Neither ORES, nor its Executive Director has any jurisdiction over this matter, and it is unclear why or how the Commission can transfer its statutory responsibilities to another agency. If the Executive Director is being delegated authority in his capacity as a DPS employee, then the Order should clarify that neither ORES nor a person acting in his capacity as Executive Director of ORES has authority to issue any notice to proceed with construction.

should also address the separate but related uncertainty over what model inputs are necessary to demonstrate conservative modeling in the updated PNIA. The specific modeling deficiencies in ACWE's prior filings, documented by Rand Acoustics (Exhibit B), illustrate why a new PNIA is necessary and what it must contain. Although the June 23 Order provides adequate clarification concerning the conservative intent of the condition, the necessity of the L(night) Design Goal, and the value of some model parameters, the Order fails to adequately address other parameters, including ground absorption factor, topography and concave-slope corrections, property classification and Leq-8hr exceedances, and low-frequency spectrum and icing events.

A. Ground Absorption Factor

ACWE's shift from G = 0.5 to G = 1.0 in successive PNIAs appears calculated to offset the required uncertainty factor and keep predicted levels below 40 dBA. A ground factor of G = 1.0 for every nighttime hour of an entire year is physically unachievable. Seasonal conditions produce ground absorption far closer to zero for substantial portions of the year. Professional standards do not support G = 1.0 as a year-round annual average assumption. Consistent with the Certificate's conservative intent, annual L(night) modeling must employ a ground absorption factor no higher than G = 0.5.

B. Topography and Concave Slope Corrections

The project area is characterized by steep and rolling slopes. Research cited by Rand shows that on concave slopes the ISO 9613-2 method systematically under-predicts noise levels by 2.4 to 4.8 dB. Where concave-slope conditions meeting the Bass criterion exist, an additional +3 dB (or greater) correction must be applied. These conditions exist for hundreds of receptors.

C. Property Classification and Leq-8hr Exceedances

More than three receptors previously treated as non-residential are in fact habitable

residences. Even under ACWE's own February 2025 PNIA, the Leq-8hr limit is exceeded at multiple receptors. All habitable residences must be treated as non-participating receptors for L(night) purposes unless a valid participation agreement is demonstrated, and any PNIA showing exceedances of related short-term limits must be rejected or conditioned on redesign.

D. Low-Frequency Spectrum and Icing Events

Prior filings under-estimated the low-frequency spectrum and omitted noise increases during icing events. Both can produce material under-prediction of nighttime levels. Any compliant PNIA must explicitly account for low-frequency content consistent with measured turbine spectra and include a conservative icing adjustment or demonstrate why icing is not expected to increase levels at the receptors of concern.

Legislator Hanson's letter (Exhibit A) correctly emphasizes that turbines already erected may not be commissioned or operated until a compliant PNIA is approved, and that the full suite of enforcement tools remains available. An explicit order requiring a revised PNIA and barring operation until approval will make those tools meaningful.

IV. MOTION FOR STAY

Pending a decision on this Petition, interim relief is necessary to preserve the status quo and prevent irreparable harm.

Turbines have already been erected in multiple towns. An Operations Package has been approved. A formal mechanism for issuance of a Notice to Proceed with commercial operations is now in place. Yet there is still no approved Pre-Construction Noise Impact Assessment demonstrating compliance with Certificate Condition 68(d)(vi). If commercial operations or noise-producing pre-operational testing begin before the Board resolves the issues raised in this Petition, non-participating residents will be exposed to the very long-term nighttime noise the

L(night) Design Goal was designed to prevent. Once operations commence, that exposure cannot be undone, and the practical value of the relief sought here will be substantially impaired or mooted.

The County is likely to succeed on the merits. The June 23 Order correctly retained the L(night) Design Goal as a necessary pre-construction protection and reaffirmed that the required modeling methodology is intentionally conservative. The Order nevertheless left unresolved the critical next steps: whether a new PNIA is required, what conservative inputs that PNIA must employ, and whether already-erected turbines may be commissioned in the absence of a compliant filing. The technical record, including the Rand Acoustics analysis, demonstrates that prior PNIAs relied on non-conservative assumptions that understate predictable nighttime levels. The County's request for a clear directive requiring a revised, conservative PNIA and a bar on operations until approval is firmly grounded in the Certificate, the June 23 Order itself, and the public-health findings that supported retention of the Design Goal.

The balance of equities favors a narrow stay. ACWE has already constructed the Facility. A limited pause on the final step—commencement of operations or noise-producing testing—pending resolution of this Petition imposes no undue burden relative to the harm that would result from premature operation. A previous amendment of the Certificate provides that the project must be operational by June 2030. The requested stay is narrowly tailored: it seeks only to prevent issuance of a Notice to Proceed with commercial operations and to bar pre-operational testing that produces noise. It does not seek to halt all compliance review or other activities.

The public interest likewise favors the stay. The L(night) Design Goal exists to protect public health by ensuring, before operations begin, that long-term nighttime noise exposure remains within protective limits. Allowing operations to commence prior to demonstrating

compliance would undermine that protective purpose and the Board's own determination that the Design Goal is a necessary, non-redundant condition.

The Commission (and by extension the Siting Board pursuant to 16 NYCRR § 1000.3) has authority to grant interim relief pending resolution of a petition for rehearing or declaratory ruling. Although Rule 3.7(d) does not make stays automatic upon filing of a Petition for Rehearing, the Rule does not preclude the possibility of a discretionary stay. Here, given the advanced stage of the project, the absence of a compliant PNIA, and the imminent risk of excessive nighttime noise exposure, a narrow stay is warranted to preserve the status quo until the Board can decide the Petition on the merits.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Cattaraugus County respectfully requests that the Siting Board:

1. Grant rehearing of the June 23, 2026 Order pursuant to PSL § 170;

2. Direct ACWE to submit, within a defined short timeframe, a revised Pre-Construction Noise Impact Assessment that employs the Certificate's required conservative methodology and that:

(a) applies a ground absorption factor no higher than G = 0.5;

(b) applies an additional terrain/concave-slope correction of at least +3 dB where the Bass criterion or equivalent is met;

(c) treats all habitable residences as non-participating receptors for L(night) purposes, and demonstrates compliance with related short-term limits; and

(d) explicitly accounts for low-frequency spectrum characteristics and potential icing-related noise increases; and

(e) further direct that any such revised PNIA be noticed to the County, affected municipalities, and parties, with a reasonable opportunity for comment before approval;

3. In the alternative or concurrently, issue a declaratory ruling interpreting Certificate Condition 68(d) and the June 23 Order to require the submission of a revised PNIA meeting the standards set forth in paragraph 2 above;

4. Confirm that no wind turbine (including those already erected) may be commissioned or operated until a PNIA demonstrating compliance with Condition 68(d)(vi), as clarified herein, has been filed and approved;

5. Confirm that the full suite of enforcement tools—including stop-operation orders under the Certificate, penalties under Condition 17, and suspension or revocation under 16 NYCRR § 1000.16—remains available and will be employed if ACWE fails to comply;

6. Pending final resolution of this Petition, stay (a) the issuance of any Notice to Proceed with commercial operations and (b) any pre-operational testing that produces noise; and

7. Grant such other and further relief as the Board deems just and proper.

Dated: July 23, 2026
Webster, New York

/s Benjamin E. Wisniewski

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EXHIBITS

Exhibit A Letter of Cattaraugus County Legislator Brenda S. Hanson to Russell King, Assistant Counsel, New York State Board on Electric Generation Siting and the Environment / Department of Public Service, dated June 24, 2026, regarding obligations of the Certificate Holder, compliance, and enforcement following the June 23, 2026 Order.

Exhibit B Technical comments of Robert W. Rand, ASA, INCE (Member Emeritus), Rand Acoustics, LLC, submitted March 28, 2025 to Gary A. Abraham, Esq., on behalf of the Coalition of Concerned Citizens, responding to Alle-Catt Wind Energy LLC's March 20, 2025 letter and Pre-Construction Noise Impact Assessment, addressing ground absorption factor, topography/concave slopes, receptor classification, low-frequency spectrum, and icing events.

EXHIBIT A

CATTARAUGUS COUNTY LEGISLATURE
Brenda Hanson, District #2 Legislator
303 Court Street
Little Valley, New York 14755

Cell: 716.492-5315
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June 24, 2026

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

EXHIBIT B

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March 28, 2025

SUBMITTAL VIA E-MAIL

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Re: Case No. 17-F-0282 | All-Catt Wind Energy LLC
Response to Alle-Catt March 20, 2025 Letter

Per your request, below please find additional preliminary comments on the subject letter dated December 12, 2024, and the document furnished by counsel for Alle-Catt on March 20, 2025 titled "Re: Alle-Catt Wind Energy LLC – Supplement to Pre-Construction Noise Impact Assessment and Request for Approval of Construction Compliance Filing" (the "Letter").

These comments are in reference to the project document titled "Pre-Construction Noise Impact Assessment", dated February 28, 2025, prepared by Mr. Hankard of Hankard Environmental, Inc. for the proposed Alle-Catt Wind Farm (the "Assessment" or "PNIA"). Reference is also made to two previous PNIA project documents of the same title, dated November 15, 2024 and December 12, 2018, prepared by Hankard.

In my letter dated February 7, 2024, I documented findings for the following:

1) Non-Participating properties are misclassified

See discussion below.

2) Low-frequency spectrum is underestimated

3) Noise increases during icing events have not been considered.

The PNIA and Letter did not respond to these findings.

Pending additional information on those matters, the following issues are of concern.

1. Order Conditions 68.d(v) and 72(a) Leq-8hr limit breached at misclassified properties

See the Coalition Counsel's cover letter responding to ACWE counsel assertions that only 3 of 91 properties were improperly classified. Many more than 3 properties have been confirmed as habitable residences and my conclusions about noise limits exceeded by the project at several receptors have not been addressed. Even if Alle-Catt's updated PNIA is credited, the Order Condition 68(d)(v) Leq-8hr limit is breached at three properties 2066, 2223, and 2224.

2. Order Condition 68.d (v), 72.a Leq-8hr limit breached by Cumulative Noise Impact

In the February 28, 2025 PNIA Table 5-4, Leq8Hr noise levels are reported to exceed 45 dBA with noise reduction methods. They are Receptors 2630, 1980, and 1974, with predicted levels reported at 46.0, 45.2, and 45.1 dBA respectively with Alle-Catt controlling noise immissions.

3. Impermissible ground absorption factor

Background: In the 2020 Certificate Order p.62, the Board makes it clear that there are two choices for noise modeling, and mandated those specific bounds on ACWE noise modeling,

> "We support DPS Staff's recommendation that the Applicant be required to remodel the predicted annual noise levels by applying to the modeled results either the entire suite of CONCAWE corrections or by applying the Van den Berg corrections [to ISO 9613-2]."

ACWE did not remodel using CONCAWE. The November 2024 PNIA, at Section 4.5, paragraph 1, states that Alle-Catt's noise assessment predicts noise levels at receptors "using the ISO 9613-2 method" and "settings include a ground factor of 0.5, a receptor height of 1.5 meters, and no uncertainty added." If the ISO 9613-2 method is used, the Certificate Order, at Condition 68(d)(iii), provides: "Sound levels shall be evaluated at either 4.0 meters with no uncertainty added, or at 1.5 meters with a 2 dBA correction for uncertainty added."

New Lnight calculations employ a novel method: In the 2018 PNIA, Hankard used a novel modeling method which was overruled by the Board. In subsequent PNIAs including the recent November 2024 PNIA, Hankard Environmental used G=0.5 and uncertainty of 0 dB for calculation of Lnight. Suddenly, in the latest PNIA dated February 28, 2025, Hankard Environmental switched to using a ground factor (G) of 1.0 and 2 dBA of uncertainty.

Hankard Environmental seemingly justified the adjustment to a non-conservative G=1.0 by saying "a ground factor of 1.0 was used to account for the fact that over the course of a year atmospheric conditions will not be as ideal as those assumed by the ISO method with 0.5 ground plus 2 dBA uncertainty." This is nonsensical. The ISO 9613-2 method does not utilize adjustments to ground absorption to account for variations in atmospheric conditions. The ground absorption factor in the ISO method is completely disconnected from atmospheric conditions.

If anything can explain this odd adjustment, it appears that Hankard Environmental realized that to comply with the Order conditions they have to incorporate the 2 dBA uncertainty factor, and when they ran the calculations with the 2 dBA uncertainty factor and G=0.5, the predicted noise levels exceed the project noise limits. So instead of modifying turbine locations away from from receptors to meet the noise limits using increased distance (the only reliable noise control option available), Hankard Environmental switched to G=1.0 to obtain a reduction in predicted noise levels at receptors.

The assumption of G=1.0 for the annual Lnight computation is technically unjustifiable and inconsistent with professional standards, including ISO 9613-2, ISO 1996-2, and the EU Environmental Noise Directive (2002/49/EC), as G=1.0 over all 2,920 nighttime hours of a year is physically unachievable. During some months of the year, leaves are off the trees, the ground may be hard and dry or frozen hard, trees will be frozen hard, and the ground may be bare or covered with ice. In those conditions, ground absorption is closer

to zero. For the aggregate year's ground absorption factor to be 1.0, all ground between all sources and receptors would have to be completely absorptive (G=1.0, nothing comes back), every single hour of the year. This cannot be achieved in practice. The aggregate yearly ground absorption (G) may be somewhere between G=0.0 and G=1.0, most likely between G=0.0 and G=0.5 to be conservative during modeling, but it can never be G=1.0.

Comparison of the Lnight data in the November 15, 2024 PNIA to the data in the February 28, 2025 PNIA show a 2 dBA differential associated with adjusting ground absorption from G=0.5 to G=1.0 combined with chaning uncertainty from 0 to 2 dBA. Adding back the erroneously obtained 2 dBA reduction from employing G=1.0, or switching back to G=0.5, results in Lnight annual levels reported at 38.1 dBA or higher being approximately 40.1 dBA or higher.

4. Additional conservatism in modeling is warranted to address topography slope

Ground effect limits are stated in ISO 9613-2 section 7.3.2: "This method of calculating the ground effect is applicable only to ground which is approximately flat, either horizontally or with a constant slope." Ground absorption in ISO 9613-2 is not applicable to ground slopes which are substantially concave. The ACWE project site is filled with steep and rolling slopes between sources and receptors. The role of topography slope was addressed in the Hankard Environmental PNIA dated December 12, 2018 (page 53), citing research on concave slope effects on wind turbine noise levels by Evans and Cooper[1]:

> From Evans and Cooper [46]: "The comparison has indicated that the commonly used ISO 9613-2 (with completely reflective ground) and CONCAWE (with completely absorptive ground) generally over-predict noise levels from the wind farm. However, the degree of over-prediction appears dependent on the topography around the wind farm. At sites with a relatively flat topography or a steady slope from the turbines to the measurement sites, the over-prediction can be in the order of 3 to 6 dB(A). **However, at sites where there is a significant concave slope from the turbines down to the measurement sites, these commonly used prediction methods are typically accurate, with the potential of marginal under-prediction in some cases." Evans and Cooper also caution "other commonly used prediction methods, such as ... the ISO 9613-2 method with 50% absorptive ground, can under-predict noise levels in some situations and should only be used with caution**. [emphasis added]

As shown in the Evans and Cooper Table 1 below, the ISO 9613-2 model with G=0.5 (used by Hankard in November 2024) under-predicts noise levels slopes by 2.4 to 4.8 dB at receptors for acoustic paths with concave terrain[2]. Whereas modeling with G=0.0 over concave slopes is accurate within 1 dB. The trend in the table suggests that modeling errors using G=1.0 would be much larger than 3 dB.

[1] C. J. Evans T, "Comparison of predicted and measured wind farm noise levels and implications for assessments of new wind farms," Acoustics Australia. 40, pp. 28-36, 2012.

[2] The ISO 9613-2 model with G=0.0 is accurate within 1 dB for terrain with concave slopes, and this appears to represent the prediction method referred to by Evans and Cooper when they say "typically accurate".

Table 1 – Difference between predicted and measured wind farm noise levels

Site	Approximate distance to nearest turbine, m	Topography description	Predicted – measured, ISO 9613-2 G=0	Predicted – measured, ISO 9613-2 G=0.5
A1	1000	Steady downward slope	5.8	2.2
A2	800	Steady downward slope	5.4	2.2
A3	800	Concave downward slope	-0.4	-3.5
B1	1500	Concave downward slope	-0.7	-3.8
B2	1000	Slight concave slope	1	-2.4
B3	1000	Concave downward slope	-0.4	-3.4
B4	3000	Concave downward slope	-0.3	-4.8
C1	600	Flat	2.9	1
C2	300	Flat	2.9	0.1
C3	700	Flat	2.6	-0.6
D1	300	Flat	3.2	0
E1	1200	Flat	2.5	-1.2
F1	700	Flat	2.1	-1

Table 1. From Evans and Cooper Table 1, ISO 9613-2 under-predicts noise emissions when there is a slight or significant terrain slope between source and receptor.

4.1 Determining significant terrain slope

Bass, Bullmore, and Sloth (1998), under contract to the European Commission (Contract JOR3-CT95-0051),[3] measured the effects of concave slope for wind turbine noise emissions. They recommended that if the concave slope ratio to the direct path mean height is 1.5 or greater, a terrain slope factor of 3 dB should be applied:

> Where the ground falls away significantly between the source and receiver, such that the mean propagation height is at least 1.5x than over flat ground and particularly where the ground falls away steeply from the receiver, it is recommended that 3dB(A) be added to the calculated sound pressure level. This correction factor is based on experimentally measured levels. It accounts for the reduction in excess ground attenuation due to the increased height of propagation.
>
> Provided the suggested correction factors are applied to the output of the ISO 9613 model, the calculated sound pressure levels have been validated to agree to within 2dB(A) of noise levels measured under practical "worst case" conditions at distances of up to 1000m from a noise source. Also, based on the observed scatter of measured sound pressure levels under these same conditions, it is concluded that the one standard deviation spread of data above the calculated levels will be limited to below 1dB(A), even at the furthest distances form the source. It is therefore finally concluded that an 85% level of confidence can be placed on the noise levels measured in practice not exceeding the calculated level by more than 1 dB(A).

[3] Bass, James, Andrew Bullmore, Erik Sloth, Hoare Lea and Contract Jor. "Development Of A Wind Farm Noise Propagation Prediction Model.", The European Commision, Non-Nuclear Energy Programme, (1998).

Bass, Bullmore and Sloth, 1998 provided the terrain slope factor for significant concave slope in their equation 2, shown here with description:

$$A_{ter} = -3dB(A) \qquad \text{if} \qquad h_m \geq 1.5 \times \left[\frac{abs(h_s - h_m)}{2} \right]$$

where "h_m is the mean height above the ground of the direct line of sight from the receiver to the source, and h_s and h_m are the heights above local ground level of the source and receiver respectively. Note that where this condition exists it serves to increase the received sound pressure level, hence A_{ter} in this instance is negative." In practice this 3-dB terrain slope factor is entered at the head of the ISO 9613-2 software model and is applied to all computations.

The measurements and findings by Bass, Bullmore, and Sloth (1998) show that using a 3-dBA terrain slope factor for significant concave slope (e.g. ratio>=1.5) still leaves a 1 dBA exceedance to be accounted for to ensure compliance. Their findings result in a total terrain slope factor of 4 dBA to match predicted levels within 1 dBA with an 85% level of confidence.

4.2 Terrain slopes in the ACWE Project area

For this letter, terrain slope was evaluated for the ACWE project area by importing digital elevation model (DEM) HFA/Erdas Imagine Images (.img) 1-meter files from the USGS 3D Elevation Program and tiling over the project area. Bespoke Python routines were used to 1) create a raster image showing slope intensity and 2) compute slope paths and slope ratios between sources and receptors.

Figure 1 below shows the USGS topography for the ACWE project area. Significant elevation changes are clearly visible throughout the project area. Steep slopes are visible where topographic lines run closely together along hillsides.

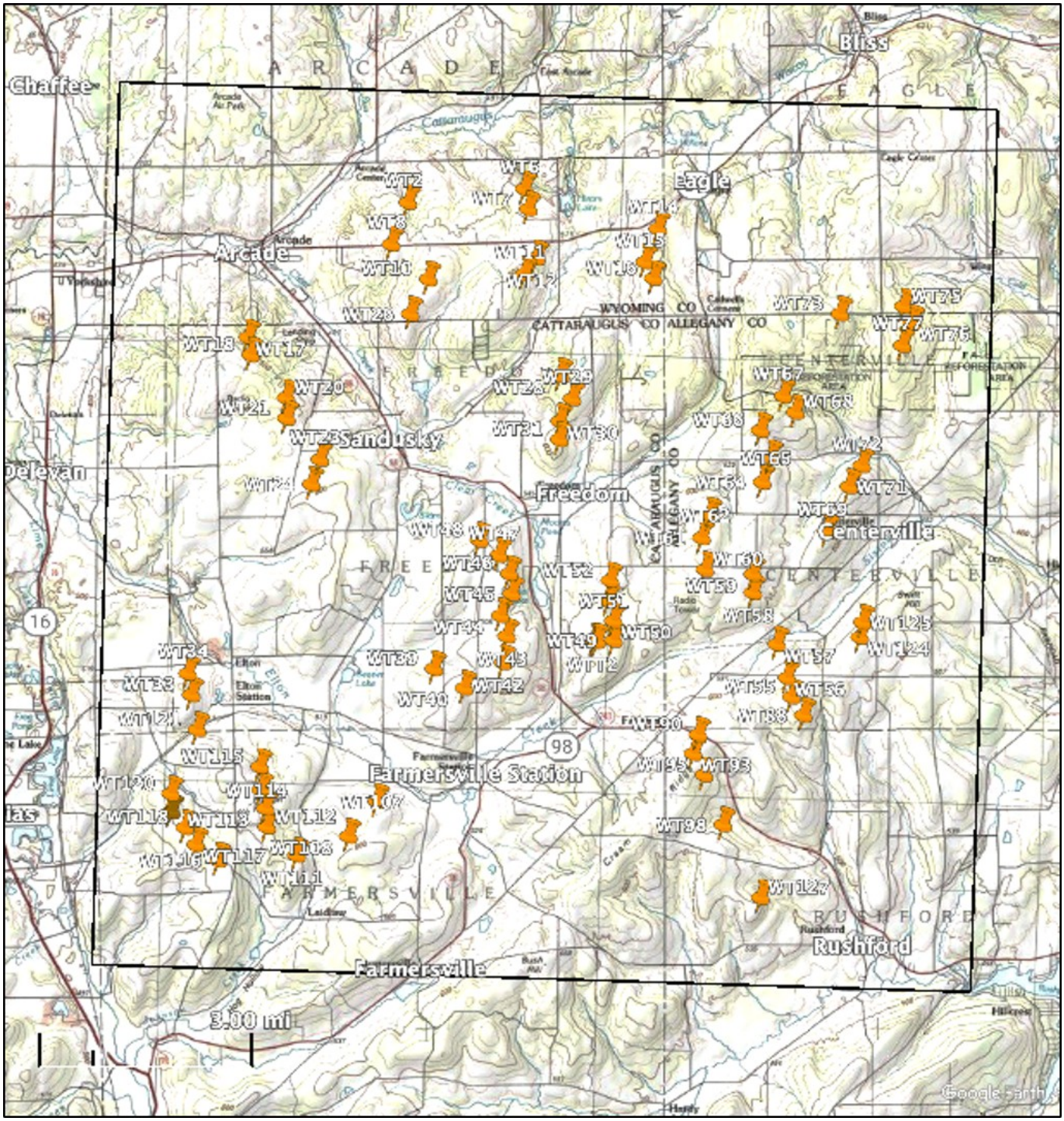

Figure 1. USGS chart of ACWE project area with DEM analysis overlay area shown with black ink outline. Turbine locations shown with WT 52 added March 2025.

Figure 2 shows a raster image with computed slopes in degrees through the ACWE project area. Green, yellow, orange, and red raster shadings show slopes exceeding 0, 5, 10, and 15 percent slope, respectively. Significant terrain slopes are therefore clearly present throughout the project area.

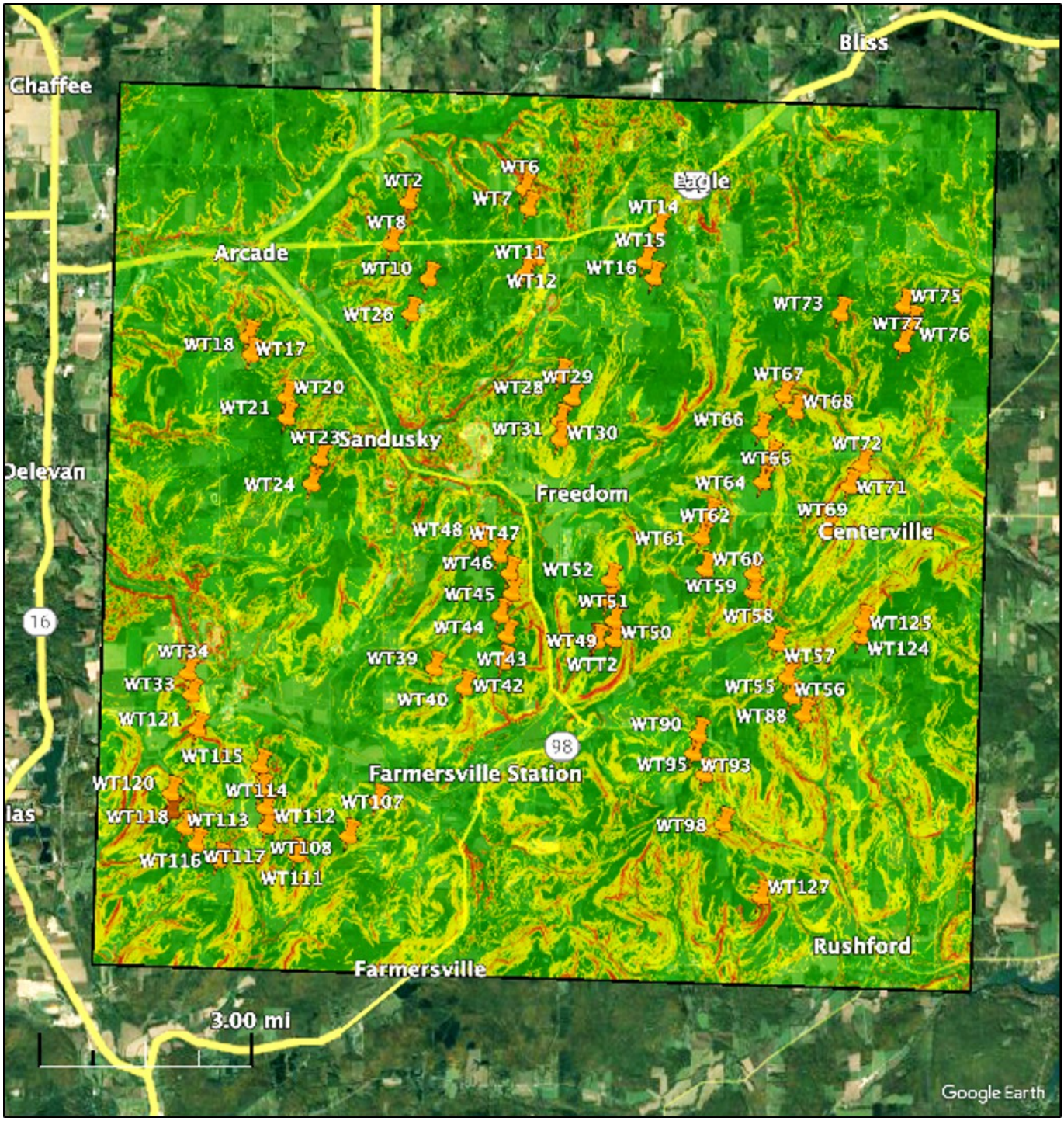

Figure 2. Slope in ACWE project area. Green, yellow, orange and red show slopes exceeding 0, 5, 10, and 15 percent slope, respectively. Turbine locations shown with WT 52 added March 2025.

Figure 3 below shows computed slope ratios along line-of-sight acoustic paths between turbines and receptors. Slope ratios are the ratio between mean height between source and receptor and the mean height of the line-of-sight between source and receptor and the average terrain elevation along the path directly under the line-of-sight path. For example, *on level ground*, the mean height between turbine hub height and receptor is the same as the mean height of the line-of-sight between hub height and receptor; the ratio is 1.0. As the terrain drops away below the line-of-sight path, the ratio increases, indicating that terrain slope is concave.

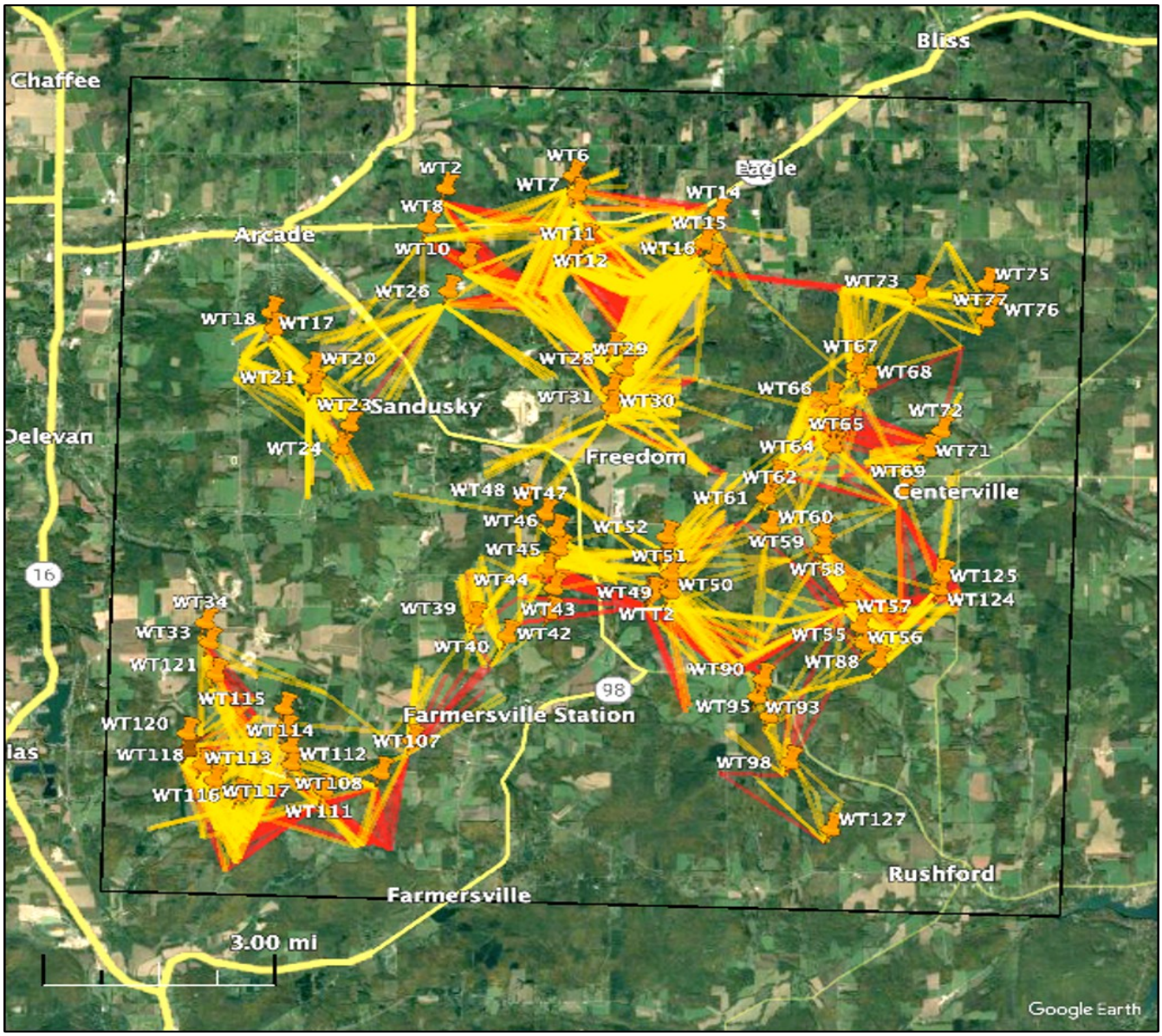

Figure 3. Slope in ACWE project area. Orange and red lines show slope ratios along acoustic paths between sources and receptors for height above average terrain relative to mean height between sources and receptors exceeding 1 and 1.5 respectively. Turbine locations shown with WT 52 added March 2025.

Figure 4 and 5 below show concave slope ratios between turbines and receptors summarized by turbine and by receptor, respectively. Numerous turbine-receptor paths have slope ratios over 1.5, consistent with a 3-dB uncertainty to be applied in the ISO 9613-2 model per Bass, Bullmore, and Sloth, 1998.

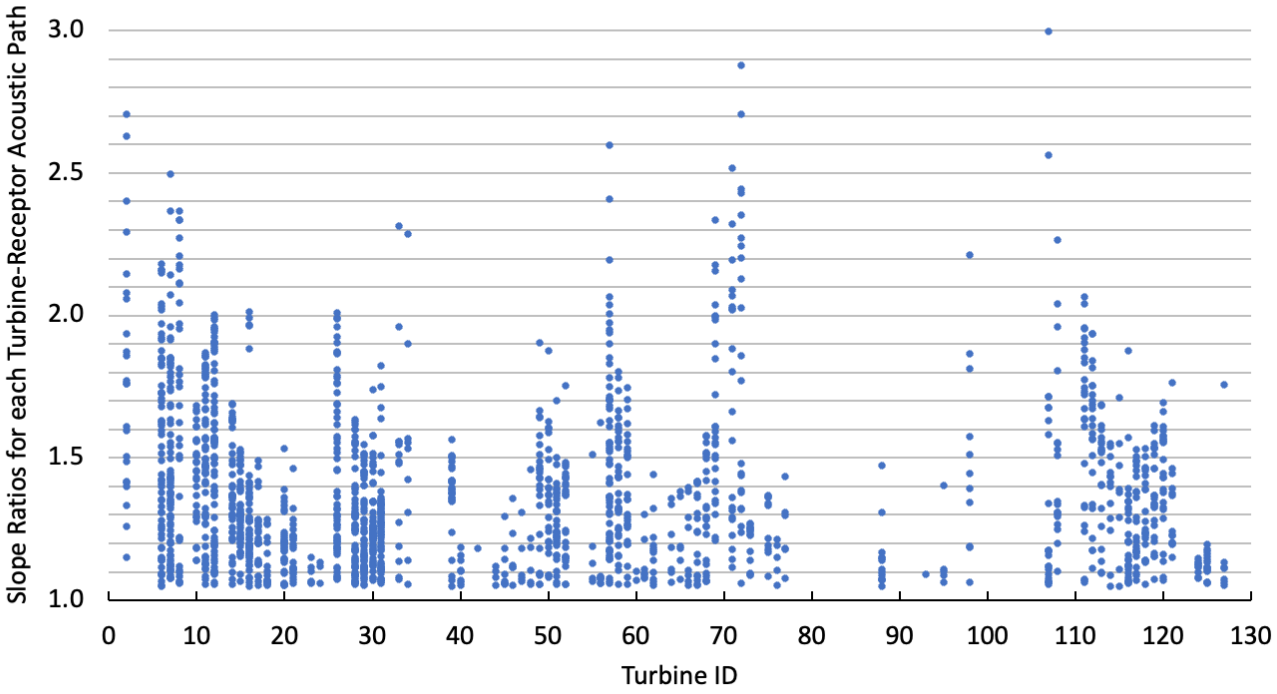

Figure 4. Concave slope ratios by turbine for each receptor with line of sight within 3000 meters. Turbines shown with WT 52 added March 2025.

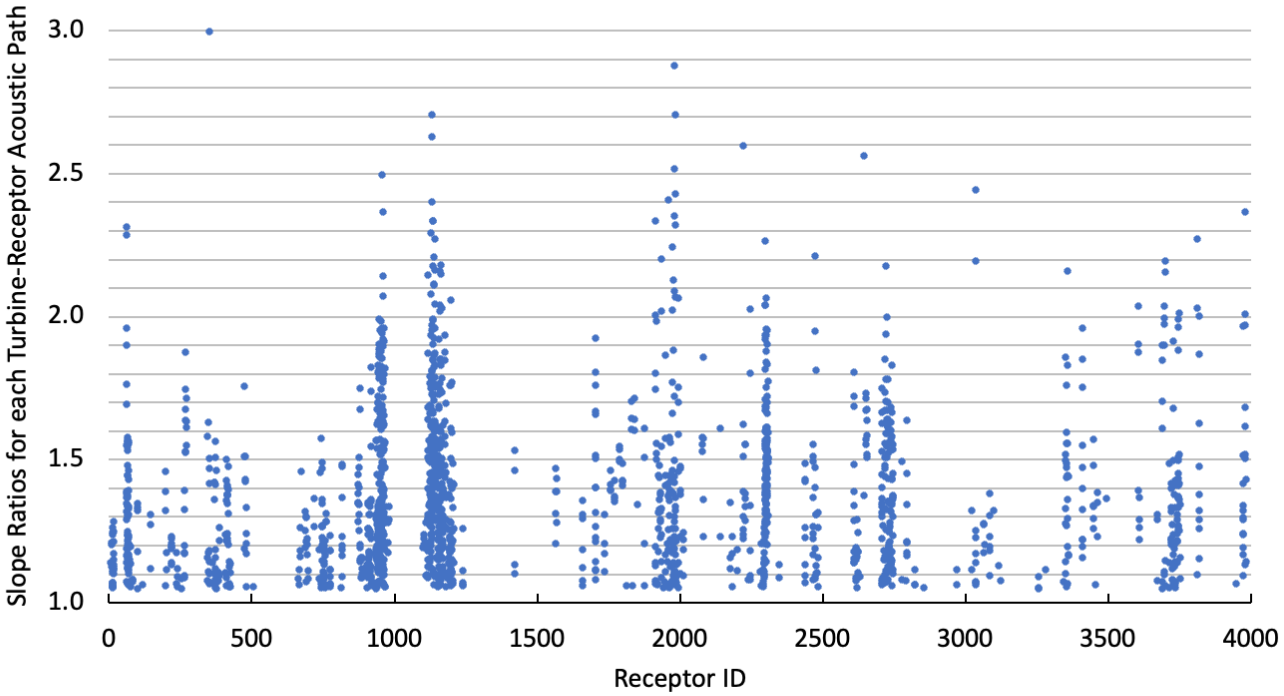

Figure 5. Concave slope ratios by receptor for each turbine with line of sight within 3000 meters. Turbines shown with WT 52 added March 2025.

Figure 6 below shows a summary histogram of concave slope relations inside the ACWE project area. Several hundred source-receiver paths have concave slope ratios exceeding 1.5, consistent with a 3-dB terrain slope factor entered at the head of the ISO 9613-2 model, per Bass, Bullmore, and Sloth (1998).

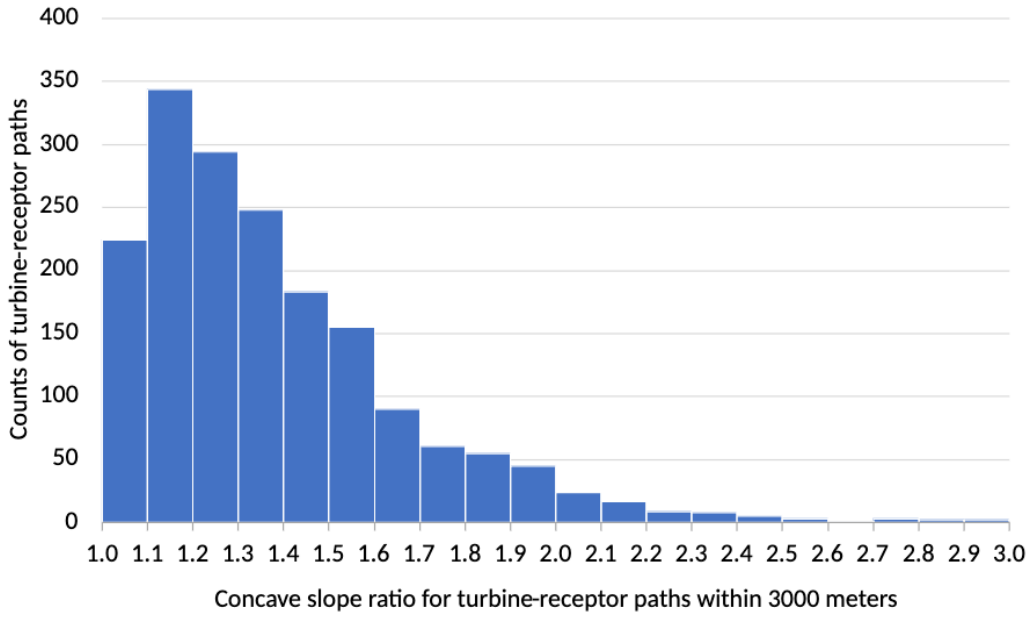

Figure 6. Concave slope ratios for all source-receptor acoustic paths within 3000 meters.

The presence of hundreds of significant concave slopes in the project area unadressed by the PNIA raises doubt as to whether Hankard's methods are sufficiently conservative to assure the Siting Board that non-participating residents will be protected from unwanted noise, and thus that complaints during operations will be rare.

SUMMARY

INCE Rules of Practice require approving only noise control engineering studies, reports, or work which, to the best of the reviewer's knowledge and belief, are safe for public health, property, and welfare and in conformance with accepted practice.[4] Best practices include designing to prevent noise complaints and impacts on sleep and amenity, and assuring that facilities comply with regulatory requirements with an adequate design margin.[5,6]
In summary:

1) Order Condition 68(d)(v) 72.a Leq-8hr limit is breached at three receptors 2066, 2223, and 2224 improperly classified by ACWE.

2) Order Condition 68.d (v), 72.a Leq-8hr limit is breached by Cumulative Noise Impact at three receptors 2630, 1980, and 1974 where the noise levels are controlled by the Alle-Catt wind turbines.

3) For the yearly Lnight metric, the February 28, 2025 PNIA suddently employs a yearly ground absorption factor G=1.0, which is physically impossible, because many weeks and months of the year, leaves are off, the ground is variously dry and hard, bare, frozen, and/or iced, with G closer to 0.5 or less some portions of the year. It appears the ground absorption factor was changed from G=0.5 to G=1.0 to reduce predicted levels by 2 dBA after adding in the 2 dBA uncertainty factor required by the Order that had been left out in previous PNIA submittals. This is a non-conservative adjustment in the modeling.

4) Several hundred acoustic paths between sources and receptors exhibit significant concave slope for which there is no ground absorption effect, and which are most accurately modeled using a ground absorption factor of G=0.0. This modeling issue was raised by Hankard Environmental in the 2018 PNIA but was not addressed in any of the project PNIAs. To be sufficiently conservative with a ground absorption factor of G=0.5, a 3-dB uncertainty for concave slope influence on model accuracy must be incorporated into Alle-Catt's noise assessment for all noise metrics. With G=1.0, a larger decibel uncertainty must be factored in.

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[4] INCE Canon of Ethics. Section II.1 "b. Approve only noise control engineering studies, reports, or work which, to the best of their knowledge and belief, is safe for public health, property, and welfare and in conformance with accepted practice." https://www.inceusa.org/pub/?id=A31057F9-EFA6-9D27-572B-1754C2BF6BC7

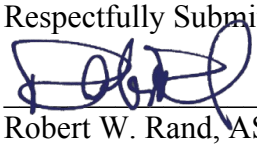
[5] Id., Section II.1 "INCE members shall hold paramount the safety, health, and welfare of the public in the performance of their professional duties and shall: a. Notify their client and such other authority as may be appropriate, if their professional judgment is overruled under circumstances where the public safety, health, property, or welfare are endangered." Best practices were acquired during a decade of work in the Noise and Vibration Control Group in the Environmental Engineering Division at Stone & Webster Engineering Corporation. Design safety margins were approved conservative project investments to prevent much higher costs of noise control if noise levels exceeded regulatory limits or generated complaints once facilities were in operation.

[6] Factors of Safety are a part of engineering design, e.g. Maria, Rutheravan. (2016). Summary Of Safety Criteria In Design. 10.13140/RG.2.1.1501.5285.

Low frequency (16 Hertz) noise level and icing noise issues were not addressed in the February 28, 2025 PNIA. These issues combined with the exceedances of Order Conditions, non-conservative methods, and impacts of concave terrain slope on noise immissions in the project area documented herein are substantive and raise significant doubts as to whether Hankard's methods are sufficiently conservative to assure the Siting Board that non-participating residents will be protected from unwanted noise, and thus that complaints during operations will be minimized.

Thank you for your consideration of this letter. If you have any questions, please contact me.

Respectfully Submitted,



Robert W. Rand, ASA, INCE (Member Emeritus)