

1 8/5/2024 - Siting Board - 17-F-0282

2 NEW YORK STATE BOARD ON  
3 ELECTRIC GENERATION SITING AND  
4 THE ENVIRONMENT

5 CASE 17-F-0282 - Application of Alle-Catt Wind Energy LLC  
6 for a Certificate of Environmental Compatibility and  
7 Public Need Pursuant to Article 10 for a Proposed Wind  
8 Energy Project, Located in Allegany, Cattaraugus, and  
9 Wyoming Counties, New York, in the Towns of Arcade,  
10 Centerville, Farmersville, Freedom, and Rushford.

11 Siting Board Meeting

12 Date: Monday, August 5, 2024, at 2:00 pm

13 TAMMY MITCHELL, Alternate for Rory M. Christian, Chair of  
14 the New York State Public Service Commission

15 KEVIN MALONE, Alternate for James V. McDonald, M.D.,  
16 M.P.H., Commissioner, New York State Department of Health

17 MARK SANZA, Alternate for Sean Mahar, Interim  
18 Commissioner, New York State Department of Environmental  
19 Conservation

20 DAVID WHIPPLE, Alternate for Hope Knight, Commissioner of  
21 the New York State Department of Economic Development

22 JOHN WILLIAMS, Alternate for Richard L. Kauffman, Chair,  
23 New York State Energy Research and Development Authority

24  
25 Reported by Monique Hines

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2 (On the record 2:00 p.m.)

3 DIRECTOR MITCHELL: Good afternoon, my name  
4 is Tammy Mitchell. I'm the Director of the Office of  
5 Energy System Planning and Performance at the New  
6 York State Department of Public Service. I've been  
7 designated to serve as the alternate representing the  
8 Chair of the New York State Board on Electric  
9 Generation Siting and the Environment, or as it is  
10 also known, the Siting Board. I call this meeting of  
11 the Siting Board to order.

12 Before moving to the agenda, I would like  
13 to introduce the alternates representing the  
14 permanent members of the Siting Board. When I call  
15 your name, please confirm that you are present.  
16 Kevin Malone, alternate representing the Commissioner  
17 of the Department of Health?

18 MR. MALONE: Present.

19 DIRECTOR MITCHELL: Mark Sanza, alternate  
20 representing the Commissioner of the Department of  
21 Environmental Conservation?

22 MR. SANZA: Present.

23 DIRECTOR MITCHELL: David Whipple,  
24 alternate representing the Commissioner of the New  
25 York State Department of Economic Development?

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2 MR. WHIPPLE: Present.

3 DIRECTOR MITCHELL: And John Williams,  
4 alternate representing the Chair of the New York  
5 State Energy Research and Development Authority.

6 MR. WILLIAMS: Present.

7 DIRECTOR MITCHELL: Thank you.

8 Secretary Phillips, are there any changes  
9 to the agenda?

10 SECRETARY PHILLIPS: There are no changes  
11 to the agenda.

12 DIRECTOR MITCHELL: Thank you.

13 We will begin with Case 17-F-0282.

14 Application of Alle-Catt Wind Energy, L.L.C. for a  
15 certificate of environmental compatibility and public  
16 need pursuant to Article 10 for a proposed wind  
17 energy project located in Allegany, Cattaraugus and  
18 Wyoming Counties, New York and the Towns of Arcade,  
19 Centerville, Farmersville, Freedom and Rushford.  
20 Presented by Ryan Coyne, Assistant Counsel,  
21 Department of Public Service, Robert Rosenthal,  
22 General Counsel and Jason Zehr, Chief of  
23 Environmental Certification and Compliance,  
24 Department of Public Service are available for  
25 questions.

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2 Attorney Coyne, please begin.

3 MR. COYNE: Thank you very much and good  
4 afternoon, Chair Designee Mitchell and members of the  
5 Board. Before you today is an order adopting the  
6 terms of a consent order agreement in this matter.

7 On June 3rd, 2020, the Board granted Alle-  
8 Catt Wind Energy, L.L.C. a certificate of  
9 environmental compatibility and public need for a 340  
10 megawatt wind facility. Under that certificate, the  
11 Board delegated to Cattaraugus County, among other  
12 municipalities, the authority to issue a road use  
13 agreement for Alle-Catt's use of the county's roads  
14 and highways, an authority that is otherwise  
15 preempted under Public Service Law Section 172-1.  
16 Per Certificate Condition Four, the Board could  
17 withdraw that delegated authority if it were to find  
18 that the county's actions were unreasonably delayed,  
19 withheld or conditioned.

20 On May 7th, 2021, Alle-Catt filed a  
21 petition arguing that the county had unreasonably  
22 delayed approving a road use agreement and asked for  
23 the county's delegated authority to be withdrawn.  
24 Alle-Catt supplemented that petition on March 15th,  
25 2023, noting that despite nearly three years of

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2                   negotiations, the county had not agreed to a road use  
3                   agreement. The board agreed with Alle-Catt and  
4                   consequently applied Certificate Condition Four and  
5                   withdrew the county's authority delegated under  
6                   Public Service Law Section 172-1.

7                   On December 19th, 2023, the county  
8                   submitted a petition for rehearing. The Board denied  
9                   rehearing on March 26th of this year. In April of  
10                  this year, the county sued the Board and Alle-Catt,  
11                  asking a court to annul the two orders that withdrew  
12                  the county's delegated R.U.A. authority. After  
13                  commencing that litigation, however, the county and  
14                  Alle-Catt resumed negotiations and subsequently  
15                  agreed to an R.U.A. That fully executed road use  
16                  agreement is attached to the proposed consent order  
17                  agreement as Exhibit A.

18                  In light of this development, the parties  
19                  have petitioned the Board to find that the issues  
20                  that gave rise to the two orders that are the subject  
21                  of a litigation are now moot and that they may be  
22                  vacated. The order before you does that and commits  
23                  the county to promptly and permanently discontinue  
24                  its litigation once the Board issues an order.  
25                  Approving the proposed consent order agreement is

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2                   consistent with this Board's discretionary delegation  
3                   of road use authority in this and other Article 10  
4                   proceedings. These delegations may promote  
5                   collaboration and cooperation between developers and  
6                   the affected local governments, as this Board has  
7                   observed. And approving the terms of this consent  
8                   order agreement under which Alle-Catt and the county  
9                   have reached a mutually acceptable R.U.A. is  
10                  consistent with that goal while also avoiding further  
11                  unnecessary litigation.

12                  That concludes my presentation, and I would  
13                  be happy to take any questions that you may have.  
14                  Thank you.

15                  DIRECTOR MITCHELL: Thank you for your  
16                  presentation. I have no questions or comments. Let  
17                  me turn to my fellow Board members for any comments  
18                  or questions.

19                  Mr. Malone?

20                  MR. MALONE: No comments or questions.

21                  DIRECTOR MITCHELL: Mr. Sanza?

22                  MR. SANZA: No questions or comments.

23                  DIRECTOR MITCHELL: Mr. Whipple?

24                  MR. WHIPPLE: No comments, no questions.

25                  DIRECTOR MITCHELL: Mr. Williams?

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2 MR. WILLIAMS: No comments or questions.

3 DIRECTOR MITCHELL: I now call for a vote.

4 My own vote is in favor of the recommendation as  
5 described.

6 Mr. Malone, how do you vote?

7 MR. MALONE: I vote in favor.

8 DIRECTOR MITCHELL: Mr. Sanza?

9 MR. SANZA: In favor.

10 DIRECTOR MITCHELL: Mr. Whipple?

11 MR. WHIPPLE: In favor.

12 DIRECTOR MITCHELL: Mr. Williams?

13 MR. WILLIAMS: In favor.

14 DIRECTOR MITCHELL: The order is approved  
15 and the recommendations therein are adopted.

16 Secretary Phillips, is there anything  
17 further to come before us today?

18 SECRETARY PHILLIPS: There is nothing  
19 further.

20 DIRECTOR MITCHELL: All right. Thank you  
21 all. We are adjourned.

22 (Off the record.)

23 (The proceeding concluded at 2:05 p.m.)

24

25

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2 STATE OF NEW YORK

3 I, MONIQUE HINES, do hereby certify that the foregoing was  
4 reported by me, in the cause, at the time and place, as  
5 stated in the caption hereto, at Page 1 hereof; that the  
6 foregoing typewritten transcription consisting of pages 1  
7 through 7, is a true record of all proceedings had at the  
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 7th day of August, 2024.

11  
12 MONIQUE HINES, Reporter  
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