

***LAW OFFICE OF GARY A. ABRAHAM***

4939 Conlan Rd.  
Great Valley, New York 14741  
716-790-6141

gabraham44@eznet.net  
www.garyabraham.com

January 24, 2022

John P. Asiello  
Chief Clerk and Legal Counsel to the Court  
State of New York – Court of Appeals  
Clerk's Office  
20 Eagle Street  
Albany, New York 12201-1095

RECEIVED

JAN 24 2022

NEW YORK STATE  
COURT OF APPEALS

Re: **Coalition of Concerned Citizens v. NYS Board on Electric Generation Siting  
APL-2021-00192**

Dear Mr. Asiello:

On behalf of the Coalition of Concerned Citizens (“Coalition”), please accept the attached Jurisdictional Response regarding the above-referenced case as directed by your letter dated January 13, 2022. Proof of service is attached.

A substantial constitutional question is directly involved in this case because the Amish Swartzentruber settlement in Farmersville, New York, within the Alle-Catt project area, was a member of the Coalition and a represented party from the beginning of the application phase of the administrative proceeding; Swartzentruber bishops delivered letters to the hearing examiners even prior to the application phase indicating their religious objections to the Alle-Catt project; the Coalition provided direct, rebuttal and cross-examination testimony by an expert in Amish religious life in support of the Swartzentrubers’ objections; the Coalition’s briefs in the administrative proceeding asserted the religious sensitivity of the Swartzentruber to industrial noise, visual and traffic impacts that would result from the project; and the Coalition’s “brief on exceptions” to the Respondent Siting Board identifies the project’s “intrusion on their religious way of life”, the reasons why Swartzentruber homes should be considered churches, and argues that the State’s insistence on neutrality is “prejudicial” to the Swartzentruber’s free exercise of religion, relating each of these arguments back to the robust administrative record developed by the Coalition detailing the need to accommodate the Swartzentruber with appropriate setbacks from industrial wind turbines.

Each of these points finds robust support in the Appellate Division record, as detailed in the remainder of this letter.

**1. The Swartzentruber settlement was a member of the Coalition and a represented party from the beginning of the application phase of the administrative proceeding.**

Unlike the Appellate Division, the Hearing Examiners were “satisfied that the [Coalition] is an appropriate [organization] to act as the representative of the group whose rights it is asserting”. App. Div. Memorandum and Order, 4.

The Hearing Examiners' award of intervenor funding to the Coalition shows that the Swartzentruber settlement was represented by the Coalition from the beginning of the application phase of the administrative proceeding. "The purpose of application stage intervenor funding is to enable those municipal and local parties to review an Article 10 application and to contribute to an informed decision by the Siting Board as to the appropriateness of a proposed project site and facility. Funding is made available to defray expenses for expert witnesses, consultants, legal representation, and administrative fees." R.166-1, 3 (Ruling on Application-Phase Intervenor Funding Requests, dated July 19, 2019).

By March 20, 2019, the "Old Order Amish" (*i.e.*, the Swartzentruber settlement in Farmersville) appeared on the Party List for the proceeding among the parties represented by the undersigned. R.138.

On June 11, 2019, the Hearing Examiners held a Public Statement Hearing at which the undersigned stated:

I'm representing six organizations in the Article 10 proceeding in opposition to the project. Freedom United, Farmersville United, Concerned Citizens of Cattaraugus County, Concerned Citizens of Centerville, the Rushford Concerned Citizens and the Old Order Amish of Farmersville who've been referred to me by a Ginger Schroder. ...

I have a statement that we will be filing on D.M.M. ["Document Matter Master", the administrative record] by the end of the week from our expert, Professor Steven Nolt, Professor for Anabaptist Studies at Elizabethtown College in Pennsylvania. He's an expert on the Amish and he visited the Farmersville Amish Community last fall.

His statement supports the conclusion that if this project is cited here, the Amish will leave. They will be displaced. Because based on their religious beliefs, they must live an agrarian way of life. It is what God has called them to do and they are opposed to this, as you've heard earlier, because this violates their religion.

So we are hereby asking that the project at the -- at the least accommodate the Swartzentruber Amish by moving all turbines away from their community in Farmersville.

R.163-2, 120-122 (Tr.). *See also* R.159-1, 44-45 (Tr. of Procedural Conference Transcript, June 12, 2019).

The Coalition was initially awarded \$130,000 in intervenor funding, (R.166-1, 4), upon a proposed budget that included Dr. Steven M. Nolt, who would prepare expert

testimony on the Alle-Catt project's impacts on Amish religious life. R.148-9, 11. Accompanying the Coalition's request for funding is my retainer agreement with Ginger Schroder, Esq. R.69-2. *See also* R.68-1; R.69-6; R.139-1. Ms. Schroder represents the Farmersville Swartzentruber "in most of their legal dealings", but for the application phase of the Article 10 proceeding she "turned them over to Gary [Abraham] . . . along with the other Coalition groups that were my clients." R.339-2, 1592:4-8. *See also* R.65-1, 37 (Tr. of Procedural Conference); R.72-1 (Ruling on Pre-Application Phase Intervenor Funding Requests). Thus, at the latest, the Swartzentruber Amish were a represented party from April 3, 2019.

Thereafter, Ms. Schroder became the attorney of record in the proceeding for the towns of Franklinville, Yorkshire and Machias, adjacent to the project area. R.322-1, 614-615 (testimony of Franklinville Town Supervisor). As noted, the undersigned became the attorney of record for the Coalition members, including the Swartzentruber settlement in Farmersville. In an Article 10 proceeding, "[p]articipants are encouraged to consider the consolidation of requests with similar funding proposals of other participants." 16 NYCRR § 1000.10(a)(4). "The purpose of application stage intervenor funding is to enable those municipal and local parties to review an Article 10 application and to contribute to an informed decision by the Siting Board as to the appropriateness of a proposed project site and facility. Funding is made available to defray expenses for expert witnesses, consultants, legal representation, and administrative fees." R.166-1, 3 (Ruling on Application-Phase Intervenor Funding Requests).

In the Coalition's request for funding, the scope of testimony proposed for the Coalition's expert on Amish religion is described:

Dr. Steven Nolt is an expert in Anabaptist and Pietist religions within the field of religious studies. The various sects of Amish are among these religions. The Old Order Amish (also known as the Swartzentruber Amish) in Farmersville, are among the most conservative of Amish groups and adhere to traditional methods of farming. Their lifestyle and their livelihood depends upon having between 85 to 120 acres or more of productive farmland per family. Old Order Amish may be the most significant private land holders in Farmersville. The Old Order Amish consist of approximately 22 large families owning hundreds of acres of productive farmland which not only provide the sole means of feeding the members of their community but also provide food to local stores and restaurants. The Old Order Amish conduct themselves as a self-governing insular community and, in that regard, have voted internally not to execute wind leases, good neighbor agreements or setback waivers offered by Invenergy. They have serious concerns about the impact a utility-wind project could have on their ability to continue to live in harmony with the land and God, make full use of their land, feed their families, and realize the full value of their land against the pressure of declining land values caused by the project. They are concerned about the increased traffic,

before and after construction, and what impact that might have on the safety of their horses and buggies, their sole means of travel over the roads. The Old Order Amish make extensive use of local roads to get between Amish settlements to assist each other in harvest times, medical emergencies, and for any other reason, as the community exists for each other and to assist each other. Their religious beliefs prohibit Swartzentruber church members from installing a windshield or a safety marker triangle on their buggies. Buggies also have no more than very basic gas lighting, reflecting Swartzentruber rejection of worldly symbols and emphasis on devotion to God. Increased traffic, large concrete and transport trucks, as well as a significant increase in the number of drivers unfamiliar with the roads puts the Swartzentruber Amish at greater risk for deadly vehicular accidents, especially for the small children who regularly drive buggies to and from farms and school.

R.148-9, 12-13.

On August 29, 2019, as directed by the Hearing Examiners, (*see* R.166-1), the Coalition submitted its Issues Statement, identifying “disproportionate impacts on the Swartzentruber Amish community” and “impacts on the Swartzentruber Amish community, and how those impact affect the character of the wider non-Amish community”, among six issues proposed for adjudication. R.192-3.

The Coalition’s Issues Statement specifies at length its concerns about project impacts on the Swartzentruber settlement in Farmersville in four ways:

**(1) Failure to comply with local law setbacks**

Article 10 requires the Siting Board to determine “the facility is designed to operate in compliance with applicable . . . local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety”. PSL § 168(3)(e). See also 16 NYCRR § 1001.31(d). In Farmersville and the immediate vicinity, Swartzentruber homes and barns are used as places of worship. In addition there are three Swartzentruber schoolhouses in the Project Area.<sup>1</sup> These structures should therefore receive protection from the setback from large-scale wind turbines in Farmersville’s and Freedom’s<sup>2</sup> local laws applicable to schools and churches. Farmersville’s Local Law No. 1 of 2019, Section 13(E)(5) requires wind turbines to be set back “2,200 feet or more from the property line of any school, church, hospital, or nursing facility”. The final project layout does not comply with Section 13(E)(5). Freedom’s Local Law No. 1 of 2018, Section 13(E)(5) requires wind turbines to be set back “1,200 feet or more from the property line of any school, church, hospital or nursing facility.” The final project layout does not comply with this provision. Among other instances of noncompliance, Turbine 39 is

only about 800 feet from Sam Swartzentruber's property line in Freedom, and his property is used as an Amish church.

**(2) Disproportionate impact on the Schwarzentruuber Amish community**

The Swartzentruber Amish should be deemed a religious minority within the Project Area, subject to the environmental justice provisions of Article 10.

Based on a detailed record of the nature of their religious practices and beliefs the U.S. Supreme Court found that the Old Order Amish (including the Swartzentruber subgroup) established "a free exercise claim", "one that probably few other religious groups or sects could make". Wisconsin v. Yoder, 406 U.S. 205, 233 and 236 (1972). The freedom to worship in their homes, and to maintain a church community that requires an agrarian life as a matter of faith "separate and apart from the world and worldly influence" is central to the practice of their religion and, "[b]roadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents." Yoder, 406 U.S. at 210. These statements describe the Old Order Amish of Farmersville today. . . .

**(3) failure to encourage public involvement of the Swartzentruber Amish**

The Applicant has failed to engage the Swartzentruber community. In response to IR Coalition-2, question 1, the Applicant acknowledges the Swartzentruber of Farmersville is a discrete religious community "by word of mouth and in casual use in the Project's communities" and prepared a map distinguishing the locations of Centerville Amish from Swartzentruber homes. However, "ACWE has no knowledge of whether or how [these Amish designations] apply specifically to the Amish in this area". In response to question 3, the Applicant states it has spoken with various Amish landowners, but not with community or church leaders. *Cf.* Comment Letter by Henry S. Miller and Andrew P. Hershberger (October 17, 2018), posted on DMM [administrative record, DPS "Document Matter Master"]. These responses indicate the Applicant has not done any serious community engagement. Questions like "What is the nature of the Amish community here?" "Of what specific Amish church group are they a part?" "What is the population of the community?" "Who are the community's leaders?" should have been asked "early in the pre-application and application processes", (PSL § 163(3)), not several years into it at the prompting of stakeholders.

In response to Information Request (IR) Coalition-2 (attached hereto),

question 4, the Applicant states that because the Amish of Farmersville are part of the local community found within the Project Area, the exhibits in the Application addressing visual, safety, traffic and noise impacts on the local community are sufficient. Thus, despite being informed about their religious practices and the likely disproportionate effect siting project components as proposed would have on those practices, ACWE is indifferent to the Amish. . . .

**(4) adverse impact of loss of the Swartzentruber on the character of the non-Amish community**

In addition to direct impacts on them, as previously noted, the Swartzentruber are highly valued by non-Amish in area for their affordable skilled labor for construction of homes, barns and other accessory home structures; selling or bartering produce and craft items; and attracting tourists. “PSL §168(2) requires that the Siting Board, in any decision on an application, make explicit factual findings as to the probable environmental impacts of the construction and operation of the facility, including impacts on . . . (c) cultural . . . values”. Case 14-F-0490, *Application of Cassadaga Wind, Order Granting Certificate of Environmental Compatibility and Public Need, With Conditions*, 13-14. “PSL § 168(3)(c) further requires the Siting Board to determine that any adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable before it issues an Article 10 certificate.” *Id.*, 16-17. In addition, “the Siting Board may consider any other social, economic, visual or other considerations that it deems pertinent.” *Id.*, 15.

As an important cultural resource, should the Swartzentruber be displaced by the siting of the Project, their loss would have significant and adverse impact on the character of the wider non-Amish community. Accordingly, the Applicant must include the Swartzentruber Amish in its description of the community and must identify measures it proposes to avoid and minimize the probable adverse impacts on community character that result from displacing the Swartzentruber. *See* 16 NYCRR § 1001.4(p).

R.192-3, 2-9 (citation to transcript of public hearing omitted).

Point two above appeals to the PSL Article 10 “environmental justice” regulations, issued by NYSDEC. *See* 16 NYCRR § 1001.28. These regulations require consideration of disproportionate impacts of a project on “low-income” communities—an approach to accommodating the Swartzentruber that was subsequently foreclosed by NYSDEC, as the statistical analysis of U.S. Census data prescribed by the regulations would not encompass disproportionate impacts to religious communities such as the Swartzentruber. R.339-2, 1538-1540.

In the course of proceeding, the Coalition submitted discovery requests to Alle-Catt and to NYSDEC regarding their understanding of project impacts on the Swartzentruber settlement and the need for additional setbacks would be approved in order to accommodate the settlement's religious needs, and Alle-Catt submitted discovery requests to Dr. Nolt designed to test his role in the proceeding. *Cf. id.*, 1544-1546. *See also* R.197-2, Attachment at 4-5 (describing how shadow flicker would have distinctive adverse impacts on the Swartzentruber).

Based on his interviews with seven Amish families in Farmersville, (*id.*, 1547:11-17), his extensive research on Amish communities in North America, including Amish publications that report on the news in particular communities, (*id.*, 1556-1557), and on the results of information requests to Alle-Catt and NYSDEC, Dr. Nolt submitted extensive pre-filed direct and rebuttal testimony, and appeared for cross-examination in the evidentiary hearing. *See id.*, 1512-1597. In addition to the substance of his testimony on the need to accommodate the Swartzentruber's religious needs, Dr. Nolt indicated that he is "submitting testimony on behalf of the Concerned Citizens Coalition in this case" and that "the Amish members of the Coalition" "are members of the Swartzentruber settlement". *Id.*, 1542-1543. He also emphasized that he wanted "the Siting Board to know that the Amish aren't just sort of this generic group" as depicted in Alle-Catt's application but rather there are important religious differences between the Fillmore settlement in the adjacent Town of Centerville and the Swartzentruber settlement in Farmersville. *Id.*, 1549-1550. *See also id.*, 1569-1570, 1572-1574. The Swartzentruber "would not share communion [with the Centerville Amish] in like a church sense. Their children would not intermarry." *Id.*, 1579:10-12. Dr. Nolt then clarified the circumstances under which he was asked to provide expert testimony.

Dr. Nolt visited first with "Ms. Schroder" in February 2019. *Id.*, 1552-1555. He did not visit the Centerville Amish because "we [he and Ms. Schroder] were visiting Amish families who were part of the Coalition". *Id.*, 1554:17-24.

Dr. Nolt testified that the Swartzentruber "live in close proximity to one another" as a consequence of their religious "discipline", which requires they settle "in areas that are going to have limited motorized traffic" and prohibits "hiring drivers to take them to visit a relative", in contrast to more liberal Amish settlements who are allowed to "hire a non-Amish driver"; and because "they don't buy properties that have easements or other kinds of like legal encumbrances that would . . . legally connect them to someone else", in violation of the command, "Be ye not unequally yoked together with unbelievers" (II Corinthians 6:14), "when there are, say, turbines or other things like this that are put on -- on properties -- and this might not seem to, you know, make logical sense to -- to you and me, but this is their -- their understanding, then that land becomes off limits for them." R.339-2, 1559-1561. Since research shows that "Swartzentruber families . . . have 9.3 children per completed family, . . . if land is not available or if it's too far removed, then -- then they'll just leave." *Id.*, 1561:9-17.

Dr. Nolt also provided his interpretation of the May 7, 2018 Andrew Hershberger letter submitted to the hearing examiners, (*id.*, 1555-1557), concluding that the letter is a “sort of understated way of saying they would probably have to leave” if the Alle-Catt project is built. *Id.*, 1567:11-12. When asked whether the five points made in the letter could be interpreted as secular concerns about the project, Dr. Nolt rejected that interpretation because “religion is pervasive in Amish life”, the fifth point “says being that we are religiously opposed to having these turbines on our properties”, and in any case “these are all religious issues”, including for example “their architecture”. *Id.*, 1581-1582.

(The Amish generally are reluctant to complain about the adverse effects of government action on them, based on “the English term nonresistance” as found in “the King James translation of the Bible in Matthew 5”. *Id.*, 1577:3-14. Their concept of nonresistance led them to stand in the back at “hearings or meetings” about the Alle-Catt project. *Id.*, 1577-1578.)

Contrary to the Appellate Division’s finding, there is a robust record of expert testimony on the Swartzentruber’s religious practices and why avoiding their settlement is required in order to preserve their freedom to practice their religion. It cannot be said that the Coalition “deprive[d] the administrative agency of the opportunity to prepare a record reflective of its expertise and judgment with regard to that issue.” App. Div. Memorandum and Order, 4 (quoting *Matter of Hill v. Zucker*, 172 A.D.3d 1895, 1897 (4th Dep’t 2019) (internal quotation marks omitted) and citing *Matter of Yarbough v. Franco*, 95 N.Y.2d 342, 347 (2000)).

**2. The Swartzentruber on their own accord submitted two letters to the record describing their religious objections to siting the Alle-Catt in proximity to their settlement.**

A letter dated May 7, 2018 and on October 17, 2018, by Andrew Hershberger was delivered to the Hearing Examiners, stating the settlement’s religious objection to industrial wind turbines and requesting a setback of 3,000 feet from the settlement to any wind turbine. R.250-5, 6-7; R.302-4 (copies of the letters). The May 7, 2018 was read at the initial Public Statement Hearing. R.163-2, 21-25.

**3. The Coalition offered expert testimony on why project siting should avoid the Swartzentruber settlement.**

Dr. Nolt testified at length about the need to avoid the Swartzentruber settlement on religious grounds:

Q: How does the Swartzentrubers’ religiously-dictated way of life contribute to their desire for rural residence?

A: Rural residence is a characteristic of all Amish communities, but for the



Swartzentruber Amish that desire is even more important due to their church discipline. For example, unlike some other Amish subgroups whose members hire non-Amish drivers to take them on routine shopping trips or to distant job sites, Swartzentruber Amish, and especially members of the Andy Weaver Swartzentrubers, hire outside drivers only in cases of medical or similar emergencies. As a result, buggies represent nearly the totality of their transportation and they seek places to live where motorized traffic is limited.

As well, Swartzentruber church discipline prohibits members from working “in town,” meaning within the bounds of an incorporated community (not a “town” in the sense of New York state subdivision of a county). Although Swartzentruber families all farm for a living, heads of household may take seasonal odd-jobs to supplement income in the winter, but such employment may not be “in town.” Thus, Swartzentruber Amish are keen to live in undeveloped rural areas that hold the promise of retaining that character so that there will be possibilities for rising generations.

R.1521.

A new [Amish church] district forms when the population of a district becomes too large for everyone to meet for worship in members’ homes. (There are no church buildings, worship services are hosted by households in their homes).

R.1523:8-11.

Q: Where do the Amish worship?

A: Like 98 percent of the Amish across North America, the Farmersville Amish meet for worship in the homes of settlement members and do so on an organized, rotating basis. Within a district, each household hosts worship, in turn, for all the Amish residents of the district. The hosting family does so by rearranging first-floor furniture and setting up several dozen benches. Services last approximately three hours, and are followed by a noon meal for all in attendance, and then informal visiting for the rest of the afternoon. In the days that follow, the benches will be transported to the next household in the district, who will host the next service, in two weeks.

As described above, each family home is a place of worship in the Amish tradition, and has been for centuries. Weddings and funerals also take place in homes. Thus, each home within the Amish settlement functions as a church building.

R.1529.

Q: What are the impacts of the ACWE project on the Farmersville Swartzentruber Amish community?

A: The impacts, some of which they themselves noted in their letters dated May 7, 2018 and October 17, 2018, include safety, religious ritual, and the livelihood and ongoing viability of their community itself.

R.1531:1-5.

Q: Could the Swartzentruber Amish change their practices to accommodate?

A: Their life is a direct outgrowth of their sincerely held religious beliefs. As the U.S. Supreme Court held in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Amish way of life protected by the First Amendment right to practice religion. Moreover, the Farmersville Amish church-community is part of the Swartzentruber Amish affiliation of settlements. The local church-community is constrained in its ability to change by its commitment to maintain the Ordnung (church discipline) shared with other Swartzentrubers. Should the Farmersville group modify their lifestyle, they would effectively cut themselves off from the wider Swartzentruber diaspora and render their children unable to find marriage partners in this endogamous society.

R.1533:1-10.

To his rebuttal testimony, Dr. Nolt attached responses to information requests that specifically ask Alle-Catt to identify possible accommodations to mitigate the project's harm to the Swartzentrubers' exercise of their religion. *See* R.250-3, Ex. 1. *See also* R.339-2, 1580-1583 (Alle-Catt cross-examination of Dr. Nolt).

**4. The Coalition's briefs in the Article 10 proceeding preserve the issue of the need to accommodate the Swartzentrubers' exercise of religion.**

The Coalition's initial brief to the Siting Board asserts that: "Sufficient information was provided to ACWE during both the pre-application and application stage of this proceeding, including the discovery process, to understand that mechanized agriculture, electricity, and industrial noise are incompatible with the Swartzentruber community and their way of life." R.332-1, 42. Dr. Nolt's testimony is quoted in support of the Coalition's contention that treatment of the Swartzentruber neutrally, as if they would not suffer distinctive harms owing to their religious practices, is prejudicial:

"The effects of the Invenergy project disrupt the ability of the

Swartzentruber community to practice their religion. The location, noise, and sight of the turbines in proximity to their homes and barns, which necessarily serve as their places of worship, disrupt their religious ritual and practice.” “Life in proximity to an industrial project such as the Alle-Catt wind farm violates the Swartzentrubers’ ability to peacefully gather for worship.” However, siting intrusive project components anywhere in the community will diminish the ability of Amish to grow, and growth of their numbers over time is a religious imperative. “As such, the project would effectively bring the future of their community here to an end, since it would dramatically limit their future ability to acquire additional land for the next generation.”

*Id.*, 43 (citations omitted).

In its “Brief on Exceptions” to the Siting Board, the Coalition made clear that it was preserving the contentions made throughout the record on behalf of the Swartzentruber:

On the record of this case, the Alle-Catt wind energy project proposal is poorly sited, lacking precise locational information for turbine sites and many other project components, including a late proposal to build a concrete batch plant serving all 116 proposed turbine sites in the Town of Farmersville, next to two Amish farms, households particularly sensitive to traffic, dust and noise.

R. 34-1, 3.

The Farmersville Amish are distinct from the Centerville Amish, as the Swartzentruber “would not share communion [with Centerville Amish] in like a church sense. Their children would not intermarry.” Just as the Swartzentruber would find compliance with local fire codes to be an intrusion on their religious way of life, which dictates their architecture, they find the siting of wind turbines in their community to raise “religious issues” where “other people are trying to change their way of life”.

*Id.*, 48-49 (citations omitted).

Finally, “the Examiners find that it is an unreasonable reading of the Town’s local laws for the Town to classify a full-time home as a church because one three-hour worship service is conducted in the home or a nearby barn once every 10 months.” This way of stating the issue avoids the factual question, how the Swartzentruber understand their places of worship, and whether by “classifying” their homes as churches, the Town of Farmersville government is accommodating the Swartzentruber’s understanding. Whether it is reasonable to consider Swartzentruber homes

churches should not depend on an out-of-context calculation of how much time is spent at church. More importantly, the use of such a calculation in the RD is dismissive and obscures the reality of Amish living within a wind farm. A less prejudicial account would acknowledge that while any single house hosts church every 10 months, virtually every home will be in proximity to a turbine under the project layout proposed. As a result, every time the Farmersville Amish meet for church, no matter whose home they will be in there will be one or more wind turbines nearby. It is therefore reasonable to conclude that wind turbines will be close to the Amish church every time they meet for formal worship.

In conclusion, contrary to the RD [Recommended Decision of the Hearing Examiners, *see* R.358-1], ACWE virtually ignored the Farmersville Amish, treating them just like everyone else, and have failed to minimize and mitigate the special impacts on their community.

*Id.*, 50-51 (citations omitted).

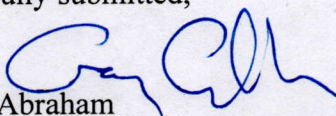
In its initial brief to the Appellate Division, the Coalition referred to the record of the briefs, testimony, information requests, and other relevant submissions in the administrative proceeding discussed in this letter in support of its legal argument, that the Siting Board's refusal to accommodate Swartzentruber religion violates the First Amendment to the U.S. Constitution. Coalition Appellate Brief, 26-49. The Coalition revisited its contentions on this subject to show specifically that the First Amendment claim was preserved, in its reply brief to the Appellate Division. *See* Coalition Appellate Reply Brief, 21-24.

## 5. Conclusion

For the reasons provided above, in this case a substantial constitutional question is directly involved to support the Coalition's appeal as of right.

Respectfully submitted,

Gary A. Abraham



gaa/enc.

cc: John C. Graham, Esq. (Siting Board)  
John W. Dax, Esq. (Alle-Catt Wind Energy, LLC)

