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March 31, 2011

Linda Roberts  
Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
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**Re: PETITION NO. 980 - BNE Energy, Inc. petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 3.2 MW Wind Renewable Generating facility located at 178 New Haven Road, Prospect, Connecticut.**

Dear Ms. Roberts:

Save Prospect Corp. hereby submits the following response to the comments filed by the Connecticut Department of Environmental Protection (DEP), dated March 14, 2011, which we received March 18, 2011.

First, as a matter of proper procedure, agency comments are required to be “made available to all parties prior to the commencement” of a public hearing. Conn. Gen. Stat. § 16-50j(h). This procedure gives all parties a fair opportunity to consider and to respond to such comments. Here, it is particularly troubling that the DEP elected to submit comments that were dated the day before the evidentiary hearing at which Save Prospect Corp.’s witnesses testified, but were not delivered until three days after the hearing. This timing is unfair and frankly raises questions about whether the timing was intended to deprive Save Prospect Corp. the ability to have its expert witnesses respond.

Save Prospect Corp. also is disappointed and dismayed by the superficial and inaccurate comments filed by the Department of Environmental Protection (DEP). The DEP comments

essentially whitewash the glaring deficiencies in the BNE Petition. The DEP comments are deficient in a number of areas including:

- DEP fails to recognize deficiencies and inadequacies of the bat and wildlife studies, even as measured by the standards accepted by the firm hired as BNE's expert consultant.
- DEP does not suggest any effective mitigation measure and fails to recognize that no mitigation measures will be effective to reduce the impacts of noise and shadow flicker on property and homes within 500 to 3,000 feet of the site.
- DEP fails to appreciate the fact that BNE consistently and inappropriately measures setbacks to structures rather than property lines and consistently ignores proximate undeveloped residential property in its analyses.
- DEP fails to recognize that BNE's noise and shadow flicker studies cannot be relied upon with respect to revised turbine locations.
- DEP makes an offhand reference to certain properties and property owners being "at risk" as shown in BNE's own studies and fails to explain why it should be acceptable to place these owners at risk or how the risk may be eliminated
- DEP fundamentally failed to perform any independent analysis, or any review of existing data of more than a superficial nature, relating to the contamination at the adjacent U.S. Cap & Jacket Superfund site and the impacts of the proposed development on the migration of such contamination. Indeed, the current DEP comments ignore DEP's and the US EPA's specific past recommendations of further in-depth investigation, well monitoring within one-half mile of the Superfund site, and further remediation of the "grossly contaminated" site. DEP's comments follow BNE's lead in conflating a failure to engage in responsible evaluation and investigation with evidence that there is not in fact a problem.
- DEP reaches the wholly unsupported conclusion that contamination of the bedrock is "not significant." We know that the deep site wells at the Superfund site were found to have pollution levels in excess of DEP groundwater protection action criterion, as described in General Statutes 22a(6)(u). This is, by definition, "significant" pollution that requires responsive action. To characterize such pollution as not "significant" is clearly erroneous.



- DEP fails to take cognizance of the fact that there are major geological fault lines in the area of the proposed site and that such fault lines provide preferred pathways for the migration of the pollution to other properties.
- DEP fundamentally fails to recognize that it is irresponsible to proceed with the proposed project – particularly when the project is not viable without massive infusions of state and federal public funds and subsidies – when the risks of harm to the environment and to adjoining properties has not been explored to any degree that remotely approximates the recommendations of the US EPA and the prior recommendations of the DEP itself.
- DEP mischaracterizes the facility and the Superfund site as having been “removed.” To the contrary, while the structure of the Cap & Jacket factory recently was demolished without a permit, there is a heap of rubble and debris on the property. This results in a greater surface area of contaminated materials being exposed to the elements and potential leaching into the soil and aquifer. DEP’s comments fail entirely to address this issue.
- DEP has not conducted an ongoing monitoring program with respect to adjacent wells. Mr. Joseph Lukeski of 213 New Haven Road (prefiled testimony dated 2/15/11) has contacted DEP on several occasions with a request that they test his drinking water.
- DEP’s suggestion of screening is meaningless, as discussed in the testimony of Michael Bahtarian and Mayor Chatfield, who suggested that unless Connecticut begins to grow redwoods and we wait a few hundred years, there are no trees that could possibly provide any effective screening from a turbine that reaches more than 490 feet in the air.
- DEP relies on a report that is eight years old, which recommended extensive additional investigation that has not been done and which was delivered to the Mayor of Prospect with a cover letter that described the site as “grossly contaminated” and suggested ongoing well monitoring within a half-mile of the site to conclude that there is no significant contamination of concern relative to BNE’s proposed project. DEP’s comments and conclusions are nothing short of irresponsible.

Under the circumstances, Save Prospect Corp. respectfully submits that DEP's comments should be stricken from the record unless DEP produces an witness to respond to questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey J. Tinley", is written over the typed name. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

Jeffrey J. Tinley

cc: Distribution List

## CERTIFICATION

This is to certify that a copy of the foregoing has been delivered via electronic mail and/or first class mail, postage pre-paid, on this 31<sup>st</sup> day of March, 2011 to the following:

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