

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**Petition of BNE Energy Inc. for a
Declaratory Ruling for the Location,
Construction and Operation of a 4.8 MW
Wind Renewable Generating Project on
Winsted-Norfolk Road in Colebrook,
Connecticut (“Wind Colebrook North”)**

Petition No. 984

May 27, 2011

PROPOSED FINDINGS OF FACT OF PETITIONER BNE ENERGY INC.

- 1) BNE Energy, Inc. (BNE), a Connecticut corporation with headquarters in West Hartford, Connecticut was founded in 2006 for the purpose of constructing and operating commercial wind generation projects in Connecticut and elsewhere. *See* BNE Exhibit 1.
- 2) On December 13, 2010, BNE, pursuant to Connecticut General Statutes (CGS) §16-50k and §§16-50j-40 of the Regulations of Connecticut State Agencies, submitted a petition to the Connecticut Siting Council (Council) for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation (Petition) of a 4.8 megawatt (MW) Wind Renewable Generating Project on Winsted-Norfolk Road in Colebrook, Connecticut (“Wind Colebrook North” or the “Project”) *See* BNE Exhibit 1.
- 3) Pursuant to CGS § 16a-35k, Connecticut state energy policy includes the goal to “develop and utilize renewable energy resources, such as solar and wind energy, to the maximum extent possible.” *See* BNE Exhibit 1.
- 4) The State of Connecticut has implemented renewable portfolio standards (RPS) that required 14 percent of electric generation within the state be produced by renewable

resources by 2010. By 2020, RPS requirements increase to 27 percent, 20 percent of which must be from Class I renewable energy sources, which include wind. *See* BNE Exhibit 1.

- 5) Wind Colebrook North will further the State's energy policy by developing renewable energy resources. *See* BNE Exhibit 1.
- 6) The Council conducted a field review of the proposed project site on March 22, 2011 and conducted public hearings in Colebrook on March 22 and 23, 2011. Evidentiary hearings were conducted on April 26 and 28 and May 5, 2011. The Council is subject to a statutory deadline of June 11, 2011 to render a decision on this petition.
- 7) The proposed Project site is located on Winsted-Norfolk Road (Route 44) in Colebrook, Connecticut on approximately 124.9 acres of largely undeveloped land ("the "Property"). The developed portion of the Property is used for commercial purposes as a golf driving range. The Northwestern Connecticut Sportsman's Association, Inc. (the "Gun Club") land is located to the south of the Property and is in between the Property and the Wind Colebrook South property. Rock Hall Road abuts the Property to the west. *See* BNE Exhibit 1.
- 8) Land use within the vicinity of the Property is comprised of sparse residential development and the well-traveled Route 44 corridor. *See* BNE Exhibit 1.
- 9) The proposed project calls for the installation of three GE Energy ("GE") 1.6 megawatt ("MW") wind turbines and associated ground equipment, upgrading and installation of an

access road and a 13.8 kilovolt (“kV”) electrical interconnection (together, the “Project” or “Wind Colebrook North”). *See* BNE Exhibit 1.

10) The Project does not propose the development of any paved roads or paved parking areas.

See BNE Exhibit 1.

11) As part of its continuous review of the Project and in response to comments and concerns raised by parties, intervenors, the general public, and the Council, BNE proposed to relocate turbine 1. The Council has jurisdiction over the entire Property and can relocate any of the three proposed turbines and the access road. *See* BNE Exhibit 11 (A2).

12) The Project was initially presented to the Town of Colebrook in the fall of 2008. Since that time, BNE has kept the Town and its elected local and state officials apprised of the Project’s progress. In addition, while not legally required, in preparation of filing this petition, BNE and its representatives submitted preliminary information to the Town on October 8, 2010. At the request of the First Selectman of Colebrook, BNE and its representatives conducted a public informational presentation for the residents of Colebrook on November 10, 2010. The informational meeting was attended by members of the public. *See* BNE Exhibit 1.

13) Although not legally required, BNE sent a certified mailing to all abutting property owners notifying such owners of the filing of its petition and published a legal notice in the Litchfield County Times. In addition, while not legally required, BNE sent copies of its petition to local, state and federal officials that would be required to receive notice for a certificate filing pursuant to Connecticut General Statutes (“CGS”) § 16-50l(b). *See* BNE Exhibit 1.

- 14) The materials submitted in BNE's petition exceed the Council's recommendations contained in its April 2010 application guideline for Petitions for Declaratory Rulings for Renewable Energy Facilities. That application guideline does not recommend the filing of engineered site plans, visibility analysis, wetlands impacts analysis, habitat analysis, bird and bat impact analyses, noise impact analyses or the like. Despite this, BNE submitted all of the referenced analyses in its petition and, during this proceeding, also submitted shadow flicker analysis, ice drop/ice throw analysis and a herpetological assessment of the Property.
- 15) One year prior to BNE's submission of this petition, the Council opened Petition 863 to examine its jurisdiction over renewable energy facilities, which resulted in the Council's revised application guidelines in April 2010. *See* Petition 863.
- 16) Furthermore, in early 2010 and in anticipation of receiving BNE's petitions, the Council released a request for proposal to retain a consultant on renewable energy matters generally. On March 26, 2010, the Council formed a subcommittee to review and evaluate responses to the RFP. *See* March 26, 2010 Meeting Minutes. The Council subsequently retained Epsilon Associates in August 2010 to assist the Council in reviewing renewable energy projects such as this petition. *See, e.g.*, DEP Comments dated April 6, 2011.
- 17) In addition, while not legally required, the Council not only voted to hold a public hearing but also to hold two public comment sessions in the Town of Colebrook and conducted a total of three days of evidentiary hearings for this single petition.
- 18) Numerous individuals, groups or entities sought and were granted legal standing in this proceeding including parties the Town of Colebrook, FairwindCT, Inc. ("Fairwind"),

Stella and Michael Somers, David R. Lawrence and Jeannie Lemelin, Kristin M. and Benjamin C. Mow, Walter M. Zima and Brandy Grant, Jeffrey and Mary Stauffer, Eva Villanova, and Susan Wagner, and intervenor The Connecticut Light and Power Company (CL&P).

19) Pursuant to Conn. Gen. Stat. § 16-50k(a) and Section 4-176(a) and 16-50j-38 *et seq.* of the Regulations of Connecticut State Agencies (“RCSA”), BNE requested that the Council issue a declaratory ruling for BNE’s proposed location, construction, operation and maintenance of three GE 1.6 MW wind turbines, associated ground equipment, an access road and a 13.8 kV electrical interconnection at the Property.

20) CGS § 16-50k(a) provides: “Notwithstanding the provisions of this chapter or title 16a, the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling . . . (B) the construction or location of any . . . grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as such project meets air and water quality standards of the Department of Environmental Protection”

21) The Project is a “grid-side distributed resources” facility, as defined in CGS § 16-1(a)(43), because the Project involves “the generation of electricity from a unit with a rating of not more than sixty-five megawatts that is connected to the transmission or distribution system”

22) Compliance with DEP air and water quality standards is the appropriate and only standard of review for this petition.

DEP Air and Water Quality Standards

A. Air

23) The Project complies with the applicable DEP air quality standards found at RCSA § 22a-69-1 *et seq.* See BNE Exhibit 8b, 8h.

24) The Project will also result in a net benefit to air quality in the State of Connecticut, as the production of 12,614 megawatt hours (MWh) per year of clean, renewable energy will reduce CO₂ emissions by approximately 6,332 tons per year. See BNE Exhibit 2 (A23), 8b, 8h.

25) DEP itself acknowledged the same in its comments, dated April 6, 2011, that were submitted to the Council in this proceeding. In those comments DEP stated that:

While it is entirely reasonable and justified to expect emissions reductions to result from the operation of these turbines as opposed to alternate sources of generation in their absence, experience has shown that it is very difficult to predict exactly which existing sources of generation would be displaced by any new source and, therefore, what the resultant emissions reductions would be. Nevertheless, a non-emitting source of electricity will result in emissions reductions over time as virtually every competing source of replacement power will yield emissions, and many of the generation units that would be called upon at the margins are older, less efficient and higher emitting units.

See DEP correspondence dated April 6, 2011.

26) The fact that the Project not only complies with DEP air quality standards but will in fact result in a *net benefit* to air quality in the State of Connecticut is unrefuted in the record.

27) Fairwind's witness admitted on the record that other generators of renewable energy can have negative impacts to air quality. For example, Fairwind's witness stated that corn biomass plants emit carbon dioxide, particulate matter, nitrous oxide, sulfur oxide and

carbon monoxide. Fairwind's witness admitted that the Project will not emit any of these pollutants. *See* May 5, 2011 Tr. at 135-36.

28) The production of 12,614 MWh per year of clean, renewable energy generated by the Project will reduce particulate matter, ozone precursor emissions of volatile organic compounds and oxides of nitrogen as compared to emissions from other fossil fuel sources. These emission reductions will result in public health benefits and improved visibility in Connecticut. *See* BNE Exhibit 8b, 8h.

B. *Water*

29) The Project will also comply with DEP Water Quality Standards, including both groundwater quality standards and surface water standards. The Project will not result in any negative impacts to ground water or surface water on the Property or in the vicinity of the Property. *See* BNE Exhibit 8d, 8h, 15.

30) The Project will not have a negative impact on surface water quality on the Property or in the vicinity of the Property. The Project will permanently impact only 4.07 acres of the entire 124.9 acre parcel; this area will remain as compacted stone roads, rip rap cover slopes, and the location of the turbine towers. *See* BNE Exhibits 8h, 15.

31) The development of this Project will result in far less impact than the development of the Property for residential purposes. *See* BNE Exhibit 15; May 5, 2011 Tr. at 314, 316.

32) The Project will require direct impacts to surface waters of the State, primarily related to two intermittent watercourse crossings. These crossings will be constructed in accordance with the DEP Inland Fisheries Division Stream Crossing Guidelines, dated February 26, 2008. These guidelines were established to minimize impacts associated

with stream crossings to water quality and to resident fish and wildlife. *See* BNE Exhibit 8d.

33) Stormwater discharged to uplands in proximity to the site's surface waters will be properly treated by utilizing best management practices in accordance with the DEP's 2004 Connecticut Stormwater Quality Manual ("Water Quality Manual"). Potential non-point source pollutants originating from erosion and sedimentation during construction primarily consist of suspended particulate soil media that will be minimized by incorporating best management practices detailed in the DEP's 2002 Guidelines for Soil Erosion and Sediment Control ("Erosion and Sediment Control Guidelines"). Due to the nature of the Project and low traffic it generates, the proposed development would not be considered to be classified as a land use with potential for high pollutant loads (i.e., heavy metals, hydrocarbons, synthetic organic chemicals, trash, etc.). Additional measures have been implemented by BNE to address the potential for secondary impacts to surface waters during construction, including third party erosion and sedimentation control inspections. Therefore, the Project will comply with the State's goal to maintain the chemical, physical, and biological integrity of surface waters. *See* BNE Exhibit 8h; Council Administrative Notice 9, 25; May 5, 2011 Tr. at 277.

34) Existing and designated uses will be protected by maintaining and protecting the quality of surface water both during and after construction of the Project. *See* BNE Exhibit 8h; Council Administrative Notice 9, 25.

35) Potential non-point source pollutants originating from erosion and sedimentation during construction will be minimized by incorporating best management practices detailed in the Erosion and Sediment Control Guidelines. Additional measures will be required to

address the potential for secondary impacts to surface waters during construction, including third party erosion and sedimentation control inspections and adoption of a Spill Prevention Plan. *See* BNE Exhibit 8h; Council Administrative Notice 9, 25.

36) The Project will not result in discharge of phosphorous and nitrogen that will impair surface water or groundwater quality. Disturbed areas of the site will be revegetated following construction with a variety of native herbaceous vegetation which will not require fertilization or maintenance with herbicides or pesticides. Therefore, the Project will not result in excessive anthropogenic inputs of nutrients or synthetic organic chemicals that might impair surface waters. *See* BNE Exhibit 8h; Council Administrative Notice 9, 25.

37) The location of the original wetland crossing, which includes two watercourse crossings, was chosen to minimize square footage of permanent wetland impacts. Following incorporation of the updated topographical data, it was determined that wetland impacts would increase as a result of filling on the south side of the road in the vicinity of the easternmost watercourse crossing that would extend further into the wetland than originally anticipated. Thus, the crossing was moved approximately 50 feet, which will allow for the proposed access road to intersect the easternmost and more significant watercourse at an existing woods road crossing. *See* BNE Exhibit 8d; May 5, 2011 Tr. at 328-29.

38) Three-sided box culverts will be utilized to span each of the two watercourse crossings. Again, these crossings will be constructed in accordance with the DEP Inland Fisheries Division Stream Crossing Guidelines, dated February 26, 2008. These guidelines have been established to minimize impacts to water quality and to resident fish and wildlife.

As required by the DEP, unconfined in-stream work associated with the culvert installation will occur between June 1 and September 30. If possible, impacts associated with the installation of the box culvert will be located outside of the stream channel. *See* BNE Exhibit 8d; May 5, 2011 Tr. at 327-30.

39) The DEP stated that the use of three-sided box culverts at the two watercourse crossings is “consistent with the recommendations of the Stream Crossing Guidelines of the DEP Inland Fisheries Division in that these types of crossing structures allow for the maintenance of natural stream bottom substrates.” *See* DEP correspondence dated April 6, 2011.

40) The DEP also agreed that the construction window selected by BNE is “consistent with the Stream Crossing Guidelines to take advantage of seasonal low flow conditions.” *See* DEP correspondence dated April 6, 2011.

41) Additionally, erosion and sedimentation controls will be installed in accordance with the Erosion and Sediment Control Guidelines prior to construction in order to decrease the likelihood of sediment inputs into streams. Following construction activities, cleared or disturbed areas in proximity to the streambanks will be adequately stabilized to prevent erosion and sedimentation of downstream resources. A detailed restoration plan identifying these measures will be submitted during the development and management (“D&M”) phase of the Project. *See* BNE Exhibit 8d.

42) Therefore, the proposed wetland impacts will not affect existing and designated uses or downstream water quality of surface waters of the State of Connecticut. *See* BNE Exhibit 1, 8d, 8h, 15.

- 43) BNE submitted preliminary drawings for review during this locational approval portion of this proceeding. Assuming that three turbines are approved on the Property, BNE will then move into the D&M portion of this proceeding, during which it would submit preliminary construction drawings. Assuming those D&M preliminary drawings are approved, BNE would then be required to submit 100 percent complete construction drawings—incorporating any requested modifications to the preliminary construction drawings—prior to the commencement of construction. *See, e.g.* Docket 370, Decision and Order GSRP (with specific development and management plan requirements including development of a stormwater management system); *see also* BNE Exhibit 15.
- 44) Like every other project that has come before the Council and been approved, BNE has submitted preliminary plans and demonstrated that, to the extent possible at this stage of these proceedings, those plans comply with the DEP's 2002 soil, erosion and sedimentation control guidelines and 2004 water quality manual. *See* BNE Exhibits 1, 8d, 8h 15.
- 45) BNE has proposed a relocation of turbine 1. This relocation was proposed partially in response to comments and concerns raised by parties, intervenors, the general public, and the Council and demonstrates BNE's continuing commitment to developing the best project possible. In relocating turbine 1, any environmental impacts were further minimized due to the elimination of a second access road. The size of the road was narrowed once it became clear that a narrow track crane could be utilized during construction, which further mitigates any environmental impacts. *See* BNE Exhibit 11 (A2).

- 46) DEP guidelines are not requirements, regulations or directives. DEP guidelines are exactly what they are titled—guidelines. The DEP is an administrative agency that is well-versed in the crafting of regulations. Should it have wanted its guidelines to be regulations, the DEP would have followed the Uniform Administrative Procedures Act, and crafted them as regulations. *See* BNE Exhibit 15.
- 47) The Erosion and Sediment Control Guidelines specifically state that the purpose of the guidelines is “intended to provide information to government agencies and the public on soil erosion and sediment control.” The Guidelines are a “useful reference for projects that require erosion and sediment control planning, design and implementation.” *See* Council Administrative Notice 9.
- 48) Similarly, the Water Quality Manual states that “[t]he information provided in this Manual are provided for guidance and are intended to augment, rather than replace, professional judgment.” *See* Council Administrative Notice 25.
- 49) The topographic data in the area of the wetlands crossing is based upon accurate field measurements and the remaining topographic data presented is based upon Lidar information provided by the State of Connecticut. The centerline elevations of the proposed roadway have been field measured and compared to the Lidar information. The field survey information compares favorably with the Lidar information, with comparative precision ranging from zero to two feet. The topographic data is entirely adequate for the present phase of the Project. Additional field topographic work will be completed for final design during the anticipated D&M portion of this proceeding. *See* BNE Exhibit 4 (A80), 15.

- 50) The centerline cuts and fills for the access road do not exceed eight feet and more generally are in the three to four foot range. The maximum road grade is 9.9%. *See* BNE Exhibit 15. The Property is not steeply sloping.
- 51) A variety of measures will be utilized to control and minimize erosion and regular inspections will occur during construction. These inspections will occur weekly or after any rain event greater than 0.1". These inspections will recognize any incipient issues with regards to erosion control and corrective action will then be taken. *See* BNE Exhibit 15.
- 52) Nowhere in the seven pages of its detailed comments does DEP raise any issues or concerns regarding water quality or soil, erosion or sedimentation control. *See* DEP correspondence dated April 6, 2011.
- 53) The DEP commended BNE for its plan to remove erosion control barriers after upland meadow habitat is created, noting that "[t]oo often erosion control barriers are not removed from the site after the affected areas have been planted and stabilized" and that "[i]t is beneficial to get barrier materials, which can often include plastic sheeting, off the site as soon as practical." *See* DEP correspondence dated April 6, 2011.
- 54) The DEP stated that the use of three-sided box culverts at the two watercourse crossings is "consistent with the recommendations of the Stream Crossing Guidelines of the DEP Inland Fisheries Division in that these types of crossing structures allow for the maintenance of natural stream bottom substrates." *See* DEP correspondence dated April 6, 2011.

- 55) The DEP agreed that the construction window selected by BNE is “consistent with the Stream Crossing Guidelines to take advantage of seasonal low flow conditions.” *See* DEP correspondence dated April 6, 2011.
- 56) The Project will satisfy DEP’s groundwater standards and guidelines and will result in no impact to groundwater on the Property or the vicinity thereof. No use of groundwater or discharge to the ground or subsurface will be created. Operation of the turbine does not require bulk storage of fuel or other hazardous materials which could be accidentally released to the environment. Normal operations will not require any discharges, other than for sanitary purposes. The potential for impacts to groundwater resulting from a release of hazardous materials during construction will be minimized through the adoption of a US EPA Spill Prevention Controls and Countermeasures Plan. *See* BNE Exhibit 8h.
- 57) BNE anticipates that blasting will be required for construction of the Project BNE’s proposed well survey and controlled blasting will ensure that construction of the Project will result in no impact to surrounding groundwater wells. *See* BNE Exhibit 8j.

Environmental Effect

- 58) The appropriate legal standard to review this petition is compliance with DEP air and water quality standards—which BNE has fulfilled. *See* BNE Exhibits 1, 8b, 8h, 15.

A. The Natural Environment

- 59) The Project complies with state policies concerning the natural environment. *See* BNE Exhibits 1, 8d, 8g, 8i, 13, 14.

60) Connecticut has expressed a commitment to “develop and utilize renewable energy resources, such as solar and wind energy, to the maximum extent possible.” *See* CGS § 16a-35k. To this end, the State has implemented renewable portfolio standards (RPS) that require 27 percent of electric generation within the State to be produced by renewable resources by 2020, with 20 percent of the required 27 percent being generated by Class I renewable energy sources, such as wind. The Project, along with BNE’s other projects pending before the Council, would be the first commercial wind energy generation facilities to be approved and constructed in the State, and would represent a meaningful step toward achieving Connecticut’s expressed commitment to renewable energy. *See* BNE Exhibit 1.

61) The Project has been specifically designed to minimize environmental impacts. BNE’s team of experts worked carefully through numerous iterations of potential turbine locations and spacing to balance capturing optimum wind conditions while avoiding and/or minimizing effects to the existing environment and habitat. *See* BNE Exhibit 1, 3 (A20), 8h.

B. Ecological Balance

- 62) The Project will not have a substantial adverse environmental effect in terms of ecological balance. While a total of approximately 8.95 acres will be disturbed, only 4.07 acres will be permanently impacted. *See* BNE Exhibits 1, 8d.
- 63) Construction activities associated with the installation of the proposed Project are primarily expected to have a short-term impact on terrestrial wildlife. Long-term impacts on wildlife resulting from operation of the proposed Project are expected to be minimal. *See* BNE Exhibits 1, 8d.
- 64) The Project is not expected to adversely impact amphibians and reptiles. No vernal pools were identified on the Property. Dr. Klemens assessed the Property for potential suitable habitat to support the Jefferson salamander, a State-listed Species of Special Concern, and the spring salamander, a State-listed Threatened Species spring salamander. Two additional State-listed Species of Special Concern, the smooth green snake and the eastern ribbon snake, were identified as potentially occurring on the site. *See* BNE Exhibit 13.
- 65) The DEP initially indicated that the smooth green snake may occur on the Property, but eventually concluded that suitable habitat for the smooth green snake does not occur on the Property and that the proposed Project is unlikely to have an impact on these species. *See* DEP correspondence dated April 6, 2011.
- 66) If these reptiles are in fact utilizing the Property, the proposed clearing activities associated with the Project will actually enhance habitat for both of these species. *See* BNE Exhibit 13.

- 67) The Project will not negatively impact wetlands or significant habitat used by amphibians or reptiles on the Property, including the wood frog and four-toed salamander. *See* BNE Exhibit 13.
- 68) The anticipated minor relocation of the access road per Dr. Klemens' recommendation will ensure that more habitat is protected and will further minimize any potential impacts to amphibians, reptiles and other species. *See* BNE Exhibit 13; May 5, 2011 Tr. at 295-97.
- 69) The wood turtle, a State-listed Species of Special Concern, has been observed as occurring in the area, though not specifically on the Property. Dr. Klemens identified Mill Brook as providing potential wood turtle habitat. To ensure that this population is protected to the utmost degree, BNE has committed to employing a detailed Wood Turtle Protection Program for construction and related work surrounding Turbine 1, the only part of the Project site that could coincide with areas of wood turtle terrestrial activity. These protocols will prevent any incidental take of wood turtles during construction. *See* BNE Exhibit 13; May 5, 2011 Tr. at 291, 316-17.
- 70) Disturbance activities associated with the proposed Project do not encroach on the shrub swamp along the southern Property boundary, which provides the richest wildlife habitat on the Property. Rather, construction activities would primarily affect areas characterized as a Northern Hardwood forest, which is the most common forest type throughout northern Connecticut. Locally, this cover type is abundant throughout Colebrook and the surrounding towns of northern Litchfield County. The loss and/or conversion of this amount of forested habitat is not significant on a landscape scale as

there are several large areas of similar forested habitat adjacent to and in the vicinity of the Property. *See* BNE Exhibits 1, 8d.

- 71) The conversion of Northern Hardwood forest to meadow will be beneficial to the smooth green snake and other reptile species that may utilize the Property. *See* BNE Exhibit 13.
- 72) The Property is within a mile of the Algonquin State Forest, and the Project will help maintain a habitat corridor for wildlife. *See* BNE Exhibit 8d.
- 73) The impacts of the Project on wildlife are minimal especially when compared to the alternative of developing the site for residential use, e.g., as a subdivision. *See* BNE Exhibit 1, 8d, 8g; May 5, 2011 Tr. at 314.
- 74) In terms of wetlands, the proposed Project is largely successful in minimizing direct impact to wetland resources on the Property. Due to the need to locate turbines in a manner that effectively captures wind and maximizes electrical generation efficiency, direct wetland impacts associated with access road construction are required. These impacts will be limited to approximately 4,860 square feet of direct impact associated with the installation of two box culverts to create an access driveway. *See* BNE Exhibit 8d, 15.
- 75) Where wetland impacts are unavoidable, careful consideration has been given to the location of these impacts in order to minimize the effect on wetland functions and values. The location of the original wetland crossing, which includes two watercourse crossings, was chosen to minimize square footage of permanent wetland impacts. Following incorporation of the updated topographical data, it was determined that wetland impacts would increase as a result of filling on the south side of the road in the vicinity of the easternmost watercourse crossing that would extend further into the wetland than

originally anticipated. Thus, the crossing was moved approximately 50 feet, which will allow for the proposed access road to intersect the easternmost and more significant watercourse at an existing woods road crossing. *See* BNE Exhibit 8d; May 5, 2011 Tr. at 328-29.

76) Once snow on the Property had melted and Dr. Michael Klemens was able to begin his herpetological assessment, Dr. Klemens recommended that the westerly end of the road shift approximately 40 feet to the north (the easterly end would remain the same) to be even more protective of habitat. *See* BNE Exhibit 13; May 5, 2011 Tr. at 295-97.

77) This slight shift of the access road will be even more protective of amphibians, reptiles and other species. *See* BNE Exhibit 13. It has not yet been incorporated into the plans as this is anticipated to take place during the D&M phase of this proceeding. *See* May 5, 2011 Tr. at 380.

78) Three-sided box culverts will be utilized to span each of the two watercourse crossings. These crossings will be constructed in accordance with the DEP Inland Fisheries Division Stream Crossing Guidelines, dated February 26, 2008. These guidelines have been established to minimize impacts to resident wildlife and fish. *See* BNE Exhibit 8d; May 5, 2011 Tr. at 326-30.

79) The DEP stated that the use of three-sided box culverts at the two watercourse crossings is “consistent with the recommendations of the Stream Crossing Guidelines of the DEP Inland Fisheries Division in that these types of crossing structures allow for the maintenance of natural stream bottom substrates.” *See* DEP correspondence dated April 6, 2011.

- 80) The wetland area that will be subject to permanent impacts by the construction of the gravel access road provides wildlife habitat and sediment/shoreline stabilization functions at a principal level. By incorporating stream crossing measures as recommended by DEP and erosion and sedimentation controls, the construction of the gravel access road is not likely to result in a significant adverse impact on these functions.
- 81) These planned measures have been described in BNE's application, Stormwater Management Plan, Soil Erosion and Sedimentation Control Plan, Terrestrial and Habitat Wetland Impact Analysis and pre-filed testimony in this proceeding, and a detailed restoration plan will be submitted during the D&M phase of the Project.
- 82) Following construction activities, wetland areas subject to temporary disturbance will be restored with native wetland plants and proximate areas subject to temporary disturbance will be restored with a wildlife/conservation seed mix containing native grasses and forbs. Streambanks will be adequately stabilized to prevent erosion and sedimentation of downstream resources. Following establishment of these plantings and permanent stabilization of exposed soils, erosion control measures will be removed so as not to impede migration of wildlife utilizing the Property. *See* BNE Exhibit 1, 8d, 8h, 15. The DEP specifically commended BNE for this feature of its proposal. *See* DEP correspondence dated April 6, 2011.
- 83) In accordance with DEP guidelines, unconfined in-stream work associated with the culvert installation will occur between June 1 and September 30. If possible, impacts associated with the installation of the box culvert should be located outside of the stream channel. *See* BNE Exhibit 8d, 8h. The DEP stated that the construction window selected by BNE is "consistent with the Stream Crossing Guidelines to take advantage of seasonal

low flow conditions.” *See* DEP correspondence dated April 6, 2011. Sixty days is sufficient time for installation of the proposed culverts; in most cases, the installation can be accomplished in less than three weeks. *See* BNE 8h.

84) The elimination of the possibility of suburban development on the Property will contribute to a healthy watershed, as Mill Brook outlets to the Mad River, which is a tributary to the Rugg Brook Reservoir. *See* BNE 1, 8d, 15; May 5, 2011 Tr. at 317.

C. *Public Health and Safety*

85) The Project represents a clean and renewable method of electricity generation in a manner consistent with State policies to protect public health and safety. *See* BNE Exhibit 1, 8b.

86) The Project will generate electricity in a cleaner and more environmentally acceptable manner compared to conventional generation, e.g., nuclear, natural gas, coal and oil. *See* BNE Exhibit 8b.

87) The Project will result in a net benefit to air quality in the State and will reduce particulate matter and ozone precursor emissions of volatile organic compounds and oxides of nitrogen as compared to emissions from other fossil fuel sources. These emission reductions will result in public health benefits and improved visibility in Connecticut. *See* BNE Exhibit 8b.

88) The Project will meet all applicable safety requirements for construction, operation and electrical interconnection. The technology selected is manufactured by GE, one of the world’s leading wind turbine suppliers, with over 13,500 GE wind turbine installations operating safely worldwide providing clean, renewable energy. Variable speed control and independent blade pitch will be used for aerodynamic braking to reduce blade speed

during high winds. The reinforced tower design will enable reliable and safe operation that meets product and regulatory compliance expectations up to operational maximum extreme gusts for a three second period of 56 m/s (over 125 mph) and for ten minutes of 40 m/s (over 89 mph) according to IEC standards. The wind turbine machine can be controlled automatically or manually from either an interface located inside the nacelle or from a control box at the bottom of the tower. Control signals can also be sent from a remote computer via a SCADA. *See* BNE Exhibit 1, 8a.

89) BNE expects to enter into an operations and maintenance agreement with GE to remotely monitor and maintain the turbines. BNE operations and maintenance personnel will also be located on-site to supplement the services provided by GE. To override any machine operation, emergency stop buttons located in the tower base and in the nacelle can be activated to stop the turbine in the event of an emergency. The rotor blades are also equipped with lightning receptors mounted in the blade and the turbines are grounded and shielded to protect against lightning. The turbines are also specially built to handle seismic loads. *See* BNE Exhibit 1, 8a; May 5, 2011 Tr. at 338-39.

90) The Project complies with GE recommended setback distances related to ice throws. *See* BNE Exhibit 8b.

91) BNE's unrefuted ice throw study established that 90% of any ice potentially projected from a turbine would land within 525 feet from the base of the turbine and that the maximum distance of ice projection is 935 feet. No residences are located within this area. *See* BNE Exhibit 8f.

92) One approximately 100-square foot portion of Rock Hall Road was identified as presenting a chance of ice throw impact to a passing car of once in 1,073 years. These

are worst case scenarios that assumes continuous operation of turbines during icing conditions and that no mitigation measures are implemented. *See* BNE Exhibit 8f.

93) Despite the minimal risk of ice throw from the Project, BNE has committed to employing shut down procedures and a specific re-start procedure, completely eliminating any potential risk due to ice throw. *See* BNE Exhibit 8f.

94) Remote and internal monitoring of the turbines can detect icing events, or other problems, through changes in turbine electrical output when compared to wind speed. Ice formation can affect the aerodynamics of the turbine, as accumulating ice would slow down the blades. Sensors will detect lower power outputs when compared to wind speed and will cause the turbine to automatically shut down. The shut down will protect the turbine from mechanical damage as well as act as a safety measure during an icing event. Internal monitoring will also detect icing events through an increase in rotor vibration caused by ice formation on the blades; the turbines will be shut down if this occurs. *See* BNE Exhibit 2 (A25), 8f.

95) The turbine will be monitored continuously by GE during operation. During known or predicted icing events, BNE will dispatch personnel to the site to monitor the turbines for icing. If the turbines are shut down, BNE will have personnel on-site to assess ice accumulation and operating conditions. Those on-site personnel will inspect the turbines and ensure that ice has melted and fallen from the blades prior to re-start. The implementation of these shut down procedures ensures that the risk of ice impacting surrounding properties, residences or roadways will be zero. *See* BNE Exhibit 8f.

96) The Project complies with DEP noise control regulations. *See* BNE Exhibit 8e.

- 97) These regulations establish three types of land classifications based on the actual use of the parcel. The three categories are Class A, generally residential; Class B, generally commercial; and Class C, generally industrial. *See Council Administrative Notice 42; BNE Exhibit 1, 2 (A9), 8e.*
- 98) DEP noise criteria require a noise impact analysis to classify any property based on the proposed use. *See Council Administrative Notice 42.*
- 99) The construction of electric generating wind turbines would render the property a Class C land use. *See BNE Exhibit 8e.*
- 100) The DEP noise criteria from a Zone C emitter to a Zone A use is 61 dBA during the daytime and 51 dBA during the nighttime. *See Council Administrative Notice 42.*
- 101) The projected sound levels generated by the Project range from 32-46 dBA during both daytime and nighttime conditions, in compliance with DEP criteria. *See BNE Exhibit 1, 2 (A9), 8e.*
- 102) The DEP has provided a comment letter regarding BNE's petition and did not mention any issue with noise. *See DEP Comments dated April 6, 2011.*
- 103) DEP does not have noise regulations for noise increases, only maximum noise levels. *See Council Administrative Notice 42; BNE Exhibit 8e.*
- 104) The wind turbines will not be running or will be running at their lowest sound levels based upon the wind speeds that exist during their background sound levels. As a result, the actual sound level increases from the wind turbines, if they were to be running, will vary from 0 to 5 dBA. These increases are minor, as a 3 dBA increase is just barely perceivable to the human ear. *See BNE Exhibit 1, 8e.*

- 105) The sound levels presented in BNE's noise analysis represent worst case sound levels compared to DEP noise impact criteria. The BNE noise report demonstrates that the worst case sound levels will only occur *11% of the time* and that the majority of the worst case sound levels will occur during the wintertime (i.e. when the windows of residences are generally more likely to be closed). The remainder of the time (89%), the wind turbines will be generating lower sound levels, or will not be running at all. *See* BNE Exhibit 1, 8e; May 5, 2011 Tr. at 322.
- 106) While potential noise mitigation measures were discussed in response to questions, no noise mitigation measures are proposed because the sound levels will be so low that they will meet both the required industrial classification (Class C) and even comply with the residential (Class A) noise impact criteria, which are not applicable to the Project. *See* BNE Exhibit 1, 8e; May 5, 2011 Tr. at 258.
- 107) Although sound levels are so low that mitigation measures are not necessary, mitigation options are available, including house insulation and insulated windows. BNE has committed to establishing a funding mechanism for mitigation measures if results of the two post-construction noise study BNE has offered to perform show levels over DEP noise limits. *See* May 5, 2011 Tr. at 262, 282.
- 108) The types of noise which might be generated from wind turbines were addressed and will not exceed DEP noise criteria levels. *See* BNE Exhibit 1, 8e; May 5, 2011 Tr. at 322-23. Specifically, BNE has provided unrefuted evidence that anticipated infrasonic sound levels will be well below the DEP criteria. *See* BNE Exhibit 1, 8e; May 5, 2011 Tr. at 323.

109) The DEP's seven page comment letter did not mention any concerns with noise potentially generated by the Project. The comment letter did, however, mention that road noise from Route 44 is "easily perceptible" at the Turbine 2 and 3 sites. The DEP also noted that "noise from the shooting range at the Northwestern Connecticut's Sportsmen's Association property just south of US-44 is easily heard throughout the Colebrook North site." See DEP correspondence dated April 6, 2011.

110) Overall, the Project will meet or exceed all health and safety requirements applicable for electric power generation and will not have a substantial adverse effect in terms of health and safety.

D. Scenic, Historic and Recreational Values

111) The Project is not anticipated to have a negative impact on scenic or recreational values in the area. See BNE Exhibit 1, 8c.

112) Areas where at least one of the proposed turbine hubs could be visible above the tree canopy year-round (during both "leaf-on" and "leaf-off" conditions) comprise approximately 175 acres within a five mile "Study Area" emanating from the Property. This represents less than 0.5% of the 53,332-acre Study Area. At its apex, the blade(s) may be visible above the tree canopy from approximately 329 acres (less than 1 percent of the Study Area). See BNE Exhibit 1, 8c.

113) The majority of potential year-round views of the turbine hub would occur in close proximity to the Project site, primarily from low-lying areas associated with open water bodies and swamps. Select locations along Route 44, Rock Hall Road and Route 182 (Stillman Road) would have brief views, as would outlying areas at higher elevations

with open fields. Generally, views would be limited by the steep topography associated with the significant ridgelines within the surrounding area. *See* BNE Exhibit 1, 8c.

114) A limited number of residential properties are located near the Property. BNE's analysis conservatively included some properties as "residential" even if they were actually occupied by either commercial or recreational structures, agricultural land or forest. Even with this overestimation, only approximately 15 residential properties within one mile of the Property were identified as potentially having at least partial views of the Project's turbine(s) hub(s) during "leaf-on" conditions. Approximately 9 additional properties within one mile could have views of the blade(s) at its apex above the trees. *See* BNE Exhibit 1, 8c.

115) Approximately 1,389 acres (representing about 2.6% of the Study Area) have the potential to offer some views of the turbine hubs through the trees during "leaf-off" conditions. Most of the potential seasonal visibility (about 88%) occurs at and within approximately one mile of the Project site. Approximately 56 residential properties within one mile of the Project site could have at least partial views of the turbine(s) hub(s) through the intervening trees during "leaf-off" conditions. *See* BNE Exhibit 1, 8c.

116) The DEP noted that, "[a]s a densely populated state, there are no locations in Connecticut which are miles from neighboring land uses, including residences. Some level of impact upon neighboring properties cannot be avoided in the siting of facilities such as that proposed in this petition." *See* DEP correspondence dated April 6, 2011.

117) The area surrounding the Project site is only sparsely developed with residences. The DEP stated that no homes or structures are visible from the Turbine 2 or 3 sites. The DEP noted that the relocated site for Turbine 1 is "substantially more removed from

homes along US-44 and Greenwoods Turnpike than the original site” and that the relocated site “will significantly reduce the prominence of turbine [1] to the homes” along those transportation corridors. The DEP found that the few homes on those transportation corridors “all benefit from some screening, mostly of a deciduous nature.” See DEP correspondence dated April 6, 2011.

118) The DEP did note that one home possesses only very partial screening toward Turbine 1, but notes that this reflects the *original*, not relocated, site for Turbine 1 and that “the revised Turbine 1 location adds 400’ to 550’ of separation between these homes and Turbine 1.” See DEP correspondence dated April 6, 2011.

119) The DEP found that “most homes on Rock Hall Road are on wooded lots with mature trees close to the homes, as well as screening along the east side of that road” and that the closest homes on that road are approximately 1,200’ from the closest turbine. See DEP correspondence dated April 6, 2011.

120) The Project is located along the Route 44 transportation corridor, which is not designated as a scenic road. See May 5, 2011 Tr. at 28-30. A commercially zoned area is located along Route 44. See May 5, 2011 Tr. at 27.

121) Even using BNE’s conservative methodologies with respect to shadow flicker, of 136 potential receptor locations evaluated, a total of only ten receptors are predicted to have some shadow flicker events. No receptor is predicted to experience more than 30 hours of shadow flicker *annually*. The Gun Club lodge, not a residence, is expected to experience the highest number of annual shadow flicker hours. See BNE Exhibit 1, 8c.

122) In terms of historic impacts, VHB completed a review of the Project with the State Historic Preservation Office (“SHPO”). The agency’s initial review resulted in the

issuance of a "no effect" letter on November 29, 2010, indicating that the Project is not expected to have any adverse impact on historic and cultural resources in the State of Connecticut, including but not limited to the Rock Hall Luxe Lodging. After substantial lobbying by parties Fairwind and Stella and Michael Somers, the SHPO subsequently requested photographic simulations and a visibility assessment specifically from the Rock Hall property, which is located approximately one-half mile from the nearest turbine.

123) The results of VHB's reconnaissance and photo-documentation indicate that the Project will not be substantially visible from the Rock Hall Luxe Lodging structure, which is listed on the National Register. As depicted in the photo-simulations, overall views from this property would be limited. The Project will not be visible from any historically significant areas of the inn, nor is it visible from any interior rooms. The only places from which the Project may be visible are from the pool and balcony areas; however, both of those areas were recently renovated and are not of historical significance. *See* BNE 17.

124) On May 19, 2011, the SHPO issued a determination claiming that the Project will have an adverse effect on the Rock Hall Luxe Lodging property.

125) The SHPO has no jurisdiction over this Project and would only be involved in consulting if another federal agency has jurisdiction over the Project. Such jurisdiction not been established in this proceeding. Therefore, the SHPO's comments are only advisory to the Council.

126) As noted in all of the SHPO correspondence in the record in this proceeding, no other historic resources are in question as potentially impacted by the Project.

127) In totality, the Project will have no impact in scenic or recreational values, have severely limited visual impact and shadow impact and will have minimal impact on a single historic resource in the area. This limited effect does not rise to the level of “substantial” impact sufficient to deny the Project.

E. *Forests and Parks*

128) The only potential impact to forests and parks of the State would be potential visibility of the turbines from those areas. Elevated monuments and/or towers may provide some opportunity for visibility. The turbines are expected to be distantly visible from a distance of over four miles from the vantage point at Haystack Mountain. *See* BNE Exhibit 1, 8c.

129) In its comment letter in Petition 983, the DEP stated that “the visibility of the turbines from a distance of over four miles does not change the overall richness of the view from [the] vantage point” at Haystack Mountain. *See* DEP correspondence dated April 6, 2011 in Petition 983.

130) Only the very tips of the blades, not the hubs of the turbines, are expected to be visible from the lookout tower at Soldiers’ Memorial Park. The blade tips are not nearly as significant on the horizon as the Winchester monopine already visible from the lookout tower. In terms of distant views, the turbines are not expected to constitute a significant feature along the horizon from distant forests and parks. *See* BNE Exhibit 1, 8c.

F. *Air and Water Purity*

- 131) The Project's impact to air purity is positive in that the green, renewable energy produced by the Project will actually result in a decrease in greenhouse gas and other health-related air pollutant emissions. *See* BNE Exhibit 1, 8b.
- 132) In terms of water purity, the Project will comply with DEP Water Quality Standards including both groundwater quality standards and guidelines and surface water quality standards and guidelines. *See* BNE Exhibit 1, 8d, 8h, 15.
- 133) The Project will not result in any negative impacts to ground water or surface water on the Property or in the vicinity of the Property. *Id.*
- 134) The DEP submitted seven pages of comments regarding the proposed Project and did not mention any concern regarding impact to water. *See* DEP correspondence dated April 6, 2011.

G. *Fish, Aquaculture and Wildlife*

- 135) Fish and aquaculture are not expected to be impacted by the Project. *See* BNE Exhibit 1, 8d.
- 136) The two watercourse crossings will be constructed in accordance with the DEP Inland Fisheries Division Stream Crossing Guidelines, dated February 26, 2008. These guidelines have been established to minimize impacts to resident fish and wildlife. In accordance with DEP recommendations, unconfined in-stream work associated with the culvert installation will occur between June 1 and September 30. If possible, impacts associated with the installation of the box culvert will be located outside of the stream channel. *See* BNE Exhibit 8d.

- 137) The DEP stated that the use of three-sided box culverts at the two watercourse crossings is “consistent with the recommendations of the Stream Crossing Guidelines of the DEP Inland Fisheries Division in that these types of crossing structures allow for the maintenance of natural stream bottom substrates.” *See* DEP correspondence dated April 6, 2011.
- 138) The DEP also stated that the construction window selected by BNE is “consistent with the Stream Crossing Guidelines to take advantage of seasonal low flow conditions.” *See* DEP correspondence dated April 6, 2011.
- 139) In terms of wildlife, the Property does not contain high value or uncommon wildlife habitat. The limited habitat disturbance caused by the Project is mostly temporary. *See* BNE Exhibit 8d.
- 140) The Project is not expected to adversely impact amphibians and reptiles. *See* BNE Exhibit 13, May 5, 2011 Tr. at 291, 298. No vernal pools were identified on the Property. Dr. Klemens assessed the Property for potential suitable habitat to support the Jefferson salamander, a State-listed Species of Special Concern, and the spring salamander, a State-listed Threatened Species spring salamander. Two additional State-listed Species of Special Concern, the smooth green snake and the eastern ribbon snake, were identified as potentially occurring on the site. *See* BNE Exhibit 13.
- 141) The DEP concluded that suitable habitat for the smooth green snake does not occur on the Property and that the proposed Project is unlikely to have an impact on these species. *See* DEP correspondence dated April 6, 2011.

- 142) If these reptiles are in fact utilizing the Property, the proposed clearing activities associated with the Project will actually enhance habitat for both of these species. *See* BNE Exhibit 13.
- 143) Additionally, the proposed Project will not negatively impact wetlands or significant habitat used by amphibians or reptiles on the Property, including the wood frog and four-toed salamander. The wood turtle has been observed as occurring in the area, though not on the Property. To ensure that this population is protected to the utmost degree, BNE has committed to employing a detailed Wood Turtle Protection Program for construction and related work surrounding Turbine 1, the only part of the Project site that could coincide with areas of wood turtle terrestrial activity. These protocols will prevent any incidental take of wood turtles during construction. *See* BNE Exhibit 13.
- 144) The anticipated slight shift of the access road recommended by Dr. Klemens will ensure that the Project is even more protective of habitat, amphibians and reptiles. *See* BNE Exhibit 13; May 5, 2011 Tr. at 291; 295-97.
- 145) As for birds and bats, potential impacts as a result of the Project were evaluated based on detailed surveys completed at the Colebrook South (Petition 983) site. The Colebrook South and Colebrook North sites are closely situated and contain similar vegetation composition and physiographic characteristics, with the exception of the golf driving range located at the Colebrook North site. Both Colebrook North and South are located along forested ridges with little variation in vegetation or topography relative to the surrounding landscape. Deciduous forest dominates both Colebrook South and North, and both properties contain palustrine wetlands. Due to the similarities of habitat, land use and land cover, results of bat and bird surveys for Colebrook South are likely

indicative of species composition and relative abundance for Colebrook North. *See* BNE Exhibit 8g; April 28, 2011 Tr. at 52-54.

146) For larger wind projects with much larger sites that may vary in terms of vegetation and habitat across the site, similar inferences are commonly made regarding the community composition of species. *See* BNE Exhibit 8g; April 28, 2011 Tr. at 52-54.

147) In terms of birds, the breeding birds identified were regionally common and no high value bird habitats were identified within the area. No state or federally listed threatened or endangered species were identified during the breeding bird survey. While wind projects can result in collision-induced mortality of birds, these impacts have not been shown to result in population-level effects. In fact, overall conclusions on the scale of impact to birds from wind energy remains qualified as being orders of magnitude lower than other sources of mortality such as windows, domestic cats, road collisions or tall lit communications towers. *See* BNE Exhibit 1, 8g, 14.

148) Alternative uses of the Property, for example for housing development, would result in far greater loss of forested habitats and increased fragmentation—and therefore greater impact to breeding birds—compared with the proposed Project. *See* BNE Exhibit 1, 8g, 14.

149) Overall, the Project will not have undue impacts to breeding bird populations in the Colebrook area. *See* BNE Exhibit 1, 8g, 14.

150) BNE met with the DEP in March, 2010 to discuss the BNE wind projects and specifically discuss protocol for the bird and bat studies to be undertaken. BNE surpassed the level of work requested by the DEP at this meeting by completing breeding bird surveys in addition to the requested acoustic surveys for bats. *See* BNE Exhibit 14.

- 151) The DEP agrees with the fact that the Project will not have undue impacts to breeding bird populations and has stated that it does not anticipate significant negative impacts to breeding birds by the proposed project. *See* DEP correspondence dated April 6, 2011.
- 152) BNE began conducting pre-construction bird surveys for the spring migration period in early March 2011. BNE has additionally committed to conducting pre-construction bird surveys for the summer breeding season and the fall migration season, and post-construction bird surveys during two separate calendar years between April–October. This additional data will be provided to the DEP to better inform of bird activity on the Site. *See* BNE Exhibit 1, 3 (A22), 8g, 11 (A7).
- 153) In terms of bats, the Project is not anticipated to have undue impact to bat populations. One of the key factors in minimizing impacts to bat populations is to avoid locating wind facilities near high-value bat habitat such as forested wetlands. This factor was specifically considered in determining the proposed locations of the three turbines on the Property. *See* BNE Exhibit 1, 8g, 14.
- 154) Additional design features of Wind Colebrook North help to further minimize potential impacts to bats, including not siting the turbines near permanent standing water, and minimizing of clearance areas for roads, turbines and infrastructures. *See* BNE Exhibit 1, 8g, 14.
- 155) While wind projects can result in collision-induced mortality of bats, these impacts have not been shown to result in population-level effects. Bat fatality patterns observed at facilities within the region in similar forest-dominated landscapes have been low to moderate, based on regional study results. The vast majority of formal post-

construction bat mortality studies completed in the United States have been completed at facilities with substantially larger numbers of turbines and megawatt capacity than what is proposed for Wind Colebrook North. For example, the 76 projects evaluated in BNE's bat acoustic report had an average of 53.8 turbines per site. Wind Colebrook North will have a more limited impact in terms of bat fatalities compared to these facilities given the fact that only three turbines are proposed for the site. Overall, fatality rates for bats at the proposed Project site are anticipated to be low to moderate. *See* BNE Exhibit 8g.

156) BNE has volunteered to perform pre-construction bat monitoring at the Property between April 15-October 31, 2011 and to conduct a two-year post-construction bat monitoring study; this data would be submitted to the DEP to better inform the DEP of bat activity on the Property and in the surrounding area. *See* BNE Exhibit 3 (A22), 14.

157) BNE has demonstrated compliance with terms of Tiers 1 through 3 of the United States Fish and Wildlife Service ("USFWS") interim draft guidelines. *See* Council Administrative Notice 36; BNE Exhibit 14.

158) Despite the small project size, BNE has committed to completing a Scope of Work for biological surveys greater than the level of work completed at most other facilities of similar or larger size. *See* BNE Exhibit 14.

159) Any adverse environmental effects from the Project will be minimized to the extent possible through the use of appropriate mitigation and control measures. BNE has expressed its willingness to provide several types of post-construction monitoring in order to further ensure that the Project has minimal environmental impacts. Furthermore, the vast majority of environmental effects will be temporary and will be limited to the anticipated four-month construction phase of the Project.

160) The Project complies with state policies concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife, and there is “not sufficient reason to deny the application,” in compliance with CGS § 16-50p(a)(3)(B) and (C). *See* BNE Exhibits 1, 8a, 8d, 8g, 8h, 8i, 13.

Respectfully Submitted,

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Certification

This is to certify that a copy of the foregoing has been mailed this date to all parties and intervenors of record.

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