



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

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### VIA ELECTRONIC MAIL

March 6, 2020

Emily A. Gianquinto, Esq.  
EAG Law LLC  
21 Oak Street, Suite 601  
Hartford, CT 06106

RE: **PETITION NO. 983** - BNE Energy, Inc. Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 4.8 MW Wind Renewable Generating facility located on Flagg Hill Road, Colebrook, Connecticut. **D&M Plan Modification.**

Dear Attorney Gianquinto:

The Connecticut Siting Council (Council) received the Request for Party Status and Notice of CEPA Intervention under Connecticut General Statutes (CGS) §§ 4-177, 16-50n and 22a-19 on March 4, 2020 that was submitted on behalf of the Grant Swamp Group (GSG). Please be advised that the evidentiary record and public hearings for the above-referenced petition closed on April 26, 2011.

The Council issued a Declaratory Ruling to BNE Energy, Inc. (BNE) for the construction, maintenance and operation of **three wind turbines** at the Wind Colebrook South (WCS) site on June 2, 2011. Under the Uniform Administrative Procedure Act (UAPA), the Declaratory Ruling constitutes the final decision for Petition 983. Therefore, there is no pending matter or proceeding in which to intervene.

On January 9, 2020, BNE submitted a request to modify the Development and Management Plan (D&M Plan) for the WCS facility to relocate Turbine 3 (T3) 1,715 feet south of the initial location, as well as to construct, maintain and operate a different model turbine at that location. Condition No. 2 of the Council's June 2, 2011 Declaratory Ruling required BNE to submit a D&M Plan in one or more sections for approval by the Council prior to the commencement of facility construction.

BNE submitted its D&M Plan on September 16, 2011. It included all of the sections required under Condition No. 2 of the Council's June 2, 2011 Declaratory Ruling. The Council approved the site clearing and environmental monitor sections of BNE's D&M Plan on October 21, 2011. The Council approved all of the remaining sections of BNE's D&M Plan, including a request to relocate the temporary construction access road, on November 22, 2011.

Under Regulations of Connecticut State Agencies (RCSA) §16-50j-62, advance written notice shall be provided to the Council whenever a significant change to an approved D&M Plan is necessary. Significant changes to an approved D&M Plan include, but are not limited to, "**a change in structure type or location.**"

After the Council's approval of BNE's D&M Plan, subsequent requests for modifications to BNE's approved D&M Plan were submitted and approved, including, but not limited to, a request to relocate Turbines 1 and 2 (T1 and T2) 135 feet east and 167 feet southwest, respectively, and to construct, maintain and operate a different turbine model at those revised locations. These D&M Plan modifications were approved in accordance with RCSA §16-50j-62.

A D&M Plan is not the subject of a proceeding nor is it a contested case under the UAPA. It is a condition of a final decision in a contested case proceeding that must be met in order to commence facility construction. A D&M Plan functions to "fill up the details" and constitutes the "nuts and bolts" of the facility approved by the Council.<sup>1</sup>

Under CGS §4-177a, a person may be granted party status in a contested case if: "(1) such person has submitted a written petition and mailed copies to all parties, **at least five days before the date of hearing...**" (Emphasis added).

The final hearing on this petition was held on April 26, 2011. The Council issued a Declaratory Ruling for this petition on June 2, 2011. Therefore, GSG's Request for Party Status and CEPA Intervention is moot.

Sincerely,



Melanie A. Bachman  
Executive Director

MAB/laf

cc: Parties and Intervenors  
Council Members

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<sup>1</sup> *Town of Westport v. Conn. Siting Council*, 260 Conn. 266 (2002); *Town of Middlebury v. Conn. Siting Council*, 2002 Conn. Super. LEXIS 610 (Conn. Super. 2002).