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July 20, 2020

Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06059

Re: Petition No. 1408 – FairWindCT, Inc., et al Petition for Declaratory Ruling

Notice of Intent to be Party/Request for Party Status

Dear Council Members,

I am writing on behalf of my client, the Town of Colebrook, Connecticut (the “Town”), with respect to the above-referenced Petition. Pursuant to Connecticut General Statutes §§ 16-50n(a) and 16-50l(b), this letter constitutes the Town’s Notice of Intent to be a Party to the proceeding initiated by the above-referenced Petition. In this regard, C.G.S. § 16-50n(a) states that the parties to a declaratory ruling proceeding “shall include,” among others, “each person entitled to receive a copy of the application or resolution under section 16-50l if such person has filed with the council a notice of intent to be a party.” Section 16-50l(b) states that each application shall be accompanied by proof of service of the application on, among others, “Each municipality in which any portion of such facility is to be located.” Since the facility which is the subject of the above-referenced Petition is located entirely within the Town of Colebrook, pursuant to C.G.S. §16-50n(a), the Town is entitled to be a party to the proceeding initiated by the Petition as a matter of right, simply by filing this notice of intent to be a party.

In the alternative, if for some reason the Town is not deemed to be entitled to become a party simply by filing a notice of intent to be a party pursuant to C.G.S. § 16-50n(a), this letter constitutes the Town’s Request for Party Status in the above-referenced proceeding.

I. Manner in Which Proposed Party’s Legal Rights, Duties or Privileges Will be Specifically and Substantially Affected by the Council’s Decision in This Case

Petition No. 1408 requests the Council to issue a declaratory ruling reversing or vacating the Council’s approval of a request by BNE Energy, Inc. dated January 9, 2020 for approval of a modified Development and Management Plan in the proceedings relating to Petition No. 983.

The Council's approval of the modified D&M Plan was in the form of a memorandum issued on March 6, 2020 by the Council's staff.

The Town has party status with respect to Petition No. 983. The subject of Petition No. 1408 is proceedings which occurred with respect to Petition No. 983. Therefore, the Town's legal rights, duties and privileges will be specifically affected by the Council's decision on Petition No. 1408 in the same manner, to the same extent, and for the same reasons for which the Town has party status under Petition No. 983.

II. Manner and Extent to Which Proposed Party Proposes to Participate

The Town proposes to participate in the proceedings under Petition No. 1408 to the fullest extent and in the same manner in which it participated in the proceedings pursuant to Petition No. 983, by submitting testimony of fact and expert witnesses and documentary exhibits, participating in cross-examination of witnesses, propounding interrogatories, and filing comments and arguments, as warranted.

III. Statutory Authority for Party Request

The Town of Colebrook is entitled to party status in this proceeding pursuant to C.G.S. §§ 4-177a, 16-50l, 16-50n, 22a-19 and 22a-20, and §§ 16-50j-13 through 17 of the Regulations of Connecticut State Agencies.

IV. Nature of Evidence Proposed Party Intends to Present

The Town intends to present evidence demonstrating, among other things, that:

1. BNE Energy's D&M Plan Modification dated January 9, 2020 involves the placement of a new and much taller wind turbine, with longer blades and a higher nameplate capacity than the third turbine originally approved by the Council, on two new parcels of land, 45 and 53 Flagg Hill Road, comprising approximately 37 acres, which were not part of the facility approved pursuant to Petition No. 983. The D&M Plan Modification increased the size of BNE's existing 79.4 acre facility approved by the Council pursuant to Petition No. 983 by approximately 47%. Neither the larger turbine nor the two new parcels of land had ever been proposed to or reviewed and analyzed by the Council, as part of the proceedings under Petition No. 983 or in any other manner. Accordingly, BNE's D&M Plan Modification in fact proposed a new facility on a new site, which involved new abutters and required new environmental, wetland, setback, safety, visual and noise analyses and studies.

2. The Council should have required that this new facility be proposed by submission of a new petition for declaratory ruling, subject to the current wind regulations and pursuant to all of the procedural requirements, safeguards of the rights of interested parties, and substantive analyses, reviews and input which apply to new petitions, rather than as a modification to the D&M Plan in Petition No. 983.
3. Due to the differences between the facility approved in the D&M Plan Modification and the facility approved in the Council's approval of Petition No. 983, the D&M Plan Modification is inconsistent with the Council's decision on Petition No. 983.
4. The D&M Plan Modification was approved by a memorandum issued by the Council's staff. Neither the Council nor its staff had statutory authority to approve the Modification.
5. The Modification violates the fundamental due process rights of property owners abutting 45 and 53 Flagg Hill Road.
6. The Modification violates the Connecticut Environmental Protection Act, Connecticut General Statutes § 22a-19, in that it will unreasonably destroy or impair the public trust in the waters of the state and in the natural resources of the state. In connection with the Modification, BNE did not submit to the Council information sufficient to enable the Council to evaluate the impacts of the Modification on wetlands.
7. Because BNE's D&M Plan Modification actually proposed a new facility which should have been the subject of a new petition for a declaratory ruling, the Council lacked jurisdiction to process BNE's proposal as a D&M Plan Modification.

V. Contact Information for Service List

Contact Information for Proposed Party

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First Selectmen
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P.O. Box 5
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Contact Information for Representatives of Proposed Party

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Please add the above-named persons to the Service List for this proceeding.

Very truly yours,



Patrick E. Power

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CERTIFICATION

I hereby certify that a copy of the foregoing document was served by electronic mail on July 20, 2020 on each of the persons and entities listed on the Siting Council's Service List, as set forth below:

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