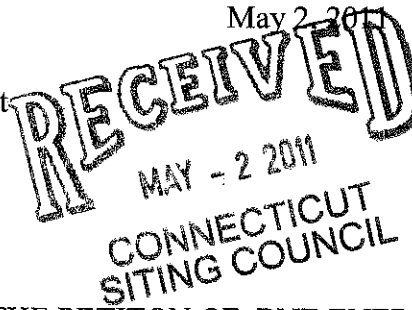


STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Petition of BNE Energy Inc. for a
Declaratory Ruling for the Location,
Construction and Operation of a 3.2 MW
Wind Renewable Generating Project on
New Haven Road in Prospect, Connecticut

Docket/Petition/Petition No. 980



BRIEF IN SUPPORT OF DENYING THE PETITION OF BNE ENERGY INC. FOR THE
LOCATION AND CONSTRUCTION OF A 3.2 MW WIND RENEWABLE GENERATING
FACILITY AT NEW HAVEN ROAD IN PROSPECT, CONNECTICUT

INTRODUCTION

The parties, John Lamontagne and Cheryl Lamontagne, and Thomas Satkunas and Ellen Satkunas, respectfully request that the Connecticut Siting Counsel deny the Petition of BNE Energy, Inc. for the location and construction of A 3.2 mw Wind Power generating facility at New Haven Road, Prospect Connecticut. The Lamontagnes' home lies due east of the proposed southern tower of the project and is a mere 800 feet from the property line and 910 feet to their home. The property is their dream home. They have lived in Prospect all of their lives and at this property for over twenty-five years. They have a swimming pool at their home which they use and enjoy seasonally.

The Satkunas have four properties which are 93.7 meters (307 feet), 139 meters (456 feet) and 456 meters (1,496 feet) from the proposed southern facility, including their residence, their used car business and a home in which Tom's mother lives.

Both John Lamontagne and Tom Satkunas testified at the Petition process.

Both stated that the location of the facility, as proposed, would be devastating and injurious to their property and their quality of life. All of their collective properties are among the closest to the proposed Wind facility.

- Q13. Granting any petition or making any order which allows these turbines to be built will have a devastating effect on the value of my home and greatly reduce our quality of life and possibly be injurious to my family's health.

The Lamontagnes also discussed possible mitigation measures:

"MR. LAMONTAGNE: Yes, I understand. And even the turbine itself appears to be -- and I may be wrong, but the propellers on the south turbine will be even hanging over the property lines of the water company. I think they're really backed into a corner because of the -- it demonstrates the inadequacy of this lot. It's -- it's not -- while the acreage is -- it may be borderline, the shape of the lot does not allow for them to move this turbine further back to not affect the residences, and myself included."

John Lamontagne set forth the bold conclusion of the unfortunate facts of this case when he stated:

"It's too big, too close and too loud." (Transcript)

**THE SITE IS INADEQUATE IN SIZE AND CONFIGURATION TO PROTECT
THE ENVIRONMENT AND PUBLIC HEALTH AND SAFETY**

In his prefiled testimony, Paul Corey, President of BNE, and one who time and again provided opinion testimony without providing qualifying expert credentials, stated that the site was adjacent to 1,000 acres of land that was never to be developed. (Paul Corey prefiled testimony page 3 of 4)

This presumptuous and misleading testimony boldly outlines the unfortunate cold reality of this case. Lamontagne and Satkunas both testified that they support Wind Power and even went so far as to sponsor Zoning Regulations in Prospect to enable its location. They and the entire rational and enablement of the Connecticut Siting Council mandate that it must be properly located.

If, as Mr. Corey's misleading remarks suggest, the proposed massive towers were anywhere near the middle of a 1,000 acre tract owned and controlled by BNE and could comply with air water and environmental standards, it should receive approval. However, this is not the case. As BNE's own exhibit (BNE exhibit dated April 11, VHB Property Line Results). shows, the towers are within 155, 400 and 800 feet from all of the property lines. The 1,000 acres lies only on one side of this residentially zoned property far away from the very active residential neighborhoods.

During the evidentiary portion of the Docket/Petition, BNE advised the Siting Council that it has no other land or land rights adjacent to the proposed site beyond the 67.5 acre footprint and also that off site grading and improvements will be required at Kluge Road. In addition to the off site required rights to grade (CSC FOF Draft dated April 27, 2011 number 44, and 243),

BNE advised that the BNE and GE minimum safety set back requirements are at least 920 feet from the Wind Mill superstructure.(Rhinebolt prefiled testimony page 1.) The proposal will encumber large quantities of land which will be burdened by the safety set back areas which are beyond the ownership or control of BNE. The site is inadequate and the application should fail because it uses property which is not owned or controlled by it.

The proposed site is a 67.5 acre parcel of land lying to the east of New Haven Road in Prospect, Connecticut. The Southernmost point of the property is within 500 feet of the town line where Prospect joins Bethany. The property is roughly triangular in shape and has a rolling topography which is highlighted by a North to South running ridgeline which has an elevation of approximately 800 feet above sea level.

The property is zoned residential and is adjacent to property of the Bridgeport Water Company which is also zoned residential and residential neighborhood including 129 homes within 2,500 feet. The hypotenuse of the parcel is approximately 1,800 feet and its average width is 600 feet and its greatest width at a single point is 1,100 feet.

The site walk was conducted on February 23, 2011 and was well attended by Council, parties and media. The walk showed the rolling character of the site and the marked proposed locations of the wind turbine facilities, the areas to be cleared for blade assembly and construction and the areas to be graded and improved for access roads to the wind tower turbines. The site walk had the unfortunate effect of NOT adequately apprising the Siting Counsel of the severe limitations of the site for consideration of a massive facility as is proposed. Property lines were not evident, limitations on the massive radius of the blade extensions were

not showed or discussed, and wetlands were not clearly marked. In the course of the hearings no wetlands delineation maps were filed.

The petitioner greeted the assembled site viewers, including the Council, the Staff, BNE personnel and consultants, parties and members of the general public. Significant snow cover obscured views which would have established but did not, the following: a significant portion of the site is farmed and hayed as open fields, the property lines are within 150 to 450 feet of the southern wind turbine on the south east and west, the proposed access road is topographically below the crown of the ridge so that the view of all easterly neighbors are obscured from view at pedestrian eye height. There was no marking or indication of the westerly boundary which is within 156 feet of the south location, the other boundaries adjacent to the south location or of boundaries of the north location and the entire length of the access road leading to the north tower. Finally, there was no designation whatsoever of the wetland upland review areas which are significantly encumbered by the plans.

Additionally there was no view indication, discussion or presentation of any off site impositions such as grading areas or set back safety zones or other activities which are required as part of the application.

It was apparent that the site walk did create an illusion as to the expansiveness of the site and also obscured its limitations. (Site Walk evidence dated February 2, 2011 at 178 New Haven Road).

Other features of the site included a communications tower and a meteorological tower which assisted in the review of the scale and height in that the existing towers were reported by

BNE to be 160 feet tall and 180 feet tall. (The taller of the two being less than 39% of the height of the proposed wind turbine.)

THE PETITION SHOULD BE DENIED BECAUSE IT IS INCOMPLETE AND INADEQUATE

This Petition is the first seeking the permitting of a Commercial Wind Energy facility in the state of Connecticut. As a Petition for Certification, the BNE filing takes a short, time sensitive path down an unknown road. This has not served the Petitioner, the Council, the neighbors or the State well. With no precedent for BNE to follow, and some ambiguity as to the Statutes or Regulations for the Siting Council to follow, the Petition foundered.

The record is replete with extraordinary and inefficient happenstances which are troublesome, unique and debilitating to the Petition.

1. This was a first for BNE as a Wind Developer.
2. This was a first commercial wind generation facility for the Connecticut Siting Council.
3. This was a first commercial wind generation facility for VNE Engineers.
4. This was the first time that VNE used certain critical software concerning aesthetic impacts of windmills and shadow flicker impacts.
5. BNE 's incomplete presentation as to wind and bird and mammal impacts which they propose as part of their application to monitor for impacts for a period of years after the completion of the construction. (CSC FOF Draft dated April 27, 2011 number 198, and 199).
6. The Town was so shocked at the dimension and impacts of the proposal that it filed a Resolution in opposition of its Council and Zoning Commission. (CSC FOF Draft dated April 27, 2011 number 27).
7. The neighboring town also appeared in opposition.

8. State legislative leaders filed proposed laws to bring clarity to an ambiguous statute on siting renewable energy facilities.
9. BNE without a firm contract and without even having the holder of the privilege, General Electric appear before the CSC to claim is was somehow able to secure a protective order for its set back formulas and findings to hide from public view material information on environmental public health and safety information. (CSC FOF Draft dated April 27, 2011 number 130, and 131, see protective order).
10. BNE's plans and specifications are unsigned, unsealed, not verified or approved by a licensed Connecticut Engineer, without metes or bounds, without clear specific wetlands delineations, and without any detail or specification of off site grading areas, off site fall zones and safety areas.(CSC Docket/Petition 980, BNE Petition Submission documents).
11. Connecticut Siting Regulations authorize d&m agreements to supplement Applications for the Siting of Electric Transmission Lines and Communications Towers however no such enablement exists for Commercial Wind Turbine Electrical Generation Facilities.(CSC Regulations §16-50j – 60 et seq.; §16-50j-75 et seq.).
12. The Connecticut Siting Council engaged a hidden consultant, Epsilon, whose interaction with the Council and its staff were not transparent, and whose findings and reports have not been produced. (Docket/Petition 980 Proceedings; Draft Findings of Fact- no citation).
13. Epsilon consultants assisted the CSC and its staff in preparation of cross examination of BNE witnesses, but for some reason no cross examination of other witnesses was prepared and little was asked.
14. During the proceedings staff did cross examination of most BNE and witnesses and declined cross examination of most of the witnesses for Save Prospect, or Fairwind.

To the fault of no one and the disadvantage of the Council and all of the parties, the process generated confusion, and eroded confidence in the Petitioner, the Council and the State of Connecticut. This was further exacerbated by the failure of the Council to extend the time for

a reasonable and orderly approach to all of the issues in a fair and reasonable time. (CSC FOF Draft dated April 27, 2011 20 categories of risk issues containing 203 proposed findings of fact).

**THE CONNECTICUT SITING COUNCIL HAS THE BROADEST
LATITUDE FOR REVIEW IN THIS MATTER**

At the outset of this proceeding the Siting Council set out a narrow and limited review criteria for this case:

“Pursuant to provisions of General Statutes § 16-50m and Section 16-50j-21 of the Regulations of Connecticut State Agencies, notice is hereby given that the Connecticut Siting Council (Council) will conduct public hearings on a petition from BNE Energy, Inc. 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. The scheduled hearing dates and locations are as follows: Wednesday, February 23, 2011, etc....”

But at the Opening session the Council’s responsibility was enlarged by the articulation of Former Chairman Caruso when he stated:

“Additionally, the Council's actions and procedures are governed by state statutes and extensive regulations with which we have during the past 40 years cited, modified, conditioned, or rejected cellular telecommunications facilities, extensive electrical generating and transmission projects, and the storage of spent nuclear fuel to name but a few examples. There are also certain matters beyond the jurisdiction of this Council, including our inability to impose a moratorium on such facilities. Such is exclusively within the purview of the General Assembly. Now the decisions this Council needs to make include weighing whether the Petitioner has met its burden of proof that the proposed project will not have a substantial adverse environmental

impact. The Council is not the one proposing this project, but it is the one which will determine if it may be located here in accordance with state statutes and regulations.....”

Later on March in response to direct question concerning the standard for review and decision Attorney Bachman articulate on the record further clarification of the standard in response to a Motion for Clarification:

“7. Lamontagne Motion for Clarification dated March 28, 2011.

Lamontagne’s motion was granted. The Council’s statutorily imposed standard of review for a petition for a declaratory ruling filed pursuant to C.G.S. 4-176 and R.C.S.A. § 16-50j-38 is to make a determination that the proposed facility will not have a substantial adverse environmental effect and therefore would not require a Certificate of Environmental Compatibility and Public Need. The Council’s decision as to substantial adverse environmental effect is governed by the criteria set forth under C.G.S. §16-p for an electric generating facility, which states in part - the nature of the probably environmental impact of the facility on 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.”

However, when viewing the record, the Petition and all of the submissions it becomes apparent that the standard for review in this case must be the full blown balancing required for a full Certificate of Need Application.

The statutes are very clear that an applicant has the absolute right to waive the lesser standard in any proceeding. **C.G.S. Sec. 16-50k. Certificate of environmental compatibility and public need. Transfer. Amendment. Excepted matters. Waiver.** (e) Any person intending to construct a facility excluded from one or more provisions of this chapter may, to the extent permitted by law, elect to waive such exclusion by delivering notice of such waiver to the

council. Such provisions shall thereafter apply to each facility identified in such notice from the date of its receipt by the council.

BNE now claims that the Connecticut Siting Council has the narrowest discretion for consideration and must make findings as to the compliance of the application with air and water quality standards of the State of Connecticut and grant the application.

However with each additional submission of reports, responses and materials BNE clearly waived the rights to any lesser standard of review. Just as BNE declined to respond to Attorney Bachman's articulation above, they sat on their hands with over 1120 interrogatories and requests which they now claim have no relevance to the duties of the Connecticut Siting Council with respect to the petition. The complexity, volume, sophistication and importance of this case demands that all that has been presented must be considered and that the broadest standard of review is now available due to the full and willing and open participation by BNE in the review.

Finally, the Connecticut Siting Council must consider that this case more than any other goes to the essence of its responsibility. This body was created in derogation of the established laws and regulations of Zoning. When you received that very significant power the Council was charged with a significant responsibility of balancing the interests of all in the State of Connecticut and making a fundamental judgment as to the convenience and environmental compatibility of each facility to be sited.

The power you received was directly commissioned with the responsibility set forth in the **initial section of the Act establishing the siting council:**

“CGS, Sec. 16-50g. Legislative finding and purpose. The legislature finds that power generating plants and transmission lines for electricity and fuels, community antenna television towers and telecommunication towers have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, scenic, historic and recreational values of the state. *The purposes of this chapter are: To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria,.....*”(Emphasis added)


For John Lamontagne and Tom Sutkunas you are the primary line of protection. They feel that this Council has the responsibility to balance the equation for them, and the environment, and the State of Connecticut. BNE files a brief today that says that you should not consider them, their neighborhood, or the environment, other than direct air and water quality impacts in this matter.

Thank you for your consideration.

Respectfully Submitted,

JOHN LAMONTAGNE and CHERYL LAMONTAGNE
THOMAS SATKUNAS and ELLEN SATKUNAS

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