

**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 (“Wind Prospect”)**

Petition 980

May 2, 2011

POST-HEARING BRIEF OF PETITIONER BNE ENERGY INC.

Every time the power grid is in demand and that coal burner is firing up and putting out more coal, I pay part of that price. We all do in our health. Clean power is necessary. It’s necessary for this country to go on. It’s necessary for our health, for our future. Member of public during Public Comment Session, February 23, 2011 Hearing Transcript at 128-129.

The petitioner, BNE Energy Inc. (“BNE”), submits this post-hearing brief in support of its Petition to allow it to construct the first commercial wind renewable generating project in Connecticut. The need for the development of clean, renewable and safe energy has never been more evident. The events of the last year around the world—the Gulf oil spill and the nuclear disaster in Japan to name but a few—only serve to further highlight the fact that this country must become less dependent on fossil fuels and other traditional forms of electricity production. If the Siting Council approves BNE’s petition, it will allow Connecticut to take advantage of the growing market for renewable power, assist Connecticut in meeting its renewable portfolio standards and ultimately allow Connecticut to be less dependent on fossil fuels. BNE submits this brief after the completion of a site visit, two public comment sessions and four evidentiary hearings in this proceeding.

I. INTRODUCTION

This petition was filed on November 17, 2010. The Connecticut Siting Council (“Council”) conducted a field review of the proposed project site on February 23, 2011, and conducted public hearings in Prospect on February 23 and 24, 2011. Evidentiary hearings were

conducted on February 24, March 3, March 25 and March 31, 2011. BNE received and responded to hundreds of interrogatories during the proceeding. As the Council is aware, the Council is subject to a statutory deadline of May 17, 2011 to render a decision on this petition.

II. BACKGROUND

The proposed project site is located at 178 New Haven Road in Prospect, Connecticut on approximately 67.50 acres of undeveloped land (the "Property"). Currently, the proposed site is undeveloped with the exception of an existing 160-foot tall telecommunications tower owned by SBA located on the southeast corner of the parcel. BNE notified the owner of the existing telecommunications tower of the proposed project and SBA had no objection to the project. *See* BNE Exhibit 2. The proposed project includes the construction of two GE Energy ("GE") 1.6 megawatt ("MW") wind turbines with 100 meter hub heights and 82.5 meter blade diameter along with an access road, electrical connector yard and outbuilding to provide storage, office space and an educational center (the "Project" or "Wind Prospect"). *See* BNE Exhibit 1. The Project does not propose the development of any paved roads or paved parking areas.

The Property is abutted by Connecticut Water Company ("CWC") property, which consists of over 1,000 acres of undeveloped land. BNE Exhibit 1. Sprint and the Connecticut Light & Power Company have telecommunications towers on abutting properties. *Id.* Contrary to the opposition's contention that the Project is located in a residential neighborhood, the Property is located in close proximity to Route 69 in a mixed use corridor in Prospect with commercial, industrial and residential development. *See* BNE Exhibit 1, Vol. 1, p. 7, Vol. 3, Tab J; BNE Exhibit 2. Located within the vicinity of the Property are the former (now abandoned) U.S. Cap and Jacket factory, a used car dealership and other commercial and/or industrial properties. *See, e.g.,* BNE Exhibit 1, Vol. 3 at I, J.

BNE has been in contact with officials from the Town of Prospect for several years regarding the development of the Project. In fact, the Mayor of the Town of Prospect authored a letter of support for the Project on March 7, 2008, more than two years prior to BNE's submission of this petition. *See* BNE Exhibit 6 at Exhibit 1. In addition, while not legally required to do so, BNE submitted pre-filing materials to the Town of Prospect on October 1, 2008 and attended an informational meeting at the request of the Town on October 18, 2011. BNE Exhibit 1. Additionally, 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) and also sent notice of filing via certified mail, return receipt requested, to all abutting property owners of record. BNE received return receipts from all but one abutting property owner, the U.S. Cap and Jacket property located at 214 New Haven Road. *See* BNE Exhibit 2. It cannot be disputed that the materials submitted in BNE's petition far exceed the Council's recommendations contained in its application guideline for Petitions for Declaratory Rulings for Renewable Energy Facilities dated April 2010. 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 the proceeding also submitted shadow flicker analysis and ice drop/ice throw analysis.

It is equally indisputable that the Council, like BNE, went well above and beyond its legal requirements in reviewing a petition for declaratory ruling. First, almost a 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. Furthermore, in early 2010 and in anticipation of receiving

BNE's petitions, the Council released a request for proposal to retain a consultant on general renewable energy matters. On March 26, 2010, the Council formed a subcommittee, headed by Vice-Chairman Tait, 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 March 14, 2011. In addition, while not legally required, the Council unanimously voted to hold a public hearing for this petition on January 6, 2011. *See* January 6, 2011 Meeting Minutes. The Council also took a rare step in hosting not one but two public comment sessions in the Town of Prospect and conducted a total of four days of evidentiary hearings for this single petition. Finally, the Council attended a field review of an existing wind turbine facility in order to obtain first-hand knowledge of the operations of a wind turbine. *See* Council Notice of Special Meeting for March 9, 2011.

Numerous individuals, groups or entities sought and were granted legal standing in this proceeding including parties: Save Prospect Corp. ("SPC"), FairwindCT, Inc. ("Fairwind"), the Town of Prospect, Mr. Bibler, Mr. Lamontagne and Mr. Satkunas, the Connecticut Water Company (CWC") and intervenor the Connecticut Light and Power Company (CL&P).¹

During the course of this proceeding, BNE responded to hundreds of interrogatories and presented expert testimony from nine different expert witnesses discussing site design and

¹ CL&P became an intervenor in this proceeding and also received certified mailing as an abutting property owner. Despite these facts, CL&P apparently was unaware that the Project is adjacent to a telecommunications tower it owns that it utilizes for microwave communications. In comments submitted after the evidentiary hearing closed, which are not evidence in this proceeding, CL&P argues that BNE should be required to expend unspecified sums of money to ensure not only that the Project will not interfere with CL&P's current communications system but also not interfere with unspecified and undetermined potential future uses. CL&P's argument, unencumbered as it is with citation to any relevant fact, law or regulation is flawed for the following reasons. First, CL&P essentially admits that the Project will have no impact on its existing system. Second, CL&P has not identified any planned future uses of its facility with which the Project may interfere. Third and most importantly, CL&P cannot cite to any contractual, statutory or regulatory right CL&P has to require abutting property owners to reimburse CL&P for the study costs it seeks. That is because no such right, statute or regulation exists.

engineering, visual impacts, shadow flicker impacts, wetlands impacts, ice drop and ice throw risk assessments, noise impacts, bird and bat impacts, terrestrial wildlife impacts and air quality emissions benefits. *See generally* record. During this proceeding, members of the public, parties and intervenors raised concerns regarding setbacks. In order to ensure that the Project is safe, BNE proposed to re-locate the northern turbine to move that turbine even further away from abutting, inhabited properties. *See* BNE Exhibit 18b. In addition, BNE incorporated comments on both the original site layout and the revised location for the northern turbine raised by CWC. *See* BNE Exhibits 3, 18b; *see also* CWC Comments dated March 29, 2011. The revised layout complies with GE's setback recommendations, reduces any potential shadow flicker receptor locations with impacts below 30 hours per week and reduces any risk of ice throw injury to zero. *See* BNE Exhibits 18b, 18c. The only abutting property lines that are less than 900 feet from the closest turbine for either turbine are the CWC property lines. Significantly, during CWC's participation in this proceeding and in its comments submitted hereto, CWC has never mentioned a concern regarding property line setbacks. *See* CWC comments dated March 29, 2011, March 30, 2011. Opponents of the Project have made the baseless argument that BNE's commitment to working with its neighbors, including CWC and others, by incorporating suggested plan modifications is somehow a tacit admission of shortcomings of the plans. *See, e.g.* SPC Exhibit 5a; Fairwind Exhibits 4, 5. This argument is not only wholly unsupported by the record but also demonstrates the opposition's fundamental misunderstanding of the Council's iterative procedures.

III. LEGAL STANDARD

Pursuant to CGS § 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 two GE 1.6 MW wind turbines, and associated ground equipment, an access road, an ancillary building and a 13.8-kiloVolt ("kV") electrical interconnection at the Property.

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 . . .

Approval of the Project is warranted under CGS § 16-50k(a), since the Project is a grid-side distributed resources facility under 65 MW that complies with the air and water quality standards of the Connecticut Department of Environmental Protection ("DEP"). The record is clear that the Project complies with the air and water quality standards of DEP and therefore the Project must be approved.

While BNE believes that compliance with DEP air and water quality standards is the appropriate and only standard of review for this petition, the Council has indicated that, pursuant to CGS §§ 16-50k and 4-176 as well as RCSA § 16-50j-38, that the Council has jurisdiction to approve a petition for declaratory ruling so long as the facility will not have a substantial environmental impact and therefore would not require a certificate of environmental compatibility and public need. Further, the Council has indicated that, in determining whether a facility has a substantial environmental impact, the Council must consider the criteria laid out in CGS § 16-50p, which includes the consideration of "[t]he nature of the probable environmental impact of the facility . . . including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether along or cumulatively with other effects, on, and conflict with the policies of the state 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.” *See* CGS § 16-50p (3)(B); *see also* March 31, 2011 Hearing Transcript (“TR”) at 17-18. Even if this heightened standard of review is applied to this petition, which BNE argues is not the applicable standard, the record is clear that the Project will not have a substantial environmental impact and therefore the petition must be granted.

IV. ARGUMENT

A. The Project Complies with DEP Air and Water Quality Standards

The Project satisfies the requirements of CGS § 16-50k(a) because it is a grid-side distributed resources facility under 65 MW and complies with DEP air and water quality standards, as further demonstrated below.

1. The Project Complies with DEP Air Quality Standards

The Project complies with the applicable DEP air quality standards found at RCSA § 22a-69-1 *et seq.* Wind Prospect will result in no air emissions. Petition at 1. In fact, it is unrefuted in the record that the Project will not only comply with DEP air quality standards, but also will result in a net benefit to air quality in the State of Connecticut. As described in the pre-filed testimony of Joel Rinebold, the production of 8,410 megawatt hours (“MWh”) per year of clean, renewable energy will reduce CO₂ emissions by approximately 4,222 tons per year. *See* BNE exhibit 9i. In addition to a reduction in CO₂ emissions, the Project will cause a reduction in health-related criteria pollutant emissions. In fact, DEP itself acknowledged the same in its comments submitted to the Council in this proceeding dated March 14, 2011. DEP stated that “[w]hile 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. . . .” See DEP correspondence dated March 14, 2011. 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 by any other party or intervenor to this proceeding. In addition, the production of 8,410 MWh per year of clean, renewable energy will also 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.

2. The Project Complies with DEP Water Quality Standards

The record is equally clear that 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 14.

a. Groundwater Impacts

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. The Property itself is located on a glacial drumlin comprised of glacial till with till soil ranging from a depth of zero to fifty feet or deeper. See BNE Exhibit 21. The Project abuts property owned by CWC, which hosts CWC’s watershed land, from which CWC supplies potable water to CWC customers in 55 towns. As was demonstrated in this proceeding, BNE has made a concerted effort to work with CWC and incorporate its comments, requested changes and additional measures to satisfy any concerns that

CWC may have regarding impact to drinking water by the Project. In doing so, BNE submitted plan revisions requested by CWC on both the original location of the northern turbine (*see* BNE Exhibit 3) and the revised location of the northern turbine (*see* BNE Exhibit 18a).²

The excavation for the turbine foundations requires a depth of less than ten feet. *See* BNE Exhibit 21. As a result, no bedrock is anticipated to be encountered, and no blasting is expected to be required for the installation of the foundations for the proposed turbines. *Id.* BNE presented evidence from two Connecticut licensed environmental professionals (“LEP”), one of whom is also a geologist, concluding that the Project will have no impact to groundwater in the vicinity of the Project. *See* BNE Exhibits 18c, 21. This conclusion is further bolstered by the comments submitted by CWC dated March 29, 2011, comments submitted by the Department of Public Health Drinking Water Section (“DPH”) dated January 5, 2011, and comments from DEP dated March 14, 2011. CWC concludes that, since BNE has agreed to implement the measures that CWC requested, CWC believes that the measures will provide adequate protection to the water resources at the site and that there will be no adverse impact to the water supply. *See* CWC correspondence dated March 29, 2011. The DPH comments and DEP comments make it clear that neither DPH nor DEP have concerns about the Project’s potential impact (or lack thereof) to groundwater. Finally, Fairwind’s “expert” engineer agreed

² Much was made of the fact that BNE submitted several sets of revised plans during this proceeding. However, the record is clear that these plan revisions were undertaken for the purpose of incorporating requested comments and changes by CWC as well as a minor re-location of one of the two proposed turbines in order to move that turbine even further away from abutting residential properties. This process is in keeping with Council practice, which demands an iterative process in which parties, intervenors and stakeholders work together in order to maximize use of a site and, at the same time, minimize environmental impacts including impacts to property owners in the vicinity of a project. *See, e.g.*, Docket 396. In fact, in the Council’s review of docket 370, a transmission project traversing multiple towns, the applicant, the Connecticut Light and Power Company, even filed its application as two alternative projects in order to ensure that the Council and all stakeholders had the ability to weigh the benefits of impacts of different scenarios.

that the two turbine foundations will have no appreciable effect on groundwater flow. *See* March 15, 2011 TR at 193.

Other parties and intervenors have attempted to argue that the Project will have an impact to groundwater due to the proximity of the Project to the U.S. Cap and Jacket property, located at 214 New Haven Road in Prospect. *See* Exhibit 21. However, the only “expert” testimony submitted concerning potential groundwater impacts as it relates to the U.S. Cap and Jacket property was from a single individual who is wholly unqualified to render any opinion regarding impacts to groundwater.

In its attempt to provide such testimony, SPC presented Mr. John Stamberg. *See* SPC Exhibit 4i. However, Mr. Stamberg is not a licensed professional engineer in the State of Connecticut, is not a Connecticut LEP and is not a geotechnical engineer. He is an engineer licensed only in the State of Louisiana. *See* March 15, 2011 TR at 130-131. In addition, he conducted no on-site investigation at either the BNE Property or the U.S. Cap and Jacket property. *See* March 15, 2011 TR. Simply put, Mr. Stamberg is not qualified to render any opinions concerning potential impacts to groundwater as a result of the Project.

What is clear from the record is that while there is documented contamination at the U.S. Cap and Jacket property, the “plume” associated with this contamination is moving *away* from the BNE Property, which both the Town of Prospect and Mr. Stamberg admit. *See* March 15, 2011 TR at 48, 133. It is also equally clear and unrefuted that, given the soil composition on the Property, no blasting is expected to be utilized for development of the Project, and therefore there is no possibility that the Project will impact groundwater, including potential disturbance to the contamination at the U.S. Cap and Jacket property. *See* Exhibits 18c and 21; *see also* March 3, 2011 TR at 123-125 (one of BNE’s two Connecticut LEP’s concluding that: “it’s clear to say

that all activities we're doing is on the opposite downhill slope of where the contamination exists. So, I don't see a direct connectivity of the contamination source being intercepted by surface water and then going into the groundwater. All our flows are generally flowing to the west. We're talking about something that is over in elevation and then down the other side to the east of us. So, I – I just don't see there to be a direct connection there for that to really occur. I think it's a very, very, very remote possibility.”). Mr. Stamberg's unqualified supposition about potential impacts is not evidence in this proceeding nor should it be considered by the Council.

DEP clearly rejects Mr. Stamberg's suppositions and agrees with BNE's unrefuted evidence that the development of the Project would not impact the existing conditions at the U.S. Cap and Jacket property. As DEP itself stated, “the degree of contamination in the bedrock at the factory site is not significant” and “surficial groundwater flows from U.S. Cap and Jacket would not be likely to migrate in the direction of the turbines.” *See* DEP comments dated March 14, 2011. Notably, CWC did not indicate any concern regarding the U.S. Cap and Jacket property in its participation and submitted comments in this proceeding. *See* CWC comments dated March 29, 2011. There can be no dispute that DEP and CWC are the two largest stakeholders in determining compliance with DEP groundwater quality standards and protecting groundwater in this area and it is clear that both DEP and CWC agree with BNE's experts that development of the Project will have no impact to groundwater.

b. Surface Water Quality Impacts

Similarly, the Project will not have a negative impact on surface water quality on the Property or in the vicinity of the Property. As noted in this proceeding, the development of the Project, utilizing the alternative location for the northern turbine, will result in only 7.71 acres of temporary disturbance and just over one acre of permanent disturbance from the entire parcel of

67.5 acres. The area of permanent disturbance will include the gravel access driveway and small parking area, crane access pads and the storage building. *See* BNE Exhibit 25, March 31, 2011 TR at 278-79. The development of this Project will result in far less impact than the development of the Property for residential purposes. In addition, the record is clear that the Project will have no direct impact on wetlands and will not be discharging directly to surface waters of the state. *See* March 31, 2011 TR at 278; *see also* BNE Exhibits 9c, 9f, 14, 18b, 22.

Opponents of the Project have attempted to argue that the soil erosion and sedimentation controls, as proposed, are insufficient, do not comply with the DEP's 2002 Connecticut Guidelines for Soil Erosion and Sediment Control ("2002 Guidelines") and 2004 Connecticut Stormwater Quality Manual ("2004 Manual") and will therefore result in impacts to surface waters. *See* SPC exhibits 4d, 5a, Fairwind Exhibits 2, 4 and 5. These baseless arguments are apparently founded on the fact that BNE did not submit 100 percent complete construction drawings with its petition. These arguments are unsupported by facts in the record and are based on the opponents' fundamentally flawed misunderstanding of Council procedure and misinterpretation of DEP water quality standards in an apparent effort to defeat the Project. SPC and Fairwind's flawed arguments that BNE was somehow required to file 100 percent complete construction drawings have no basis in any Council guideline, regulation or statute.

First, SPC and Fairwind demonstrate a fundamental lack of understanding of the Council's procedure and instead seek to impose their own arbitrary requirements regarding filing requirements and level of detail required in the Council's filing requirements. This is contrary to Council procedure and lacks any support in Council statutes, regulations or application guidelines. In fact, in reviewing the Council's guidelines for renewable facilities under 65 MW, which the Project indisputably falls under, there is *no* requirement that any engineered plans be

filed with a petition for declaratory ruling for such a facility. *See* Council’s Petition for Declaratory Ruling Energy Facility guide, updated April 2010. Therefore, SPC and Fairwind’s arguments that BNE should have filed 100 percent complete construction drawings is simply unsupported.

BNE submitted preliminary drawings for review during this locational approval portion of this proceeding. Assuming that two turbines are approved on the Site, BNE will then move into the development and management (“D&M”) portion of this proceeding and 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). This is consistent with the Council’s past practice in its review of renewable energy facility petitions for declaratory ruling. *See* Petition 784, Decision and Order and Petition 834 Decision and Order (with specific development and management plan requirements including development of stormwater management systems and “final” site plans).

Based on the foregoing, there is simply no basis for SPC or Fairwind to argue that BNE should have submitted 100 percent complete construction drawings with 100 percent complete stormwater management systems at this stage in this proceeding. 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 will result in no direct impacts to wetlands or surface waters of the State and comply with the DEP’s 2002

Guidelines and 2004 Manual. *See* March 31, 2011 TR at 163, 278; *see also* BNE Exhibits 9c, 9f, 18b, 22.

Furthermore, SPC and Fairwind convey a fundamental misunderstanding of DEP's guidelines in an apparent attempt to defeat the Project at any cost. SPC and Fairwind's purported position stretches the DEP guidelines into something they are not: requirements, regulations or directives. Instead, the 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.

Instead, the DEP's 2002 soil erosion and sedimentation 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. Similarly, the 2004 Stormwater quality manual also 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 #40.

Even SPC's purported wetlands expert admits that the DEP water quality standards are simply "narrative standards that identify goals and objectives of the water control program of the state." *See* March 15, 2011 TR at 156. Despite this admission, SPC and Fairwind have continued to make the baseless argument that the DEP 2002 guidelines and 2004 manual are requirements, regulations or directives and have sought to impose their own tortured interpretation of those "narrative standards that identify goals and objectives" and cast them as

regulation. SPC and Fairwind's flawed interpretations of narrative guidelines are simply not relevant to this proceeding.

SPC and Fairwind's misinterpretation of the DEP 2002 guidelines and 2004 manual does not end there, however. SPC and Fairwind go even further and seek to impose a "requirement" not included in those documents—that even if a project is not discharging water into surface waters of the State, that certain guidelines must nonetheless be followed. Again, a simple review of the 2002 guidelines and 2004 manual shows this argument to be meritless. *See* Council Administrative Notice Items #9 and #40. Only if a project proposes direct discharges to the waters of the State of Connecticut do many of the guidelines even apply. Therefore, since the Project does not propose any such discharges, many of the guidelines are simply inapplicable.³

Finally, BNE notes that beyond the evidence BNE has submitted establishing that construction of the Project will not result in direct impacts to wetlands and will not result in discharges to surface waters of the state in compliance with DEP guidelines, the Council has received detailed comments from DEP in this proceeding. Nowhere in the seven pages of its comments does DEP raise any issues or concerns regarding stormwater runoff or lack of compliance with DEP surface water quality standards. *See* DEP comments dated March 14, 2011. Clearly, the largest stakeholder in ensuring compliance with DEP water quality standards is DEP itself. SPC and Fairwind are hard-pressed to argue that such standards are not being met when the agency with cognizance over the matter agrees with BNE's contention that the Project will comply with applicable water quality standards.

³ While opponents may attempt to argue that a failure of an erosion control measure may result in such a discharge, this argument is completely undermined by the fact that BNE has agreed not only to provide weekly erosion control measure inspections by an independent third party but also to permit CWC to inspect such measures at any time. *See* BNE Exhibits 3, 15, 18c, 25.

B. The Project Will Not Have a Substantial Adverse Environmental Effect

While BNE argues that the appropriate legal standard under which to review this petition is compliance with DEP air and water quality standards—with which BNE has demonstrated compliance—the Council has indicated that it may view its standard of review as extending to consideration of whether the Project will not have a substantial adverse environmental effect. To the extent that the Council applies that standard of review, the record is clear that the Project will not conflict 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). As discussed below, the record is clear that the Project will have minimal environmental impact and any such impact certainly does not rise to the level of substantial adverse environmental effects.

1. The Natural Environment

The Project complies with state policies concerning the natural environment. Connecticut has expressed a goal 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 implemented renewable portfolio standards (“RPS”) that require 27 percent of electric generation within the State to be produced by renewable resources by 2020. Twenty percent of the required 27 percent must be generated by Class I renewable energy sources, which include wind. The Project would be the first commercial wind generation facility to be approved and constructed in the State, and would represent a meaningful step toward achieving Connecticut’s expressed commitment to renewable energy.

2. Ecological Balance

The Project will not have a substantial adverse environmental effect in terms of ecological balance. Construction of the Project will entail the permanent conversion of slightly more than one acre of habitat on a 67+ acre site. Most conversion will be temporary and will be limited to the anticipated four month construction phase of the Project. *See* BNE Exhibit 1, 9c, 25.

As is discussed in BNE's terrestrial habitat report, and as is unrefuted in the record, the Property does not contain any high value wildlife habitat. *See* BNE Exhibit 1. In fact, as addressed in that report, the greatest value that the Property plays is the role of undeveloped open space in the larger landscape. *Id.* And, it is equally clear that BNE has no intentions of developing the vast majority of the Property and has, in fact, agreed to permanently protect the most environmentally sensitive areas of the Property. *See* BNE Exhibit 15.

Finally, the record is unrefuted that the Project will have no direct impacts on wetlands resources on the Property. *See* BNE Exhibits 9c, 25, March 31, 2011 TR at 278-280. While SPC has attempted to argue that there will be wetlands impacts, this argument is made by a witness critiquing BNE's engineering plans without being qualified to do so and who has not conducted an on-site wetlands assessment. *See* SPC Exhibit 4d (indicating Mr. Klein is not a licensed engineer in the State of Connecticut or elsewhere); March 15, 2011 TR at 127.

3. Public Health and Safety

The Project represents a clean and safe method of electricity generation in a manner consistent with state policies to protect public health and safety. In terms of public health, the Project will generate electricity in a cleaner and more environmentally acceptable manner compared to conventional generation that uses nuclear material, natural gas, coal, or oil as fuel.

(a) General Safety Requirements

In terms of safety, the Project will meet all applicable safety requirements for construction, operation and electrical interconnection. The selected technology 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.

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. Service switches at the tower top prevent service personnel at the bottom of the tower from operating certain systems of the turbine while service personnel are in the nacelle. 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, 9a.

(b) Icing

Despite the fact that BNE's unrefuted ice throw study established that the chances of ice throw impacting surrounding residences or individuals is once in every 8,391 days, BNE has committed to employing shut down procedures and a specific re-start procedure, completely eliminating any potential risk due to ice. *See* BNE Exhibit 9h, Exhibit 14. The Project (using the proposed alternate location for the northern turbine) complies with GE recommended setback distances related to ice throws. 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 with accumulating ice slowing the blades; sensors would detect lower power outputs when compared to wind speed and would cause the turbine to automatically shut down. The shut down would protect the turbine from mechanical damage as well as act as a safety measure during an icing event. Internal monitoring can also detect icing events through an increase in rotor vibration caused by blade ice formation, leading to a shut down of the turbine. *See* BNE Exhibit 14.

The turbine would be monitored continuously by GE during operation. During known or predicted icing events, BNE would dispatch personnel to the site to monitor the turbines for icing. Once the turbines were shut down, BNE would have personnel on-site to assess ice accumulation and operating conditions. Those on-site personnel would inspect the turbines and ensure ice has melted and fallen from the blades prior to re-start.

(c) Noise

The Project complies with DEP noise control regulations. 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* BNE Exhibit 1, Vol. III, Ex. N; BNE Exhibit 9(d); BNE Exhibit 11.

The Project site is already developed with a telecommunications tower, a Class C Land Use category. The construction of electric generating wind turbines would also render the property a Class C land use. The DEP noise criteria from a Zone C emitter to a Zone A use is 61 dBA during the daytime (7:00 a.m. to 10:00 p.m.) and 51 dBA during the nighttime (10:00 p.m. to 7:00 a.m.). *See* Council Administrative Notice #42. The projected noise from the Project complies with DEP noise criteria and ranges from 28-46 dBA during both the daytime and nighttime conditions. *See* BNE Exhibit 11. This is underscored by the fact that the Connecticut DEP has provided a comment letter on BNE's petition and did not mention any issue with noise. *See* DEP Comments dated March 14, 2011.

Opponents of the Project have raised several concerns regarding BNE's noise analysis, none of which have any merit. First, opponents have attempted to argue that BNE should have conducted an analysis utilizing a residential (Class A) emitter for the proposed use. *See* SPC Exhibit 4a. They have argued this despite the fact that their own noise "expert" has admitted that wind turbines are an industrial use and despite the fact that the DEP noise regulations make it clear that class must be selected based on actual use, not zoning. *See* March 15, 2011 TR at 119; *see also* Council Administrative Notice #42 at 22a-69-2.1.

Opponents of the Project have also criticized the amount of background noise levels collected by BNE. However, this argument is equally meritless since the DEP criteria make it clear that background noise levels are irrelevant to compliance. In fact, SPC's own witness admits this to be the case. *See* March 15, 2011 TR at 120. Furthermore, opponents have argued that the BNE noise study did not take into account low frequency sounds or infrasound.

However, it is clear from the record that those issues were addressed and will not exceed DEP noise criteria levels. *See* March 31, 2011 TR at 230.

Finally, opponents have argued that despite the fact that DEP employs noise criteria through regulation, that the Council should instead adopt an amorphous analysis of annoyance level or potential health impacts from noise. *See* SPC exhibit 4a. This argument flies in the face of the DEP noise regulations and the purpose behind the implementation of criteria, which is to protect the public health and safety. If the opponents of the Project believe that these regulations do not adequately protect public health and safety, then the appropriate avenue for redress is revision to these regulations, not *ad hoc* revision by another agency on a case-by-case basis.

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.

4. Scenic, Historic and Recreational Values

VHB completed a review of the Project with the State Historic Preservation Office (“SHPO”). The SHPO has rendered a determination that the Project will have no adverse impact on historic and cultural resources in the State of Connecticut. This information is unrefuted. *See* BNE Exhibit 1 at Exhibit B.

In addition, the Project is not anticipated to have any impact on scenic or recreational values in the area. *See* BNE Exhibit 1, 9b. The Project will not be visible from the Naugatuck Trail, which is part of the Connecticut Blue-blaze system. However, the Project may be visible from a brief portion of the Beacon Cap Trail, which is a spur trail off of the Naugatuck Trail. *Id.* Other than these locations, the Project will not be visible or will be distantly viewable from locations well outside one mile away from the Project. *See* BNE Exhibit 18c.

In terms of general visibility, the Project or portions thereof will be visible from less than one percent of the surrounding five mile area (a five-mile radius Study Area emanating from the Project site). *See* BNE Exhibit 9b, 18c. The majority of potential year-round views of the turbine hub would occur on the Project site, the adjacent New Naugatuck Reservoir and New Haven Road. *See* BNE Exhibit 9b.

Using the 100-meter blade length, the areas where the proposed turbine hubs could be visible above the tree canopy year-round (during both “leaf-on” and “leaf-off” conditions) comprise approximately 160 acres within (or less than 0.05% of) the 5-mile Study Area. *See* BNE Exhibit 9b. At its apex, the blade(s) may be visible above the tree canopy from approximately 347 acres (less than 1 percent of the 5-mile Study Area). *Id.* Using the 82.5-meter blade length, year-round visibility of the blades above the tree canopy drops from approximately 347 acres to approximately 313 acres. *See* BNE Exhibit 18c.

Using the 100-meter blade length, approximately 50 residential properties within one mile of the Property may have at least partial views of the Project’s turbine(s) hub(s) during “leaf-on” conditions. *See* BNE Exhibit 9b. An additional 58 residential properties within one mile could have views of the blade(s) at the apex above the trees. *Id.* Using the 100-meter blade length, approximately 1,164 acres (representing approximately 2% of the Study Area) have the potential to offer some views of the turbine hubs through the trees during “leaf-off” conditions. *Id.* Most of the potential seasonal visibility occurs on and within approximately one mile of the Project site. *Id.* Using the 100-meter blade length, approximately 248 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. *Id.* As might be expected, use of the

shorter 82.5-meter blade length slightly reduces areas of predicted blade visibility. *See* BNE Exhibit 14, 18c.

Despite SPC and Fairwind's protests to the contrary, the record is clear that shadow flicker is essentially a non-issue. Neither party, nor any other party or intervenor to this proceeding, has produced any credible evidence demonstrating a significant potential shadow flicker effect. Using the revised location for the northern turbine, VHB's analysis indicates that if 100-meter diameter blades are used, a total of 93 receptors are predicted to have some shadow flicker occurrences. BNE Exhibit 18c. Annual durations of shadow flicker range from an approximate low of 9 minutes per year up to nearly 33 minutes. *Id.* Four receptor locations on Route 69 (New Haven Road) could slightly exceed 30 hours annually, including two residential structures located at 177 New Haven Road, one residential structure at 213 New Haven Road, and the commercial office building located at 207 New Haven Road. *Id.*

However, when employing 82.5-meter blade diameters and also using the revised location for the northern turbine, a total of 77 receptors are predicted to have some shadow flicker occurrences. BNE Exhibit 18c. Annual durations of shadow flicker range from an approximate low of 14 minutes per year up to nearly 25 minutes. *Id.* No receptor locations are predicted to exceed 30 hours annually. *Id.*

5. Forests and Parks

As discussed *supra* in Section III.B.4, the only potential impact to forests and parks of the State of Connecticut would be potential visibility of the turbines from those areas. And, as discussed by Mr. Libertine, existing telecommunications on the Property as well as the two additional telecommunications towers on properties abutting the Property are currently viewable from those areas. *See* March 3, 2011 TR. As can be seen in BNE Exhibit 18c, some scenic

locations or parks may have distant views along with views of the existing telecommunications facilities. *See* BNE Exhibit 18c.

6. Air and Water Purity

As discussed *supra* in Section IV.A.1, 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 emissions.

In terms of water purity, as discussed *supra* in Section IV.A.2, the record is clear that the Project will comply with DEP Water Quality Standards including both groundwater quality standards and guidelines and surface water standards and guidelines. *See* BNE Exhibit 14. 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.*

BNE has worked closely with CWC, as CWC watershed land abuts the Project site, and has incorporated its comments and requested changes in order to satisfy any concerns that CWC may have regarding impact to drinking water by the Project. BNE submitted plan revisions requested by CWC on both the original location of the northern turbine (*see* BNE Exhibit 3) and the revised location of the northern turbine (*see* BNE Exhibit 18a). CWC believes that the measures will provide adequate protection to the water resources at the site and that there will be no adverse impact to the water supply. *See* CWC Comments dated March 29, 2011, March 30, 2011.

In addition, neither the Public Health Drinking Water Section of the DPH nor the DEP have concerns about the Project's potential (or lack thereof) impact to groundwater. *See* DPH correspondence dated Jan. 5, 2011; DEP correspondence dated March 14, 2011. Even

Fairwind's "expert" engineer agreed that the two turbine foundations will have no appreciable effect on groundwater flow. *See* March 15, 2011 TR at 193.

Similarly, the Project will not have a negative impact on surface water quality on the Property or in the vicinity of the Property. As noted in this proceeding, the development of the Project, utilizing the alternative location for the northern turbine, will result in only 7.71 acres of temporary disturbance and just over one acre of permanent disturbance from the entire parcel of 67.5 acres. *See* BNE Exhibit 25. The area of permanent disturbance will include the gravel access driveway and small parking area, crane access pads and the storage building. *See* BNE Exhibit 25, March 31, 2011 TR at 278-79. The development of this Project will result in far less impact than the development of the Property for residential purposes. In addition, the record is clear that the Project will have no direct impact on wetlands and will not be discharging directly to surface waters of the state. *See* March 31, 2011 TR at 278; *see also* BNE Exhibits 9c, 9f, 14, 18b, 22.

As noted by the DEP:

As 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...Mitigating the scale of these structures is the reasonably large size of the host site and the presences of the undeveloped Connecticut Water Company property to the west and north. The host turbine sites have a remote feel to them, with no homes visible from either site and with topography screening of the Sites from homes to the east and southeast, at least at ground level.

See DEP correspondence dated March 14, 2011. DEP staff also noted nearby homes of particular concern that have minimal existing screening from the turbines including homes on New Haven Road (#s 187, 198, 210, 213, 220), and on George Street (# 2 and four homes on the south side of the street) and Lee Road (#s 13, 15 and 17). *Id.* BNE has committed to growing

evergreen trees and/or shrubs on the Property where existing trees do not exist along the eastern border of the Site that abuts the homes along Route 69. *See* BNE Exhibit 24. Additionally, BNE has committed to establishing a funding mechanism whereby nearby homes noted by DEP staff that do not have sufficient screening from the wind turbines will be reimbursed for the cost of reasonable screening. Also, the proposed alternate location of the northern turbine will increase the setback to a minimum of 920 feet from the nearest home, which will further mitigate any visual concerns.

7. Fish, Aquaculture and Wildlife

Fish and aquaculture are not associated with the Project site and the record is clear that there is no alleged or potential impact to such species. In terms of wildlife, the Property does not consist of any high value wildlife habitat. *See* BNE Exhibit 1. In fact, as addressed in that report, the greatest value that the Property plays is the role of undeveloped open space in the larger landscape. *Id.* And, it is equally clear that BNE has no intentions of developing the vast majority of the Property and has, in fact, agreed to permanently protect the most environmentally sensitive areas of the Property. *See* BNE Exhibit 15. Again, the limited habitat disturbance caused by the Project is mostly temporary. *See* BNE Exhibit 1, 9c, 25.

The record is unrefuted that the Project will have no impact on any endangered, threatened or species of special concern. BNE has assumed presence of the eastern box turtle, a species of special concern in the State of Connecticut. *See* BNE Exhibit 1, Vol. III, at Exhibit I. The DEP has accepted BNE's action plan for the eastern box turtle. *See* BNE Exhibit 1, Vol. III, Ex. I; DEP correspondence dated March 14, 2011. BNE has committed to promptly report to the DEP any observations, relocations or fatalities of eastern box turtles on the Site. *See* BNE Exhibit 24.

In terms of birds, the breeding birds identified at the Site are regionally common and no high value bird habitats are located within the development area of Wind Prospect. *See* BNE Exhibit 1, Vol. III, Ex. M; BNE Exhibit 9(e). The highest breeding bird relative abundance and species richness were recorded within the grassland and forest edge portion of the study area and not within forested areas of the site proposed for turbine siting. *See* BNE Exhibit 1, Vol. III, Ex. M. While wind projects do result in collision-induced mortality of birds, these impacts have not been shown to result in population-level effects. The Project will not have undue impacts to breeding bird populations in the Prospect area. *See* BNE Exhibit 1, Vol. III, Ex. M; BNE Exhibit 9(e).

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 March 14, 2011. DEP staff also indicated that grassland and early successional habitat are management targets both in Connecticut and in the Northeast. *Id.* The Project development would actually increase these types of habitat on the Site. BNE Exhibit 9(e). No state listed or federally listed species of concern were identified at the site during the survey. *See id;* BNE Exhibit 1, Vol. III, Ex. M.

BNE has committed to conducting an additional migratory bird study on the Site from March to April 2011. This additional data will be provided to the DEP to better inform of bird activity on the Site. *See* BNE Exhibit 24.

In terms of bats, the record is clear that the Project will not have undue impact to bat populations. *See* BNE Exhibit 9(e). 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. *Id.* This factor was specifically considered in determining the locations of the two proposed turbines on the proposed project site. *Id.*

Not only does the siting of the proposed turbines avoid potential bat habitat, but additional design features of Wind Prospect help to further minimize potential impacts to bats. *See* BNE Exhibit 9(e). These include not creating or locating either of the turbines near permanent standing water, minimization of clearance areas for roads, turbines and infrastructures. *Id.*

The Project is not anticipated to have undue impacts to bat populations. *See* BNE Exhibit 9(e). While wind projects do result in collision-induced mortality of bats, these impacts have not been shown to result in population-level effects. *Id.* Bat fatality patterns observed at facilities within the region in similar forest-dominated landscapes have been low to moderate based on regional study results. *Id.*

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 Prospect. *See* BNE Exhibit 9(e). For example, the mean project size for studies included in Table 8 is 53.8 turbines (range: 3-195). *Id.* Wind Prospect will likely have a much more limited impact in terms of bat fatalities compared to these facilities given the fact that only two turbines are proposed for the site. *Id.*

Furthermore, measured bat activity on the site was highest between July 16 and July 22, 2010, whereas post-construction monitoring at wind-energy facilities throughout North America show the highest number of bat casualties during fall migration (approximately mid-August through mid-September) with lower numbers in general in the summer and spring. *See* BNE

Exhibit 9(e). Based on this information, fatality rates for bats at the proposed project site are anticipated to be low to moderate. *See* BNE Exhibit 9(e).

While Fairwind and SPC have attempted to criticize BNE's pre-construction monitoring time frames and methodology for the bird and bat studies, both Fairwind and SPC yet again are seeking to hold BNE to “standards” or “requirements” that simply do not exist. SPC and Fairwind make the astonishing argument that the Project should comply with guidelines from the states of New York, Pennsylvania or New Jersey. Apparently, Fairwind and SPC are unaware that the Project is located in the State of Connecticut. Furthermore, Fairwind and SPC have argued that the bird and bat surveys do not fully comply with the United States Fish and Wildlife Service (“USFWS”) interim draft guidelines. *See* Council Administrative Notice #36. Again, they fail to point out that those draft guidelines were released in February 2011, apparently making the argument that BNE should have complied with guidelines that were not yet released. *Id.* In addition, as with many other issues raised in this proceeding, Fairwind and SPC draw the illogical conclusion that draft interim guidelines are “requirements.” Despite their attempts to muddy the record, it is clear that BNE appropriately met with DEP in the spring of 2010 and went above and beyond the bird and bat studies that DEP requested BNE to perform. *See* BNE Exhibit 24. DEP clearly concurs with that and concluded that, “[i]n general, the methods and process used for the acoustic bat surveys are appropriate, but a few modifications could have improved the results.” *See* DEP correspondence dated March 14, 2011. Specifically, DEP staff expressed concern with the placement of the Anabat detectors, stating that placement at a higher elevation may have increased quality and detection rates of hoary bats in particular. *Id.* BNE elected to utilize ground-based Anabat detectors because placement of an elevated detector would have required lowering the meteorological tower to the ground which may have damaged

meteorological instrumentation and resulted in study delay. *See* BNE Exhibit 8, R64; BNE Exhibit 24. Moreover, ground-based Anabat sampling is a respected method of sampling and has been used during pre-construction acoustic bat monitoring at commercial wind energy projects for years. *See* BNE Exhibit 24.⁴

BNE has volunteered to perform additional bat monitoring for the period of May to November 2011 and would 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 24.

Any adverse environmental effects will be minimized to the extent possible through the use of appropriate mitigation and control measures. As noted by BNE in its response to the DEP's March 14, 2011 correspondence, BNE is willing to implement mitigation efforts and 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. 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).

V. CONCLUSION

Wind Prospect will provide numerous and significant benefits to the Town of Prospect, the State of Connecticut and its citizens, and will place the Town of Prospect at the forefront of green energy development while producing significant environmental benefits with minimal

⁴ Additionally, an expert presented by SPC on March 15, 2011 indicated that the number of Anabat units used by WEST during its acoustic bat study was in line with projects he has worked on. *See* March 15, 2011 TR at 129-30.

environmental impact. Pursuant to CGS § 16-50k(a), the Council shall approve by declaratory ruling the construction or location of a grid-side distributed resources project or facility with a capacity of not more than 65 MW, as long as such project meets DEP air and water quality standards. The Project meets these criteria. 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 . . .” and, as demonstrated herein, the Project will meet DEP air and water quality standards.

Additionally, the Project will not have a substantial adverse environmental effect, and will comply with CGS § 16-50p(a)(3)(B) in that it will not conflict 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.

Accordingly, BNE Energy respectfully requests that the Siting Council approve the location, construction and operation of the Project by declaratory ruling.

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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