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 No. 980**
	April 28, 2011

SAVE PROSPECT CORP'S COMMENTS ON SITING COUNCIL'S DRAFT FINDINGS OF FACT

Preliminary Statement

Save Prospect Corp. ("SPC") has reproduced on the following pages the Siting Council's Draft Findings of Fact dated April 14, 2011, and has inserted after each paragraph thereof SPC's comments. In addition, SPC adopts and incorporates by reference the comments and proposed findings of fact submitted by parties FairwindCT and Messrs. Lamontagne and Satkunis as if fully set forth herein. SPC also submits herewith its proposed Findings of Fact.[1]

[1] These comments are in addition to and not a limitation of statements in SPC's proposed findings of fact, its prior objections and motions, or SPC's right to amend, supplement and further explain its comments in its post-hearing brief.

PETITION NO. 980 - BNE Energy, Inc. petition for 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 Energy facility located at 178 New Haven Road, Prospect, Connecticut

[CONNECTICUT SITING COUNCIL'S]
DRAFT FINDINGS OF FACT

Introduction

2. Pursuant to CGS §16-50k(a), the project is eligible to be approved by a declaratory ruling since it is a grid-side distributed resources facility under 65 MW that is in compliance with air and water quality standards of the Connecticut Department of Environmental Protection (DEP). (BNE 1,Vol. 1,p. 1)

Comments: **SPC disagrees with this interpretation of the statute and states that the Petition on its face fails to qualify or be eligible to be approved by declaratory ruling; that the declaratory ruling process was never intended to be used for projects of this type; that neither the Petition as presented at the time of filing nor its various iterations comply with DEP air and water quality standards; and that the Petition process does not permit the significant, substantive revisions to the Petition that the Council has permitted in this case; and that each significant or substantive revision constitutes a new Petition that must be subject to review that accords the other parties to the proceedings substantive and procedural due process rights, including but not limited to a reasonable opportunity in advance of a hearing or decision to receive and review the materials presented by the Petitioner, a reasonable opportunity to present additional or contrary evidence, a reasonable opportunity to confront and to cross-examine all witnesses and consultants; and full and fair consideration of all relevant issues, including due consideration for the property rights and interests of other parties and a balancing of benefits and harms that is not limited to the issues deemed relevant by the Siting Council in these proceedings.**

SPC further challenges the Siting Council's jurisdiction under the statute cited and challenges the constitutionality of the statute cited and other statutes and regulations cited or relied upon by the Siting Council, both on the face of such statutes and regulations and as applied in this case.

3. Pursuant to CGS § 16a-35k, Connecticut state energy policy includes the goal to "develop

and utilize renewable energy resources, such as solar and wind energy, to the maximum extent possible." (BNE I, Vol. 1, p. I)

Comments: This fact is irrelevant to the issue before the Siting Council. which is whether the Petitioner is entitled to the ruling that it seeks in this case, on the record presented, and whether the subject site is an appropriate site for the proposed project.

4. BNE is a West Hartford based company, founded in 2006 for the purpose of constructing and operating commercial wind generation projects in Connecticut and elsewhere. (BNE 1, Vol. 1, p. 2)

Comments: There is no evidence in the record, other than BNE's statement, that it intends to operate wind generation projects after obtaining approvals, rather than turning over operations to another entity or "flipping" the projects for a profit. BNE has no contracts to sell the power produced at this site nor, as acknowledged by Mr. Corey, does it have a contract or a letter of intent to purchase turbines to be located at the property.

5. The State of Connecticut has implemented renewable portfolio standards (RPS) that required 14 percent of electric generation within the state be produced by renewable resources by 2010. By 2020, RPS requirements increase to 27 percent, 20 percent of which must be from Class I renewable energy sources, which includes wind. (BNE 1, Vol. 1, p. 3)

Comments: This fact is irrelevant to the issue before the Siting Council, which is whether the Petitioner is entitled to the ruling that it seeks in this case, on the record presented, and whether the subject site is an appropriate site for the proposed project. To the extent that this fact may be considered relevant, it omits other facts, such as the negligible contribution that the proposed project would make meeting the RPS and the existence of other means, methods and technologies that would be far more effective with far fewer negative impacts on the environment and the quality of life of nearby property owners.

7. On November 17, 2010, BNE provided notice of the filing to all adjacent landowners via certified mail, return receipt requested. BNE received return receipts for all abutting property owners except for one, which is U.S. Cap, Inc. BNE sent a second notice to this property owner via regular mail. (BNE 1, Vol. 1, Tab D; BNE 2, R. 12)

Comments: This finding does not impact the rights of any affected landowners who may later challenge the notice provided. Further, the record does not reflect that BNE gave proper notice to all owners of existing communications towers on

or adjacent to the site.

14. BNE expects the proposed project to be completed and ready for commercial operation in late 2011. (BNE 1, Vol. 1, p. 30) State Agency Comment

Comments: This fact is irrelevant to the issue before the Siting Council. which is whether the Petitioner is entitled to the ruling that it seeks in this case, on the record presented, and whether the subject site is an appropriate site for the proposed project.

16. The DPH Drinking Water Section provided comments on January 5, 2011. The DPH comments noted that the proposed project is located within the public water supply watershed of Long Hill Reservoir, which is an active source of drinking water for the Connecticut Water Company Naugatuck Central System. The proposed project would also be within 45 feet of a wetlands tributary leading to that water supply. DPH recommended the following.

a. Erosion and sediment controls should be used and maintained as necessary.
b. A responsible party should be named for the maintenance, inspection, repair, replacement and incorporation of new controls.
c. Machinery should be serviced outside the watershed.
d. Vehicles and machinery should be refueled on an impervious path with secondary fuel containment controls.
e. A fuel remediation kit should be kept on site.
f. The Connecticut Water Company should be notified prior to Commencement of the proposed project construction.
g. The Connecticut Water Company should be granted permission to periodically inspect the project to ensure that drinking water is not being affected.

(DPH comments dated January 5, 2011)

Comments: The Petitioner's plans fail to show compliance with these conditions and the Petition should be denied on that basis. Further, the Petitioner has failed to demonstrate the financial resources and responsibility to meet future conditions and obligations relating to maintenance, inspection, repair and replacement of controls during the useful life of the facility.

18. On March 14, 2011, DEP submitted comments regarding the proposed project, which are referred to in various portions of the Environmental section of these findings. (DEP comments dated March 14, 2011)

Comments: DEP's comments are dated March 14, 2011, which was the day before SPC presented its witnesses. Thus, SPC did not have these comments in advance

of the date on which it presented its evidence and testimony. The copy of the DEP comments posted on the Siting Council web site does not bear a date of receipt. Further, the Siting Council memorandum transmitting these comments to the parties bears a date of March 17, 2011. These comments should have been received and distributed prior to the commencement of hearings and if the Siting Council in fact had the DEP comments on March 14, 2011, they should have been provided to SPC and the other parties immediately.

Municipal Consultation

23. The concerns of Town of Prospect Planning and Zoning Commission about the proposed project are primarily the noise and ice throw from the proposed turbines and the project's impact on residential real estate values. (Tr. 5, p. 26)

Comments: SPC does not agree with this characterization of the concerns of the Town of Prospect Planning and Zoning Commission, which has stated that it is opposed to the project. (Town of Prospect Filings, Letter from Prospect Zoning Commissions dated February 2, 2011)

24. The Town of Prospect Inland Wetland Commission is concerned about the project's potential impact on an existing underground plume of industrial contamination from an adjacent property; the potential impact of the proposed project on the wetlands that exist on the property; the Inland Wetland Commission have asked for permission to enter the property at reasonable times to inspect the proposed project as it goes forward; and have requested a list of contacts from BNE that would be available to call in the event of an emergency. (Tr. 5, pp. 27-28)

Comments: The Petitioner has not demonstrated any reasonable effort to address these concerns or to provide sufficient information to show that there is not a legitimate basis for concern and the Petition should be denied on that basis. (Transcript March 15, 2011, page 27, lines 7-23, Donovan)

Other Permits

25. BNE would file with DEP for a General Permit for the Discharge of Stormwater and Dewatering Wastewaters Associated With Construction Activities. (BNE I, Vol. I, p. 30)

Comments: The Petitioner should be required to obtain such a permit in advance of a ruling by the Siting Council. The Petitioner has not demonstrated and will not be able to demonstrate compliance with DEP water quality standards and the Petition should be denied on that basis alone.

Proposed Site

30. Surrounding land uses include commercial and residential development. (BNE I, Vol. I, p. 7)

Comments: SPC disagrees with this characterization of "surrounding uses." The subject parcel is zoned residential and is a residential area, with the exception of businesses that are located along Route 69, which is used as a means of travel through Prospect and for access to the surrounding residential properties.

33. CWC owns the adjacent property to the west, which is used for the New Naugatuck Reservoir. Most of the CWC property is Class I watershed land with portions of it designated Class II watershed land. (BNE I, Vol. I, p.19)

Comments: The Siting Council should also take note of the watershed classification of the subject property and the appropriate limitations of use on such properties, as it does with respect to siting cell towers and other projects.

34. There are 52 residences within 2,000 feet of the proposed turbine locations. (BNE 2, R. 22)

Comments: See SPC Proposed Findings.

35. The distance of the proposed turbines to nearby properties is shown in the following table. (BNE 1, Vol. 2, Tab F; BNE 6, R. 13; BNE)

[Table Omitted]

Comments: SPC disagrees with the distances as shown is the table. Closest distance to the nearest residential property line to the base of a turbine is 417 feet. Further, this distance does not take into account the fact that the turbines rotate such that at various times the blade tips will point toward adjacent properties and will be up to 164 feet closer (a net distance of 253 feet) to the nearest adjacent property.

36. Access to the proposed site would extend from Kluge Road. A portion of the access road currently exists and would be upgraded then a new access road would be constructed to the turbine locations. (BNE 1, Vol. 1, p. 8)

Comments: The Petitioner has not shown the feasibility of this means of access, nor has it presented plans that comply with applicable standards. Without a Petition that shows an appropriate resolution of these issues, the project does not qualify to proceed as a Petition proceeding and the Petition should be denied.

37. Construction of the proposed project may require some improvements to Kluge Road. BNE would assess the condition of Kluge Road and determine if it is capable of withstanding the weight of the equipment that would travel the road to the host property. (Tr. 4, p. 86; Tr. 6, p. 173)

Comments: The Petitioner has not shown the feasibility of this means of access, nor has it presented plans that comply with applicable standards. Without a Petition that shows an appropriate resolution of these issues, the project does not qualify to proceed as a Petition proceeding and the Petition should be denied.

38. Off-site grading would be required between the end of the pavement on Kluge Road and the host property boundary. (BNE 8, R. 82)

Comments: The Petitioner does not have such grading rights and has not shown the feasibility of this means of access, nor has it presented plans that comply with applicable standards. Without a Petition that shows an appropriate resolution of these issues, the project does not qualify to proceed as a Petition proceeding and the Petition should be denied.

Project Description

40. The hub or tower of each proposed turbine is approximately 328 feet (100 meters) tall. The nacelle is at the top of the hub and contains the operation equipment. The proposed rotor blades are 132 feet each with a diameter of 270 feet (82.5 meters) for the three-blade configuration. BNE is requesting approval for 164-foot (50 meter) rotor blades with a 328-foot (100 meter) diameter for this petition. The total maximum height of the tower and rotor blades would be 492 feet (150 meters). (BNE I, Vol. I, pp. 7-8; BNE 6, R. 11)

Comments: None as a description of what BNE is requesting.

41. The proposed ancillary building would include restroom facilities and use an on-site well to meet sanitary and drinking needs. An on-site septic system would be required to dispose of wastewater. (BNE I, Vol. I, pp. 8-9)

Comments: The Petitioner has not investigated or demonstrated the impact of these facilities on the contamination in the aquifer and has not addressed the risks that these activities will cause the contaminant plum to migrate.

43. BNE investigated the use of a 262.5-foot (80 meter) hub height tower rather than a 328-foot (100 meter) hub height; however, due to the ground elevation in the area of the proposed turbines, the wind turbulence intensity would be higher causing more stress on the bottom of the blades versus the top of the blades. (Tr. 4, pp. 88-89)

Comments: SPC objects to this finding on the basis that the documents that form the basis for this finding were inappropriately filed under the terms of a Protective Order after the close of evidence and the underlying facts have not been supported by sworn testimony nor subject to cross-examination or an opportunity to present contrary evidence.

44. The turbine foundations are proposed to be octagonal, approximately 48 feet in diameter, and about four feet deep made of reinforced concrete. (Tr. 4, p. 114)

Comments: The Petitioner has undertaken no geotechnical investigation that would permit a determination of the appropriate and feasible footings. There is no competent evidence in the record to support this finding.

45. The power generated from the proposed wind turbines would be sold at wholesale to the grid. (Tr. 6, pp.214-215)

Comments: There is no evidence in the record to support this finding as BNE has no contract to sell the power generated by the proposed wind turbines.

46. BNE would agree to post a construction bond with the Council, if ordered. (Tr. 6, p. 62)

Comments: Specific bonding requirements should have been presented during the hearing and subject to comment and evidence presented by other parties as to their adequacy. Further, there is no evidence in the record that BNE is a financially responsible party that is capable of meeting such obligations.

47. BNE would agree to reimburse any reasonable expenses incurred by the Town of Prospect to hire experts to verity the proposed project would be built in accordance with final design plans. (Tr. 6, p. 62)

Comments: There is no evidence in the record that BNE is a financially responsible party that is capable of meeting such obligations.

48. The useful lifespan of the proposed turbines is approximately 20 to 30 years. At the end of that period, the equipment would be reviewed and a determination would be made to decommission or change out existing equipment. BNE would be willing to file a plan for decommissioning of the turbines during the Development and Management (D&M) Plan phase of the proposed project, if required by the Council. (BNE I, Vol. 1, p. 9; Tr. 6, pp. 62-63)

Comments: A decommissioning plan should have been presented with the Petition and subject to comment and evidence presented by other parties as to its adequacy. Further, there is no evidence in the record that BNE is a

financially responsible party that is capable of meeting such obligations. SPC further objects to any decision that defers the Petitioner's obligations to meet the requirements for a declaratory ruling to a D&M phase or D&M plan, as such is not authorized by statute or regulation and effectively deprive SPC and the other parties to respond and present contrary evidence regarding whether the Petitioner has met the requirements for a declaratory ruling before the Siting Council issues such a ruling.

49. BNE would be willing to file a certificate of liability insurance for the proposed turbines, with the town on an annual basis. (Tr. 6, p. 66)

Comments: There is no evidence in the record that BNE is a financially responsible party that is capable of meeting such obligations.

Northern Turbine Relocation

50. BNE would be willing to relocate the northem turbine approximately 160 feet south-southwest of its original location. This relocation would increase the distance of the turbine to the nearest residence. (BNE I8b, R. 12)

Comments: This is a mischaracterization of the record. BNE amended its plans to relocate the northern turbine tower shortly before the close of evidence in these proceedings, which should have resulted in a dismissal and a direction to begin the process over again. BNE's expert engineer, Mr. Cline, stated clearly on cross-examination that the amended plans showing the relocation of the north turbine are the only plans that he is willing to stand behind as a professional engineer. SPC and the other parties were not afforded a reasonable opportunity to examine these plans, present evidence and testimony as to issues and defects in the plans, and cross-examine BNE's witnesses as to these plans.

5I. The proposed relocation would also require the relocation of the laydown areas, crane pad, turnarounds and the position and slope of the access road (refer to Figure 3). (BNE 18b, R. 12)

Comments: This is a mischaracterization of the record. BNE amended its plans to relocate the northern turbine tower shortly before the close of evidence in these proceedings, which should have resulted in a dismissal and a direction to begin the process over again. BNE's expert engineer stated clearly on cross-examination that the amended plans showing the relocation of the north turbine are the only plans that he is willing to stand behind as a professional engineer. SPC and the other parties were not afforded a reasonable opportunity to examine these plans, present evidence and

testimony as to issues and defects in the plans, and cross-examine BNE's witnesses as to these plans.

52. The ground elevation at the relocated northern turbine would be 640 feet above mean sea level. (BNE 18b, Tab I)

Facility Operation

53. BNE worked with GE to find the proper location and product for the proposed wind turbines on the Prospect property. GE performed a Mechanical Loads Assessment taking into account wind shear, air density and turbulence intensity. Turbulence intensity at the location of the proposed turbines were found to be too high for the 270-foot (82.5 meter) rotor diameter turbine with a 262-foot (80 meter) hub height. The proposed 270-foot (82.5 meter) turbine with a 328-foot (100 meter) hub height was selected to reduce the turbulence intensity and loading on the turbine when in operation. (BNE 2, R. 1)

Comments: There is no competent evidence in the record to support these findings. No one from GE testified in these proceedings and there is no competent expert testimony to support these findings. The documents purporting to show GE's mechanical loads assessment is improperly subject to a protective order that interferes unreasonably with SPC's and other parties and the public's interests and right to participate in these proceedings.

54. The proposed 328-foot (100 meter) hub height would result in a higher energy output and capacity factor compared to the 262-foot (80 meter) hub height. (BNE 2, R. 1)

Comments: There is no competent evidence in the record to support these findings. No one from GE testified in these proceedings and there is no competent expert testimony to support these findings. The documents purporting to show GE's mechanical loads assessment is improperly subject to a protective order that interferes unreasonably with SPC's and other parties and the public's interests and right to participate in these proceedings.

55. The cut-in wind speed for the 270-foot (82.5 meter) rotor diameter turbine is 7.8 mph (3.5 m/s). (BNE 2, R. 7)

56. Based on measured wind data, the turbines are expected to spin approximately 7,787 hours over a one-year period, or 88.9 percent of the time. (BNE 2, R. 7)

Comments: The voluminous documents and data purporting to support this finding are improperly subject to a protective order that interferes unreasonably with SPC's and other parties and the public's interests and right to participate in these proceedings. Further, there is no competent expert testimony to

support these findings.

57. Based on measured wind data at the site, the proposed turbines are expected to run at full capacity for approximately 7.5 percent of the time during the year. (BNE 2, R. 8)

Comments: The voluminous documents and data purporting to support this finding are improperly subject to a protective order that interferes unreasonably with SPC's and other parties and the public's interests and right to participate in these proceedings. Further, there is no competent expert testimony to support these findings.

58. If the proposed wind turbines were placed too close together, there would be a potential of wind coming through one turbine and causing turbulence on the second turbine. The turbine would be affected by turbulence, would be damaged over time and/or would produce less electricity. (Tr. 6, p. 242)

Comments: There is no competent expert testimony in the record to support these findings.

Reliability

62. The proposed project would generate approximately 8,410 megawatt-hours (MWh) of Class I renewable energy annually. (BNE 1, Vol. 1, p. 11)

Comments: The voluminous documents and data purporting to support this finding are improperly subject to a protective order that interferes unreasonably with SPC's and other parties and the public's interests and right to participate in these proceedings. Further, there is no competent expert testimony to support these findings.

63. The proposed wind turbines are designed to have an availability of approximately 98 percent. The capacity factor of the proposed project is expected to be approximately 30 percent. (BNE 1, Vol. 1, p. 12)

Comments: There is no competent expert testimony in the record to support these findings. See Pre-filed Testimony of David Pressman dated February 16, 2011.

64. The remaining two percent of time that the turbines may be unavailable is typically due to routine maintenance or needed repairs. (Tr. 4, p. 83)

Comments: There is no competent expert testimony in the record to support these findings.

65. Maintenance is generally scheduled every six months and requires turbines to be shut down for approximately one and a half days. Maintenance includes tightening of bolts, changing filters, and topping off lubricants in the nacelle. (Tr. 4, pp. 83-84)

Comments: There is no competent expert testimony in the record to support these findings.

66. The proposed turbines could operate in a maximum extreme gust for a three-second period of approximately 125 miles per hour (mph) and for ten minutes at approximately 89.5 mph, in accordance with International Electrotechnical Commission standards. (BNE 1, Vol. 1, p. 13)

Comments: There is no competent expert testimony in the record to support these findings.

Capacity

67. BNE began searching in Prospect for a site because of Prospect's ground elevation and potential for wind resources. The search was focused on available property with enough acreage to accommodate several turbines, with the ability to interconnect with the electric grid, and with a low residential density in the surrounding area. (BNE 1, Vol. 1, p. 13; BNE 2, R. 5)

Comments: These facts are irrelevant to the issue before the Siting Council, which is whether the Petitioner is entitled to the ruling that it seeks in this case, on the record presented, and whether the subject site is an appropriate site for the proposed project.

68. BNE obtained an option to purchase the property of the proposed site. (BNE `, Vol. 1, p. 13)

Comments: These facts are irrelevant to the issue before the Siting Council, which is whether the Petitioner is entitled to the ruling that it seeks in this case, on the record presented, and whether the subject site is an appropriate site for the proposed project.

71. The nighttime (6:00 p.m. to 6:00 a.m.) and daytime (6:00 a.m. to 6:00 p.m.) average wind speeds for each month are shown in the table below.

[Table Omitted]

(BNE 4, R. 33)

Comments: **The voluminous documents and data purporting to support this finding are improperly subject to a protective order that interferes unreasonably with SPC's and other parties and the public's interests and right to participate in these proceedings. Further, there is no competent expert testimony to support these findings.**

Public Health and Safety

Operational Safety

72. The proposed turbines can be controlled from an interface within the nacelle, from a control box at the bottom of the tower, or remotely using a Supervisory Control and Data Acquisition System with local lockout capacity. (BNE 1, Vol. 1, p. 10)

Comments: **There is no competent expert testimony in the record to support these findings.**

74. The proposed turbines would have automatic fire extinguishers and fire alarms and additional, hand held fire extinguishers. (BNE 6, R. 45)

Comments: **There is no competent expert testimony in the record to support these findings or the adequacy of the fire alarms and fire extinguishing systems.**

Noise

77. The site is 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. (Council Administrative Notice Item 42; BNE 1, Vol. 2, Tab F; BNE 14, R. 39)

Comments: **The fact that the site has a telecommunications tower does not alter the fact that it is a "generally residential" area and is zoned residential. The applicable Class and the Class that provides reasonable consideration and protection of the vested property rights of nearby residents is Class A.**

78. 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.). (Council Administrative Notice Item 42)

Comments: **The fact that the site has a telecommunications tower does not alter the fact that it is a "generally residential" area and is zoned residential. The applicable Class and the Class that provides reasonable consideration and protection of the vested property rights of nearby residents is Class A.**

79. Noise modeling indicates the noise levels from the turbine hub locations would be 45 to 46 dBA at the nearest residences (Zone A use) during the daytime and nighttime, at a wind speed of 20.1 miles per hour. The projected noise from the turbine complies with DEP criteria. (Council Administrative Notice Item 42; BNE 1, Vol. 3, Tab M)

Comments: The projected noise does not comply with applicable DEP criteria at the property lines. The fact that the site has a telecommunications tower does not alter the fact that it is a "generally residential" area and is zoned residential. The applicable Class and the Class that provides reasonable consideration and protection of the vested property rights of nearby residents is Class A. (See SPC Proposed Findings of Fact)

82. Operation of the site would not generate low frequency noise that is subject to regulation since the turbine would not produce individual octave bands that are higher than other octave bands. (Tr. 6, pp. 228-230)

Comments: This finding ignores contrary evidence in the record and the impacts of low frequency noise with respect to unreasonable disturbance of neighbors and impacts on their quality of life and their right to the quiet use and enjoyment of their property. (See SPC Proposed Findings of Fact)

83. Walls, vegetation or other short barriers would not be effective in reducing sound levels at nearby receptors. (Tr. 6, pp. 150-151, 233-234)

Ice Throw

86. Ice throw and ice fall determinations were based on climate data obtained from on-site measurements from one winter season. Based on the collected climate data, the estimated amount of icing at the site is 192 hours per season. The risk level associated with the ice throw analysis is dependent on the amount of icing assumed for the site. An increase in the hours of icing would increase the risk of ice being thrown. (BNE 9h; BNE 14, R. 49; Tr. 2, p. 67; Tr. 4, pp. 207-208)

Comments: The evidence does not support the finding regarding the number of hours of icing. There is no competent expert evidence relating the climate data to icing on a wind turbine blade exposed to the wind at the elevations in question.

87. Ice can accumulate on stationary turbines and can fall off during melting conditions. The worst-case ice drop distance, assuming a 1.1-pound ice fragment, is approximately 226 feet from the base of the turbine. The typical drop range (90 percent of occurrences) of 1.1 pound and 2.2 pound ice fragments from a 328-foot rotor diameter is 131 feet from the base of the turbine. (BNE 9h)

Comments: **These findings are not supported by competent expert testimony. The statistical probabilities presented by the Petitioner's expert rely of false and flawed assumptions and modeling that has not been shown to reliably reflect actual conditions.**

88. The typical range (90 percent of occurrences) of a 1.l-pound ice fragment being thrown from a turbine with a 328-foot rotor diameter is 0 to 475 feet. Land-owners/properties within the typical range of the turbines include the site property, CWC and 15 Kluge Road. (BNE 1 Vol. 1, Tab D, Tab F; BNE 9h; BNE 14, R. 43)

Comments: **These findings are not supported by competent expert testimony. The statistical probabilities presented by the Petitioner's expert rely of false and flawed assumptions and modeling that has not been shown to reliably reflect actual conditions.**

89. The exceptional range (10 percent of occurrences) of a 1.1-pound ice fragment being thrown from a turbine with a 328-foot rotor diameter is 476 to 820 feet . Land-owners/properties within the exceptional range of the turbines are the same as above. (BNE 1 Vol. 1, Tab D, Tab F; BNE 9h; BNE 14, R. 43)

Comments: **These findings are not supported by competent expert testimony. The statistical probabilities presented by the Petitioner's expert rely of false and flawed assumptions and modeling that has not been shown to reliably reflect actual conditions.**

90. The typical range (90 percent of occurrences) for a 2.2-pound ice fragment being thrown from a turbine with a 328-foot rotor diameter is 0 to 508 feet. Land-owners/properties within the typical range of the turbines includes the site property, Naugatuck Water Company, 15 Kluge Road, 18 Kluge Road (CL&P), 214 New Haven Road (U.S. Cap Inc.), 200 New Haven Road (Demagistris), 190 New Haven Road, (Visockis), and 184 New Haven Road (McCormack). (BNE 1 Vol. 1, Tab D, Tab F; BNE 9h; BNE 14, R. 43)

Comments: **These findings are not supported by competent expert testimony. The statistical probabilities presented by the Petitioner's expert rely of false and flawed assumptions and modeling that has not been shown to reliably reflect actual conditions. SPC disputes the distances stated. The distances also fail to take into account the length and reach of the turbine blades from the base of the turbines.**

92. The closest residence to the turbines, 200 New Haven Road (Demagistris), is approximately 823 feet east of the northern turbine, within the 2.2-pound ice fragment exceptional range (328-foot rotor diameter). The probability of a 2.2-pound ice fragment striking a 10.7 square foot section of the residence is once in every 8,391 years, assuming

ice mitigation methods are not employed. (BNE 9h; BNE 14, R. 41)

Comments: These findings are not supported by competent expert testimony. The statistical probabilities presented by the Petitioner's expert rely of false and flawed assumptions and modeling that has not been shown to reliably reflect actual conditions. SPC disputes the distances stated. The distances also fail to take into account the length and reach of the turbine blades from the base of the turbines.

93. A residence at 190 New Haven Road (Visockis) is approximately 885 feet east of the northern turbine. The probability of a 2.2-pound ice fragment striking a 10.7 square foot section of the residence is greater than once in 10,000 years, assuming ice mitigation methods are not employed. (BNE 9h; BNE 14, R. 41)

Comments: These findings are not supported by competent expert testimony. The statistical probabilities presented by the Petitioner's expert rely of false and flawed assumptions and modeling that has not been shown to reliably reflect actual conditions. SPC disputes the distances stated. The distances also fail to take into account the length and reach of the turbine blades from the base of the turbines.

94. If a 270-foot (82.5 meter) rotor diameter was used at the site, the probability of a 2.2-pound ice fragment striking a 10.7 square foot section of the closest residence (823 feet east of northern turbine) is once in every 82,639 years, assuming ice mitigation methods are not employed. The probability of a 2.2-pound ice fragment being thrown beyond 837 feet is nil. (BNE 14, R. 41)

Comments: These findings are not supported by competent expert testimony. The statistical probabilities presented by the Petitioner's expert rely of false and flawed assumptions and modeling that has not been shown to reliably reflect actual conditions. SPC disputes the distances stated. The distances also fail to take into account the length and reach of the turbine blades from the base of the turbines. Further, the statement that the probability is "nil" is not the statement of BNE's expert.

95. GE has developed recommended setback distances related to ice throws. The southern turbine with a 270-foot rotor diameter would meet GE's recommended setback. The northern turbine with a 270 foot rotor slightly exceeds GE's recommended setback. BNE would be willing to shift the location of the northern turbine approximately 160 feet to the southwest. At this alternate location, the northern turbine would meet GE's recommended setback. The alternate location would increase the setback from the nearest residential dwelling from approximately 823 feet to 920 feet. (BNE 9h; BNE 14, R. 46; Tr. 6, pp. 40, 260-261)

Comments: **There is no competent evidence in the record to show that the Petitioner's plans meet GE's recommendations. SPC objects to this finding on the basis that the documents that form the basis for this finding were inappropriately filed under the terms of a Protective Order and include documents filed after the close of evidence. The underlying facts have not been supported by sworn testimony nor subject to cross-examination or an opportunity to present contrary evidence. SPC disputes the distances stated. The distances also fail to take into account the length and reach of the turbine blades from the base of the turbines.**

96. 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 down. 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 icing events. (BNE 14, R. 47; Tr. 2, pp. 78-79)

Comments: **These findings are not supported by competent expert testimony. The statistical probabilities presented by the Petitioner's expert rely of false and flawed assumptions and modeling that has not been shown to reliably reflect actual conditions. There is no evidence to show that the mitigation efforts would eliminate risks to adjoining properties.**

98. 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. (BNE 2, R. 9; BNE 14, R. 47; Tr. 2, pp. 74-75)

Comments: **These findings merely parrot BNE's self-serving statements. The phrase "known or predicted icing events" is meaningless. There are no criteria stated and no basis upon which to conclude that icing, which is inherently a local phenomenon, can be reliably predicted for this site. Further, as the statement implicitly admits, not all icing events will be predicted. These findings are not supported by competent expert testimony.**

100. Restarting and operation of a turbine with ice on the blades is the most dangerous scenario for ice throws. To prevent ice throws upon re-start, BNE would have on-site personnel inspect and ensure ice has melted and fallen from the blades prior to re-start. (BNE 14, R. 47, R. 48; Tr. 2, pp. 69-71, 73; Tr. 6, pp. 267-268)

Comments: **These findings describe highly improbable scenarios that are at odds with other findings, such as BNE shutting down turbines until all ice has melted and fallen from the blades, with no estimation of how long it would take for**

this to occur and how this would be consistent with BNE's claims regarding operational efficiency.

101. During severe icing events, BNE would curtail or completely shut down the turbines prior to the icing event to prevent ice throws. The turbines could be manually positioned away from favorable ice-forming wind conditions during turbine operation to reduce the amount of icing on the blades during the ice event. (BNE 14, R. 47)

Comments: This finding contradicts itself. There is no way that BNE could shut down the turbines at a time that is both "during" an icing event and "prior to" the event. There are no criteria identified and no expert testimony that would support the feasability of these findings.

102. GE offers an optional Winter Ice Operation mode that would allow the turbine to spin at slower speeds during icing events to keep the turbines operational and thus produce electricity. BNE is studying whether local weather conditions would warrant inclusion of this option. The mode can be added on after construction is completed. (BNE 2 R. 9; Tr. 2, pp. 86-89)

Comments: In a Petition proceeding, the Petitioner must present plans that show compliance with all applicable standards and are not dependent on future events or decisions.

Shadow Flicker

109. A German court case ruled that the actual exposure level of 30 hours per year of shadow flicker was acceptable at a neighboring property. (BNE 2a)

Comments: The court case is referred to in Mr. Libertine's testimony, but none of the details are provided. Mr. Libertine admitted he did not know any such details and did not know that the standard derived from that case uses worst case exposures, whereas he used probable case exposures. (March 3, 2011 Hr'g Tr. 163:11-165:13.)

110. A probable case shadow flicker model was generated which accounts for vegetation and weather conditions not favorable for generating shadows such as lack of sun or absence of wind. Additionally, the probable case model was operated in a conservative "greenhouse mode" which accounts for line of sight shadows affecting a residential dwelling from all sides of the dwelling. This mode is conservative in that the windows of many houses do not face the sun directly during all shadow flicker occurrences. Additionally, varying widths of the blade were not factored into the model. Shadow flicker is more pronounced when the shadow is cast from closer to the hub than from the blade tips. (BNE 2a; BNE l8c; Tr. 2, 90-93; Tr. 4, pp. 141-147; Tr. 6, pp. 118-120)

Comments: The Shadow flicker analysis incorrectly considered only first floor windows and by limiting the analysis to windows, did not consider overall exposure to the property and was not revised to account for the modified northern turbine location.

112. The probable case model is a predictive tool and cannot precisely determine the effects of shadow flicker. (Tr. 4, pp. 166-167)

Comments: Use of the probable case model is inappropriate, particularly given the fact that the model cannot precisely determine effects. Nearby property owners should not be subjected to the "worst case" outcomes or the uncertainties of the model.

113. The probable case model was limited to a distance of 6,560 feet from the turbines. After this distance, shadow flicker would be negligible. (BNE 2a)

Comments: Use of the probable case model is inappropriate, particularly given the fact that the model cannot precisely determine effects. Nearby property owners should not be subjected to the "worst case" outcomes or the uncertainties of the model.

114. The probable case model, when applied to the original proposed locations using a 270-foot rotor diameter, indicates shadow flicker would occur generally east of the site, usually two hours before sunset during specific calendar dates. Shadow flicker would occur to a limited area west of the site for up to two hours after sunrise. (BNE 2a; BNE 5; Tr. 2, pp. 94-95; Tr. 4, pp. 168-189)

Comments: Use of the probable case model is inappropriate, particularly given the fact that the model cannot precisely determine effects. Nearby property owners should not be subjected to the "worst case" outcomes or the uncertainties of the model.

115. The probable case model indicates 74 residential dwellings would experience some shadow flicker ranging from three to 31 minutes per day during certain times of the year. Two residential dwellings would experience 32 to 34 hours of shadow flicker per year. Twelve residential dwellings would experience between 10 and 23 hours of shadow flicker per year (refer to figure 4). (BNE 5)

Comments: Use of the probable case model is inappropriate, particularly given the fact that the model cannot precisely determine effects. Nearby property owners should not be subjected to the "worst case" outcomes or the uncertainties of the model.

116. The probable case model also indicates approximately five off-site properties would experience over 40 hours of exterior shadow flicker per year and an additional six properties would experience 30 to 40 hours per year of exterior shadow flicker (not including the New Naugatuck Reservoir). (BNE 5; Tr. 6, pp. 268-270)

Comments: Use of the probable case model is inappropriate, particularly given the fact that the model cannot precisely determine effects. Nearby property owners should not be subjected to the "worst case" outcomes or the uncertainties of the model.

117. If the probable case model were applied to the site with the alternative northern turbine location, and using a rotor diameter of 270 feet, 77 residential dwellings would experience some shadow flicker ranging from two to 26 minutes per day during certain times of the year. Seventeen residential dwellings would experience 10 to 25 hours of shadow flicker per year. No residential dwelling would experience over 30 hours per year. Six off-site properties would experience over 30 hours of exterior shadow flicker per year (not including the New Naugatuck Reservoir) (refer to Figure 5). (BNE l8c; Tr. 6, pp. 111-112)

Comments: Use of the probable case model is inappropriate, particularly given the fact that the model cannot precisely determine effects. Nearby property owners should not be subjected to the "worst case" outcomes or the uncertainties of the model.

118. If the probable case model were applied to the site with the alternative northern turbine location, and using a 328-foot rotor diameter, 93 residential dwellings would experience shadow flicker ranging from two to 31 minutes per day during certain times of the year. Three residential dwellings would experience 32 to 33 hours of shadow flicker per year. Twenty-one residential dwellings would experience between 10 to 29 hours of shadow flicker per year. Twelve off-site properties would experience over 30 hours of exterior shadow flicker per year (not including the New Naugatuck Reservoir). (BNE 18c; Tr. 6, pp. 111-112)

Comments: Use of the probable case model is inappropriate, particularly given the fact that the model cannot precisely determine effects. Nearby property owners should not be subjected to the "worst case" outcomes or the uncertainties of the model.

119. Shadow flicker can be mitigated by eliminating shadows cast upon the receptor through the installation of window blinds or the strategic planting of landscaping on the receptor property. Turbines could also be shut down when shadow flicker is most prevalent. (Tr. 2, pp. 96-99; Tr. 4, pp 169-170; Tr. 6, pp. 124-125)

Comments: Use of the probable case model is inappropriate, particularly given the fact

that the model cannot precisely determine effects. Nearby property owners should not be subjected to the "worst case" outcomes or the uncertainties of the model. The finding that shadow flicker can be mitigated by strategic plantings defies common sense and both this finding and the finding regarding the use of window blinds impose unreasonable and unfair burdens on the nearby residents' quiet use and enjoyment of their property.

Environmental Impacts
Air and Water Quality Standards

123. The project would have no direct discharge into surface waters. Indirect discharges from the site would occur through run-off and stormwater discharge. Surface water quality would be maintained through the proper implementation of erosion and sedimentation controls both during construction and after construction. (BNE 14, R. 36)

Comment: There is no evidence in the record to support the statement that "[s]urface water quality would be maintained through the proper implementation of erosion and sedimentation controls both during construction and after construction." In fact BNE has admitted that its plans as currently presented are not final and do not meet all applicable requirements. Further, there is substantial contrary evidence showing BNE's failures to meet such requirements in each iteration of its plans. (See SPC's proposed Findings of Fact)

124. Stormwater generated at the site would be controlled in accordance with the 2004 Connecticut Stormwater Quality Manual and the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control. BNE would design the project to conform to these guidelines. The submitted site plans relied on preliminary survey work that does not contain certain topographical features. If the project were approved, BNE would complete all survey work aud develop site plans consistent with the aforementioned manual/guidelines. (BNE 14, R. 36; Tr. 6 pp. 156-157, 162-163)

Comment: There is no evidence in the record to support these findings. In fact BNE has admitted that its plans as currently presented are not final and do not meet all applicable requirements. Further, there is substantial contrary evidence showing BNE's failures to meet such requirements in each iteration of its plans. (See SPC's proposed Findings of Fact)

125. Some of the preliminary construction erosion aud sedimentation control features include the use of silt fencing, drainage swales, sediment traps, check dams, pipe slope drains, runoff diversions, temporary seeding, and erosion control blankets. (BNE 22, Attachment 3, pp. 3.1-3.3)

Comments: It is entirely inappropriate to base a decision on this Petition on "preliminary" erosion and sedimentation control features.

126. Some of the post-construction erosion and sedimentation control features include riprap-1ined swales, check darns, level spreaders, catch basins, and two bio-retention ponds. (BNE 22, Attachment 1)

Comments: It is entirely inappropriate to base a decision on this Petition on plans that are not final and fail to show effective control features.

127. Culverts would be installed beneath the access road to allow runoff to travel from one side to the other. The culverts would be at least two to three feet beneath the roadbed. (Tr. 6, pp. 171, 172)

Comments: It is entirely inappropriate to base a decision on this Petition on plans that are not final and fail to show effective control features.

128. In accordance with the 2004 Connecticut Stormwater Quality Manual, post-construction peak stormwater run-off levels would not exceed pre-construction levels. (BNE 22, R. 27, Tr. 6, pp. 162-163)

Comments: There are no final plans or competent evidence in the record to support this finding.

129. Once completed, temporarily disturbed areas would be re-vegetated with a variety of native vegetation. The re-vegetated areas would not be treated with fertilizers or pesticides to prevent phosphorus and nitrogen laden run-off into surface waters. (BNE 14, R. 36)

Comments: There are no final plans or competent evidence in the record to support this finding.

130. A construction Spill Prevention Plan would be implemented to respond to any accidental spills of hazardous, toxic or petroleum substances that could affect surface water or ground water resources during construction events. In the event a spill occurs, BNE would notify the DEP and the Connecticut Water Company. (BNE 6, R. 19; BNE 14, R. 36, Attachment 2, p. 5-1)

Comments: There are no final plans or competent evidence in the record to support this finding.

134. The USCJ property is located on the east side of a geologic drumlin formation. The proposed turbines are located on the westside of the drumlin. A highpoint of the drumlin, the field area of the BNE site property, is located between the USCJ and the turbines,

thereby creating a hydraulic surface and groundwater water divide. Surface and groundwater would migrate to the northeast. (DEP comments of March 14, 2011; BNE 18c, R. 2, R. 3; BNE 21, R. 5; BNE 22, Attachment 1, map C-200; Tr. 4, pp. 105, 108, 124-125)

Comment: There is no geotechnical, subsurface or geological study to support these findings. This finding ignores the contrary evidence submitted by SPC. (See SPC Proposed Findings of Fact)

135. Remedial actions were performed at the USCJ in the 1990's and involved the removal or underground and aboveground tanks, an oil water separator, and contaminated soil. Residual soil contamination remains at the USCJ site. (BNE 18c; SPC 4i; Tr. 5, pp. 139-140)

Comment: This finding is an incomplete and inadequate description of the remaining contamination of the site and fails to note that no study has been undertaken to determine the full scope and extent of the contamination.

141. BNE does not anticipate blasting of bedrock at the site. The layer of till over the bedrock at the site is estimated to be 15 to 60 feet deep. Excavation for the turbine foundation would be to an approximate depth of ten feet. (BNE 18c, R. 3; BNE 21; Tr. 4 pp. 108-114)

Comments: There are no final plans or competent evidence in the record to support this finding. The Petitioner has undertaken no geotechnical study to support this statement.

144. The well for the maintenance/storage building would be installed into the bedrock. The draw area of the well could extend up to 500 feet. It would not draw from the USCJ property. (BNE 18c, R. 3; BNE 21, R. 5; Tr. 4, pp. 123-124, 126-127)

Comment: There is no geotechnical, subsurface or geological study to support these findings. This finding ignores the contrary evidence submitted by SPC. (See SPC Proposed Findings of Fact)

146. The 2003 remediation report recommended the removal of the drainage system components at the USCJ site to eliminate a preferential pathway for the horizontal migration of contaminated groundwater and its subsequent discharge into surface waters. There is no information regarding groundwater discharge into the drainage ditch. It is unlikely that surface water in the drainage ditch is contaminated. (BNE 21, R. 5; SPC 4i; Tr. 5, pp. 141-142, 166-168)

Comment: This finding ignores the text of the Tetra TECH NUS report, which is in the record, concerning the entry of contaminants into the drainage ditch and their

travel into the storm sewer that connects to an unnamed tributary that empties into the reservoir and ignores evidence submitted by SPC concerning migration . (See SPC Proposed Findings of Fact)

147. Installation of the turbine foundations would have no effect on overall groundwater flows at the site. (Tr. 5, pp. 192-193)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what type of foundation will be used or its effects on groundwater without geotechnical study and investigation.

Wildlife

148. The BNE site property is generally located on the west side of a forested hill and includes the following habitat types: second growth hardwood forest, forested wetlands and hillside seeps, and a nine-acre hilltop meadow (refer to Figure 6). (BNE I, Tab I, p. 2)

Comments See SPC Proposed Findings of Fact.

149. The site does not have high wildlife value due to the absence of a diversity of nut and seed bearing vegetation in the forest and the abundance of Japanese barberry in the forest understory. Japanese barberry is an invasive species offering minimal food supply to native fauna. (BNE 1, Tab I, p. 15)

Comments See SPC Proposed Findings of Fact.

150. Construction of the project would cause relocation of some wildlife to adjacent areas and cause some mortality of slower moving species. Once construction is completed, some species sensitive to disturbance would return and some would occupy re-vegetated areas. Generally, long-term impacts to wildlife would be minimal. (BNE 1, Tab I, pp. 15-16)

Comments See SPC Proposed Findings of Fact.

Amphibians and Reptiles

151. The site lacks water features that would attract many amphibian species. Common species that may occur at the site include American toad, redback salamander, wood frog, and spring peeper. (BNE 1, Tab I, pp. 10-ll, BNE 1, Tab M, p. ll)

Comments See SPC Proposed Findings of Fact.

Mammals

154. A bat survey performed from June 25 to November 1, 2010 identified six species of bats utilizing the site. Three of these species, the eastern red bat, hoary bat, and silver-haired bat, are listed as state species of special concern. Although not recorded, the northern long eared bat may occur at the site as it favors interior forest areas. (BNE 9e, pp. 16, 20)

Comments: See SPC Proposed Findings of Fact.

155. Tree dwelling bats would be attracted to the forest and forested wetland areas of the site. This type of habitat is common to the region. Tree roosting bats in this area are solitary and do not aggregate in large numbers; however, the presence of forested wetlands and forest edge habitat on the site, and the proximity of the New Naugatuck Reservoir to the site, are all favorable in supporting bat populations. (DEP comments of March 14, 2011; BNE 9e, p.18; SPC 5d; R. 66, R. 67)

Comments: See SPC Proposed Findings of Fact.

156. Most bat activity recorded at the site was in the meadow area, most likely because it offers more food for a majority of the identified bat species when compared to the forested areas. (BNE 9e, pp. 18-19)

Comments: See SPC Proposed Findings of Fact.

157. Most recorded bat fatalities at wind turbine sites are of migratory tree roosting species generally during post breeding and migratory periods. The most affected species (75% of reported fatalities) are the eastern red, hoary and silver-haired bats. (BNE 9e, p.21; Tr. 6, pp. 201-202)

Comments: See SPC Proposed Findings of Fact.

158. The expected mortality of bats at the site are expected to be low to moderate but may be higher, especially for the hoary bat, due to possible undercounting attributed to limitations in the bat detection/identifications methods of the study. Most bat fatalities would occur in August and September, usually during low wind speed nights. (DEP comments of March 14, 2011; BNE 9e; SPC 5d, R. 61, R. 64; Tr. 6, pp. 202, 206)

Comments: See SPC Proposed Findings of Fact.

159. The DEP recommends a post-construction bat monitoring study of at least two-years in duration to monitor bat mortality at the site. If a post-construction bat study is not performed, DEP requests access to the property for research purposes. (DEP Comments of March 14, 2011)

Comments: See SPC Proposed Findings of Fact.

160. BNE would be willing to perform additional bat monitoring for the period of May to November 2011 and would conduct a two-year post-construction bat monitoring study. (BNE 24)

Comments: The Petitioner's promise to conduct future studies cannot remedy the inadequacy and flawed methodology of its studies to date and cannot properly form a part of a basis for approval. (See SPC Proposed Findings of Fact)

Birds

163. BNE is performing a migratory bird study from March to April 2011 to address concerns regarding the initial study that did not include migratory periods. Data from this study would be submitted to the DEP upon completion. (BNE 24)

Comments: The Petitioner's promise to conduct future studies cannot remedy the inadequacy and flawed methodology of its studies to date and cannot properly form a part of a basis for approval. (See SPC Proposed Findings of Fact)

164. No state listed or federal listed species of concern were identified at the site during the survey. Several birds identified on-site are species of regional conservation concern including the chestnut-sided warbler, chimney swift, and eastern towhee. (DEP comments of March 14, 2011; BNE 1, Tab M, pp. 12-13; BNE 8, R. 59)

Comments: The Petitioner's flawed study cannot form a proper basis for approval and the Petitioner's promise to conduct future studies cannot remedy the inadequacy and flawed methodology of its studies to date. (See SPC Proposed Findings of Fact)

169. The project would not have a significant negative impact on birds of regional conservation concern. (DEP comments of March 14, 2011)

Comments: The Petitioner's promise to conduct future studies cannot remedy the inadequacy and flawed methodology of its studies to date and cannot properly form a part of a basis for approval. (See SPC Proposed Findings of Fact)

Visibility

180. The projected visibility of the turbines from residences within one-mile of the site is as follows:

[Table Omitted]

(BNE 1, Vol. 3, Tab J; BNE 2, R. 18; BNE 9b, R. 5)

Comments: This finding does not consider the dynamic, moving wind blades and to be corrected to indicate the list does not include the closest most impacted properties which are on Kluge Road and New Haven Road. (BNE 1, Vol. 3 Tab J BNE 2, R. 18, BNE 9b, R5, Assessor's Map, Town of Prospect, Zoning Map. Town of Prospect)

Site Disturbance

Clearing

186. Construction of the proposed project would disturb approximately 8.4-acres, including the clearing of approximately 5 acres of woodland. Approximately 0.6-acres of disturbance would occur within 100 feet of the wetland areas. (BNE 1, Vol. 2, Tab F)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

187. Disturbed areas would include the proposed turbines, a blade assembly and laydown area, a temporary stockpile area, a crane assembly area, a tower section laydown area, and a crane pad. (BNE 1, Vol. 2, Tab F)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

188. The original site plan specified a 35-foot wide construction access road. A 50-foot wide cleared area would be required to accommodate the access road and associated drainage features. Once the turbines are constructed, the access road would be re-constructed to a width of 20 feet. (BNE 1, Vol. 2, Tab F; Tr. 4, pp. 87-88)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or

what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

189. The total cut required to construct the proposed project is approximately 37,996 cubic yards and total fill would be approximately 9,098 cubic yards. There would be an excess of approximately 15,000 cubic yards of cut material. (BNE 8, R. 78, R. 79)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

190. Development of the proposed site would require approximately 270 cubic yards of rip-rap and 1,470 cubic yards of process gravel. (BNE 8, R. 80)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

191. BNE reviewed the use of 1:1 slopes versus 2:1 slopes and eliminated all 1:1 slopes from the project. BNE would use 2:1 slopes for the areas around the southern turbine and a 1.5:1 slope would be used around the northern turbine. All 1.5: I slopes would be stabilized with geotextile fabric and rip-rap in accordance with the 2002 Connecticut Erosion and Sedimentation Control Guidelines. (BNE 18b, R. 12)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

192. The proposed temporary access road would result in approximately 1.74 acres of graveled surface. (Tr.4, p.115)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

193. The March 28, 2011 site plan revision included reducing the construction access road from a width of 35 feet to 20 feet and designing the road to stay near existing grades, thus reducing the amount of cut and fill, clearing and earthwork. (BNE 22; Tr. 6, pp. 185-187)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

194. Approximately 5.74 acres of vegetation would have to be cleared for the proposed project if the northern turbine relocation were approved. The total area to be disturbed would be approximately 9.79 acres and the area within 100 feet of wetlands would be approximately 1.1 acres. (BNE 18b, Tab 1)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

195. Development of the project with the alternative northern turbine location, and using a 20-foot wide construction access road, would disturb approximately 8.8-acres, including the clearing of 4.4-acres of woodland. Approximately 0.43-acres of disturbance would occur within 100 feet of wetland areas. (BNE 22, Attachment 1; BNE 25)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

196. After construction, approximately 7.7-acres of the disturbed areas would be restored by recontouring the areas using soil from the stockpiles and planting a native herbaceous seed mixture to create meadow areas. (BNE 9f, R. 6, BNE 25)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

197. Following construction, the 1.5:1 slopes around the northern turbine would be converted to 2:1 slopes or flatter. (BNE l8b, R. 12)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

198. Approximately 1.1-acres of the site would consist of permanent developed areas, including the access road, parking areas, turbines, storage building and crane pads. BNE would not restrict future use of the parcel for some other purpose. The site would not be able to accommodate another wind turbine due to wind turbulence effects that could damage a turbine or cause it to produce less electricity. (BNE 25; Tr. 6, pp. 223-226, 241-242)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation.

199. Off-site grading would be required between the end of the pavement on Kluge Road and the host property boundary. (BNE 8, R. 82)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation. The Petitioner has not demonstrated that it has the right to conduct any required off-site grading.

Wetlands

204. Development of the original turbine configuration or the alternative configuration would have no direct impact on wetlands. (BNE 22)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what wetlands impacts will occur without such plans and the plans submitted to date fail to support this finding.

211. The CWC commented on the March 28, 2011 site plan, stating that the preliminary plan would adequately protect the on-site wetlands but requested additional items to be incorporated into the final design of the site. BNE would agree to address these items in the final design. (BNE 7, R. 7; BNE 22; BNE 26; Tr. 6, pp 162-164, 180, 185, 278)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation. It is inappropriate to base approval of a Petition on preliminary plans that fail to show compliance with all applicable standards.

212. In order to provide additional protections to the on-site wetlands, BNE would be wi1ling to establish a conservation easement to a distance of 50 feet from the delineated edge of the two northernmost wetlands (Wetlands 2 and 4) and the southernmost wetland (Wetland 1). BNE would also be willing to establish an easement around Wetland 3 to a distance sufficient for BNE to perform necessary construction, operations and maintenance of the northern turbine. (BNE 26; Tr. 6, pp. 223-226)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation. It is inappropriate to base approval of a Petition on preliminary plans that fail to show compliance with all applicable standards.

213. The preliminary site plans would need additional geotechnical and topographical information to complete. The final design would be consistent with the 2002 Guidelines for Soil and Sediment Control. (Tr. 6, pp. 159-163; 185-186)

Comments: There are no final plans or competent evidence in the record to support this finding. It is not known and cannot be known what area will be disturbed or what type of foundation will be used without such plans, which must be preceded by geotechnical study and investigation. It is inappropriate to base approval of a Petition on preliminary plans that fail to show compliance with all applicable standards. The finding that plans not yet in existence "would be in compliance" is nothing more than result-oriented speculation.

Respectfully submitted,
SAVE PROSPECT CORP

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SERVICE LIST

This is to certify that a copy of the foregoing has been delivered via electronic mail and/or first class mail, postage pre-paid, on this 28th day of April, 2011 to the following:

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