

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

March 28, 2011

MOTION FOR CLARIFICATION

The parties, John LaMontagne and Cheryl LaMontagne, respectfully request clarification of certain positions reportedly taken by the Connecticut Siting Council in connection with the above captioned application. Specifically, clarification is requested concerning the following: comments of former Chairman Daniel Caruso, reportedly made to one of the parties (see letter of Jeffrey Tinsley to the Executive Director dated March 22, 2011); comments made by former Chairman Caruso at recent hearings as he reported evidentiary rulings of the council; a letter from former Chairman Caruso, dated March 24, 2011, sent to the council advising of his recusal and reporting in detail his understanding of the Council's position.

The LaMontagnes wish to be provided with clarification of the following representations contained in the March 24, 2011 letter of Chairman Caruso:

1. That the Siting Council accepts a narrow and limited review criteria for this case. Simply, the LaMontagnes would like to know what the parameters of the Councils' deliberations will be and what the criteria will be for their decision.
The Notice of the Public Hearing is precise:

"Pursuant to provisions of General Statutes § 16-50m and Section 16-50j-21 of the Regulations of Connecticut State Agencies, notice is hereby given that the Connecticut Siting Council (Council) will conduct public hearings on a petition from BNE Energy, Inc. for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 3.2 MW Wind Renewable Generating facility located at 178 New Haven Road, Prospect, Connecticut. The scheduled hearing dates and locations are as follows: Wednesday, February 23, 2011, etc...."

While the former Chairman's Public explanations have been inconsistent and, considered together with the actual Notice, confusing:

"Additionally, the Council's actions and procedures are governed by state statutes and extensive regulations with which we have during the past 40 years cited, modified, conditioned, or rejected cellular telecommunications facilities, extensive electrical generating and transmission projects, and the storage of

spent nuclear fuel to name but a few examples. There are also certain matters beyond the jurisdiction of this Council, including our inability to impose a moratorium on such facilities. Such is exclusively within the purview of the General Assembly. Now the decisions this Council needs to make include weighing whether the Petitioner has met its burden of proof that the proposed project will not have a substantial adverse environmental impact. The Council is not the one proposing this project, but it is the one which will determine if it may be located here in accordance with state statutes and regulations. Please note also that local land use ordinances and regulations do not limit the Council's ability to approve any such facility in any way."

Of further concern is the testimony of the Siting Council member at the Legislative Hearing referred to in this exchange:

"In the case of petitions for declaratory ruling regarding renewable generating facilities, the Council has proceeded using the same statutory authority, procedures, and regulations applicable to the above-referenced traditional generation and transmission projects. While not automatically requiring a public hearing for the approval of a petition, the statutes nonetheless give the Council the authority to hold such a hearing upon its own motion: thus, at the request of residents and legislators from two communities where wind energy projects are currently pending, the Council voted to schedule not one but two public hearings in each community, and contested proceedings have been initiated. Also, anticipating a need for specialized background information—information that will become available to all parties through the Council's customary open procedures—the Council hired a consultant to provide independent advice on the technical aspects of the petitions. As previously demonstrated, the Connecticut Siting Council has both the experience and expertise necessary to process applications and petitions relative to wind renewable energy. Whatever you decide on this bill, please note that adequate regulations and guidelines are in place and the Council has established a credible record for the successful siting of controversial projects." Testimony of Dr. Barbara Bell, member of the Siting Council February 3, 2011.

2. That the Siting Council regards significant amounts of evidence presented to the Council as irrelevant. (Tinley letter of March 22, 2011)

"He then stated that the only reason he had allowed "those people from Massachusetts" to speak at the hearing on Tuesday is because he saw the "pained expression" on my face when the initially said they would not be given an opportunity to speak.

In response to Judge Caruso's comment, I again tried to respond in a non-substantive way, by saying that the people from Massachusetts were "nice people," and that we (Save Prospect) had asked for them to be there.

Judge Caruso said "They're all nice people. But it's a lot of b----." He then posed a rhetorical question, with words to the effect: The fact that some little town in Massachusetts decides to push these things back 3,000 feet, why should we care about that? He said we are going to do what we have to do."

And this is supported by the former Chairman's own letter of March 24, 2011.

“There is a fundamental difference between a public hearing at which those who are not parties or intervenors may express their opinions to which the Council gives great attention, and an evidentiary hearing, at which parties and intervenors may only be cross-examined on their previously filed written testimony.”

“The issue of regulations, their need or desire(ability), is not one which is before the Council and therefore can have no bearing on any decision the Council can make.”

3. That the Siting Council will proceed without standards or evidence as to separation and distances for Wind Turbine facilities. (Tinley letter of March 22, 2011)

“At this point, I got up and was moving toward the door and Judge Caruso was beside me. I tried to change the subject to something other than the hearings. I made a reference to the residents’ wish that the legislature had put standards in place before the process started. I knew that the Siting Council had publicly taken a position against wind specific regulations and that a Siting Council representative had listened to the testimony and had testified at the legislative hearings on this subject. Judge Caruso said that regulations were not necessary and brought the subject back to the hearings, reiterating that the process was not going to stop and would be finished before anything is finished in the legislature. He said that if the Chair of the Energy Committee (Rep. Nardello) was upset about it, that’s “too bad.”

This is consistent with his dismissal of the relevant information from Massachusetts witnesses cited above.

4. That the Siting Council is limited to a role of mitigating at 225 New Haven Road, Prospect, Connecticut and cannot reject the petition in toto. (Tinley letter of March 22, 2011)

“Judge Caruso then told me that when he had questioned the President of Save Prospect Corp. at the evidentiary hearing on Tuesday about what mitigating measures could be taken, assuming that the turbines had to be built on this site, he was trying to help him to understand “how we work.” He said that we (the Siting Council) come up against objections all the time and we always try to listen to the concerns of opponents and take whatever steps can be taken within reason to mitigate adverse impacts. He said that the Siting Council has not made a decision yet in this case, but that Reilly should take the opportunity to suggest ways to mitigate the impacts. On Tuesday, Judge Caruso had invited Mr. Reilly to submit a further response to his questions before the close of hearings.”

And later in the letter:

“He also stated that when he asked Save Prospect’s noise expert at the hearing about what could be done to mitigate the noise of the turbines, the witness “pooh-poohed” the question, saying that nothing could be done. He said that it wasn’t very smart for a witness who is asked a question by the Chair to “pooh-pooh” it.”

5. That the Siting Council requires neighboring parties to propose mitigation in consideration of the application. (Chairman's Letter of March 24, 2011)

Finally, I wished to indicate that questions by Council members regarding means by which the impacts on neighbors be it by plantings, structures, buffers, or other means, should be taken very seriously. If the Council decides to approve facilities, it always wishes to mitigate its affects on neighbors as much as possible. Lacking such information, were we to approve this petition, we might well lose opportunities useful to addressing and limiting some adverse effects."

Conclusion: If, in fact, the Siting Council has adopted any or all of these representations, it is our belief that it should vacate said position(s) and request legal argument from the parties on each of the issues.

Respectfully Submitted,

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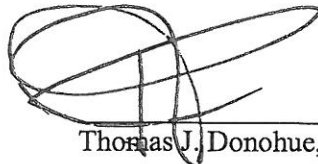
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