

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**Petitions of BNE Energy Inc. for a
Declaratory Ruling for the Location,
Construction and Operation of 4.8 MW
Wind Renewable Generating Projects on
Flagg Hill Road in Colebrook,
Connecticut (“Wind Colebrook South”)
and Winsted-Norfolk Road in Colebrook,
Connecticut (“Wind Colebrook North”)**

Petition Nos. 983 and 984

May 16, 2011

**FAIRWINDCT, INC.,’S, MICHAEL AND STELLA SOMERS’ AND SUSAN WAGNER’S
LATE FILED REQUEST FOR ADMINISTRATIVE NOTICE**

FairwindCT, Inc., Stella and Michael Somers and Susan Wagner (collectively the “Grouped Parties”) late filed this request for administrative notice requesting that the Connecticut Siting Council take administrative notice of the recent determination made by the Department of the Army that a permit is required from the US Army Corps of Engineers with respect to activities planned for Wind Colebrook South and Wind Colebrook North as evidenced by that certain letter dated May 11, 2011 addressed to Paul Corey, Chairman, BNE Energy Inc., from the New England District, Corps of Engineers, Department of the Army, Regulatory Division a copy of which is attached as Exhibit A hereto (the “Corps Letter of May 11”).

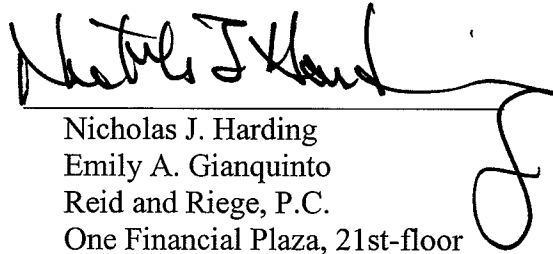
Good cause exists for the Siting Council to take administrative notice of the Corps Letter of May 11 as the letter was not in existence at the time of the hearings, or at any time before the close of the hearings and is an agency comment that may be of interest to the Siting Council in its consideration of the inland wetlands and watercourse impacts that are planned by BNE Energy Inc., at both of the sites.

In the Corps Letter of May 11 the Corps observes that they have reviewed the information submitted to the Siting Council in support of BNE’s request for declaratory ruling and “... based upon... [a Corps]... review it appears that the proposed work at each of the sites,

at a **minimum**, will need to be evaluated under **Category 2** of the Connecticut General Permit (CT GP).” [Emphasis added.]

Wherefore, the Grouped Parties request administrative notice be taken of the Corps Letter of May 11.

Respectfully submitted,
FairwindCT, Inc.,
Stella and Michael Somers
and Susan Wagner

A handwritten signature in black ink, appearing to read "Nicholas J. Harding". The signature is written in a cursive style and is positioned above a horizontal line. A large, stylized flourish extends from the end of the signature, resembling a large "J" or "G", and loops down and to the left.

Nicholas J. Harding
Emily A. Gianquinto
Reid and Riege, P.C.
One Financial Plaza, 21st-floor
Hartford, Connecticut 06103
Tel. (860) 278-1150
Fax.(860) 240-1002
Juris No. 049362

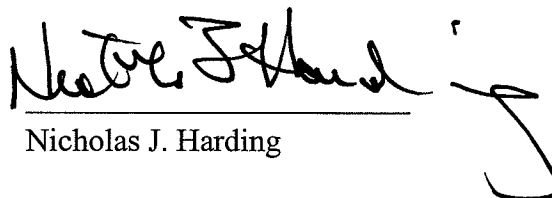
CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by first-class mail and e-mail to the following service list on the 16th day of May, 2011:

Lee D. Hoffman
Bonnie L. Heiple
Paul Corey
Thomas D. McKeon
David M. Cusick
Richard T. Roznoy
David R. Lawrence and Jeannie Lemelin
Walter Zima and Brandy L. Grant
Eva Villanova
Jeffrey and Mary Stauffer

and sent via e-mail only to:

John R. Morissette
Christopher R. Bernard
Joaquina Borges King


Nicholas J. Harding

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

May 11, 2011

Regulatory Division
CENAE-R-PEB
File Number: NAE-2011-0779

Paul Corey, Chairman
BNE Energy Inc.
29 South Main Street
Town Center, Suite 200
West Hartford, Connecticut 06107

Dear Mr. Corey:

We understand that you intend to place fill or otherwise disturb aquatic resources, wetlands and/or waterways associated with Mill Brook and the Mad River for construction of three 1.6 MW wind turbines, associated equipment and access roads on a 124.9 acre site at SR 44 - Winsted-Norfolk Road (Wind Project Colebrook South) and three 1.6 MW wind turbines, associated equipment and access roads on an 80 acre site at 17-29 Flagg Hill Road (Wind Colebrook South) in Colebrook, Connecticut. The purpose of this letter is to explain Corps of Engineers jurisdiction and to inform you of the need for a Department of Army permit for the proposed work. We have reviewed the information submitted to the Connecticut Siting Council in support of your request for a declaratory ruling and, based upon our review it appears that the proposed work at each of the sites, at a minimum, will need to be evaluated under Category 2 of the Connecticut General Permit (CT GP).

The following is an explanation of Corps jurisdiction as defined by Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

A permit is required under Section 10 for all work seaward of mean high water in navigable waters of the United States. In New England, for purposes of Section 10, navigable waters of the United States are those subject to the ebb and flow of the tide and a few of the major waterways used to transport interstate or foreign commerce.

Permits are also required under Section 404 for discharges of dredged or fill material into all waters of the United States, including navigable waters, inland rivers, lakes, streams, and wetlands, as well as the excavation/grading within these waters/wetlands. On the coastline, our jurisdiction extends landward to the high tide line (i.e., the highest predictable tide) or to the landward limit of any wetlands, whichever is more extensive. In interior waters, our jurisdiction extends landward to the ordinary high water mark or to the landward limit of any wetlands, whichever is more extensive.

The term "wetlands" is defined by Federal regulations as "...those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in



saturated soil conditions..." (Federal Register, November 13, 1986 33 CFR Part 328.3(b)). Wetlands generally include swamps, marshes, and bogs; however, forests and meadows that lack surface waters can also be wetlands. In addition, wetland delineations as determined for Federal, state, and local agencies might not be interchangeable.

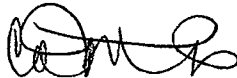
We have determined that a Department of the Army permit is required for the above-referenced activity. The project has been assigned file number NAE-2011-0779 to which all future correspondence should refer.

Your project may be eligible for authorization under Category 2 of the CT GP. In an effort to facilitate processing of your application and minimize delays associated with requests for additional information, we recommend that you provide all of the items listed on the attached *Summary of Application Items* Table. For your convenience, the necessary forms and supporting information have been provided.

Please note that the authorizations referred to above must be obtained before any work or filling is done in areas subject to Corps jurisdiction. Performing such work or filling without first obtaining Corps authorization could result in substantial penalties.

If you have any questions regarding this letter, please contact me at (978) 318-8306.

Sincerely,



Cori M. Rose
Senior Project Manager
Permits & Enforcement Branch
Regulatory Division

Enclosure

Copy furnished:

CT DEP
Bureau of Water Management
Inland Water Resources Division
ATTN: Bob Gilmore
79 Elm Street
Hartford, CT 06106-5127

US EPA New England, Region I
Office of Ecosystem Protection
Attn: Michael Marsh
USEPA SUITE 100 (OEP05-2)
5 Post Office Square
Boston, MA 02109-3912

US FWS New England Field Office
Endangered Species Program
Attn: Maria Tur
70 Commercial Street, Suite 300
Concord, NH 03301

Pullman & Conley, LLC
Attn: Lee Hoffman
90 State House Square
Hartford, Connecticut 06103-3702