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**VIA ELECTRONIC MAIL AND HAND DELIVERY**

The Honorable Daniel Caruso, Chairman  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

Ms. Linda Roberts  
Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

**Re: BNE Energy Inc. petitions for declaratory ruling, petitions 980, 983 and 984**

Dear Chairman Caruso and Executive Director Roberts:

As you are aware, this firm represents BNE Energy Inc. ("BNE") in the above-referenced pending petitions. I am in receipt of correspondence from State Representative Vickie Nardello dated January 11, 2011 in reference to BNE's pending petitions, additionally signed by State Senator Joan Hartley, State Representative John Rigby and State Senator Kevin Witkos (the "January 11<sup>th</sup> Correspondence"). BNE wishes to take this opportunity to respond to that correspondence.

As pointed out in the January 11<sup>th</sup> Correspondence, on January 6, 2011, after numerous requests from members of the public and elected officials for a public hearing, the Siting Council voted, during its public meeting and pursuant to Connecticut General Statutes § 4-176 (e), to establish a proceeding for petition 980 including two full days of public hearings in the Town of Prospect. Likewise, at that meeting, the Siting Council members indicated that the following petitions 983 and 984 should expect similar treatment of those petitions as that decided for petition 980.

The January 11<sup>th</sup> Correspondence—filed without legal standing—suggests that the Siting Council reverse its decision to hold a proceeding and, outside of the sixty days permitted under § 4-176 (e), decide to not issue a declaratory ruling and instead initiate regulation-making proceedings under § 4-168. These same arguments were made in the Motion filed by Save Prospect on January 10, 2010. BNE reiterates its objection that was filed on January 13, 2010 in objection to that Motion. This suggestion also flies in face of the State of Connecticut's energy

policies and Siting Council procedures as delineated in the Connecticut General Statutes as well as Governor's Malloy's recently released energy policy statement and goals for the State of Connecticut concerning the development of renewable energy. Such a request also appears to be a refutation of the State of Connecticut's commitment to the projects proposed in BNE's pending petitions since those projects have been developed with significant investments made by the Connecticut Clean Energy Fund.

Reversing course at this point in time is tantamount to the imposition of ex-post facto law and essentially seeks to impose a moratorium on BNE's already pending petitions. Particularly troubling is the suggestion that wind generation projects require special regulations when other renewable energy facilities or other facilities within the Siting Council's jurisdiction do not. This is clearly an attempt to selectively prohibit the development of this important renewable energy resource in the State of Connecticut based on the localized concerns raised by a handful of residents. While BNE does not discount the concerns raised by these residents, BNE believes that these concerns are appropriately reviewed by the Siting Council during the proceeding as already established in petition 980 and as the Siting Council routinely does as a matter of course and is uniquely qualified to do, in its proceedings.

#### History

As the Siting Council is aware, as part of The Act Concerning Energy Independence of 2005, Conn. Gen. Stat. § 16-50k was amended by a near unanimous vote to include a petition for declaratory ruling process for renewable generation projects under 65 megawatts (MW) in output for the very purpose of promoting the development of renewable energy generation within the State of Connecticut. Since that Act became effective in 2005 almost six years ago, the Council has approved numerous projects pursuant to this declaratory ruling process. Some have involved public hearings (see petition 784 – Plainfield Renewable Energy, LLC involving a 14.4 MW biomass plant; see also petition 834 – Watertown Renewable Power, LLC involving a 30 MW biomass plant), while others have been approved without a public hearing (see, e.g. petition 847 – Pepperidge Farm Inc. involving a 1.2 MW fuel cell installation).

The Siting Council has reviewed and approved these facilities and other facilities under its jurisdiction including nuclear, coal and natural gas power plants, substations, transmission lines, and telecommunications towers. The Siting Council has done so without any "specific regulations" for each of these facilities. Rather, the Siting Council's regulations address procedures and standards, and it is through the approval process, and the conditions put on approval, that the Siting Council addresses these issues.

Put simply, the Siting Council has the necessary expertise to review and analyze BNE's petitions. Simply because the Siting Council does not have "regulations" establishing minimum setback distances does not and cannot lead to the conclusion proffered by the January 11<sup>th</sup> Correspondence—that the State has no regulations relating to wind generation facilities. That

could not be further from the truth. In fact, a review of the record of any of the above-referenced proceedings or a review of BNE's petition materials refutes the proposition that there are no regulations relating to wind generation facilities. BNE has spent more than three years working on Wind Prospect, has measured wind on-site there for more than two years, and has conducted among others, bird, bat and wildlife studies, sound and visual studies, wetland impacts, a storm water management plan, and interconnection studies. In addition, BNE has been working closely with GE, which has some of the strictest setback requirements in the industry, to ensure the project has appropriate setbacks and is safe and reliable. All of these issues and more will be thoroughly reviewed by the Siting Council, and parties and intervenors have a fair opportunity to participate.

In addition, the suggestion that the Siting Council needs additional, new siting policies is contrary to state statutes. As it stands now, § 16-50x requires the Siting Council to review and consider municipal regulations. Therefore, the need for yet another layer of policies or regulation is simply repetitive and unnecessary.

Contrary to the assertion that these petitions are "new" or require further study and investigation, as mentioned above, the General Assembly approved the revisions to § 16-50k almost six years ago. The implication that the General Assembly somehow did not contemplate the development of wind generation as a renewable energy resource is wholly unsupported. In fact, wind generation is exactly the type of energy source encouraged by state policy as it is a Class I renewable energy source as defined by state law. In addition, the Council has been aware of the anticipated filing of these projects for at least the past year. The Council created a renewable energy facility application guide and a petition for declaratory ruling guidelines for renewable facilities in April, 2010. In addition, the Council established a request for proposal (RFP) in early 2010 and in that RFP referred to the fact that the Council was anticipating the filing of wind generation projects. In fact, the Council retained a third-party consultant as a result of that RFP in the late summer of 2010 to assist with the review of such projects.

Likewise, the implication that the towns involved and/or its residents have not had sufficient time to prepare for the filing of BNE's petitions is equally unsupported. As mentioned in BNE's petitions, both the Towns of Prospect and Colebrook have been aware of BNE's intention to pursue the development of wind generation projects in those towns for more than two years. BNE obtained a zoning permit from the Town of Prospect on October 1, 2008 and from the Town of Colebrook on November 24, 2008. Both of these permits were obtained for the installation of a temporary meteorological tower for the sole purpose of collecting wind data at the proposed sites. In fact, a resident in the Town of Colebrook appealed the issuance of Colebrook's zoning permit, which included a public hearing with the Town's Zoning Board of Appeals and an appeal to the Connecticut Superior Court. Therefore, any argument made that the impacted towns have not had the opportunity to prepare municipal regulations concerning such projects or have not have sufficient time to prepare the filing of BNE's petition is baseless.

If the towns had wanted to prepare such regulations, they could have begun to do so two years ago. They have not.

### State Policy

As discussed above, the Energy Independence Act of 2005 was enacted in 2005 in part to encourage the development of renewable energy resources in the State of Connecticut. Connecticut has also adopted renewable portfolio standards requiring 27% of the State's energy needs to be derived from renewable resources by 2020 with 20% from Class I renewable energy sources, which includes wind power.

Further, the Energy Policy Statement recently provided to Governor Malloy includes the recommendation of the implementation of an RFP process to encourage the development of renewable resources (including the maximization of the use of available federal funding), the establishment of a system to encourage the development of smaller scale renewable energy projects such as those proposed by BNE, and considerations of ways to expedite the development of renewable energy projects.

Finally, BNE has received significant funding in the form of non-recourse loans from the Connecticut Clean Energy Fund (CCEF) as part of its pre-development funding for Wind Prospect and Wind Colebrook. CCEF was created in order to provide a funding mechanism to encourage research and development of renewable energy resources within the State of Connecticut. Therefore, the State has reviewed BNE's proposals and invested significant resources in the development of the wind renewable generation projects proposed in BNE's pending petitions. Wind energy should continue to be encouraged in Connecticut.

Conclusion

BNE objects to the proposal submitted in the January 11<sup>th</sup> Correspondence and urges the Siting Council to reject the proposed denial of BNE's petitions and request for a regulation-making proceeding. A regulation-making proceeding will unnecessarily delay BNE's wind projects, and have a chilling effect on future wind projects and renewable energy projects in the state. Additional regulations or an open-ended moratorium designed to prevent the development of much needed renewable energy projects in the State of Connecticut is in direct contradiction to overwhelming state policy. It should not be considered and the filed petitions should proceed through the normal Siting Council procedures.

Respectfully submitted,



Carrie L. Larson

cc: Certification of Service for Petitions 980, 983 and 984  
State Representative Vickie Nardello  
State Senator Joan Hartley  
State Representative John Rigby  
State Senator Kevin Witkos