

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

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

Petition No. 983

March 14, 2011

PREFILED TESTIMONY OF ROBIN L. HIRTLE

1. Please state your name and address.

My name is Robin L. Hirtle; I live at 29-A Flagg Hill Road, Colebrook, CT.

2. Why have you requested Party status in this petition?

I have requested Party status because this project is proposed for a parcel of land directly abutting the property where I have my home, to the west and northwest, and because the three wind turbines proposed for it are directly within vision of my home. The nearest of the 3 proposed turbines would be 600 feet from my property line and 800 feet from my home.

I bought my property about 11 years ago and we built our home on our property because it was in a secluded residential area where we could enjoy the quality of life we wanted. It took a lot of hard work and expense for us to build the home we wanted, and now there is a proposal to totally reform this residential neighborhood by erecting large industrial wind turbine towers.

And I also became a Party because the petitioner, BNE, has been using a common driveway I use to enter my home, which is supposed to be limited to residential use. Even though their petition claims they would use some other driveway, they have been using the common driveway to enter their property since they erected their test “MET” tower at the end of 2008. The Siting Council should be made aware of this improper use of a private driveway, controlled by an easement granted by BNE’s predecessor specifically to limit use of the driveway (and the abutting property) to residential purposes.

3. Why do you feel this Petition should be denied?

It is totally inappropriate for an industrial wind turbine project such as this proposal to be built in the middle of a residential neighborhood. If it is approved my health and safety are in danger, my quality of life will be adversely affected, my pets will be adversely affected, and the value of my property, which is my primary life investment, will be severely reduced.

It is inconceivable to me that the Siting Council would condone an industrial project such as this in a residential neighborhood. I am in favor of renewable energy, which we need to find, but I don’t understand how it could be supported in a residential neighborhood such as the one where I live. It will affect so many people in so many adverse ways, creating a massive impact on the entire area of the state.

With my property line 600 feet from the nearest proposed turbine and my home 800 feet from it, I would be subject to constant noise and vibration from the constant noise of the

turbines, plus the “flicker effect” I have heard about, the sound vibrations and the flashing lights at night. I have done a considerable amount of reading on this since I was made aware of this project, on wind turbine accidents, on setback requirements other states have adopted, on safety issues with ice on the blades and other matters, and to consider that Siting Council might approve this project right next to my home frightens me.

4. Do you have any other specific concerns?

Yes: The driveway I referred to above (#2) is my only access in and out of my property. It is controlled by a mutual driveway Easement Agreement signed by the predecessor in interest to Mr. Zupkus and Mr. Corey, who own the property abutting mine (where BNE wants to put its “Colebrook Wind South” project). That Easement Agreement specifically states the entire driveway will be used only for residential purposes, yet BNE has used it since 2008 when they erected their MET test tower, and they continue to use it for commercial and industrial purposes.

I don’t believe the Siting Council is aware of the Driveway Easement Agreement controlling access to the site where BNE wants to put its turbines. It cannot be used for this industrial/commercial purpose, but BNE has been using it since they wanted to erect their test MET tower.

A copy of the Easement Agreement and its supporting survey (“Compilation Plan, Easement Area to be Granted to CL&P ... etc.”, Sept. 25, 2002) are offered in Evidence.

5. Have you taken any action to keep BNE from using this driveway?

Yes, I have filed suit in Litchfield Superior Court, Docket No. LLI-CV-10-6003476-S seeking a permanent and Temporary Injunction to prevent Mr. Corey and Mr. Zupkus from using the driveway for commercial purposes. As of this date we have had hearings on the Application, and are awaiting a ruling from the judge regarding the Application for Temporary Injunction.

BNE has been vigorously defending against the Application for Temporary Injunction, indicating they want to keep using the common driveway for this project.

Meanwhile, the Siting Council is apparently planning to use the driveway for public access for the on-site public viewing process portion of the public hearing on this petition, and I am opposed to this happening.

A copy of the Complaint and Application for Temporary Injunction/Order to Show Cause is offered in Evidence.

6. Didn’t BNE indicate it would not use your driveway in their petition?

Yes, they did say that, just as they told the Town of Colebrook Planning and Zoning Commission in 2008 that they would not use the driveway and would use an “existing access road” on a survey they presented to the Town entitled “Site Plan prepared for BNE Energy, Inc., 29 Flagg Hill Road Date 11/6/08” drafted by Connecticut Consulting Engineers, LLC, of Meriden, CT. The “existing access road” did not even exist at that time.

Then, in February 2009 BNE also told the Town of Colebrook Zoning Board of Appeals they would not use the driveway, but would use the “existing access road” on the survey. Since the “existing access road” does not exist, of course they used the common driveway to erect their MET test tower and maintain it.

This 2008 survey prepared for BNE is offered in Evidence.

7. Doesn't BNE's petition indicate a new access road separate from your driveway?

The new access road, in BNE's Petition Vol. II, site plans, Exhibit F, pages C-002 and following, does not exist and would need to be blasted through a rock mountain before it could exist. This would take time and it would be very expensive.

Due to their misrepresentations in 2008 and 2009 and afterward, claiming they would not use the common driveway and then continuing to use it, I have no confidence they would do anything other than use the existing driveway, as they have been. Doing so is obviously their least expensive option.

If they did not want to use the existing driveway they would not be defending against the Application for Temporary Injunction pending in court.

In the meanwhile, for all of their surveying and site preparation work, BNE has been using the common driveway, an indication they intend to continue doing so.

8. What is the problem with BNE using the driveway in the easement?

First, the terms of the easement, which express the intentions of the parties when the easement was entered into, provide it was to be used only for residential purposes. It is a restrictive covenant upon the land which limits the use of the property.

Additionally, the driveway is a dirt and gravel roadway, suitable for personal vehicles, not for commercial or industrial vehicles, such as would use it for this proposed project. BNE's use of it to date has already resulted in extra wear and tear on it. (One count of my Complaint seeking a permanent injunction is that BNE is overburdening the easement.) I have had to make specific requests that BNE make repairs on the driveway in order for my vehicle, which is not a small automobile, to navigate the driveway. Even so, I have been stuck on the driveway a number of times and have had to leave my vehicle sitting on the side of the driveway and walk to my house.

9. Does this driveway issue have a direct impact on the process for this application?

Yes: The Siting Council has convened a public hearing to begin March 22, 2011 with a site viewing. The Council has erected a sign at the base of the driveway informing the public of the public hearing. On that date, presumably many people will assemble at the driveway to use it to enter onto the site of the proposed turbine project. And presumably, as more people need to access the site, prior to any Superior Court ruling on the Application for Temporary Injunction, the driveway may be considered by the Siting Council and others as freely accessible, which it is not.

As of the date of this pre-filed testimony I am exploring my options to protect my rights.

10. Are there any other concerns you have?

Yes – wetlands: To my knowledge, and reviewing their petition, BNE has not taken into account the wetlands on their property and mine. The survey that accompanies and identifies my driveway easement ("Compilation Plan," Sept. 25, 2002) shows the edge of a conservation easement on Zupkus/Corey/BNE property, and I know there are wetlands there. (See the Conn. DEP map of Colebrook wetlands.) Since BNE has not sought an inland wetlands permit from the Town of Colebrook Inland Wetlands Commission and since their petition only superficially addresses wetlands issues, I am concerned the natural wetlands habitat of my

property and the surrounding area are about to be severely adversely impacted by this proposed project.

Colebrook - Conn. DEP Wetlands Map ("Natural Diversity Database"), December, 2010 is offered in Evidence.

11. Are you opposed to wind power in Connecticut or generally?

No, I am in favor of wind power and other forms of renewable energy generally (solar-, hydro-, etc.). I have seen wind turbines located in isolated areas which are viable options for locating such facilities. But locating and siting wind turbine projects in the midst of a residential neighborhood, even though the process does not need to go through local zoning procedures, is contrary to the charge of the Connecticut Siting Council that it balance the needs of the state with the best interests of all its citizens and residents.

I am not opposed to clean energy, am in favor of it. I recognize the challenges our state and nation are facing in trying to find clean, renewable sources of energy. And I am not crying "NIMBY" because it's my backyard, but because all of us in the area will be affected. I believe the Siting Council *should* work with developers to site these facilities, but somewhere where it's not in *anyone's* back yard — not in any residential area where people's daily lives are adversely affected.

12. If this petition is granted, what will be its impact upon you?

In addition to the health, safety and quality of life concerns, if this project proceeds, there will be a score of people, or more, with life savings and investments tied up in their family homes who will lose more than the state has invested in this project. Even if, conservatively, each affected family's home is worth an estimated \$250,000 (a very conservative, low estimate for this area), the total loss for the 20 to 28 families affected by these projects will be catastrophic.

If that happens, families who had counted on being able to access the equity in their homes will be foreclosed from doing so. Some, suddenly finding their houses "upside-down" or "under water" as realtors describe it, may have no option other than walking away from their mortgage loans, increasing the housing market impact already affecting the state and the area. With the mortgage I have on my house and the prospect of it losing its value, I would be one of these people. Even though I have responsible employment, I would not be able to keep paying the mortgage on a home that had no value. And the ripple-down effect of this on area businesses, the banking industry locally and state-wide, and employment will be devastating.

Respectfully Submitted, ROBIN L. HIRTLE



BY:

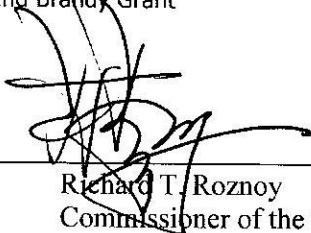
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ROBIN L. HIRTLE

C E R T I F I C A T I O N

I hereby certify that a copy of the foregoing document was sent by U.S. mail to the following Connecticut Siting Council service list on this the _____ 14th day of the month of March 2011 :

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Richard T. Roznoy
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