

**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

March 15, 2011

**OBJECTION TO HEARING PROCEDURE
AND MOTION TO CONSOLIDATE EVIDENTIARY HEARING**

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (collectively, the “Grouped Parties”) hereby object to the procedure announced by Council staff at the February 25, 2011 pre-hearing conference regarding Petition Nos. 983 and 984. Specifically, the Grouped Parties object to the Council’s apparent plan to begin the evidentiary hearing noticed and scheduled for both petitions with cross examination related only to Petition No. 983 and to then at some unannounced later date begin cross examination related only to Petition No. 984. In support of this Objection, the Grouped Parties states the following:

1. On February 25, 2011, the Grouped Parties, the petitioner, BNE Energy Inc. (“BNE”) and other parties and intervenors attended the Council’s scheduled pre-hearing conference concerning both Petition Nos. 983 and 984, which were filed by BNE.
2. At that conference, Council staff indicated that the Council plans to begin the evidentiary hearing scheduled and noticed for both petitions with questioning limited only to Petition No. 983. Council staff indicated that all cross examination

and rebuttal evidence related to Petition No. 983 would be considered on that date and future unannounced continuation dates. Once all cross examination and rebuttal evidence related to Petition No. 983 has been completed, the Council plans to proceed at some unannounced date with the evidentiary hearing related to Petition No. 984.

3. The Grouped Parties object to this announced procedure, for several reasons, and moves the Council to consolidate the evidentiary hearing for both petitions, as was previously understood to be the case.
4. First, this procedure will be inefficient. Although BNE chose to submit its plans for these projects as two petitions, a significant amount of its data was collected only on the Wind Colebrook South site (see, e.g., Exhibits K, L and M (Wind Assessment) to the petitions). Therefore, nearly all of the cross examination questions on breeding birds, bats and wind resources will be redundant if required to be repeated for 984.
5. Even those studies that are purportedly not site-specific, such as the shadow flicker and anticipated ice throw studies, were conducted by the same consultants and use the same methodology. Both the Council and the parties and intervenors opposing the petitions are likely to have many of the same questions to ask BNE's witnesses regarding 984 as they will for 983.
6. These petitions are brought by the same petitioner, involve sites within the same town across the street from each other, and include nearly all of the same parties. Only two parties, Robin Hirtle and Jeffery and Mary Stauffer, are not parties to

both proceedings. Ms. Hirtle's counsel has indicated that she has no opposition to consolidating the evidentiary hearing. At the time of this filing, the Grouped Parties have not yet ascertained the Stauffers' position on this matter, but will update the Council with that information when received. It would be the height of inefficiency to conduct the hearing for 983 in its entirety, then require the petitioner and all opposing parties to bring all witnesses back at some yet-to-be-determined date to begin the process again for 984.

7. Second, conducting the hearing in this way will be prejudicial to all of the citizens who are participating in these proceedings. These citizens must pay attorney and expert fees out of their own pockets. They are also indirectly paying for BNE's attorneys and experts, since BNE is largely funded by taxpayer dollars. Some of the parties and intervenors are unrepresented at these proceedings, which means that they themselves must arrange to take time off from work to be at the hearing dates to participate. To require the citizens opposing these petitions to bear the burden associated with conducting two hearings when the Council has noticed only one hearing, and held only one pre-hearing conference, would be prejudicial. The Grouped Parties note that holding two hearings would also significantly increase BNE's expenses.
8. Perhaps more importantly, however, the parties and intervenors opposing these petitions will be prejudiced by the Council's planned course of action because they will be effectively prevented from presenting evidence and cross examining BNE's witnesses on the cumulative effects of the two petitions. There is no

question that siting six turbines in such a small area will increase noise levels associated with the turbines, noise and traffic associated with construction, environmental impact to the immediate surrounding area and shadow flicker associated with the turbines, among other things.

9. The petitioner should be required to answer questions about those cumulative effects, even though it chose to seek approval for these projects in two separate petitions. The Council cannot examine these petitions in a vacuum – if, for example, BNE had already constructed Wind Colebrook South and then, two years later, returned to seek approval for Wind Colebrook North, the Council would naturally have questions about the cumulative effect of the projects. The fact that BNE is seeking simultaneous approval of these projects should not change this analysis.
10. Third, the notice for these proceedings states that the Council “will conduct public hearings on two petitions from BNE Energy, Inc. for a declaratory ruling” and continues to describe the hearing schedule as including an evidentiary hearing to begin on Wednesday, March 23, 2011 from 3-5pm.
11. The Pre-Hearing Conference memo detailing the Hearing Procedure is captioned for both 983 and 984 and includes identical dates and deadlines for pre-filed testimony, final exchange of interrogatories and responses and final deadline for requesting party or intervenor status. The Pre-Hearing Conference memo also repeatedly refers to “the hearing” and “the proceeding” and contains references to the “3:00 p.m., March 23, 2011, hearing session” without any indication that the


hearing will be limited only to 983. The memo refers to “the hearing program,” not “the hearing programs.” In sum, every indication from the Council, in its public notices and in its memos to the parties, has been that the hearing on 983 and 984 would begin on March 23 at 3pm.

12. The Grouped Parties therefore respectfully request that the Council reconsider its apparent decision to begin with 983 and then at some later, unannounced date, continue with 984. Instead, the Grouped Parties suggest that the evidentiary hearings for these proceedings be consolidated for purposes of efficiency. This consolidation will not prejudice BNE. In fact, consolidation of the evidentiary hearing will decrease BNE’s costs associated with these proceedings.
13. This request should not affect the Council’s different deadlines for each petition, which are one week apart. On the other hand, the Council’s plan to complete the 983 hearing before moving on to the 984 hearing likely will have a serious effect on the Council’s ability to meet its statutory deadline. If the Council does not even begin the evidentiary hearing on 984 until likely sometime in mid-April (or later, given the Council’s schedule), it will be hard-pressed to fit in all of the required cross-examination of the petitioner’s 7 or 8 witnesses, the Grouped Parties 14 witnesses, the Town of Colebrook’s witnesses and the testimony of at least four other parties to 984 and still meet its deadline of announcing a final decision in mid-June. Consolidating the evidentiary hearings will alleviate some of the time constraints the Council finds itself under.

14. In light of the above facts, the Grouped Parties object to the announced procedure and move the Council to consolidate the evidentiary hearing for Petition Nos. 983 and 984.

WHEREFORE, the Grouped Parties object to the hearing procedure announced by Council staff and move the Council to enter an order consolidating the evidentiary hearings of Petition Nos. 983 and 984, in accordance with the Council's hearing notices and to promote efficiency.

By:



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Whereas, the Council has publicly noticed an evidentiary hearing on Petition Nos. 983 and 984 for March 23, 2011 at 3 p.m.;

Whereas, the Council has previously announced the Hearing Procedure for Petition Nos. 983 and 984 in its Pre-Hearing Conference memo;

Whereas, Council staff announced that the Council intended to complete the evidentiary hearing on Petition No. 983 before moving on to the evidentiary hearing on Petition No. 984;

Whereas, the Grouped Parties have objected to that announced procedure and moved the Council to consolidate the evidentiary proceedings in Petition Nos. 983 and 984;

Whereas, the petitions are brought by the same petitioner and involve all of the same parties and intervenors, save two;

Whereas, upon review of the Grouped Parties’ objection and motion, the Council has determined that consolidation will promote efficiency for all parties to these petitions and will not prejudice any party to these petitions;

IT IS HEREBY ORDERED that the evidentiary hearings of Petition Nos. 983 and 984 are consolidated. The hearing scheduled to begin on March 23, 2011 at 3 p.m. will begin with the Council's cross examination of BNE's witnesses on issues related to both petitions.

SO ORDERED:

CONNECTICUT SITING COUNCIL

By: _____
Daniel F. Caruso, Chairman

Date: _____

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 15th day of March, 2011:

Carrie L. Larson
Paul Corey
Jeffery and Mary Stauffer
John R. Morissette
Christopher R. Bernard
Joaquina Borges King
Thomas D. McKeon
David M. Cusick
Richard T. Roznoy
David R. Lawrence and Jeannie Lemelin
Walter Zima and Brandy L. Grant
Eva Villanova

and sent via e-mail only to:

John R. Morissette
Christopher R. Bernard
Joaquina Borges King


Emily Gianquinto