



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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June 7, 2011

TO: Parties & Intervenors

FROM: Linda Roberts, Executive Director *LR/MAB*

RE: **PETITION NO. 983** - BNE Energy, Inc. petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 4.8 MW Wind Renewable Generating facility located on Flagg Hill Road, Colebrook, Connecticut.

In accordance with Conn. Gen. Stat. § 4-181a (c), which provides that an agency “may, without further proceedings, modify a final decision to correct any clerical error...” the Connecticut Siting Council hereby issues the enclosed errata sheet in connection with the above-referenced proceeding.

Please remove the old page and insert the corrected one.

This errata sheet corrects Section H on page 11 of the Petition 983 (Colebrook South) Conclusions of Law document. Section H previously read:

H. Chairman Stein met the requirements to participate in the deliberations and vote on this petition.

Robert Stein was named as Acting Chairman of the Council on March 24, 2011. He presided over the evidentiary hearings held in this petition on April 14, 2011, April 21, 2011 and April 26, 2011. At a public meeting of the Council held on April 18, 2011, Chairman Stein stated for the record that he fully intended to participate in the deliberations and the final decision on this petition.¹ On March 21, 2011, the Council issued a memorandum indicating Chairman Stein had met the requirements under the UAPA to make an informed decision on the matter and that any party or intervenor who had objections should notify the Council in writing no later than May 2, 2011.² On April 29, 2011, the Council received an objection from Fairwind to the participation of Chairman Stein in the deliberations and vote on this petition pending receipt of information with respect to the nature and scope of Chairman Stein's site visit, as well as presenting an interpretation of the Council memorandum to indicate that Chairman Stein had already decided to vote in favor of the petition.

It is well settled that members of an administrative agency need not be present at public hearings in order to participate in decisions if the member acquaints themselves sufficiently with the issues raised and the evidence and arguments presented at public hearings in order to exercise an informed judgment.³ Chairman Stein announced during a public meeting of the Council on May 12, 2011 that he had read the transcripts of the hearings held on March 22, 2011 and March 23, 2011 over which he did not preside, reviewed the entire record and conducted a site visit.⁴ He met the requirement of sufficient acquaintance with the issues raised and the evidence and arguments presented at the public hearings in this matter to exercise an informed judgment.

Fairwind's objection sought information from the Council with respect to the nature and scope of Chairman Stein's site visit. Site visits are not required by the UAPA or the PUESA. The purpose of a site visit is to acquaint members with the property at issue; the purpose of a hearing is to afford the parties the opportunity to present and to rebut evidence.⁵ Site visits are neither a hearing nor an integral part of the hearing process.⁶ Courts recognize that site visits, although not required by statute, may be necessary for evaluation of property and that site visits are an appropriate investigative tool.⁷ Chairman Stein publicly disclosed that he had read the transcripts of the public hearings over which he did not preside, reviewed the entire record and conducted a site visit. Therefore, Chairman Stein met the requirements of the UAPA and the Supreme Court to exercise an informed judgment on this petition.

¹ Connecticut Siting Council, Meeting Minutes, April 18, 2011.

² Connecticut Siting Council, Petition 983, available at <http://www.ct.gov/csc/cwp/view.asp?a=2397&q=469520> (last visited May 27, 2011).

³ *New Haven v. Public Utilities Commission*, 165 Conn. 687 (1974); *Dana-Robin Corp. v. Common Council of the City of Danbury*, 166 Conn. 207 (1974); *Loh v. Planning and Zoning Commission of the Town of Fairfield*, 161 Conn. 32 (1971).

⁴ Connecticut Siting Council, Meeting Minutes, May 12, 2011.

⁵ *Manor Development Corp. v. Conservation Commission*, 180 Conn. 692 (1980); *Grimes v. Conservation Commission of the Town of Litchfield*, 49 Conn. App. 95 (Conn. App. 1998);

⁶ *Grimes v. Conservation Commission*, 243 Conn. 266, 277-9 (1997).

⁷ *Id.*

Section H now reads (with corrected language underlined):

H. Chairman Stein met the requirements to participate in the deliberations and vote on this petition.

Robert Stein was named as Acting Chairman of the Council on March 24, 2011. He presided over the evidentiary hearings held in this petition on April 14, 2011, April 21, 2011 and April 26, 2011. During the evidentiary hearing held on April 26, 2011, Chairman Stein stated for the record that he fully intended to participate in the deliberations and the final decision on this petition.⁸ On April 27, 2011, the Council issued a memorandum indicating Chairman Stein had met the requirements under the UAPA to make an informed decision on the matter and that any party or intervenor who had objections should notify the Council in writing no later than May 2, 2011.⁹ On April 29, 2011, the Council received an objection from Fairwind to the participation of Chairman Stein in the deliberations and vote on this petition pending receipt of information with respect to the nature and scope of Chairman Stein's site visit, as well as presenting an interpretation of the Council memorandum to indicate that Chairman Stein had already decided to vote in favor of the petition.

It is well settled that members of an administrative agency need not be present at public hearings in order to participate in decisions if the member acquaints themselves sufficiently with the issues raised and the evidence and arguments presented at public hearings in order to exercise an informed judgment.¹⁰ Chairman Stein announced during a public meeting of the Council on May 12, 2011 that he had read the transcripts of the hearings held on March 22, 2011 and March 23, 2011 over which he did not preside, reviewed the entire record and conducted a site visit.¹¹ He met the requirement of sufficient acquaintance with the issues raised and the evidence and arguments presented at the public hearings in this matter to exercise an informed judgment.

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⁸ Transcript, April 26, 2011, p. 5.

⁹ Connecticut Siting Council, Petition 983, available at <http://www.ct.gov/csc/cwp/view.asp?a=2397&q=469520> (last visited May 27, 2011).

¹⁰ *New Haven v. Public Utilities Commission*, 165 Conn. 687 (1974); *Dana-Robin Corp. v. Common Council of the City of Danbury*, 166 Conn. 207 (1974); *Loh v. Planning and Zoning Commission of the Town of Fairfield*, 161 Conn. 32 (1971).

¹¹ Connecticut Siting Council, Meeting Minutes, May 12, 2011.

¹² *Manor Development Corp. v. Conservation Commission*, 180 Conn. 692 (1980); *Grimes v. Conservation Commission of the Town of Litchfield*, 49 Conn. App. 95 (Conn. App. 1998);

¹³ *Grimes v. Conservation Commission*, 243 Conn. 266, 277-9 (1997).

¹⁴ *Id.*