

**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.

Connecticut

Siting

Council

June 2, 2011

### **Dissenting Opinion**

I concur with nearly all of the Findings of Fact and the Opinion involving this petition. In particular, I find no unreasonable or significant impact regarding site development, wetlands impact, access or impact on wildlife. My disagreement instead focuses upon visibility, noise, and, to a limited extent, the lack of setback guidelines.

The three proposed wind turbines are to be 100 meters (approximately 328 feet) tall from ground level to the centerline of the blade hub on the nacelle. The turbine blades are proposed to be 82.5 meters (approximately 270 feet) in diameter. Alternatively, the applicant is also seeking approval for a 100 meter diameter blade configuration. Thus the total height from ground to blade tip in a vertical position would either be 463 or 492 feet.

These dimensions, in of themselves, are mind numbing. But, taken in the context of many decisions by the Council over the past years, they are or should be a cause of great concern. The Council has acted upon nearly two hundred cell tower dockets in the experience of this member. Without exception, each free-standing tower has been closely scrutinized as to the justification of the proposed height and the visibility from surrounding properties. The public and elected officials have also weighed in against changing the viewscape by the construction of such towers. Frequently, the Council has shifted the proposed structure slightly, trimmed the height or otherwise modified the proposals to effectuate lesser visibility. While such actions are perfectly reasonable and a proper function of the Council, it must be emphasized that the proposed cell structures are generally in the range of 100-180 feet tall and are static - not dynamic visual objects.

What we are dealing with here in this petition is an entirely different creature: there are three proposed structures on one site, with each being three or four times the height of cell towers normally encountered. Additionally, the visibility is further increased by the fact that the structure involves substantial and nearly continuous rotational motion. An object standing still can certainly be seen, but it does not jump out at the observer as it does when it is in motion. Even the visibility witness for the applicant acknowledged there is a difference and that visibility is increased by motion.

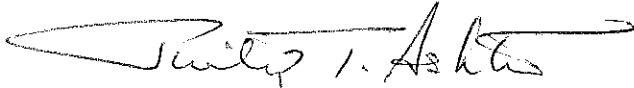
The acceptability of visibility is inevitably a matter of judgment by the observer. In cell tower dockets, the reaction is increasingly vocal if a structure is very tall or poorly screened or both. In a comparable recent petition (No. 980), the Council generally felt two similar wind turbines were too much of a visual burden and the petition was denied. It is true that the population density in this location is low, but, in my opinion, that does not justify thrusting such conspicuously visible and intrusive development upon it.

A second point of disagreement, albeit somewhat lesser in consequence, is noise. The majority defer matters of noise from the wind turbines to the regulations of the DEP. They do acknowledge that the World Health Organization (WHO) has also issued "guidelines specifically directed to wind-turbine noise." (FoF #105) Unfortunately, there is some doubt that the DEP regulations are adequate for wind turbines. They emphasize A-weighted scales (middle frequencies in the range of hearing) where others believe a C-weighted scale (emphasizing lower frequencies) is more appropriate. Evidence adduced at

the hearing was not conclusive and, at times, controversial. It is regrettable to me that WHO data was not more thoroughly considered. The WHO has proven itself to be a valuable resource on many technical topics and the organization has drawn together the lessons from many other jurisdictions with much experience. To omit its knowledge in deference to the DEP is unfortunate. Its inclusion would have made a stronger case.

Finally, I am concerned that the Council did not adequately consider setbacks - the proper distance from the centerline of the wind turbine to the adjacent property lines considering surrounding zoning, blade diameter, turbine height, and other such factors. (I prefer setbacks to property lines rather than buildings because it maintains freedom of action of the adjoining property owner, consistent with applicable law.) Setbacks are a cornerstone of zoning, the placement of industrial facilities and even the approval of the location of cell towers by the Council (using "fall zone dimensions). Increasing the distance from surrounding properties can influence the acceptability of a proposal because negative effects tend to decrease with distance. Furthermore, it avoids a partial "taking" in that the peaceful enjoyment of surrounding properties is not impaired, and so would avoid such problems as a potential aerial trespass.

Accordingly, I vote to DENY the petition.

A handwritten signature in black ink, appearing to read "Philip T. Ashton", with a long horizontal flourish extending to the right.

Philip T. Ashton, Member  
Connecticut Siting Council