

December 5, 2013

VIA ELECTRONIC MAIL AND HAND DELIVERY

Melanie A. Bachman, Esq.
Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

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 Flag Hill Road, Colebrook, Connecticut.

Dear Ms. Bachman:

BNE Energy, Inc. ("BNE") hereby submits an original and fifteen (15) copies of this letter as a response to the December 4, 2013 Objection to BNE Energy Inc.'s Development and Management Plan Modification. This Objection was filed by FairwindCT, Inc., Susan Wagner, Stella Somers and Michael Somers (the "Grouped Parties").

In their objection, the Grouped Parties make six claims, and each will be addressed in turn. The Grouped Parties first two claims are that there is no provision which allows for the modification of a petition through the use of the D&M process, and that the proposed modification to the D&M Plan runs afoul of Public Act 11-245.

Taking these issues in order, the use of the D&M process in this Petition has already been approved not only by the Siting Council, but also by the Superior Court. In *FairwindCT, Inc., et al. v. Connecticut Siting Council, et al.*, Docket No. CV-11-6011389S, October 1, 2012 (Cohn, J.), the Court noted "in light of this legislative history and the obvious legislative intent, the court holds that the council was authorized to condition its declaratory ruling with a D&M plan, in addition to having such authority in the full certification process. Again, the court must read the statutes to reach a harmonious and sensible end. See *Germain v. Manchester*, supra, 135 Conn. App. 202." *FairwindCT*, p. 29, citation in original.

Moreover, the D&M process has been used by the Siting Council to address the realities that plans may need to change as the realities of construction are faced. For example, in *Town of Middlebury v. Connecticut Siting Council*, Docket No. CV010508047S, February 7, 2002 (Cohn, J.), 2002 WL 442383 at *5, the court permitted the Siting Council to use the D&M process to allow for the relocation of a power plant site as well as to change the method by which that power plant received water. Although the Grouped Parties try to make much of the fact that

BNE is seeking to have more efficient turbines that will increase generation, the Grouped Parties fail to acknowledge that the physical scope of the turbines will largely be unchanged. As such, this minor sort of change is precisely what the D&M process is designed to accomplish.

The Grouped parties also cite Public Act 11-245 to claim that by pursuing its D&M Plan, BNE is somehow circumventing the moratorium on new wind projects in the state. The relevant portion of P.A. 11-245m section 1(b) states that “[t]he Connecticut Siting Council shall not act on any application or petition for siting of a wind turbine until after the adoption of regulations pursuant to subsection (a) of this section.” The turbines in question are already sited, and BNE is seeking only a modification of its D&M Plan. P.A. 11-245 is silent as to the Siting Council’s approval of D&M plans. Had the General Assembly wanted a moratorium placed on D&M Plan approval, the General Assembly could have drafted the statute to reflect that. It did not do so, and the Grouped Parties’ attempt to bootstrap a D&M Plan change into a new petition does not make it so.

The Grouped Parties’ third allegation is that the GE 1.6-82.5 wind turbines continue to be manufactured. This is simply not the case, at least not for the 100 meter hub height that was contemplated in this Petition. Please see the attached affidavit of Paul Corey as well as the December 5, 2013 letter from Ben Kennedy of GE. As can be seen in Mr. Kennedy’s letter, GE no longer offers a 1.6 MW turbine that is suitable for the Colebrook site. However, the proposed new equipment will, according to Mr. Kennedy, “provide the best power production and suitability for the prevailing wind conditions.” As such, despite the Grouped Parties’ contention to the contrary, BNE will not have appropriate 1.6 MW turbines available to it at the 100 meter hub height.

The Grouped Parties next argue that the increased nameplate capacity of the proposed new turbines will not result in increased electrical production. To do this, the Grouped Parties do not use any of their expert witnesses, but rather attempt to make this argument by having their attorneys extrapolate power curves and wind data. As an initial matter, BNE would like to note that the Grouped Parties’ counsel have no particular expertise in meteorology or the physics of power generation, so the evidence proffered by their counsel is of questionable value at best. Moreover, the Grouped parties have not attributed the source of the power curves that comprise Exhibit 2. As a result, it is possible that the power curves used by the Grouped Parties in Exhibit 2 are confidential material, subject to a Protective Order from the Siting Council. If these curves are confidential material, the copying of these curves and the dissemination of them in a public filing may constitute a violation of the Council’s Protective Order.

If the Grouped Parties violated the Protective Order by copying and then publicly disseminating confidential information subject to a Protective Order, BNE hereby formally objects, asks that the confidential information be redacted from any public filings, and that the Siting Council consider sanctions against the Grouped Parties should it see fit to do so. There is another possibility, which is that the Grouped Parties used information for equipment other than what

BNE has proposed to the Siting Council. Such information might not be confidential, but it is not relevant to the issues currently before the Siting Council with respect to BNE's proposed D&M modification.

Even if the power curves provided by the Grouped Parties are accurate, the Grouped Parties' reliance on the wind data in Exhibit 1 to form the bases of their opinions is misguided. The Grouped Parties cite to an excerpt of the wind data that BNE provided to the Siting Council during its petition proceedings. As the Council will note, that wind data is the average for the Colebrook site at 60 meters of hub height. The hub height of the proposed project will be 100 meters, not 60 meters. Had the Grouped Parties included all of the data from the April 12, 2010 Colebrook, CT Wind Assessment prepared by Electric Power Engineers in their Objection,¹ they would have been forced to recognize that the average monthly wind speeds in Colebrook are significantly higher, with some average monthly wind speeds at 100 meters and higher anticipated to exceed 9 meters per second.

Moreover, these values are only averages. There will be times when the wind blows more than average and times where the wind blows less. Regardless, Electric Power Engineers Assessment shows that the average wind speed at 100 meters of height and above is significantly more than what the Grouped Parties portray. As such, the Grouped Parties' power curve estimates are incorrect, and should have no bearing on the Council's deliberation regarding BNE's proposed D&M Plan modification.

The Grouped Parties' last two contentions are fairly technical matters that are well within the purview of the Siting Council. The Siting Council is fully capable of reviewing the provided data and technical specifications related to the new turbines and ascertaining whether the sound and visual characteristics of the proposed new turbines are so different from the originally planned turbines that additional review is warranted. BNE believes that this is not the case, but recognizes the Siting Council's expertise in this area and defers to it. With respect to the Grouped Parties' contention that a civil or professional engineer should provide updated site plans, BNE again submits that it is within the Siting Council's expertise to determine whether the changes contemplated with the new turbines will require additional certified engineering documents. These changes are minor in nature, and the Grouped Parties have proffered no expert evidence to the contrary. Again, BNE will defer to the Siting Council's expertise in this arena, however, BNE does not believe that such re-submissions are warranted.


Accordingly, BNE respectfully requests that the Siting Council deny the Group Parties' Objection and grant BNE's modification to its D&M Plan as expeditiously as possible. BNE

¹ Because the Council and all parties are already in receipt of the April 12, 2010 Colebrook, CT Wind Assessment, BNE has not reproduced it with this Response. Should the Siting Council so desire, BNE will provide the Council with additional copies of this Assessment.

Page 4

thanks the Siting Council for its hard work in its review, and invites the Council to contact the undersigned if there are any questions regarding this matter.

Respectfully submitted
BNE Energy, Inc.

By: 

Lee D. Hoffman
Its Attorney

cc: Service List



GE Power & Water
Renewable Energy
Ben Kennedy - Account Manager

Date: December 5th, 2013
To: BNE Energy
29 South Main Street
Town Center, Suite 200
West Hartford, CT
06107
Attention: Greg Zupkus
Subject: Turbine Availability "1.6-82.5 -100"

Dear Mr. Zupkus,

Thank you for taking the time to speak with me today regarding the availability of a 1.6-100 MW wind turbine with a hub height of 100 meters. As you know, GE manufactures a variety of wind turbines of various sizes, and does its best to match the appropriate wind turbine to a particular site. As you know, given the wind conditions at the Colebrook South site, a hub height of approximately 100 meters will be far more efficient in harnessing wind energy and converting it to electricity than an 80 m hub height. Although GE does manufacture 1.6-100 & 1.6-82.5 wind turbines, it no longer manufactures such turbines with a designed hub height of 100 meters.

GE does manufacture a 1.6-100 at 96m hub height but this turbine was deemed unsuitable from a mechanical loads perspective, given the wind conditions at the Colebrook South site. Fortunately, GE does manufacture other wind turbines that have hub heights close to 100m. Given the site conditions at the Colebrook South site, the 2.85-103 model on a 98.3m hub height will provide the best power production and suitability for the prevailing wind conditions.

Thank you for your interest in this matter. I look forward to speaking with you again soon.

Best Regards,

Ben Kennedy

cc: Scott Lobdell - GE Commercial Leader & Technical Leader
Rober Bienick - GE Commercial Director

GE Power & Water
123 Front Street West
Toronto, ON
M6K 0A1

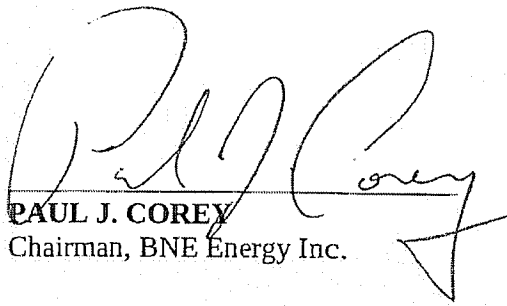
Phone 011 416-591-2200
Cell 011 647-328-8109
Email benjamin.kennedy@ge.com

AFFIDAVIT OF PAUL J. COREY

I, **PAUL J. COREY**, do hereby declare and state under penalty of perjury as follows:

1. I am over eighteen (18) years of age and understand the obligation of an oath.
2. I am the Chairman of BNE Energy Inc. ("BNE"). My principal place of business is 17 Flagg Hill Road, Colebrook, CT 06021.
3. By this affidavit, I support BNE's request for approval of the Development and Management (D&M) Plan Modification filed with the Connecticut Siting Council on November 5, 2013 in Petition No. 983 for Wind Colebrook South for the construction, operation and maintenance of three GE Energy ("GE") 2.85-megawatt ("MW") wind turbines with 98.3 meter hub heights and 103 meter diameter blades to be located at 29 Flagg Hill Road and 17 Flagg Hill Road in Colebrook Connecticut.
4. GE's 2.85-103 MW wind turbines provide increased nameplate capacity rating and annual electricity production and are also designed to meet or exceed the high availability and reliability of previous wind turbine models.
5. The 2.85 MW wind turbines offer significant benefits as compared to the 1.6 MW wind turbines in terms of renewable electricity production and will also result in lower environmental impacts including reduced sound levels.
6. Three 2.85-103 MW wind turbines at 98.3 meter hub heights will produce 55% more electricity annually than three 1.6-82.5 MW wind turbines at 100 meter hub heights.
7. GE's 1.6-82.5 MW wind turbines at 100 meter hub heights are no longer available due to changes and improvements in its wind turbine product line.

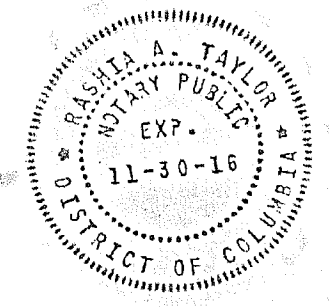
I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

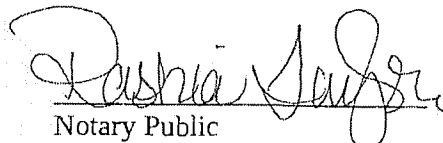

PAUL J. COREY
Chairman, BNE Energy Inc.

STATE OF District of Columbia
City) ss.
~~COUNTY OF~~ Washington

Sworn to and subscribed before me this 5th day of December, 2013, personally appeared Paul J. Corey, who acknowledged himself to be the Chairman of BNE Energy Inc., and that he as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.




Notary Public
My Commission Expires:

RASHIA A. TAYLOR
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 30, 2016