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October 19, 2011
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Linda Roberts, Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

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OCT 20 2011

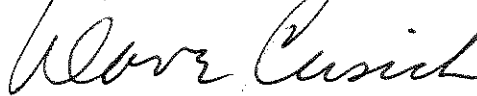
CONNECTICUT
SITING COUNCIL

RE: PETITION 983 - BNE ENERGY INC.,
FLAGG HILL ROAD, COLEBROOK, CT

Dear Ms. Roberts:

Enclosed please find an original and 15 copies of the Town of Colebrook's First Set of Comments Concerning the Development and Management Plan Filed by BNE Energy, Inc.

Very truly yours,



David M. Cusick

DMC/vh
Enc.

Cc: Lee D. Hoffman
Bonnie L. Heiple
Paul Corey
Jeffrey and Mary Stauffer
John R. Morissette
Christopher R. Bernard
Joaquina Borges King
Richard T. Roznoy
Nicholas J. Harding
Emily A. Gianquinto
Kristin M. and Benjamin C. Mow
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OCT 20 2011

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

CONNECTICUT
SITING COUNCIL
Petition No. 983

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")

October 19, 2011

TOWN OF COLEBROOK'S FIRST SET OF COMMENTS CONCERNING
THE DEVELOPMENT AND MANAGEMENT PLAN FILED BY
BNE ENERGY, INC.

BNE Energy, Inc. ("BNE") has filed a Development and Management Plan ("D&M Plan") as required by the Connecticut Siting Council (the "Council") in its Decision and Order dated June 2, 2011 (the "Decision and Order"). Although the Town of Colebrook recognizes that the Council will not hold hearings concerning the D&M Plan, it is the Town's understanding that all parties may file written comments with the Council for its consideration.

Although the Decision and Order indicated that BNE "shall attempt to reach a Host Community Agreement with the Town of Colebrook prior to the submission of the D&M Plan", BNE has met only once with the Town, during which the discussion centered exclusively on assessment/taxation issues; ie there was no discussion of the twelve enumerated conditions set forth in paragraph 2 of the Decision and Order. Although the next meeting between the Town and BNE is expected to occur later this month, the Town believes

(1) it quite possible that a Host Community Agreement addressing the conditions set forth in paragraph 2 of the Decision and Order shall not be entered into while the D&M Plan is pending before the Council, and (2) the Town must likely rely exclusively on the Council to protect the Town with respect to all such conditions. Obviously, should a Host Community Agreement be entered into, a copy will be provided promptly to the Council.

CONSERVATION EASEMENT

Condition 2.b. of the Council's Decision and Order requires: "Provision for the establishment of open space and/or a conservation easement on the 29 Flagg Hill Road parcel that is protective of the site's natural resources and restricts development for the life of the project or in perpetuity."

BNE has opted to limit the duration of its restrictions only for the duration of the wind turbine project, rather than in perpetuity, and has submitted a Conservation Plan, so-called. The Town would prefer that BNE employ a "conservation restriction" ("CR") as described in Section 47-42a of the Connecticut General Statutes instead of a Conservation Plan, and sees no reason why a CR could not be limited to a specified period of time rather than in perpetuity. A CR, as envisioned by Section 47-42a

et seq, creates an interest in land that may be acquired and enforced by a governmental body or by an appropriate charitable corporation or trust. The restrictions in a CR may also be enforced by the Attorney General.

The normal form of CR used in Connecticut (sometimes called a conservation easement) is usually an agreement between the land owner and the entity which will hold and enforce the conservation restrictions. Typically, such a document provides for access to the property by the holder of the CR, so that it may monitor compliance. Often the owner pays a monetary stipend to the holder to provide the holder with sufficient funds to perform its monitoring role during the life of the CR.

By contrast, the Conservation Plan submitted by BNE contains no provisions whatsoever for monitoring the property to be protected or to enforce compliance.

The Council should require BNE to submit to the Council a specimen CR in form and substance approved by that governmental body or by that charitable corporation (in either case experienced in holding and enforcing CRs), which has agreed to act in such capacity for BNE. The Council should not approve the D&M Plan until BNE has produced such a specimen CR and the Council has reviewed and approved it.

Presumably the prospective holder of any such CR would be able to determine whether the rather broad permitted uses proposed by BNE on the property to be protected are suitable, especially the unrestricted logging envisioned by paragraphs 4 and 5 (Permitted Uses) of BNE's Conservation Plan. At the least, the CR should require that any such forestry activities be conducted in accordance with generally accepted best management practices and in accordance with a forest management plan prepared by a certified forest practitioner.

TOWN INFRASTRUCTURE

Condition 2. c. of the Council's Decision and Order requires BNE to provide it with: "Details for the modification and restoration of Town infrastructure affected by the project including a pre-construction survey, protections during construction, post construction survey, and restoration plan to render affected infrastructure to pre-project conditions or better."

During the course of the public hearing, BNE agreed to cooperate with the Town in conducting a pre-construction survey for those portions of Flagg Hill Road which would be utilized during the construction of Wind Colebrook South. BNE further agreed that it would reimburse the Town for the Town's reasonable cost and expenses in retaining engineers

and/or other consultants to provide technical and professional services associated with such study and evaluation. However, BNE did not invite the Town to participate in whatever study BNE's engineer, Civil 1, undertook in order to produce the one page "Report" apparently meant to provide the "details for the modification and restoration of Town infrastructure" as required by condition 2.c. There is nothing in the Report indicating that BNE intends to continuously monitor the condition of that portion of Flagg Hill Road used during construction activities to confirm that the same may be safely used by the public, or to immediately report to the Town any road repairs/reconstruction which are then required to keep Flagg Hill Road in a safe and sound condition and open to the public, all of which BNE had agreed to do during the public hearing.

BNE recommends in the Report that it and the Town conduct (1) a pre-transport inspection just prior to the commencement of construction activities and (2) a post-construction survey immediately following the completion of construction activities; BNE commits itself, if the post-construction survey identifies any impacts or damage to Town infrastructure caused by construction activities for the Wind Colebrook South project, to bring any affected

infrastructure to pre-project conditions or better. However, there is nothing in such recommendations indicating that BNE will reimburse the Town for the Town's reasonable costs and expenses in retaining engineers and/or other consultants to provide the Town with technical and professional services associated with any of the foregoing, which BNE had agreed to do on the Record during the public hearing.

In its Post Hearing Brief dated May 20, 2011, the Town suggested a number of conditions which the Council should attach to any approval of BNE's Petition. The first four of such proposed conditions (since slightly modified by the Town - see attached Exhibit A) contain exactly the type of "details" envisioned by paragraph 2.c. of the Council's Decision and Order. The substance of such four proposed conditions should be included in any D&M Plan approved by the Council.

POST CONSTRUCTION NOISE MONITORING

Condition 2.j. of the Council's Decision and Order requires: "Establishment of a post-construction noise monitoring protocol describing locations, frequency and methods to be employed for a post-construction noise study. Upon review of the subsequent noise study, the Council, in consultation with the DEP, will evaluate and determine if

any mitigation measures should be employed, including turbine operations management, to ensure the project complies with DEP noise regulations."

The noise monitoring program proposed by BNE in its D&M Plan appears to the Town to be inadequate in a number of respects. First of all, the Town believes that long term monitoring should occur with respect to all four of the properties listed by BNE in its D&M Plan (rather than permitting BNE to perform short term monitoring at three locations and long term monitoring at only one location - as proposed by BNE). In addition, the Town believes that the long term noise monitoring should be conducted continuously for a period of two years (not one year as proposed by BNE), with semi-annual filing reports to be made with the Council. Finally, since the post-construction noise monitoring contemplated by condition 2.j. is "to ensure the project complies with DEP noise regulations", the monitoring should not occur near the residences (as proposed by BNE), but should occur at the property boundary, as contemplated by Section 22a-69 of the Connecticut General Statutes and the regulations adopted thereunder, specifically Subsection (g) of Section 22a-69-4 of the Connecticut Administrative Code.

INDEPENDENT THIRD PARTY MONITOR

Condition 2.k. of the Council's Decision and Order requires: "Provision for an independent third party monitor to evaluate on-site construction erosion and sedimentation controls and to ensure establishment of appropriate environmental safeguards protective of amphibian and reptile species."

Since it shall be the Town and its citizens who are adversely affected if BNE's on-site construction erosion and sedimentation controls are inadequate, the Town strongly urges that the Council not approve a D&M Plan which does not permit representatives of the Town to inspect such controls during construction and to provide comment to the independent third party monitor.

DECOMMISSIONING

Condition 2.1. of the Council's Decision and Order requires BNE to prepare a "Project Decommissioning Plan".

The most prominent flaw in the Decommissioning Plan submitted by BNE as part of the D&M Plan is the failure of the Plan to require that BNE or its successor in interest shall be responsible for the entire cost of the decommissioning project. Instead, the Plan appears to limit the financial exposure of BNE and its successors to simply the "Financial Assurance" described in its D&M Plan, which requires BNE to pre-fund the net cost of

decommissioning; i.e. the gross cost of removing the wind turbines minus the salvage value BNE expects to be realized.

The concept of "Financial Assurance" proposed by BNE is itself flawed because it fails to provide any reasonable guaranty to the Town or its citizens that there will be sufficient funds available to decommission Wind Colebrook South. The cornerstone of BNE's Financial Assurance Plan is that the net cost of future decommissioning at an undetermined date - clearly a "moving target" - can be accurately predicted. First of all, how can the Council even evaluate BNE's estimates as set forth in Table I of its Decommissioning Plan since such estimates are as general as can be with no detail whatsoever provided. Even if decommissioning costs, based on very specific decommissioning specifications could be predicted, it is doubtful that "salvage value" could ever be accurately predicted. As the Town's consultant, John B. Stamberg P.E. of Energy Ventures Analysis, Inc. ("EVA") pointed out during the public hearing, scrap metal prices are highly volatile, depending upon external economic and metal recycle demand. In calculating the scrap metal value of wind turbines, the following must be taken into consideration: (a) scrap metal such as steel, aluminum and

copper must meet certain metal purity, cleanliness and sizing specification, (b) the metal recycler must disassemble mixed material components such as generators or control systems, sort, degrease, remove paint and plastic material and remove wire insulation, all in accordance with the air and water permits and in accordance with OSHA and fire code requirements, (c) metal recyclers must also dispose of residual plastic, non-metallic components, insulation, paint residuals, etc. and (d) the sorted metal may have to be further reduced in size by torching, grinding, breaking or shredding. Typically, metal recyclers do not accept large sections of recycled material, requiring torching the wind turbines to make the sections smaller.

It is inappropriate and unnecessary for the Council to make certain that the amount of the Financial Assurance is at all time adequate, recognizing that, if it is wrong, it is the Town of Colebrook, the State of Connecticut and its citizens which will suffer. As suggested by Mr. Stamberg, the best method of protection would be for the Council to require BNE, or any subsequent owner or operator of the project, to annually update and provide a decommissioning performance bond without any financial cap to guaranty the full completion of the decommissioning work set forth in

the Council's decommissioning specifications. Under such a requirement, it will not be the Council which will need to determine the accuracy of BNE's estimates, but rather the bonding company, which will need to determine the net decommissioning costs, including the salvage value of the wind turbines in determining bond premiums. The Town submits that such a protocol is entirely reasonable, since it will eliminate the risk that the Council might underestimate the requisite financial assurance and that the Town and the State would suffer the likely disastrous financial consequences.

Even with the bonding company determining the net cost of decommissioning, it is imperative that there be detailed specifications for decommissioning. Attached to the Town's Post Hearing Brief dated May 20, 2011 were "Proposed Decommissioning Specifications for Wind Colebrook South and Wind Colebrook North" prepared by Mr. Stamberg; see attached Exhibit B. The Town submits that the EVA Specifications are more detailed than those submitted by BNE in its D&M Plan and that the EVA Specifications better protect the Town of Colebrook and its citizens. The Town strongly urges that no D&M Plan be approved by the Council which does not contain those decommissioning specifications recommended by EVA.

The Town submits that the cost of repairing any damage that might be caused to Flagg Hill Road during the decommissioning process, as well as reimbursement to the Town by BNE for the Town's reasonable costs and expenses in retaining engineers and/or other consultants to provide technical and professional services associated with those studies and evaluations of Flagg Hill Road (all of which BNE agreed to bear at the public hearing), should be included in the cost of decommissioning.

Provision should also be made in the D&M Plan that individual wind turbines forming a part of Wind Colebrook South might need to be decommissioned and should be required to be dismantled if any such turbine has failed to generate electricity in a significant economic amount in any calendar year. The foregoing is important to prevent any "visual blight" which would be occasioned by the presence of one or more derelict individual wind turbines, even if other turbines in Wind Colebrook South remained operational.

OTHER CONDITIONS

The Council's Decision and Order clearly contemplated the possible inclusion of other conditions (" . . . shall include, but not be limited to . . .").

The Town submits that the following, as suggested by the Town in its Post Hearing Brief, should be included in any approved D&M Plan:

A. Wind turbines selected by BNE for Wind Colebrook South shall include fire protection measures, such as automatic fire extinguishers, fire alarms and hand held fire extinguishers.

B. BNE shall indemnify and hold harmless the Town, its officials and employees from and against liability, actions, damages, claims, demands, judgments, losses, costs, expenses and fees, including reasonable and documented attorney's fees (collectively, "Losses"), including Losses for injury or death to persons or for loss or damage to property, including all claims etc. for environmental violations, and shall defend the Town, its officials and employees in court actions in connection with such Losses, whether or not finally adjudicated and including any settlement thereof, provided such Losses result from or arise out of acts of BNE or BNE's contractors, subcontractors or agents; and further provided that such Losses arise out of the construction and/or the operation of Wind Colebrook South or are the result of the failure of BNE or BNE's contractors, subcontractors or agents to comply with the provisions of this Approval.

C. At or prior to the commencement of construction of Wind Colebrook South and at all times thereafter, BNE shall, at its expense, maintain a general commercial liability and excess umbrella insurance policy with a combined total coverage limit of at least Five Million Dollars (\$5,000,000.00) or such higher coverage as the Council may from time-to-time require, with a deductible of not more than Ten Thousand Dollars (\$10,000.00), which policy shall cover personal injuries, accidents or judgments related to Wind Colebrook South. BNE will provide proof to the Council of such insurance annually.

Respectfully submitted:

TOWN OF COLEBROOK

By: 

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CERTIFICATION

I hereby certify that a copy of the foregoing document was sent by U.S. mail or email to the following service list on the 19th day of October, 2011.

Lee D. Hoffman
Bonnie L. Heiple
Paul Corey
Jeffrey and Mary Stauffer
John R. Morissette
Christopher R. Bernard
Joaquina Borges King
Richard T. Roznoy
Nicholas J. Harding
Emily A. Gianquinto
Kristin M. and Benjamin C. Mow
David R. Lawrence and Jeannie Lemelin
Walter Zima
Eva Villanova
Brandy Grant



David M. Cusick

EXHIBIT A

1. If BNE elects to construct Wind Colebrook South, BNE shall retain an engineer or other competent authority to conduct a preconstruction survey of those portions of Flagg Hill Road which shall be utilized during the construction of Wind Colebrook South, which survey shall consist of video and narrative describing the then existing conditions of such highway, including all related drainage facilities. BNE and the Town shall agree upon what improvements, if any, to Flagg Hill Road including drainage facilities (the "Road Modifications"), must be completed prior to the commencement of construction of Wind Colebrook South in order to accommodate all motor vehicles and equipment which may need to use Flagg Hill Road in order to access the Site. Prior to the commencement of constructions, BNE shall either make the Road Modifications to the satisfaction of the Town or shall reimburse the Town for making such Road Modifications, as the Town shall determine.

2. During BNE's construction activities concerning Wind Colebrook South, BNE shall continuously monitor the condition of that portion of Flagg Hill Road used during such construction activities to confirm that the same may

be safely used by the public, and shall immediately report to the Town any road repairs/reconstructions which are then required to keep Flagg Hill Road in a safe and sound condition and open to the public. BNE shall either complete to the satisfaction of the Town those repairs/reconstructions determined by the Town to be necessary or shall reimburse the Town for making such repairs/reconstructions, as the Town shall determine.

3. Engineers for BNE and the Town shall perform a post construction survey and identify any damage that has been caused to Flagg Hill Road by BNE's construction activity. BNE shall either complete those repairs/reconstructions determined by the Town to be necessary to restore it to its condition existing immediately prior to BNE's commencement of construction activities to the satisfaction of the Town or shall reimburse the Town for such repairs/reconstructions, as the Town shall determine.

4. BNE shall reimburse the Town for the Town's reasonable costs and expenses in retaining engineers and/or other consultants to provide technical and professional services associated with any studies, evaluations,

negotiations and all oversight in connection with
conditions 1, 2 and 3 above.

Proposed Decommissioning Specifications For Wind Colebrook South And Wind Colebrook North

Section 1

Location: Wind Colebrook South
17329 Flagg Hill Road
Colebrook, CT -
79.44 acres
3-1.6 MW wind turbine for 4.8 MW rated capacity

Wind Colebrook North
Winsted-Norfolk Road and Rock Hall Road
Colebrook, CT
124.9 aacres
3-1.6 MW wind turbines for 4.8 MW total rated capacity

Section 2

ELECTRICAL TRANSMISSION LINES AND CONNECTION

- All electrical connections, underground and above ground transmission lines, electrical controls and electrical equipment shall be deactivated prior to any decommissioning occurs.
- Electrical wiring in the wind turbine tower shall be removed prior to blade, nacelle and tower de-erection.

Section 3

FLUID REMOVAL

- All fluids, except the transformer, shall be completely drained prior to de-erection.
- Drained fluids shall be legally disposed.
- Any hazardous or toxic fluids shall be identified and double barreled for removal and disposal.
- Spill prevention and clean up materials and equipment shall be available.

Section 4

BUILDING STRUCTURE ON WIND COLEBROOK SOUTH

- Building structure on Colebrook South Site to remain if maintained in occupiable condition.
- If the structure is not in occupiable condition, the building will be demolished.
 - Asbestos inspection and abatement to be conducted.
 - Well closure required.
 - Electrical service lines and electrical post to be removed.
 - Septic tank to be removed.
 - Drainage field to remain.

Section 5

BLADE, NACELLE, AND TOWER REMOVAL

- The blades are to be disconnected and removed without torching or welding or any method that may result in fires.
- The blades may be reduced on site by sawing or breaking or by hauling off site to be reduced to size and rent to a suitable disposal site or sold as a whole unit.
- The nacelle, less the blades, are to be disconnected without torching or welding or any method that may result in fires.
- Tower components shall be unbolted and lowered to the ground and removed from the site without torching or welding or any method that may result in fires.

Section 6

BLADE LAYDOWN AND ASSEMBLY AREAS, TOWER SECTION LAYDOWN AREA,
CRANE PADS AND CRANE ASSEMBLY AREA

- These areas shall be removed entirely and restored to the original grade with at least 9 inches of top soil.

Section 7

ELECTRICAL COLLECTOR YARD

- The electrical collector yard shall be tested for spilled fluids and removed entirely and restored to the original grade with at least 9 inches of top soil.

Section 8

FACILITY SUPPORT BUILDING, MAINTENANCE OFFICE AND EDUCATIONAL
SPACE

- This building may remain if the current property owner request in writing that the building remain.
- If not so requested, the entire building, foundation, electrical connection, water supply, septic tank shall be removed and restored to the original grade with at least 9 inches of top soil.

Section 9

TOWER FOUNDATION

- The tower foundation shall be removed to a depth of 10 feet below the original or the existing contour, whichever is lower.

Section 10

ROADS

- Roads may remain if the current owners request in writing that the main roads remain (less areas identified in Section 4, 6, 7 and 8 which must be removed).
- If not so requested, the roads not requested to remain shall be removed and restored to original grade with at least 9 inches of top soil.

Section 11

DEBRIS REMOVAL

- All materials, equipment will be removed from the site and none of these materials will be disposed of on site.

Section 12

- Temporary erosion and sediment control per the 2002 Connecticut Guidelines for Soil and Erosion Sediment Control.
- The required top soil will be imported to the site as no top soil storage area was identified on site. The top soil will be placed during the growing season of April to May.
- Once the top soil is placed on the exposed disturbed areas, rye grass will be planted within a week by hydroseeding techniques.
- Finally, birch trees of 4 to 5 feet height will be planted, fertilized and watered at approximately 12 foot spacing and maintained for 3 years.

Section 13

- The transformer is to be removed as a whole unit for resale or disposal.