

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**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
Winsted-Norfolk Road in Colebrook,
Connecticut (“Wind Colebrook North”)**

Petition No. 984

May 6, 2011

**PETITIONER’S REPLY
PARTICIPATION OF VICE-CHAIRMAN TAIT**

The petitioner, BNE Energy Inc. (“BNE”), submits this reply to FairwindCT, Inc. Stella and Michael Somers and Susan Wagner (the “Grouped Parties”) objection to BNE’s objection to the participation of Vice-Chairman Tait in this proceeding.

1. This petition was filed on December 13, 2010.

2. The Council circulated a memorandum dated March 21, 2011 advising the parties and intervenors to this proceeding that Vice-Chairman Tait is the chairman of the Norfolk Inland Wetlands Commission. Clearly the memorandum was circulated to inform the parties and intervenors to this proceeding of Vice-Chairman Tait’s conflict of interest due to his affiliation with the Norfolk Inland Wetlands Commission.

3. As was not clear from BNE’s May 4, 2011 objection, counsel for BNE has *never* received a copy of the March 21, 2011 memorandum. Counsel for BNE inquired with Council staff regarding the circulation of this memorandum on May 3, 2011 when the March 21, 2011 memorandum was first viewed on the Council’s website. Counsel for BNE was informed by Council staff that a singular e-mail was sent out circulating this memorandum to the petition 984 service list and Council staff indicated that counsel for BNE was inadvertently not included on this e-mail. No such e-mail was circulated for petition 983.

4. During the evidentiary hearing on this proceeding on May 5, 2011, Council indicated that BNE's objection was moot because it was not timely filed. While BNE is assured that its counsel's exclusion from the e-mail circulation of the March 21, 2011 memorandum was entirely accidental, it is disingenuous for the Council to indicate BNE's motion is moot based on untimeliness when the sole reason for any purported delay is due to the failure of the Council itself to notify counsel for BNE.

5. BNE seeks to further respond to the Grouped Parties' objection dated May 5, 2011. The Grouped Parties raise the conspiracy theorist argument that BNE's objection to Vice-Chairman Tait's participation is based on deliberations occurring in an entirely separate proceeding. Like virtually every other legal argument the Grouped Parties have raised in this proceeding, this argument is entirely unencumbered by any legal or factual support whatsoever. Contrary to the Grouped Parties' assertion, petition 980 is an entirely separate proceeding for this proceeding and no vote has occurred in that proceeding to date.

6. Furthermore, it is preposterous for the Grouped Parties' to object to BNE's objection to Vice-Chairman Tait's participation based on his actual affiliation with an opponent of the project that is the subject of this proceeding when the Grouped Parties themselves have sought to recuse Chairman Stein based on a single unintended word included in a memorandum not even authored by Chairman Stein.

7. The Grouped Parties' unsupported argument cannot alleviate the fact that a potential conflict exists that requires Vice-Chairman Tait to recuse himself. As indicated in BNE's May 4, 2011 objection, the property that is the subject of this proceeding is located within 2,500 feet of the Town of Norfolk. Furthermore, by BNE's own admissions, the proposed project, if approved, will be visible from portions of Norfolk. Finally, Vice-

Chairman Tait's affiliation with at least one opponent of this project makes it entirely necessary that he recuse himself from this proceeding. Chairman Stein has abstained from voting in this proceeding because of a single unintended word in a memorandum he did not even author pending a review of the unfounded motion for recusal of the Grouped Parties to avoid even the appearance of a potential conflict. Given Vice Chairman Tait's actual conflict in this proceeding acknowledged in the Council's March 21, 2011 memorandum that BNE did not receive due to an inadvertent omission by Council staff, Vice-Chairman Tait's recusal is warranted, justified and necessary.

WHEREFORE, BNE objects to Vice-Chairman Tait's participation in this proceeding and respectfully requests that he recuse himself from this matter.

Respectfully Submitted,

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Certification

This is to certify that a copy of the foregoing has been mailed this date to all parties and intervenors of record.

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