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**
	April 29, 2011

MOTION TO COMPEL INTERROGATORY RESPONSES

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the "Grouped Parties") hereby request that the Council compel BNE Energy Inc. ("BNE") to respond fully to certain interrogatory questions to which it has objected on various grounds including the grounds of relevance. In the alternative, the Grouped Parties request that the Council strike the sections of BNE's petition that concern the subject matter that BNE now claims is not relevant to this proceeding.

1. FairwindCT, Inc. ("FairwindCT") issued its second set of interrogatories to BNE on March 8, 2011.

2. In those interrogatories, FairwindCT asked the following questions with regards to noise and distance (the "Noise and Distance Questions"):

   Q8. Please provide a noise evaluation that analyzes the cumulative effects of both Wind Colebrook South and Wind Colebrook North on noise levels in the surrounding area.

   Q16. Please provide a list of all property lines and residences located within 1 mile of each proposed turbine location.

Q17. Please provide a list of all property lines and residences located within 1.25 miles of each proposed turbine location.

Q18. Please provide a list of all property lines and residences located within 1.5 miles of each proposed turbine location.

3. BNE objected to Question 8 as irrelevant because the petitions have not been consolidated. BNE objected to Questions 16 through 18 as overly broad and unduly burdensome.

4. The Noise and Distance Questions were asked by FairwindCT in order to receive and place on the record data that may be helpful in evaluating the impact noise resulting from Wind Colebrook North may have on properties and residences within various distances of the turbine locations. BNE has access to such information and the Grouped Parties are entitled to responses to their questions. Moreover, the Council's own interrogatories indicate that the Council is interested in hearing about how far homes and property lines are from the proposed turbine locations. The distance questions are limited to the range within which noise from turbines has been documented to travel. It is not overly broad and unduly burdensome to ask the petitioner to provide a list of all residences and property lines within the range where the noise from the turbines is likely to travel. BNE should be compelled to answer these questions.

5. In those interrogatories, FairwindCT asked the following questions with regards to the original site plans (the "Site Plan Questions"):

Q91. Per Construction Schedule Note 10 on Sheet C-200 (Exhibit F) will any off-site grading be required? If so, have grading rights been obtained? If they are not available, how will this affect the plans?

Q92. Please explain the conflict between Construction Schedule Note 9 on Sheet C-200 (Exhibit F) and the grading shown for each of the tower and blade assembly areas, the temporary sediment trap and the road side slopes.

Q93. Where are the discharge points from the temporary diversions shown on Sheet C-201 (Exhibit F), what is the drainage area for each of the discharge points and what measures will be used for sediment control and stabilization at these outlets?

Q94. Please explain the discrepancy between the use of 1:1 slopes and the specified erosion control and stabilization measure of temporary seeding on Sheets C-201, C-202, and C-203 (Exhibit F)?

Q95. Please explain the discrepancy between the design of the silt fence north of the tower assembly area for Turbine 1 and the requirements of the CT Erosion and Sediment Control Manual.

Q96. How large is the drainage area discharging to the unlabelled structure west of the road @ Station 1 + 00 on Sheet basin shown on Sheet C-202

(Exhibit F)? What is the slope of the berm for this basin? Where is the outlet structure or weir?

Q97. Please explain the discrepancy between the design of the silt fence throughout Sheet C-202 (Exhibit F) and the requirements of the CT Erosion and Sediment Control Manual.

Q99. Please explain how temporary seeding will be adequate to stabilize the slope just south of the property line on C-203 (Exhibit F).

Q100. Please explain the discrepancy between the design of the silt fence throughout Sheet C-203 (Exhibit F) and the requirements of the CT Erosion and Sediment Control Manual.

Q101. How will run-on from upslope areas, groundwater seepage and slumping be controlled on the cut slopes above the blade laydown area on Sheet C-203 (Exhibit F)? If it is to be intercepted and diverted, where are those facilities on the plan, where will the discharge points be, what is the total area that drains to each of the discharge points, how will they be stabilized, what erosion control measures will be required, and how will the grading accommodate these features?

Q103. Where will the drainage ditch on the north side of the access road on Sheet C-204 (Exhibit F) between Sta. 2 + 75 and 0 + 00 discharge? Is there a drainage system in this area to accommodate the flow? Has its capacity been analyzed? If so, what are the results? If not, how can BNE assert that its proposal will have no adverse impacts?

Q104. Where will the drainage ditch on the south side of the access road on Sheet C-204 between Sta. 1 + 50 and 0 + 00 discharge? Has its capacity been analyzed? If so, what are the results? If not, how can BNE assert that its proposal will have no adverse impacts?

Q105. How large is the drainage area that discharges to the proposed culverts at the wetland crossing shown on C-204 (Exhibit F)? What are the 50 year return frequency peak flows to these culverts?

Q106. Please explain the discrepancy between the design of the silt fence throughout Sheet C-204 (Exhibit F) and the requirements of the CT Erosion and Sediment Control Manual.

Q108. How will the discharge from the temporary diversion ditch be conveyed down the slope @ Station 1+ 75 of the access road, to the roadside ditch?

Q109. Why doesn't the erosion control barrier downslope of the access road Station 1+00 and 5+00 conform to the requirements of the Erosion Control Manual?

Q110. Why doesn't the stabilization of the slopes for the Tower assembly area on Sheet C-201 (Exhibit F) conform to the requirements of the Erosion Control Manual.

Q111. Why is no grading shown for western leg of the blade assembly area on Sheet C-201 (Exhibit F)? Why doesn't this grading conform to the requirement that the blade assembly area be graded flat to within 6" shown on the plans?

Q117. Why aren't the culverts at the wetland crossing shown on the road plan and profile Sheet C-304 (Exhibit F) as is standard practice?

Q118. Given the very steep grade of the access road to Turbines 2 and 3 (12.26% for over 200') please provide supporting calculations to demonstrate that the roadside ditches are stable.

Q120. How will the permanent roadside ditch on the north side of the access road west of the wetland crossing be stabilized? Why are no erosion control or water quality measures provided?

Q124. Where will the temporary stream crossing/temporary bridge crossing detail shown on sheet C-503 (Exhibit F) be used?

Q125. Where is the centerline of the two intermittent watercourses at the proposed wetland crossing detailed on Sheet C-503 (Exhibit F)?

Q126. Please explain the internal discrepancies in the Wetland Crossing detail on Sheet C-503 (Exhibit F) with respect to the culvert type, size and length and provide a revised detail that is consistent.

Q127. Why was no construction sequence provided for the Wetland Crossing, particularly with respect to accommodating the existing flow during construction, dewatering, and sediment control to protect the downstream watercourse and aquatic resources?

Q128. Where will the wetland crossing detail referenced on C-503 (Exhibit F) and shown as Detail 2 on Sheet C-504 (Exhibit F) be used?

Q129. Why doesn't the temporary sediment basin conform to the requirements of the Erosion Control Manual with respect to height, width and slope of the containment berm? Where is outlet weir? How will the flow be conveyed to a stable outlet?

Q131. How will the side slopes and bottom of the temporary roadside ditches be stabilized? What runoff velocities will occur for the 10 yr through 100 year storms and how will the ditch bottom and sides be stabilized? Please provide calculations showing that the ditches will be stable and have adequate capacity to pass the design storm.

Q133. How will the flow from the ditch shown on the south side of the permanent access road on Sheet C-310 (Exhibit F) be stabilized downslope of the end of the gravel section at approx. elevation 1318?

Q136. What is the drainage area upslope of the low point on the crane assembly access road to Turbine 1. How will runoff be controlled at this point during construction and how will sediment be removed from the runoff?

Q137. Why is there a discrepancy between the Erosion Control narrative and the plans with respect to stabilization of slopes steeper than 2:1?

6. BNE responded to these questions by referring to changes made on the revised plans. The Site Plan Questions all asked for information regarding the original site plans submitted by BNE in its petition for declaratory ruling, not the revised site plans submitted four months later. BNE has not withdrawn its original set of site plans or, for that matter, the siting of turbine 1 in its original location; therefore,

questions about the inadequacies of those original plans are relevant to this proceeding. BNE's response to the Site Plan Questions with reference to revised site plans is a failure to answer the questions asked, and the Grouped Parties are entitled to responses to their questions.

7. In those interrogatories, FairwindCT asked the following questions:

Q7. Please provide a shadow flicker analysis that analyzes the cumulative effects of both Wind Colebrook South and Wind Colebrook North on "receptors" in the surrounding area.

Q21. Please provide a copy of any other GE materials relevant to the proper siting of its 1.6 MW turbines, guidelines and policies, including but not limited to materials regarding ice and blade throw, fire safety, noise, wildlife impacts, fall zones and proper siting to avoid turbulence.

Q25. Please provide the name(s) of GE personnel with whom you have been in contact in the course of preparing the instant petition, including, but not limited to, the author of any MLA prepared by GE.

8. BNE objected to all of these questions as irrelevant and refused to answer them.

9. BNE should be compelled to answer them because they are all relevant. Each question is based on information that BNE included in its petition for declaratory ruling or is otherwise relevant to BNE's petition, as described below.

10. Question 7 is relevant and appropriate because whether or not petitions 983 and 984 have been consolidated, the cumulative impact of Wind Colebrook South and Wind Colebrook North is an issue when shadow flicker from both projects may

be a combined impact on public health and safety. Further, the need to consider cumulative effects is evident from the statutory scheme governing the Council's jurisdiction. For example, General Statutes § 16-50p, establishing procedures for certification decisions, specifically requires the Council to consider "[t]he nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities" (emphasis added). Pursuant to the Council's articulation in Petition No. 980, the Council's decisions in these petitions "is governed by the criteria set forth under C.G.S. § 16-50p." (Petition No. 980, Motions Memo dated Apr.8, 2011.) The Council and parties to this matter should know what "receptors" in the area surrounding Wind Colebrook South and Wind Colebrook North will be impacted by the cumulative effects of the two projects.

11. With respect to Question 21, in order to consider BNE's petition for declaratory ruling, the Council and parties to this matter should know what GE has said, or what guidelines or policies they have published, regarding the public health and safety and facility operations of this project and GE's equipment involved in this project. These topics are relevant pursuant to the Council' memorandum regarding evidentiary hearing procedures, dated March 18, 2011, which listed the subjects relevant to the Council's decision.

12. With regard to Question 25, the Grouped Parties are entitled to issue subpoenas to parties who may have information relevant to this proceeding. BNE's failure to identify the GE personnel who have knowledge about this proposed project would prejudice the Grouped Parties.

WHEREFORE, the Grouped Parties ask that the Council issue an order compelling BNE to respond to Questions 7, 8, 16-18, 21, 25, 91-97, 99-101, 103-106, 108-111, 117, 118, 120, 124-129, 131, 133, 136 and 137 of FairwindCT's second set of interrogatories to BNE. Moreover, given that the evidentiary hearing in this proceeding has already begun, the Grouped Parties ask that the Council order BNE to respond to those questions within two business days of the issuance of such an order and permit the Grouped Parties to examine BNE's witnesses regarding BNE's responses at a later hearing date.

By: 

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PROPOSED ORDER

Whereas, the evidentiary hearing in this matter began on April 26, 2011;

Whereas, BNE objected to certain interrogatories that were issued by FairwindCT, Inc. on March 8, 2011;

Whereas, the interrogatories request information relevant to this proceeding;

IT IS HEREBY ORDERED that BNE respond to Questions 7, 8, 16-18, 21, 25, 91-97, 99-101, 103-106, 108-111, 117, 118, 120, 124-129, 131, 133, 136 and 137 of FairwindCT's second set of interrogatories to BNE. **IT IS HEREBY FURTHER ORDERED** that BNE supply its answers to these interrogatories within two business days of the date of this Order.

SO ORDERED:

CONNECTICUT SITING COUNCIL

By: _____ Date: _____
Robert Stein, Chair

CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by first-class mail and e-mail to the following service list on the 29th day of April, 2011:

Carrie L. Larson
Paul Corey
Jeffery and Mary Stauffer
Thomas D. McKeon
David M. Cusick
Richard T. Roznoy
David R. Lawrence and Jeannie Lemelin
Walter Zima and Brandy L. Grant
Eva Villanova

and sent via e-mail only to:

John R. Morissette
Christopher R. Bernard
Joaquina Borges King

Denise L. Myron