



REID AND RIEGE, P.C.
COUNSELLORS AT LAW

Emily A. Gianquinto
(860) 240-1025
egianquinto@rrlawpc.com

ONE FINANCIAL PLAZA
HARTFORD, CT 06103
Voice: (860) 278-1150
Fax: (860) 240-1002

234 CHURCH STREET
9TH FLOOR
NEW HAVEN, CT 06510-1819
Voice: (203) 777-8008
Fax: (203) 777-6304

January 14, 2011

Connecticut Siting Council
Attn: Hon. David Caruso, Chair
10 Franklin Square
New Britain, CT 06051

Re: Petition No. 984, BNE Energy, Wind Project, Colebrook

Dear Judge Caruso:

FairwindCT, Inc., a Connecticut non-profit corporation run by Colebrook residents and comprised of residents of Colebrook, Norfolk, Winchester and other surrounding towns, opposes the siting of industrial wind turbine projects in close proximity to residential areas in Connecticut, and specifically opposes the two industrial wind turbine projects that are proposed for residential areas in Colebrook and are currently pending before the Connecticut Siting Council (the "Council").

BNE Energy, Inc. ("BNE") has filed two petitions with the Council asking for declaratory rulings approving two industrial wind turbine sites located less than one half mile apart on land that is zoned residential. The effects of these proposed industrial facilities will be dramatic and they will be cumulative. Despite the obvious scope of these petitions, which Judge Caruso acknowledged at a recent Council meeting, BNE asks the Council to consider its petition for Wind Colebrook North in a vacuum, based on only preliminary assessments on the project's impact on the environment and the health, safety and general quality of life of nearby residents. BNE also asks the Council to approve its petition in the complete absence of any applicable regulations. FairwindCT submits that the Council must consider the broader implications of not only the combined impact of the two petitions, but also of considering projects of this scope without any established regulations for guidance.

FairwindCT, Inc. hereby seeks party status in the 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") dated December 13, 2010.

Request for Party Status

January 14, 2011

Page 2

Contact information for proposed party

Proposed party: FairwindCT, Inc.
Address: P.O. Box 225
Colebrook, CT 06021
Phone: 860-379-6425
Email: info@fairwindct.com

Contact information for representatives of proposed party:

Attorneys: Nicholas J. Harding
Emily A. Gianquinto
Address: Reid and Riege, P.C.
One Financial Plaza, 21st Floor
Hartford, CT 06103
Phone: 860-240-1011
860-240-1025
Email: nharding@rrlawpc.com
egianquinto@rrlawpc.com

I. Manner in which proposed party claims to be substantially and specifically affected

FairwindCT, Inc. ("FairwindCT"), is a Connecticut non-profit corporation formed and run by Colebrook residents for the purpose of promoting conservation and natural beauty, protecting the environment, personal health and biological values, preserving historical sites, promoting consumer interests and promoting the orderly development of Colebrook and the surrounding area. To accomplish its purposes, FairwindCT is educating the general public and the community about industrial wind energy projects, lobbying for wind energy regulations and advocating for the protection of the environment and the health, safety, and quality of life of Connecticut residents. FairwindCT's members live in Colebrook, Norfolk, Winchester and other Connecticut towns.

The proposed facility, Wind Colebrook North, will substantially and specifically affect FairwindCT because it will have an immediate negative impact on the area surrounding the planned site on Winsted-Norfolk Road. Wind Colebrook North will be an industrial facility located in a residential area that abuts at least 10 residences, a sportsman's group with more than 600 members and property owned by an association of 125 families and used as a recreation area by the families and by entities who rent the site, including the Lion's Club, political groups and

Request for Party Status

January 14, 2011

Page 3

individuals. The petitioner, BNE Energy Inc. ("BNE"), proposes to clear nearly 10 acres of forested land, build access roads over and adjacent to wetlands areas, and construct industrial wind turbines, which will be 200 feet taller than the Statue of Liberty and will have a blade diameter that will stretch nearly the length of a football field, in an area that is primarily preserved in its natural state.

These actions will harm the environment, destroy natural beauty and set back the conservation efforts that local residents and the State of Connecticut have worked to promote for decades. The industrial turbines will result in wildlife casualties, especially for the bird and bat populations. The bat population is particularly vulnerable to any additional casualties because it has been and continues to be decimated by White Nose Syndrome. The recommendations of the U.S. Fish and Wildlife Service Wind Turbine Guidelines Advisory Committee ("Wind Turbine Guidelines Advisory Committee"), submitted to the Secretary of the Interior in March 2010, state: "As with all responsible energy development, wind energy projects should adhere to high standards for environmental protection." BNE's proposed facility does not adhere to any standards for environmental protection, let alone high standards.

The proposed industrial facility will also have adverse effects on natural and historic resources in the immediate area, including Rock Hall, which is on the National Register of Historic Places. BNE is apparently unconcerned with those negative effects, since it not only failed to inform the Council of the existence of Rock Hall in its petitions, but is also opposing the party status applications of the owners of Rock Hall in part on the grounds that "the issue of whether the proposed project will have an adverse effect on the [Rock Hall] property is irrelevant to the Council's decision making criteria." (See Objection to Request for Party Status, dated Jan. 5, 2011, ¶ 8 (filed in Petition Nos. 983 and 984).)

Wind Colebrook North also poses significant threats to the health and safety of residents who live in close proximity to the proposed sites. Studies of similar projects have shown that people living in proximity to industrial wind turbines suffer from ailments including headaches, tinnitus, nausea, sleep deprivation, dizziness, vertigo, ear pressure or pain, irritability, fatigue, memory and concentration problems, racing heartbeats, visual blurring and panic episodes. These symptoms have been attributed to the noise, vibration and shadow flicker caused by the industrial turbines. The shadow flicker may also impact drivers on Winsted-Norfolk Road (more commonly known as Route 44), which is traveled at all times of day. GE's own literature warns that the massive rotating blades of the industrial wind turbines can throw ice at least several hundred meters, and recommends that industrial turbines be sited "a safe distance from any occupied structure, road, or public use area." FairwindCT submits that the turbines proposed for Wind Colebrook South are not sited a safe distance from houses, roads or lands held in the public trust, and cannot be sited safely given the small size of the property. One of BNE's proposed turbines will be only approximately 500 feet from Route 44 and less than 300 feet from Rock

Request for Party Status

January 14, 2011

Page 4

Hall Road. BNE proposes to site one turbine nearly on top of a property line, another less than 300 feet from a property line, and a third turbine less than 800 feet from several homes. Those distances are not safe.

Industrial wind turbines also pose other safety risks. Similar turbines have caught on fire. If that occurred in Colebrook, the town's all-volunteer fire companies do not have either the fire safety equipment that could reach the top of the 328-foot turbine hub or the necessary training to suppress a fire at that height. Nor could the town alone control a fire that might spread through the heavily forested area surrounding Wind Colebrook North. Blades from similar turbines have dislodged and traveled several hundred feet from the hub. Turbines have collapsed. In BNE's petition, its wind assessment consultant states that the turbine model chosen by BNE "does not meet fall zone requirements from the project boundary." (See Petition No. 984, Ex. M, Colebrook, CT Wind Assessment, page 4.) These safety concerns show the need for appropriate regulation of the siting of these industrial projects and their incompatibility with residential areas.

Approval of BNE's petition to site an industrial wind turbine project on a property zoned residential with no regulation and in the absence of appropriate setbacks will also negatively impact the property values in Colebrook and the surrounding area. People choose to live in the Northwest corner of Connecticut for its peaceful, quiet way of life and beautiful, picturesque surroundings in historic towns. The residents of these communities, and of most of the Northwest corner of Connecticut, have spent decades conserving and protecting the natural beauty of the area, open space, and wildlife and game habitat. Industrial wind turbine projects, with their accompanying noise, visual impact and associated health and safety concerns, will depress real estate values in the area. The proposed project will also negatively impact the area's ability to attract tourists, who come to Colebrook and surrounding towns to enjoy quaint New England getaways in the Litchfield Hills. Much of the area's appeal to tourists stems from its natural beauty and peaceful surroundings. If the Council approves Wind Colebrook North, the tourism industry in Northwest Connecticut will suffer a dramatic downturn.

Based on these and other concerns, some of which are detailed below, FairwindCT asks the Council to deny BNE's petition. Alternatively, FairwindCT asks the Council to defer BNE's petition, impose a statewide moratorium on industrial wind turbine projects and adopt regulations providing for appropriate setbacks and other siting criteria, including environmental siting standards, that will protect the health and safety of Connecticut's residents and preserve its natural and historic resources. By this request, FairwindCT is asking the Council to invoke its authority under General Statutes § 4-176(e) to decide not to issue a declaratory ruling and to initiate regulation-making proceedings.

Request for Party Status

January 14, 2011

Page 5

II. Contention of the petitioner

FairwindCT contends that industrial wind turbine facilities are, as a general matter, inappropriate for residentially zoned areas. More specifically, FairwindCT contends that the BNE's proposed facility is fundamentally incompatible with the area surrounding Wind Colebrook North. FairwindCT's contentions regarding the Wind Colebrook North petition can be summarized as follows:

Point I. The Council should not consider petitions for declaratory rulings before it has engaged in the rule-making process and adopted appropriate regulations that will balance the State's goal of increasing renewable energy resources with the interests of its residents and the goals of the State Plan for Conservation and Development. The Council has never before considered industrial wind turbine projects. The State has no law or regulation specific to this technology. BNE claims that its only burden before the Council is to "establish that the proposed project complies with air and water quality standards of the Department of Environmental Protection." (See Objection to Request for Party Status, dated Jan. 5, 2011, ¶ 8 (filed in Petition Nos. 983 and 984).) BNE is asking the Council to approve these petitions with no consideration of the environmental, health, safety and economic effects of the proposed industrial use.

BNE Energy has never before constructed an industrial wind turbine project. BNE's inexperience with these projects is of particular concern given its lack of attention to detail in proceeding with its agenda of siting industrial wind turbines throughout Northwest Connecticut. BNE failed to inform the Council that both Wind Colebrook South and Wind Colebrook South are within 1.5 miles of Rock Hall, a historic residence that is on the National Register of Historic Places, and similarly failed to inform the Council that Wind Colebrook South is adjacent to the Beckley Bog, a National Natural Landmark. State and federal agencies are required to give special consideration to the potential adverse effects of projects funded by state and federal money on historic and natural resources. BNE's apparent disregard for the adverse effect of its activities on natural resources is echoed in its recent clear-cutting of 2.3 acres of state forest in North Canaan, where it is preparing to install a meteorological tower.

In light of these facts, FairwindCT asks that the Council either reject or defer BNE's petition until such time as the Council has had time to consider all aspects of siting nearly 500-foot tall rotating structures in residential areas. The residents of Colebrook and the surrounding area should not be used as guinea pigs in BNE's experiment. To proceed in the absence of any regulation at all is to risk the health, safety and welfare of the State's citizens. Moreover, all of Connecticut's citizens deserve the opportunity to be heard on these issues, which will only happen if the Council denies or defers BNE's petitions and initiates rule-making, as it is authorized to do under Section 4-176(e) of the General Statutes.

Request for Party Status

January 14, 2011

Page 6

Point II. The Wind Colebrook North petition should be denied because industrial wind turbines should not be sited in proximity of residences. The experiences of other communities in the United States and in Europe, where industrial wind turbines have been sited for decades, show that this technology and residences are incompatible with each other. Living in proximity to industrial wind turbines endangers residents' health and safety and infringes on their property rights. Residents living in proximity to similar projects are subjected to constant audible noise, measurable infrasound noise and what is known as a shadow flicker, which results from the sun passing through the rotating blades of the turbines. Documented effects on residents include sleep deprivation, headaches, tinnitus, lapses in concentration and memory, nausea, dizziness, vertigo, ear pressure or pain, irritability, fatigue, racing heartbeats, visual blurring and panic episodes.

Resident safety is also an issue, as BNE proposes to site its massive structures close to property lines, in violation of the manufacturer's own recommended "fall zone requirements." (See Petition No. 984, Ex. M, Colebrook, CT Wind Assessment, page 4.) If a fire starts in the hub of one of BNE's turbines, no firefighting equipment in the area can reach it – basically, the fire must burn itself out, which may result in the collapse of the entire structure and may cause fire as burning debris falls. Massive industrial wind turbines are known to throw ice hundreds of feet from their blades. Those blades, each of which is more than 160 feet long, have been thrown hundreds of feet from turbine hubs. These safety risks have prompted turbine manufacturers to recommend safety zones of more than 1000 feet from each turbine. The turbines proposed for Wind Colebrook North do not meet even that minimum, manufacturer-recommended safety setback requirement.

In short, BNE's brief and detail-free description of why its project is "fully expected" to "be reliable and safe" and will "meet or exceed all health and safety requirements applicable for electric power generation" is contradicted by past safety incidents with similar industrial wind turbine projects and by GE's own safety recommendations. (See Petition No. 984, page 12-15.)

Point III. The Wind Colebrook North petition should be denied because the project contradicts both the State Conservation and Development Policies Plan and Colebrook's Plan of Conservation and Development. (See id., page 15.) The project also violates Colebrook's local zoning and inland-wetland regulations.

BNE claims that Wind Colebrook North is consistent with the State Conservation and Development Policies Plan because the area of Colebrook in which BNE wants to site its industrial wind turbines is "either a 'conservation area,' a 'preservation area' or 'rural lands.'" (Petition No. 984, page 16.) According to BNE, Wind Colebrook South complies with State policies associated with such land because its industrial facility will be a use "compatible with the identified conservation value," is "directly consistent with the preservation value" and will

Request for Party Status

January 14, 2011

Page 7

“[p]rotect the rural character of these areas.” (*Id.*, pages 16-17.) BNE believes that its industrial use of residential, rural conservation land is more consistent with State goals than “the development of multiple residences that could be approved on the Property.” (*Id.*, page 16.)

The development of “multiple residences” has not been proposed for that area, a fact acknowledged by BNE. (*See id.*, page 18 (“BNE has consulted with the Town of Colebrook and the Project will not interfere with any existing or future development plans known in the area.”).) In fact, under present zoning designation, the two lots comprising the Wind Colebrook North site could only accommodate two houses, one of which is already built on the site. Moreover, were a subdivision proposed for the property, the town of Colebrook, not the Siting Council, would have authority to approve or deny those plans. BNE insists that local officials have no such control over Wind Colebrook North, which will include not only three massive turbine structures, but also an “electrical collector yard” and “[a]dditional equipment” to be installed “as needed.” (*Id.*, page 8.) This type of industrial development is not consistent with either rural, conservation or preservation designations.

Wind Colebrook North is likewise inconsistent with Colebrook’s Plan of Conservation and Development. BNE acknowledges that the town’s Plan “recognizes the rural character of Colebrook” and “emphasizes the importance of controlled growth and protecting environmental resources including forest land and habitat” – but then makes the incredible statement that this large-scale industrial facility, which will involve construction of a road over a wetland, will kill birds and bats, will likely have adverse effects on soil and habitat and will require the clear-cutting of nearly 10 acres, satisfies those goals. (*See* Petition No. 984, pages 1 & Ex. I, page 20.)

Wind Colebrook North also violates local zoning and wetlands regulations. The industrial project is proposed for property that is zoned R-2, which means that it is zoned for residential use and that lots must be a minimum of two acres to permit the construction of single-family residences, and must meet certain frontage, access and additional lot size requirements, in the case of interior lots. The permitted uses of R-2 zone not only do not include wind turbines, but they also do not include any electrical generation or industrial use at all. Thus, the siting of this industrial project in an R-2 zone would expressly violate Colebrook’s zoning regulations. BNE’s claim that it satisfies the regulations because its project would comply with the minimum setback requirements applicable to residences is ludicrous. (*See* Petition No. 984, page 17.) The 50- and 30-foot setbacks detailed for R-2 zones are applicable to homes and related residential structures. They do not permit the siting a 492-foot tall industrial wind turbine only 50 feet from a property line in a residential area, and for BNE to suggest that it should be permitted to put such a massive structure only 50 feet from a property line is simply irresponsible, and yet another reason for the Council to deny or defer this petition and initiate the rule-making process to establish appropriate setback guidelines for industrial projects of this type and scope.

Request for Party Status

January 14, 2011

Page 8

Wind Colebrook North would also violate Colebrook's wetlands regulations. BNE acknowledges that its project involves "Regulated Activity" and will "permanently impact" more than 3194 square feet of wetlands and will "temporarily impact" an additional 1785 square feet of wetlands, but does not describe how those impacts satisfy Colebrook's wetlands regulations. (See Petition No. 984, pages 17-18.) In fact, they do not. Although details of BNE's plans for construction in and around the wetlands areas on its property are not clear in the petition, it is clear that BNE proposes to construct a wetlands crossing – what appears to be either a paved or gravel road – over one of the wetlands on the site, clear-cut vegetation for a turbine laydown area, and discharge stormwater to the wetlands and watercourses. These are Regulated Activities that will have "Significant Impact" on wetlands. Under Section 6 of the wetlands regulations, BNE is required to obtain a permit from the Colebrook Inland-Wetlands Agency in order to conduct a Regulated Activity. It has not obtained such a permit, nor has it applied for such a permit. BNE has therefore not complied with Colebrook's wetlands regulations.

Point IV. The Wind Colebrook North petition should be denied because the project will have significant adverse effects on the environment. BNE claims in its petition that its project "will result in significant environmental benefits," "offers significant . . . environmental . . . benefits to the citizens of the Town of Colebrook and the State of Connecticut" and offers "[s]ignificant environmental benefits with minimal impact to the land." (Petition No. 984, pages 3-4, 10-12.) That claim is likely absurd, but the paucity of data provided by BNE in support of its petition makes it nearly impossible to assess its validity.

As a whole, the studies and data provided by BNE in its attempt to establish that Wind Colebrook North will have no adverse impact on the environment are preliminary and therefore inadequate. In addition to being preliminary, many of the data and studies contributed were only performed at the Wind Colebrook South site, not the Wind Colebrook North site. For example, the bat acoustic study submitted as Exhibit K, which was conducted only at the Wind Colebrook South site, is only an "interim report" – the study was apparently to continue through October 2010, but BNE has not provided a final report to the Council. (Ex. K to Petition No. 984, page i.) BNE's consultant, Western EcoSystems Technology, Inc. ("Western EcoSystems"), expressly states in its report that the results reported are subject to change. The bat study is not only preliminary and based on studies conducted on a different piece of property, however, but likely significantly flawed, since Western EcoSystems notes that "substantial differences" in bat detection rates between different recording stations require "further investigation of detector functionality . . . to ensure differences are not the result of equipment malfunction." (Id., page 13.) In short, BNE's own expert is unsure of the validity of the data it collected, but BNE asks the Council to rely on that data to assess environmental impact. Moreover, Western EcoSystems did not conduct any mist netting to actually capture and record the species of bats in

Request for Party Status

January 14, 2011

Page 9

the area. Instead, Western EcoSystems relies solely on the results of its sound recordings, which it acknowledges do not identify individual bats or even individual species of bats.

BNE's breeding bird study suffers from similar flaws. Western EcoSystems spent a total of three days in very late June and early July 2010 making observations on the Wind Colebrook South property – again, not on the Wind Colebrook North property. (See Ex. L to Petition No. 984, page i.) The timing of Western EcoSystems' "final report," late in the birding season, means that its observations lack value because (1) the vegetation would have been very dense, preventing effective identification at the observation points located in deciduous forest dominated areas, and (2) many birds would have already been in nesting mode, particularly given the extremely hot summer Connecticut experienced. Western EcoSystems' surveys were conducted after the peak birding season. Although there were 12 survey points occupied on each day, a biologist was located at each survey point for only 5 minutes each day – meaning that the total observation period for this study was approximately three hours. The superficial nature of this "study" explains its sparse findings of only 39 species of birds and 461 unique individuals. It also explains the significant percentage of unidentified birds recorded by Western EcoSystems. Furthermore, Western EcoSystem's biologists reported no raptor observations in an area known to be frequented by birds of prey. The Council cannot rely on such a preliminary and incomplete study, conducted on a different property, to determine the effect of Wind Colebrook North on the bird population.

Another example of the preliminary nature of BNE's data can be found in its terrestrial wildlife habitat and wetland impact analysis. BNE's environmental consultant, VHB, conducted its only wetland delineation survey was on July 27-29 and August 2, 2010. VHB's only field wildlife assessment was conducted in October 2010. These dates are outside the generally accepted dates for a vernal pool study, especially in a year with near-drought conditions from late spring through mid-fall. VHB's own assessment describes Wetland 2 as a small, isolated wetland "subject to shallow seasonal inundation," a near textbook description of a vernal pool, but then goes on to dismiss its ability to support amphibian breeding because it is too shallow, without providing any data, or any observations of actual breeding season hydrology or egg mass counts.

Nearly all of VHB's discussion of wildlife on the property is based on a desktop wildlife evaluation instead of actual observation, which is understandable since VHB's biologists conducted only one field investigation in October 2010. (See id., page 8.) Thus, VHB's discussion of wildlife focuses on species that have the "potential" to occur on the property or are "likely" to live on the property. (See id., pages 9-13.) VHB's analyses may be adequate for a preliminary feasibility or planning level study, but do not provide the Council with the data necessary to analyze the actual wildlife and habitat impact of BNE's proposed industrial sites.

Request for Party Status

January 14, 2011

Page 10

Moreover, VHB recognizes the incomplete nature of its work, since its impact assessment is labeled as preliminary. (Ex. I to Petition 984, pages 25-26.)

Point V. BNE's petition should be denied based on its failure to provide the Council with reliable and accurate information. These failures can only be seen as part of BNE's attempt to get the Council to "rubber stamp" a project of unprecedented scope with little to no scrutiny. Among BNE's failures and misrepresentations are the following:

- Failure to file a single petition for both Wind Colebrook South and Wind Colebrook North. The Council cannot decide the individual petitions without consideration of the other. Instead, it must assess the cumulative impact of all six industrial wind turbines on the area. Any representations by BNE about visual impact, noise, safety, vibration, environmental effects and other impacts of Wind Colebrook North are at best disingenuous and at worst deliberately misleading. The recommendations of the Wind Turbine Guidelines Advisory Committee stress the importance of reviewing such cumulative impacts and state that "[c]onsideration of cumulative impacts should be incorporated into the wind energy planning process as early as possible to improve decisions." Federal agencies are required to include cumulative impact analyses in their NEPA reviews of projects. The Council should similarly require BNE to provide maps and studies of the cumulative impact of both of its Colebrook petitions on the surrounding area, including the increased environmental effects, noise levels, visual impacts, economic impacts and safety risks.

- Failure to identify a historic residence on the National Register of Historical Places within less than one half mile of Wind Colebrook North. The residence, known as Rock Hall, is within the Area of Potential Effect ("APE"), which is a minimum standard established by the Federal Communication Commission for use in assessing the impact of stationary towers on nearby historic structures. The APE is effectively a presumption that towers more than 400 feet tall have an adverse effect on such structures, and was adopted pursuant to Section 106 of the National Historic Preservation Act. BNE cannot rebut the presumption that its massive rotating football field-sized industrial turbines will have a substantial adverse effect on Rock Hall. Michael and Stella Somers, owners of Rock Hall, have separately filed for party status in this petition and in Petition No. 983.

- Failure to amend its petition following the State Historic Preservation Office's letters informing BNE and the Council of the existence of Rock Hall in proximity to both of BNE's proposed facilities. The SHPO has requested that BNE's consultant provide it with "photographic views, photosimulations, and a visual analysis for Rock Hall, 19 Rock Hall Road in Colebrook, so we may have an opportunity to revise our comments." BNE's "no effect" stamp from the SHPO for this project is therefore subject to revision.

Request for Party Status

January 14, 2011

Page 11

- Misrepresenting its relationship with the local community. BNE told the Council that it has established a “good relationship with the Colebrook community” through a “multi-faceted communications approach” that allegedly included regular discussions with local officials, an informational filing at the Town Hall and public access to information on BNE’s website. (Petition No. 984, page 5.) BNE has not established any relationship with the Colebrook community, let alone a good relationship. Until the public information meeting BNE held in town on November 10, 2010 (less than one month before filing this petition with the Council), the majority of Colebrook residents, including those living in proximity to the proposed projects, were unaware of BNE’s plans to site six 1.6 MW turbines standing 492 feet tall as close as 800 feet to several homes. Even at the public meeting, BNE’s representatives provided no detail of its plans. Colebrook’s First Selectman, who supported BNE’s proposal as a way to bring in tax revenue to the town, was not even aware that BNE was planning to build turbines on two sites in town until days before that meeting in November. BNE has not at any time provided a forum for Colebrook residents to voice their opposition to this project.

- Failure to provide approval from the Federal Aviation Administration for the larger turbines that BNE is asking the Council to approve. In fact, BNE has not even finally selected the turbine model it plans to use at this site, yet asks the Council to approve its project by declaratory ruling.

- Failure to adequately measure and predict noise levels. The noise study provided by BNE’s consultant establishes sound levels in Colebrook based on two days of data in the spring of 2010. That data is not adequate to provide an accurate picture of the average noise level in the surrounding area. BNE’s noise analysis is also devoid of any consideration of the cumulative noise caused by siting six industrial wind turbines within less than one half mile of each other.

- Failure to gather adequate data regarding wind speed. At the time it filed Petition No. 984, BNE had been collecting wind data at Wind Colebrook North for approximately four months. That limited data cannot support BNE’s claim that the site “is an ideal location for the placement of wind turbines due to wind speed, direction, shear and density.” (See Petition No. 984, page 13.)

- Inaccurate representation of the project site as not supporting state-listed species. In fact, BNE’s data documents the actual presence of the Red Bat and Hoary Bat, as well as the potential presence of the Silver-haired Bat and Indiana Bat on the site, and the confirmed presence of Smooth Green Snake in the immediate vicinity. VHB’s purported survey for this state-listed species is an edited version of the habitat description contained in the body of the exhibit. (See Attachment C to Ex. I to Petition No. 984.) It does not report the results of a field

Request for Party Status

January 14, 2011

Page 12

investigation by a qualified herpetologist. Most significantly, VHB also modified its habitat description in Attachment C when compared to the body of the text in Exhibit I.

On page 6 of Exhibit I, six major habitat types are identified: second growth Northern Hardwoods, second growth Northern Hardwoods-Hemlock-White Pine Forest, early successional Northern Hardwood Forest, Palustrine forested wetlands, Palustrine scrub-shrub-emergent wetlands, and maintained lawn. In Attachment C, the habitat survey that VHB sent to the CT DEP, VHB identified only four habitat types: second growth upland forest, forested wetlands, maintained lawn, and shrub swamp. The differences in precise nomenclature are not important, but what VHB's lumping together of all of the forested habitats is important because it excludes the early successional Northern Hardwood Forest habitat.

That omission is critical because the reference VHB cites in its letter to the CT DEP describes Smooth Green Snakes as "also found in transitional and lightly forested habitats such as grassy old fields with scattered shrubs and trees, as well as oak-pitchpine woodlands." (Klemens, M. W., Ph.D., 1993, Amphibians and Reptiles of Connecticut and Adjacent Regions, State Geological and Natural History Survey of Connecticut, Bulletin 112). The early successional Northern Hardwoods Forest VHB identified in the body of Exhibit I is dominated by species indicative of transitional, lightly forested habitats. Furthermore, the areas between the golf driving range and this early successional forest can clearly be seen in aerial photographs as a meadow or grassy old field, which Klemens (1993) also identifies as Smooth Green Snake Habitat. Therefore, VHB's characterization of the site as not providing appropriate habitat for this state-listed species is incorrect and contradicted by its own findings.

- Failure to conduct adequate on-site surveys for mammals, reptiles, amphibians, or plants. The surveys were not conducted during the biologically appropriate times of the year, no level of effort is indicated, nor is there any indication that they were conducted by wildlife biologists, herpetologists and botanists.

- Failure to survey for Northern Spring Salamander, a state-listed Threatened Species, known from the project area, for which appropriate habitat exists at the site.

- Reliance on data collected during the annual dry season (during a drought period) to support the representation that no vernal pools or significant amphibian habitat is present at the site.

- Failure to conduct a fish survey at the site, despite the presence of a perennial stream.

Request for Party Status

January 14, 2011

Page 13

- Failure to accurately depict the blade laydown area for at least one turbine. BNE's depiction inaccurately minimizes the impact of the blade laydown on the adjacent wetlands area. (See Ex. F to Petition No. 984, Sheet C-002.)
- Failure to provide a Stormwater Pollution Prevention Plan (SWPPP) that meets the requirements of the CT DEP's Stormwater General Permit. Specifically, the SWPPP suffers from significant defects and errors, including the following: Section 1.3 states that a complete and accurate General Permit Registration Form and Transmittal has been submitted to CT DEP and is included as Appendix A – Appendix A, in fact, is a blank form; Section 2.3.1 says that the site will be returned to pre-construction conditions, while the plans and following text clearly show significant, permanent changes in topography, vegetation, drainage patterns and flows; the certification is not signed or stamped, and the preparer is not a registered Professional Engineer licensed in Connecticut; it lacks a site plan of sufficient scale to accurately or legibly depict proposed grading, erosion controls, or stormwater management measures; the site map does not accurately or legibly depict the location of major structural and non-structural controls areas that will be vegetated following construction, or pre and post construction locations of stormwater discharges; no phasing plan was submitted; it contains inaccurate information with respect to wetland permitting requirements; no construction sequence was submitted; it does not include a description of the controls and measures that will be performed for each major activity identified in the sequencing; the timing of such controls and measures; it does not include post construction measures designed to remove 80% of the suspended solids and floatables or velocity dissipation devices necessary to maintain non-erosive flow velocities and protection of the natural physical and biological characteristics of the receiving watercourse.

III. Relief sought by the petitioner

FairwindCT requests that the Siting Council deny BNE's petition for a declaratory ruling regarding Wind Colebrook North or invoke its authority under General Statutes § 4-176(e) to decide not to issue a declaratory ruling and to instead initiate regulation-making proceedings. It further asks the Council to impose a moratorium on all industrial wind generation projects in areas zoned residential or which are located within 1.5 miles of historic structures or National Natural Landmarks until appropriate laws and regulations may be put in place by the State, the Council and local regulatory bodies.

IV. Statutory or other authority therefore

FairwindCT is entitled to party status in this proceeding pursuant to Sections 4-177a, 16-50l, 16-50n, 22a-19 and 22a-20 of the Connecticut General Statutes and Sections 16-50j-13 through 17 of the Regulations of the Connecticut Siting Council.

Request for Party Status

January 14, 2011

Page 14

V. Nature of the evidence that the petitioner intends to present

FairwindCT will present evidence including but not limited to:

- studies, surveys and expert opinion regarding the deleterious visual and noise effects of siting wind turbines in close proximity to residential buildings, including but not limited to negative health effects such as headaches, sleep disturbances, nausea, dizziness and tinnitus;
- studies, surveys and expert opinion regarding the preliminary and incomplete nature of the evidence provided by BNE regarding the environmental effects of its proposed industrial wind turbines on nearby wetlands and other natural resources, wildlife including but not limited to rare wetland plants, amphibians, bats and birds;
- studies, surveys and expert opinion regarding the deleterious safety effects of siting wind turbines in residential areas, including the potential for fire, ice throw and turbine collapse;
- studies, surveys and expert opinion regarding the deleterious economic effects of siting wind turbines in residential Colebrook, including the adverse effects on real estate values and the local tourism industry;
- studies, surveys and expert opinion regarding the inefficiency and unreliability of industrial wind power;
- testimony by residents living in proximity to the proposed sites about the adverse effect the industrial wind turbines will have on their lives;
- testimony by Michael and Stella Somers regarding Rock Hall, a property on the National Register of Historic Places, including its historic status, their work restoring the property, their investment in the property and the expected impact of siting industrial wind turbines in proximity to their property on their business and the continued commercial viability of Rock Hall.

VI. Other comments for the Siting Council's consideration

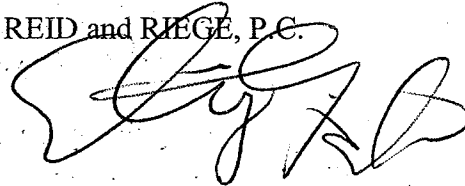
FairwindCT asks that the Council hold public hearings on BNE's petition for declaratory ruling in Colebrook or one of the surrounding towns, so that local residents will have the opportunity to voice their opinion on the proposed industrial facilities. Industrial wind projects

Request for Party Status
January 14, 2011
Page 15

do not belong in residential areas, and the residents who will be affected by BNE's proposed industrial projects deserve to be heard on this important issue.

Very truly yours,

REID and RIEGE, P.C.

A handwritten signature in black ink, appearing to read 'E. Gianquinto', written over the typed name.

Emily A. Gianquinto

cc: Carrie L. Larson, Esq.
Paul Corey