

**STATE OF CONNECTICUT
SITING COUNCIL**

DOCKET No. 983 - BNE Energy, Inc. 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 Flagg Hill Road, Colebrook, Connecticut. Development and Management Plan (D&M Plan) Modification.

FEBRUARY 24, 2020

**APPLICATION TO INTERVENE UNDER CEPA, §22a-19, §4-177a AND §16-50n and
MOTION TO OPEN PROCEEDINGS**

The Nature Conservancy, Inc. ("TNC") is a nonprofit, tax-exempt charitable organization (tax identification number 53-0242652) under Section 501(c)(3) of the Internal Revenue Code and is owner of real property in the Town of Colebrook known as the Beckley Bog Preserve, a National Natural Landmark, located off Beckley Road in Norfolk, Connecticut immediately abutting the site of BNE's wind turbine power generation facility.

TNC hereby moves and petitions the Connecticut Siting Council ("CSC") to become a party intervenor in and open the above proceeding so that it may submit evidence and have it considered by the Council. The purpose of the intervention is to participate in these proceedings to prevent unreasonable impact to the natural resources of the State including wildlife, wildlife habitat and impacts to scenic resources.

TNC is supportive of renewable energy projects and in favor of wind power generation, but that support is tempered by its duty to protect the preserves held in trust by TNC and seeks to protect its rights as an abutting property owner and to advocate for consideration of the natural resources of the preserve.

Pursuant to Conn.Gen.Stat. §22a-19 ("CEPA"), §16-50n and §4-177a, TNC seeks party status as an entity which has a direct interest in the proceedings which will be

specifically and substantially affected as it is owner of directly abutting real estate and the D&M Plan Modification being considered by the Council involves the relocation of the wind turbine closer to TNC's Beckley Bog Preserve and specifically in violation of and within the statutory setback from adjacent real property.

The Council's regulations governing the location of wind turbine facilities requires a setback of 1.5 times the height of the turbine.

Sec. 16-50j-95. Considerations for Decision. In making its decision to grant or deny an application for a certificate or to issue or not to issue a petition for a declaratory ruling, the Council shall (B) Any petition for a declaratory ruling for a proposed wind turbine facility with a capacity of less than 65 megawatts shall include setback distances from each of the proposed wind turbine locations and any alternative wind turbine locations of not less than 1.5 times the wind turbine height from all property lines at the proposed site and any alternative sites or shall comply with the wind turbine manufacturer's recommended setback distances, whichever is greater.

The proposed modification will place the 128 meter turbine significantly closer than permitted ($128\text{m} \times 1.5 = 192\text{ meters} = 630\text{ feet}$ allowed vs. the proposed 150-160 feet from the Beckley Bog property) and therefore constitutes a material modification. TNC should have been given notice of this modification but sees no proof that such notice was rendered thereby depriving it of due process and potentially causing unreasonable environmental impact to natural resources by moving the turbine closer the Beckley Bog causing visual/scenic impacts, potential impacts to resident populations of bats and avian species and disturbing the peaceful enjoyment of this publicly accessible passive recreation area.

TNC seeks party status in the above proceedings for the purpose of submitting testimony, briefs and other evidence relevant to the consideration of the application under consideration; specifically the mitigation of environmental impact to scenic and natural resources.

TNC's participation will be in the interests of justice and is proper under CEPA in

that the evidence and testimony to be given will tend to show that the proposed activity for which Applicant seeks a modification is likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut in that, if granted, the proposed facility will, inter alia, unreasonably impair the visual quality of the environment in and about Beckley Bog; and is reasonably likely to cause impacts to animal species which fly in and about the TNC property.

DISCUSSION OF LAW

The CSC must be mindful of the statutory requirements which apply to interventions under CEPA. The bar is quite low for filing an intervention and thus §22a-19 applications should not be lightly rejected. *Finley v. Town of Orange*, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss) citing *Windels v. Environmental Protection Commission*, 284 Conn. 268 (2007).

CEPA clearly and in the broadest terms indicates that any legal entity may intervene. This includes municipal officials, *Avalon Bay Communities v. Zoning Commission*, 87 Conn. App. 537, 867 A.2d 37 (2005).

An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the State is sufficient. See, *Cannata v. Dept. Of Environmental Protection, et al*, 239 Conn. 124 (1996)(alleging harm to floodplain forest resources).

The Connecticut Appellate Court has noted that statutes "such as the EPA are remedial in nature and should be liberally construed to accomplish their purpose." *Avalon Bay Communities, Inc. v. Zoning Commission of the Town of Stratford*, 87 Conn.App.537 (2005); *Keeney v. Fairfield Resources, Inc.*, 41 Conn. App. 120, 132-33, 674 A.2d1349 (1996). In *Red Hill Coalition, Inc. V. Town Planning & Zoning Commission*, 212 Conn. 7272, 734, 563 A.2d 1347 (1989) ("section 22a-19[a]makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"); *Polymer Resources, Ltd. v. Keeney*, 32 Conn. App. 340, 348-49, 629 A.2d 447 (1993) ("[Section] 22a-19[a] compels a trial court to

permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.”) See Also, *Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

In *Mystic Marinelife Aquarium v. Gill*, 175 Conn. 483, 490, 400 A.2d 726 (1978), the Supreme Court concluded that one who filed a verified pleading under § 22a-19 became a party to an administrative proceeding upon doing so and had "statutory standing to appeal for the limited purpose of raising environmental issues." "It is clear that one basic purpose of the act is to give persons standing to bring actions to protect the environment." *Belford v. New Haven*, 170 Conn. 46, 53-54, 364 A.2d 194 (1975).

The Intervenor is entitled to participate as a §22a-19 intervenor which allows for a right of appeal under that statute. *Committee to Save Guilford Shoreline, Inc. v. Guilford Planning & Zoning Commission*, 48 Conn. Sup. 594, 853 A.2d 654(2004) once any entity has filed for intervention in an administrative proceeding, it has established the right to appeal from that decision independent of any other party. *Mystic Marinelife Aquarium v. Gill*, 175 Conn. 483 (1978) stated quite clearly that "one who files a §22a-19 application becomes a party with statutory standing to appeal." *Branhaven Plaza, LLC v Inland Wetlands Commission of the Town of Branford*, 251 Conn. 269, 276, n.9 (1999) held that a party who intervenes in a municipal land use proceeding pursuant to §22a-19 has standing to appeal the administrative agency's decision to the Superior Court. The Court cited as support for this proposition, *Red Hill Coalition, Inc. v. Conservation Commission*, 212 Conn. 710, 715, 563 A.2d 1339 (1989)("because the [appellants] filed a notice of intervention at the commission hearing in accordance with §22a-19(a), it doubtless had statutory standing to appeal from the commission's decision for that limited purpose.")

In *Keiser v. Zoning Commission*, 62 Conn. App. 600, 603-604 (2001) our Appellate Court stated that the *Branhaven Plaza* case is directly on point and held "the plaintiff in the present case properly filed a notice of intervention at the zoning commission hearing in accordance with §22a-19(a). Accordingly, we conclude that he has standing to appeal environmental issues related to the zoning commission's decision."

The rights conveyed by CEPA are so important and fundamental to matters of public trust that the denial of a 22a-19 intervention itself is appealable. See, *CT Post Limited*

Partnership v. New Haven City Planning Commission, 2000 WL 1161131 Conn. Super. (Hodgson, J. 2000)(§22a-19 intervenors may file an original appeal for improper denial of intervenor status).

TNC's application for intervenor status should be granted so that it may participate by presenting evidence for the record and meaningfully assist the CSC in reaching a decision which minimizes impact to natural resources of the state while balancing the public need for responsible renewable power facilities siting.

VERIFICATION

The undersigned, Hans P. Birkle, duly authorized Assistant Secretary of The Nature Conservancy, duly sworn, hereby verifies that the above application is true and accurate to the best of his knowledge and belief.

Hans P. Birkle

Sworn and subscribed before me this 25 th day of February 2020.

Jasmine Hadley
Notary Public; My Commission Expires 1-22-27



Respectfully Submitted,

The Nature Conservancy, Inc.

By _____
Keith R. Ainsworth, Esq.
Law Offices of Keith R. Ainsworth, Esq., L.L.C. #403269
51 Elm Street, Suite 201
New Haven, CT 06510-2049
(203) 435-2014
keithrainsworth@live.com (Intervenor requests service by email)

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 25th day of February 2020 and addressed to:

Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

And electronic copies to the service list as attached:

Keith R. Ainsworth, Esq.

**LIST OF PARTIES AND INTERVENORS
SERVICE LIST**

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Petitioner	<input checked="" type="checkbox"/> U.S. Mail	BNE Energy, Inc. 17 Flagg Hill Road Winsted, CT 06098-4010 http://bneenergy.com/	Lee Hoffman, Esq. Pullman & Comley, LLC 90 State House Square Hartford, CT 06103-3702 (860) 424-4312 (860) 424-4370 fax lhoffman@pullcom.com bheiple@pullcom.com Paul Corey, Chairman BNE Energy Inc. 17 Flagg Hill Road Winsted, CT 06098 (860) 561-5101 (888) 891-6450 fax pcorey@bneenergy.com
Party <i>(approved on 01/06/2011)</i>	<input checked="" type="checkbox"/> U.S. Mail	Robin L. Hirtle 29-A Flagg Hill Road Winsted, CT 06098 (860) 601-1158	
Party <i>(approved on 01/20/2011)</i>	<input checked="" type="checkbox"/> E-Mail	Stella and Michael Somers 19 Rock Hall Road Colebrook, CT 06021 FairwindCT, Inc. P.O. Box 225 Colebrook, CT 06021 info@fairwindct.com	
Party <i>(approved 02/8/11)</i>	<input checked="" type="checkbox"/> U.S. Mail	David R. Lawrence, MD Jeannie Lemelin, LPN 30 Flagg Hill Road Colebrook, CT 06021 wnstdoc@yahoo.com	

<p>Party (granted on 01/20/11)</p>	<p><input checked="" type="checkbox"/> U.S. Mail</p> <p><input checked="" type="checkbox"/> U.S. Mail</p>	<p>Town of Colebrook</p>	<p>The Honorable Thomas D. McKeon First Selectman Town of Colebrook Town Hall 562 Colebrook Road P.O. Box 5 Colebrook, CT 06021 (860) 379-3359 x202 (860) 379-7215 tommckeon@colebrooktownhall.org</p> <p>Patrick E. Power David M. Cusick Howd, Lavieri & Finch, LLP 682 Main Street Winsted, CT 06098 (860) 379-2761 x24 (Power) (860) 379-2761 x22 (Cusick) (860) 738-3493 fax pep@hlf.com dmc@hlf.com</p>
<p>Party (granted on 01/20/11)</p>	<p><input checked="" type="checkbox"/> U.S. Mail</p>	<p>Kristin M. Mow Benjamin C. Mow 12A Greenwoods Turnpike Colebrook, CT 06021 (860) 738-0060 kmow@hcc-global.com</p>	
<p>Intervenor (granted on 01/20/11)</p>	<p><input checked="" type="checkbox"/> E-Mail</p> <p><input checked="" type="checkbox"/> E-Mail</p> <p><input checked="" type="checkbox"/> E-Mail</p>	<p>The Connecticut Light and Power Company</p>	<p>John R. Morissette Manager – Transmission Siting and Permitting Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2036 (860) 665-6933 fax morisjr@nu.com</p> <p>Christopher R. Bernard Manager, Regulatory Policy (Transmission) The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5967 (860) 665-3314 fax bernacr@nu.com</p> <p>Joaquina Borges King Senior Counsel Northeast Utilities Service Company</p>

			<p>P.O. Box 270 Hartford, CT 06141-0270 (860) 665-3678 (860) 665-5504 fax borgej@nu.com</p>
<p>Party <i>(approved on 03/17/2011)</i></p>	<input checked="" type="checkbox"/> U.S. Mail	<p>Walter M. Zima 12B Greenwood Turnpike Colebrook, CT 06021 (860) 379-5620 blkmgrant@yahoo.com Mailing: 12B Greenwood Turnpike Winsted, CT 06098</p> <p>Brandy Grant 12B Greenwood Turnpike Colebrook, CT 06021 (860) 379-5620 blkmgrant@yahoo.com Mailing: 12B Greenwood Turnpike Winsted, CT 06098</p>	
<p>Party <i>(approved on 03/17/2011)</i></p>	<input checked="" type="checkbox"/> U.S. Mail	<p>Eva Villanova 28 Flagg Hill Road Colebrook, CT 06021 evaraku@aol.com</p>	
<p>Party <i>(approved on 03/17/2011)</i></p>	<input checked="" type="checkbox"/> U.S. Mail	<p>Susan Wagner 117 Pinney Street Colebrook, CT 06021 (Residence) Mailing: P.O. Box 118 Norfolk, CT 06058-0118</p>	<p>Nicholas J. Harding Emily A. Gianquinto Reid and Riege, P.C. One Financial Plaza, 21st Floor Hartford, CT 06103 (860) 240-1011 (860) 240-1025 nharding@rrlawpc.com egianquinto@rrlawpc.com</p>