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December 11, 2010

Daniel F. Caruso
Chair
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

RE Petition No. 983, Colebrook, CT

Petition for Party Status

Mr. Caruso:

This is a request for 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 Flagg Hill Road in Colebrook, Connecticut ("Wind Colebrook South") dated December 6, 2010. Party status is sought for:

Robin L. Hirtle
29-A Flagg Hill Road, Colebrook, CT
mailing address: 29-A Flagg Hill Road, Winsted, CT 06098

Ms Hirtle's telephone: 860-601-1158
(telephone/fax/email for law office as above)

Manner in which petitioner claims to be substantially and specifically affected: Ms Hirtle's property, identified in BNE's Petition (Vol. II Exhibit F pg 5, Perimeter Survey) as "N/F Robert K. & Robin L. Dziedzic," abuts the subject parcel to the southeast; the property is now Ms Hirtle's following a change of name and conveyance from Robert K. Dziedzic. BNE's proposed project is on property for which the record title owners are the principals of BNE, Mr. Zupkus and Mr. Corey. The petitioner, BNE, has been accessing the property of Ms Hirtle to reach the subject property, which access, however, is limited by a mutual easement affecting both parcels: the easement simply, definitively and expressly states it "shall be limited to residential use exclusively."

Contention of Petitioner: Ms Hirtle's contention is that BNE cannot gain access to their property, in that, without limitation:

- a. Current access to BNE's property is restricted via the mutual driveway easement identified above, prohibiting use other than for residential purposes. While BNE now proposes a new access road, this new access was never proposed to Town of Colebrook officials for approval when construction of BNE's test tower was proposed. This proposal for a new access road is a subversion of the process for permit authority of a Connecticut town; under statutory zoning procedures residents and affected property owners have due process and an opportunity to participate in decision-making; but in this

- matter no such due process has been afforded an abutting property owner such as Ms Hirtle.
- b. The initial BNE proposal for the test (MET) tower resulted in Town of Colebrook granting a permit based on BNE's proposed site plan at the time, which plan did not propose using the common driveway, but rather a drive closer to the "new access road" proposed in the current BNE petition. When BNE began accessing their property to construct their test tower, however, they did in fact did use the common driveway, contrary to the restrictions of the easement. Therefore, Ms Hirtle seeks party status to ensure her property is not adversely affected.
 - c. Access proposed by BNE adversely affects wetlands and a conservation easement, which was addressed when the mutual driveway easement was created, and which easement was designed to protect inland wetlands and critical conservation land from overburdening by commercial and industrial vehicles. BNE now proposes a new access road which would expressly defeat the effort to preserve wetlands.
 - d. Construction of wind turbine towers in the proximity proposed to Ms Hirtle's residence creates a safety danger to her person, her home and her property.
 - e. Operation of an industrial facility on property abutting Ms Hirtle's, with vehicles for the facility using an access road which (i) she shares or uses, in a residential neighborhood, or (ii) is adjacent to her property and driveway, contravenes all concepts of substantial fairness and justice and subverts planning and zoning for this residential area.
 - f. The noise and nuisance of wind turbines operating adjacent to her residence is a substantial nuisance and should not be allowed.

Relief Sought by Petitioner: Ms Hirtle seeks, at a minimum, denial of the petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required; and, in general, denial of BNE's Petition for construction, maintenance and operation of the facility.

Statutory or Other Authority Therefor: Ms Hirtle is entitled to Party status in this proceeding pursuant to C.G.S. §§ 4-177a and 16-50l, and pursuant to R.C.S.A. §§ 16-50j-13 through 15.

Ms Hirtle also claims party status in that her property rights have been, are being and will be increasingly adversely affected by this industrial facility in close proximity to her home, in this residential neighborhood. The driveway easement is recorded in the Land Records of the Town of Colebrook and provides notice to BNE and the general public that use of the driveway "shall be limited to residential use exclusively." It has long been recognized in Connecticut that this property interest, duly recorded in the public land records, provides notice that what appears upon the record with respect to Ms Hirtle's land is what is, in fact, legal title to her property. *Sumner v. Rhodes*, 14 Conn 135 (1840). The proposed BNE project would deprive Ms Hirtle of an essential legal interest in her property. An action in Connecticut Superior Court, J.D. of Litchfield, Docket Number LLI-CV-10-6003476-S to enjoin BNE from the use of the easement for their commercial and industrial purposes is pending; the litigation also pleads as to the overburdening of the easement. A hearing on an Order to Show Cause why BNE and their

principals, Mr. Zupkus and Mr. Corey, should not be so enjoined is scheduled for December 13, 2010 and the case will continue in chief following said hearing.

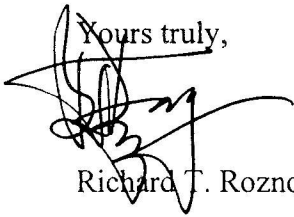
BNE's application claims it will use a new access road, but in order to construct this road, would need to use the existing driveway, which is contrary to terms of the easement to which their principals are a party. Alternatively, were BNE to construct their new access road entirely without use of the existing driveway, this access would merely parallel Ms Hirtle's drive and would subject her to the nuisance of the industrial facility abutting her property.

Nature of Evidence petitioner intends to present: Ms Hirtle will present maps/surveys, expert testimony by her surveyor, pictures, sketches, diagrams, expert testimony of an audiologist as to the harm caused by the low-grade sound emanating from such facilities, environmental experts on soil and groundwater contamination effects upon her and her property, and her testimony as to the manner in which BNE's use of her property and theirs adversely affects her rights.

Based on these factors Ms Hirtle respectfully requests acceptance as a party to this proceeding, in that her legal rights and privileges are subject to being adversely affected by this proposed project; and in that her participation as a party is necessary to a proper disposition of the case.

Please contact me should you have questions or need additional information, and for notice of any actions. Thank you,

Yours truly,



Richard T. Roznoy

copies: C. Larson, Esq., Pullman & Comley
20 copies, Siting Council

RTR/jin