

**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

November 29, 2011

COMMENTS REGARDING BNE’S “D&M PLAN” AND RELATED SUBMISSIONS

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”), hereby offer the following comments regarding the “D&M Plan” submitted to the Siting Council on October 21, 2011, as modified and supplemented by BNE in its filing dated October 21, 2011 and in its responses to the first set of D&M Interrogatories issued by the Siting Council, dated November 14, 2011.

In previous filings with the Council and in the pending appeal to the Superior Court from the Council’s Decision and Order, the Grouped Parties have argued that the Council’s decision to engage in a D&M phase is not authorized by statute. In submitting these comments and the accompanying reports by William Carboni, dated November 28, 2011, and Michael Klein, dated November 29, 2011, the Grouped Parties do not waive that argument. Nor do they waive any other arguments or objections raised in their previous filings with the Council or made in their pending appeal.

The Grouped Parties also note that due to time and resource constraints, they have not had an opportunity to review all aspects of BNE’s new submissions. These comments should therefore not be construed as a comprehensive discussion of all deficiencies in BNE’s submissions.

I. BNE's Submission Should Not Be Approved Until it Is Complete

The "D&M Plan" that BNE "respectfully requests that the Siting Council approve . . . in accordance with the Order in the above-referenced petition" does not comply with the Council's Decision and Order – and in fact has already been revised in response to interrogatories from the Council pointing out some of BNE's omissions. (See BNE Response to Set One, dated Nov. 14, 2011).

Although the Grouped Parties recognize that the Council's Decision and Order provided that the D&M Plan could be "submitted and approved by the Council in one or more sections prior to commencement of facility construction" (Decision & Order ¶ 3), the Grouped Parties ask that the Council not draw any conclusions or make any final decisions based on BNE's submissions to date. No decision to determine the overall adequacy of the D&M Plan should be made as long as that plan remains incomplete, particularly in light of BNE's history throughout these proceedings of submitting revision after revision and the continued failure of BNE to provide any site-specific studies regarding birds and bats on this site (discussed in more detail below). BNE should be required to submit its final plan to the Council as a whole for approval or denial, instead of engaging in this piecemeal approach that prevents the Council and the parties and intervenors from reviewing and considering the project as a whole. At a minimum, the Council should not permit BNE to commence construction of this project before BNE has provided data sufficient to establish a baseline for future impact assessments on the bat and bird populations.

II. The D&M Plan Represents a New Project

In its Decision and Order, the Council instructed BNE that its project “shall be constructed using a 80 meter hub height and a 82.5 meter rotor diameter.” (Decision and Order ¶ 1.) As a result, the D&M Plan submitted by BNE depicts a new project. Turbines are shorter, with shorter blades, and have been relocated. These changes have significant implications for BNE’s previously submitted studies, including in particular the studies regarding noise, shadow flicker and ice throw. The Council cannot approve this project for construction in the absence of corrected and updated reports on the predicted impact of noise, shadow flicker, and ice throw as a result of the changes to the project. By requiring the submission of these reports for the original petition, the Council indicated that it needed that data in order to make its decision. It would be inconsistent and possibly negligent of the Council to now give BNE a pass on providing the same information for this significantly changed project. The Council should not approve this project for construction until BNE has submitted updated reports regarding the effect of the re-design on the predicted noise, shadow flicker and ice throw that residents of the Town will be forced to endure.

III. BNE’s Submissions Do Not Meet the Council’s Ordered Pre-Conditions to Commencement of Construction

At a minimum, BNE should be required to comply with the Council’s order that it submit a D&M Plan including the elements specified in the Council’s Decision and Order “prior to the commencement of facility construction.” (Decision & Order ¶ 3.) The Grouped Parties note the following omissions in BNE’s submissions to date.¹

¹ These omissions are not an exhaustive list of the deficiencies in BNE’s submissions, due to the limited time provided to the parties and intervenors for comment.

A. Condition 3(a) – Detailed Site Plans

The Decision and Order provides that BNE must include in its D&M Plan “[a] detailed site plan showing the placement and/or extent of vegetative clearing, grading, wetland buffers, access roads, turbine foundations, building specifications, equipment and material laydown and staging areas.” (Decision & Order ¶ 2(a).) The site plans provided by BNE purport to provide such detail, but as noted by Mr. Carboni and Mr. Klein, the site plans are not certified by a licensed surveyor or sealed by a geotechnical engineer. The lack of a surveyor certification is particularly significant since the Council also ordered that BNE must demonstrate that the rotating blades of the northeastern turbine will be confined to the site. The figure provided by BNE in response to interrogatories shows that the blades of that turbine are only 9.5 feet away from the property boundary. If the site plans are not based on field topography, that measurement may be inaccurate and the blades may actually not be “confined to the host property,” as ordered by the Council. (Decision & Order ¶ 3(a).) The Council should not approve plans that are not certified as conforming to A-2 and T-2 standards based on actual field topography and are not based on detailed geotechnical engineering analysis.

B. Condition 3(b) – Open Space and Conservation Plan

The Decision and Order provides that BNE’s D&M Plan must “[p]rovide an open space and conservation plan to protect environmentally-sensitive areas of the property for the life of the project . . .” (Decision & Order ¶ 3(b).) BNE submitted a two-page undated “conservation plan” that is also not signed. The Grouped Parties refer the Council to the Town of Colebrook’s First Set of Comments, dated October 19, 2011, regarding BNE’s D&M Plan for Petition No. 983, for discussion of the deficiencies in BNE’s proposal for open space and/or conservation easement on

the property. (See id. at 2-4.) The concerns raised by the Town in its comments apply equally to BNE's proposal for this site, as noted by Mr. Klein in his comments, dated November 29, 2011. Particularly concerning in BNE's proposed open space/conservation plan is the lack of any guarantee that the property will remain open space. There is no provision in BNE's proposal regarding enforcement of the "conservation plan," which is especially important on this property given the high value of the swampy area in the southeast portion of the site. The Grouped Parties ask that the Council require BNE to employ a conservation restriction on the site, as described in Connecticut General Statutes § 47-42a, and also asks that BNE not be permitted to commence construction until a conservation restriction has been reviewed and approved by the Council.

C. Condition 3(c) – Modification and Restoration of Town Infrastructure

The Decision and Order provides that BNE must submit "[d]etails for the modification and restoration of Town infrastructure affected by the project including a pre-construction survey, protections during construction, post construction survey, and restoration plan to render affected infrastructure to pre-project conditions or better . . ." (Decision & Order ¶ 3(c).) BNE has not submitted such details.

1. Although BNE submitted a one and a half page "Report on Need for Town Infrastructure Improvements," that "report" is slim on details. The "report" claims that "[s]ome temporary widening at this intersection [of Rock Hall Road and Route 44] will be required . . ." and that a 1500 linear foot section of Rock Hall Road "will need to be rebuilt in order to accommodate the anticipated construction traffic." (Infrastructure Report, Sept. 2011, at 1.) The anticipated rebuilding of Rock Hall Road is a significant undertaking that will disturb the lives of the residents of the town who live on and near Rock Hall Road. The report provided by BNE

does not provide any information on when the road will be rebuilt, how long construction is expected to take, or how long residents may need to use alternate routes to access their homes.

2. Nor does the report address precautions that will be taken during construction to prevent erosion into the wetlands that border Rock Hall Road. Rock Hall Road already crosses approximately wetlands and contains a culvert. As Mr. Klein notes in his report, the proposed reconstruction of Rock Hall Road will require work within and immediately adjacent to wetlands and watercourses for approximately 250 linear feet, including work at a culvert that passes a perennial stream with a watershed of approximately 1 square mile. No detailed plans, construction sequence, or erosion control plans have been submitted. This work will have direct and indirect impacts on wetlands and watercourses and requires a permit from the Army Corps of Engineers under Section 404 of the Clean Water Act, which in turn triggers the requirement for a Water Quality Certificate from CT DEEP under Section 401 of the Clean Water Act. BNE may also require a permit from the local inland-wetland agency for this work.

3. At a minimum, BNE must provide details regarding the construction activities that will take place in or have an indirect impact on those wetlands. If the culvert needs to be modified or replaced to accommodate the weight of the construction and turbine transportation vehicles, more wetlands may be affected. BNE should be required to include these wetland impacts in its impact calculations and to provide plans showing the precautions it will take in reconstructing the road. BNE should also be required to obtain the necessary permits before receiving approval from the Council to begin construction.

D. Condition 3(d) – Erosion and Sediment Control Plan

The Decision and Order provides that BNE must submit “[a]n erosion and sediment control plan, consistent with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control (E&S Guidelines), as amended. The plan shall contain a narrative that specifies how the plan complies with the E&S Guidelines” (Decision & Order, ¶ 3(d).) The Grouped Parties urge the Council to require BNE to actually comply with its order by providing an erosion and sediment control plan that complies with the 2002 Guidelines and is supported by data from a geotechnical investigation of the site. As Mr. Carboni and Mr. Klein’s report demonstrate, BNE has not submitted such a plan.

4. One example of the defects in BNE’s plans is its failure to provide a licensed surveyor’s certification that BNE’s mapping and plans conform to A-2 and T-2 standards. BNE admitted in its response to the Council’s D&M Interrogatories, Set One, in related Petition No. 983, that one of the initial steps in designing an erosion control plan is to obtain “more detailed mapping,” as needed “for identification of areas that may be prone to erosion as well as assessment of the drainage patterns on the site to determine areas where potential treatment and detention of stormwater can be provided” – yet that mapping is not certified by a licensed surveyor. (See BNE Response to Set One, dated Oct. 14, 2011, at 2.) Both Mr. Carboni and Mr. Klein note in their reports that the failure to provide certified field topographic data is significant on this site due to proposed grading that extends to the site’s boundaries in several locations and due to the proximity of Turbine 3 to the site boundaries.

5. Another example is the lack of any erosion and sediment control plans related to the planned reconstruction of a large portion of Rock Hall Road. In its response to the Council’s

first set of interrogatories, BNE stated that “Erosion Control Measures will be used as needed during the reconstruction” but claimed that “there is limited contributing drainage area and limited potential for erosion” (BNE Response to D&M Interrogatories, Set One, dated Nov. 14, 2011, at 2.) Based on the likelihood that the culvert beneath Rock Hall Road will need to be replaced or modified to bear the weight of the trucks carrying the turbine components, that claim is questionable. Moreover, the Council should demand more from BNE than its promise that “haybales, silt fence and stone check dams will be on-site and will be installed if necessary during the reconstruction.” (*Id.*) BNE should be required to determine if those or other erosion control measures will be needed, and BNE should be required to provide the Council with its plans to manage erosion during the reconstruction before the Council permits BNE to begin construction.

6. Other defects in BNE’s erosion and sediment control plan are described in the reports submitted by Mr. Carboni and Mr. Klein.

E. Condition 3(e) – Stormwater Management Plan

The Decision and Order provides that BNE must submit a “Stormwater Management Plan, consistent with the 2004 DEP Stormwater Quality Manual.” (Decision & Order, ¶ 3(e).) BNE has not submitted such a plan.

1. BNE has submitted a Stormwater Management Plan, but as Mr. Carboni explains in his report, that plan still contains errors, particularly with regard to the Detention Study included in Appendix K to the plan. Mr. Carboni’s report notes errors in the depiction of watershed boundaries, underestimation of tributary areas and errors in outlet calculations for

detention ponds. These errors all indicate that BNE's Stormwater Management Plan is insufficient to protect the site from stormwater pollution and erosion.

2. The Grouped Parties urge the Council to order BNE to actually comply with the order to provide a stormwater management plan that complies with the 2002 Manual, does not underestimate the impact that the project will have on existing stormwater conditions on the site and will protect the site from erosion and prevent pollution to the waters of the state.

F. Condition 3(g) – Relocation of Mill Brook Crossing

The Decision and Order provides that BNE must submit “provisions for crossing Mill Brook (Wetland 1) that relocates the access road onto the old woods road where seepage areas from intermittent watercourses are already channelized, in accordance with the Herpetological Assessment dated May 1, 2011 (Klemens).” (Decision & Order, ¶ 3(g).) BNE has not submitted plans that comply with Dr. Klemens' original recommendations, as order by the Council.

1. As discussed in the reports authored by Mr. Klein and Mr. Carboni, BNE's new plans do not actually follow Dr. Klemens' original recommendations, which were incorporated into the Council's Decision and Order. Instead, the access road was not moved as far north as recommended, one culvert was not moved as far as recommended and another was not moved at all, and the sediment trap was not only not minimized or eliminated, but was actually moved closer to the wetlands and now has more frontage along the wetlands. (See Klein Comments, ¶ 24; Carboni Comments, ¶ 20.)

2. BNE should be required to present new plans incorporating Dr. Klemens' original recommendations, as ordered by the Council.

G. Condition 3(j) – Ice Safety Management Plan

The Decision and Order provides that BNE's D&M Plan must include an "Ice Safety Management plan that includes provisions to mitigate the potential for ice throw and ice drop. The Petitioner shall submit an evaluation of the feasibility of installation of the optional Winter Ice Operation Mode . . ." (Decision & Order, ¶ 3(j).) The page and a half "Ice Safety Management Plan" submitted by BNE is short on information and, if approved by the Council, will fail to protect the residents of Colebrook and prevent ice throw and drop outside the boundaries of the site.

1. First, the plan submitted by BNE is not signed or dated. There is no way to tell who drafted the Program – it could have been drafted by BNE's counsel or a BNE principal, or someone else with no experience in these matters. The Council should require BNE to submit a plan that was written and signed by an individual with proven experience in ice safety management.

2. The content of the Program is insufficient. The plan is based on the presumption that BNE has provided for proper setbacks – BNE has not done so, as is clearly demonstrated by the fact that two of the turbines are so close to the property boundaries that ice will drop onto neighboring properties. That is especially true for the Turbine 3, which is, according to BNE, only 9.5 feet from a neighboring residential property. These distances are not adequate to protect the public, and do not comply with GE's own setback recommendations.

3. The plan is inconsistent and confusing. For example, BNE states that [d]uring winter months when there is a potential for an icing event," it will "place fences and warning signs as appropriate." Does that mean BNE will only have fences and warning signs up during

the winter months? Where will these fences and signs be located? Are the fences shown on the site plans BNE has submitted? BNE should be required to provide more information before the Council approves this project for construction.

4. BNE repeatedly states that it will take certain actions when “there is a potential for an icing event,” but never defines “an icing event” or the weather conditions that lead to the “potential” for an icing event to occur. Again, BNE should be required to provide details, so that the residents living nearby know when BNE should be employing these extra safety precautions and so that BNE’s own staff will have clarity on the matter.

5. The content of the plan does not appear to be consistent with BNE’s sworn testimony. The plan indicates that the turbine shut downs will be based on power output and vibration. The plan then states that the “[t]he turbines can also be shut down remotely and manually on-site.” It does not specify that personnel will be on site at any time during the icing event. According to evidence submitted during the hearing, BNE stated that it will have at least one staff member on site to monitor the turbines at the start of a potential icing event, to assess whether ice is forming on the turbine blades. BNE should be required to adhere to the procedures it swore to implement during the hearing.

6. The plan states that BNE may restart iced turbines. That statement directly contradicts the sworn testimony BNE presented during the hearing, which was that no turbine would be restarted until all of the ice melted. (See, e.g., 4/14/11 Tr. 98:2-100:22.) Re-starting an iced turbine has obvious serious safety implications. The Council should not approve this plan.

H. Condition 3(k) – Post-Construction Noise Monitoring

The Decision and Order provides that BNE's D&M Plan must include "[a] post-construction noise monitoring protocol describing locations, frequency and methods to be employed for a post-construction noise study." (Decision & Order, ¶ 3(k).) The two-page "Post Construction Noise Monitoring Program" is short on information and, if approved by the Council, will fail to protect the residents of Colebrook by ensuring that the project complies with state law and DEEP noise regulations.

1. First, the "Program" submitted by BNE is not signed or dated. There is no way to tell whether an acoustical engineer drafted the Program – it could have been drafted by BNE's counsel or a BNE principal. In fact, the repeated use of the phrase "the project proponent" throughout the Program indicates that this Program was not even prepared for BNE. The Council should require BNE to submit a Program that was written and signed by an acoustical engineer.

2. The content of the Program is insufficient. For example, BNE proposes monitoring locations that are "[l]ocated near" four residences. Those monitoring points are irrelevant for the purposes of the noise statutes and regulations, which require compliance at the property lines. The Council should require BNE to monitor noise in at least four locations at the boundaries of its property.

3. BNE proposes to install its noise monitoring equipment "prior to the start of commercial operations of the wind turbines to document background noise conditions" – but provides no information about when that installation will be done or how BNE will adequately assess the background noise conditions. BNE should be required to install its equipment at least six months prior to the start of commercial operations of the wind turbines in at least four

monitoring locations at the boundaries of its property, and it should be required to monitor the background noise levels for at least five consecutive days two times each month.

4. BNE proposes only one “long-term” monitoring location, which will only be monitored “continuously for a period of one year.” That monitoring will again be insufficient to protect the residents of Colebrook and ensure compliance with the noise statutes and regulations of the State. The Grouped Parties presented evidence demonstrating that the nature of wind turbine noise is highly dependent on wind direction and weather conditions. Monitoring continuously at only one location will not give the Council or the DEEP an accurate picture of the actual noise generated by the project at the property lines throughout the year, which will make it impossible to employ any effective noise mitigation, such as turning the turbines off in weather and wind conditions that are demonstrated to produce noise in excess of state law. BNE should be required to continuously monitor noise for an entire year in at least four monitoring locations at the boundaries of its property.

5. The “Reporting” section of the Program provides only that “the project proponent” (presumably BNE) will submit its noise monitoring results to Council, and will do so once a month for the first three months and then only quarterly. This section is silent about whether those results will be public. The Grouped Parties presented evidence that operators of other industrial wind turbine projects have refused to disclose their noise monitoring data even to the state environmental protection agency, forcing residents to pay an expert to conduct their own noise monitoring to prove that the project was not in compliance with state noise law. The Council should require BNE to make the results of its noise monitoring study public, and should require BNE to provide the raw data in native form to any member of the public who requests it

in writing. The Council should also require BNE to submit its noise monitoring results monthly for the first year, to provide nearby residents with timely information about the noise levels in their area. BNE should also be required to submit its noise monitoring results to the DEEP.

6. The Council should also require BNE to implement, as part of this noise monitoring program, a resident complaint process that will ensure that the dates and times of all resident noise complaints are documented and reported. This reporting will enable the Town, the Council and BNE to analyze the weather conditions and wind directions that lead to noise complaints, which may enable effective noise mitigation, such as turning the turbines off in those weather and wind conditions that are demonstrated to result in noise complaints.

7. The Grouped Parties also refer the Council to the comments submitted by other parties to this proceeding regarding noise, including those submitted by Kristin and Benjamin Mow, Jeffrey and Mary Stauffer and Brandy Grant and Walter Zima.

I. Condition 3(m) – Project Decommissioning Plan

The Decision and Order provides that BNE must submit a “Project Decommissioning Plan.” (Decision & Order, ¶ 3(m).) BNE has submitted a proposed decommissioning plan that is devoid of any value to the Town.

1. During the hearing, the Town of Colebrook presented testimony from John Stamberg regarding the elements necessary for a decommissioning plan to adequately protect the Town’s interests and ensure that the site will be returned to pre-development conditions. Mr. Stamberg’s testimony is based on actual experience and analysis of other decommissioning plans, as well analysis of the extreme difficulty of determining the potential salvage value of the turbine components.

2. In contrast, BNE submitted a two-page decommissioning plan that states – with absolutely no supporting data or analysis – that the salvage value of the turbines will be \$1.4 million, so the entire decommissioning process will cost a grand total of \$150,000.

3. The decommissioning plan is not even signed, so there is no way to tell whether any of the information contained in that plan came from an individual with actual experience in decommissioning wind turbine projects or was merely drafted by one of BNE’s principals.

4. The Council should require BNE to instead submit a plan that complies with Mr. Stamberg’s recommendation of annually updating and providing a decommissioning performance bond and has been prepared by an individual with experience in these matters. The Grouped Parties refer the Council to the Town of Colebrook’s First Set of Comments, dated October 19, 2011, filed in Petition No. 983, for further discussion of the defects in BNE’s two-page decommissioning plan, because the plans BNE submitted in both dockets are nearly identical. (See id. at 8-12.) The Council should not approve this D&M Plan until BNE submits a project decommissioning plan that includes all of the same conditions that the Council ordered in Petition No. 983.

IV. BNE’s Submissions Do Not Meet Other Conditions Contained in the Council’s Decision and Order

The Grouped Parties also note the following additional deficiencies in BNE’s D&M Plan. Although the Council did not expressly state that all other conditions included in its Decision and Order must be met before BNE may commence construction, the Grouped Parties believe that these deficiencies are significant and that the Council should require BNE’s compliance prior to construction.

1. The Decision and Order requires BNE to “provide a copy to the Council of all required final decisions and/or permits issued by the DEP, Army Corps of Engineers, and all other applicable federal or State regulatory agencies concerning the proposed project” (Decision & Order ¶ 2.) On May 11, 2011, the Army Corps of Engineers informed BNE “of the need for a Department of Army permit for the proposed work” and further stated: “We have reviewed the information submitted to the Connecticut Siting Council in support of your request for a declaratory ruling and, based upon our review it appears that the proposed work at each of the sites, at a minimum, will need to be evaluated under Category 2 of the Connecticut General Permit (CT GP). The Army Corps has not released jurisdiction over the project, nor has BNE secured an Army Corps permit for the project. As of October 31, 2011, BNE had not yet even applied for a permit.

2. The Decision and Order requires BNE to “attempt to reach a Host Community Agreement with the Town of Colebrook prior to the submission of the D&M Plan.” (Decision & Order ¶ 4.) BNE did not do so, despite its sworn testimony before this Council that it would agree to certain conditions proposed by the Town of Colebrook. The Grouped Parties refer the Council to Town of Colebrook’s First Set of Comments, dated October 19, 2011, filed in Petition No. 983, for further discussion of BNE’s failure to meet this portion of the Council’s Decision and Order.

3. The Decision and Order requires BNE to “continue and submit ongoing bird and bat studies” (Decision & Order ¶ 5.) To date, BNE has not yet submitted any bird migration surveys or raptor surveys for this site, despite having petitioned the Council for approval more than a year ago. Nor has it submitted a proposed post-construction bird survey methodology.

BNE also has not yet submitted an entire season of bat acoustical monitoring. Mr. Klein's report discussed the significant risk that the Council would be taking were it to approve this project for construction in the absence of any site-specific data regarding bats, birds and other wildlife. BNE's failures with regard to its bat and bird studies are discussed in more detail below.

IV. The D&M Plan Does Not Contain Data and Other Information BNE Swore it Would Provide

As the Council is aware, during the hearing, both in pre-filed testimony and in the testimony of live witnesses, BNE repeatedly swore that many of the deficiencies, errors and omissions pointed out by the Grouped Parties' experts would be remedied in the D&M phase. The plans submitted to date in the D&M phase do not remedy the deficiencies that were present during the hearing.

1. In response to cross examination questions about the adequacy of the site plans, Mr. Jones repeatedly stated that the plans provided to date were "preliminary" and that the construction plans provided during the D&M phase would be based on site surveys, infiltration data, geotechnical analysis of slope stability, and other detailed site investigation. BNE's counsel, members of this Council and members of the Council's staff repeated that refrain.

2. Now, in the D&M phase, BNE has so far reneged on its promises. As Mr. Carboni and Mr. Klein discuss in their reports, the new plans are not ready for construction. They are not certified by a licensed surveyor. They are not sealed by a geotechnical engineer. They do not comply with the 2002 Guidelines or the General Permit. They do not incorporate all of Dr. Klemens' recommendations. The Council should require BNE to comply with the Decision and Order by showing that its new plans are based on the detailed site investigation that BNE repeatedly promised to undertake.

3. BNE has still not submitted any bird or bat surveys for the site, despite having petitioned the Council for approval more than a year ago. Nor has it submitted a proposed post-construction bird survey methodology. The Council already granted BNE's petition without the data necessary to assess the potential impact of this project on birds in the area. Now, BNE is asking the Council to approve construction of the project in the complete absence of any site-specific bird or bat surveys, which are "anticipated to be completed" at the end of this year – more than a month away. (See Memo from WEST to BNE, dated Oct. 12, 2011.) The "single pre-construction report" that BNE promises to have at that time will contain the first site-specific data related to birds and bats. The Council should not approve construction of this project until it at least has adequate baseline pre-construction data on the bird and bat population in the area. Without review of the pre-construction baseline data, it is impossible to determine whether any proposed post-construction bird surveys are adequate.

4. Moreover, it is impossible for the Council to determine whether BNE's proposed post-construction bat fatality and acoustic monitoring will be adequate to assess the impact of the project on bats in the area. (See Study Plan for Post-construction Fatality Monitoring for the Colebrook Wind Resource Area, dated Aug. 31, 2011.) The Grouped Parties note that the post-construction acoustic surveys proposed continue to use only ground monitoring.

5. In addition, even on December 31, 2011, BNE will not have any site-specific raptor data for the Council to review. Once again, BNE is asking the Council to accept data collected at the Wind Colebrook South site as evidence of the wildlife population at the Wind Colebrook North site. That request is especially troublesome because the turbines proposed for the Wind Colebrook North site lies directly in the path of birds who fly between a pond located

on Ms. Wagner's property and a pond located in Norfolk. The Council should order BNE to conduct raptor surveys on the actual project site, instead of continuing to endorse such deficient data collection.

WHEREFORE, the Grouped Parties ask the Council to refrain from approving BNE's D&M Plan and permitting BNE to start construction until the deficiencies discussed herein are remedied.

By:



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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 November, 2011:

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

and sent via e-mail only to:

John R. Morissette
Christopher R. Bernard
Joaquina Borges King


Emily A. Gianquinto