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**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 984

January 5, 2011

ORIGINAL

OBJECTION TO REQUEST FOR PARTY STATUS

The petitioner, BNE Energy Inc. ("BNE") respectfully submits this objection to a request for party status dated January 4, 2011 submitted by Stella and Michael Somers ("Somers"). In support of its objection, BNE states as follows:

1. This petition for declaratory ruling was submitted to the Council on December 13, 2010 (the "Petition").
2. On or about January 4, 2011, Somers submitted a request for party status purportedly based on §§ 16-50l, 16-50n, 22a-15 through 22a-20 and 4-177a.
3. Connecticut General Statutes § 16-50n (a) states that the parties to a declaratory ruling proceeding shall include: (1) the applicant, certificate holder or petitioner; (2) each person entitled to receive a copy of the application under § 16-50l if such person files a notice of intent to be a party; (3) any domestic or qualified nonprofit corporation or association formed in whole or in part to promote conservation or natural beauty; and (4) any such other persons as the council may at any time deem appropriate.
4. If unable to establish party status pursuant to 16-50n, the Council has the option of deeming interested persons intervenors pursuant to 16-50n (b).


5. The Somers' have not alleged any facts to support their request for party status pursuant to the criteria of 16-50n – the Somers do not allege (nor can they claim) that they were entitled to notice of the filing of this Petition nor do the Somers allege to be a domestic or qualified nonprofit corporation.
6. Since the Somers do not meet any of the above criteria, the request can only be considered through Connecticut General Statutes § 4-177a and R.C.S.A. § 16-50j-14, whereby a requesting party must establish “facts that demonstrate that the petitioner’s legal rights, duties or privileges shall be specifically affected by the agency’s decision in the contested case” and the manner in which the petitioner claims to be affected.
7. The Council has not yet rendered a determination to hold a “proceeding” for this pending Petition and therefore this Petition cannot be considered a “contested case” at this time. Until that determination is made, the request for party status must be denied as being premature.
8. Somers claims, in its request for party status, that Somers will be affected by the decision because “BNE is required by law to prove that its facilities will have no adverse effects on Rock Hall” based on its recent listing on the National Historic Register of Historic Places. *See* request for party status at 1, 3. Contrary to this assertion, pursuant to Connecticut General Statutes § 16-50k, in order to obtain approval from this Council, BNE need *only* establish that the proposed project complies with air and water quality standards of the Department of Environmental Protection. Therefore, the

issue of whether the proposed project will have an adverse effect on the Somers' property is irrelevant to the Council's decision making criteria.

9. Based on the facts asserted in Somers cannot establish facts necessary to be considered for party status established in Connecticut General Statutes § 16-50n (a). Assuming the Council votes to establish a proceeding for this pending Petition, Somers is more appropriately included in this petition as an intervenor. Previously, the Council has approved such groups or organizations as intervenors rather than parties. See Docket 306 (Berkshire-Litchfield Environmental Coalition admitted as an intervenor rather than a party).

WHEREFORE, BNE respectfully objects to Somers' request for party status and, assuming the Council establishes a proceeding for this Petition, requests that the Council grant intervenor status in this Petition.

Respectfully Submitted,

By: 

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Certification

This is to certify that a copy of the foregoing has been mailed this date to all parties and intervenors of record.

Nicholas J. Harding (request for party status pending)
Emily A. Gianquinto
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