



Daniel F. Caruso
Chairman

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

Internet: ct.gov/csc

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The Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

RE: **PETITION NO. 980** - BNE Energy, Inc. petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 3.2 MW Wind Renewable Generating facility located at 178 New Haven Road, Prospect, Connecticut.

PETITION NO. 983 - BNE Energy, Inc. petition for a 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.

PETITION NO. 984 - BNE Energy, Inc. petition for a 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 Winsted-Norfolk Road (Route 44), Colebrook, Connecticut.

Dear Council Members:

Recently, you received a copy of a letter concerning a brief conversation with an attorney in this matter. I believe it requires some perspective.

In this 2 to 3 minute conversation I sought to be helpful concerning procedural matters in a weighty petition. I began by stressing the short time the law allowed for us to act, and that the next scheduled hearing would be the last day come what may. I did this in hopes of avoiding any misconception that I had the ability to allow more time by extending deadlines, as I will often do when able.

I also wished to share my deep concern that, at the last evidentiary hearing, a roomful of citizens gave up time from work or traveled from out-of-state apparently believing that they would be cross-examined on their previously filed written testimony so that they might share, elaborate or explain their experiences and concerns. Yet following hours of cross-examining others and there being no further questions, the attorneys' for these witnesses acted surprised and objected to so many witnesses having to go home without having been questioned and argued that they would be unable to obtain these witnesses in the other pending proceedings if no questions were put to so many, especially to those who traveled from out-of-state.



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I was deeply troubled by the disappointment, frustration, and sense of disbelief evident in the faces, sounds, and statements of these neighbors. More than one could not understand why they had come and would not be heard. Believing it was not right that so many wrongly expected to be questioned, I then allowed some additional time, time we did not have, so that another attorney and some Council members might at least cross-examine some of the out-of-state witnesses. When no more time remained, that same sense of disillusionment still permeated the hearing room.

There is a fundamental difference between a public hearing at which those who are not parties or intervenors may express their opinions to which the Council gives great attention, and an evidentiary hearing, at which parties and intervenors may only be cross-examined on their previously filed testimony. The fact that there seemed to be this misunderstanding by many was deeply disappointing.

I was troubled enough for those persons that I wanted the lawyers to make it unmistakably clear that a witness who gave up a day at work or flew in to attend might not be cross-examined at all. I also wished it understood that though I was able to make some additional time available, I would not be doing so the next hearing, hoping thereby to avoid any misunderstandings or further disappointments.

Finally, I wished to indicate that questions by Council members regarding means by which the impacts on neighbors be it by plantings, structures, buffers, or other means, should be taken very seriously. If the Council decides to approve facilities, it always wishes to mitigate its affects on neighbors as much as possible. Lacking such information, were we to approve this petition, we might well lose opportunities useful to addressing and limiting some adverse effects.

These three areas, our limited time, the disappointment of unexamined witnesses, many of whom took time from work, and the Council's desire to hear of mitigating impacts should it be approved, were all previously raised or spoken at the various hearings, but their reiteration seemed necessary.

Additionally, I know that our decisions will impact the public at large and that they are best served when our procedures are followed and understood.

Thus, this brief conversation ensued in which I tried to summarize the past few paragraphs hoping that it would be helpful in imparting a fuller understanding of our procedures and thus better serve all. My sole purpose was to be of assistance, my goal was to help.

The conversation was brief and it was procedural, but being a conversation it involves questions as well as answers. When the issue of the Council's lack of regulation in this field was put to me, my answer was pointed (and I apologize for the salty language). I have repeatedly stated that the General Statutes and regulations govern our activities and the fact that they have been sufficient to deal with cell towers, power plants, hundreds of miles of transmission lines, storing spent nuclear fuel, and many other major facilities. I repeated it again. When asked about a pending bill before the legislature, my response was to the point, and again repetitive in that there are no wind renewable regulations now in place, thus the Council may only decide the issue before us with the law as it exists today, The Council can neither create them or decide this matter on the basis that they should exist. Should the legislature choose to enact such regulations, we will gladly follow them.

Please make no mistake of my complete respect for Representative Nardello. She is one of the hardest working legislators I know. Nor should any phrase here or there be interpreted as a disagreement with her desire for regulation. The fact remains, however, that until a bill becomes law, the Council must proceed as the law and within the time frames that now exist; and that is tough.

The issue of regulations, their need or desire, is not one which is before the Council and therefore can have no bearing on any decision the Council can make. Enacting regulations is not a matter before us nor is it a discussion on the merits.

This brief conversation was procedural only. It was not on the merits. It was meant to be helpful and informative to best serve all. Having more familiarity with our procedures I try to assist in understanding them.

Yet as these events are now put forth in the letter, my good intentions are now open to question by some. The help I sought to give appears to some as less than helpful.

My concern was and remains with the citizens of this state and equally so with those most impacted. Indeed I have not decided this issue, but taken and weighed the evidence so far with anticipation of that still to learn. There was no improper communication.

Yet this brief conversation on procedures seems now to be misunderstood or might otherwise be misused. Regrettably, no explanation is ever so well received as the original story it seeks to answer. I believe such will be the case here. I know, also, that I will never allow my personal desire to serve jeopardize the important decisions this Council must make. Moreover, I cannot and will not allow even the appearance of impropriety to take precedence over the tasks before you and the people of this state.

Accordingly, to remove even the appearance of impropriety, I will be recusing myself from these matters.

I deeply regret any inconvenience this may cause.

Thank you for your attention to this matter. Thank you for your hard work.

Very truly yours,



Daniel F. Caruso
Chairman

DFC/laf