

**STATE OF CONNECTICUT  
SITING COUNCIL**

**RE: Petition No. 1408 - FairWindCT, Inc., et al petition, pursuant to Connecticut General Statutes §4-176, for a declaratory ruling that: (a) the January 9, 2020 Development and Management Plan (D&M Plan) Modification submitted by BNE Energy, Inc. in Petition No. 983 conflicts with the Connecticut Siting Council's (Council) June 2, 2011 final decision on Petition No. 983; (b) the Council did not have jurisdiction over the D&M Plan Modification; (c) the Council did not have statutory authority to approve the D&M Plan Modification; (d) the D&M Plan Modification violated due process rights; and (e) the D&M Plan Modification violates the Connecticut Environmental Protection Act.**

AUGUST 3, 2020

**OBJECTION AND MOTION TO STRIKE**

Pursuant to Sec. 16-50j-15a and Conn.Gen.Stat. §4-177(a)(d), Petitioners, FairWindCT, Inc., the Grant Swamp Group and the Golds, ("Petitioners") hereby object to and move to strike the correspondence of BNE, dated July 31, 2020 relating to matters wholly outside the Docket.

The grounds for this motion are that the letter (1) does not serve to comment upon the matters pending before the Council (2) has no foundation in the rules of practice for the Council (3) appears transparently to be an improper attempt to influence the Council and (4) is irrelevant in that discussions between parties to a proceeding may occur without heralding and in any event should not serve to delay the prompt resolution of the Petition.

The Council has the authority to, and in this instance should, limit the participation of an Intervenor "so as to promote the orderly conduct of the proceedings" by striking the letter from the record.<sup>1</sup>

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<sup>1</sup> Sec. 16-50j-15a. Participation by intervenor - The Council may limit the intervenor's participation pursuant to Section 4-177a of the Connecticut General Statutes, to designated issues in which the intervenor has a particular interest; to defined categories of records, physical evidence, papers and documents; to introduce evidence; and to cross examine on designated issues. The presiding officer may further limit the participation of an intervenor in the proceedings so as to promote the orderly conduct of

## BACKGROUND

On July 31, 2020, counsel for BNE filed a letter addressed to the Executive Director but served on all parties and sent to the Council filing email ([siting.council@ct.gov](mailto:siting.council@ct.gov)) to ensure that it would be filed on the record. The letter does not comment on any issue raised by Petition 1408 and seeks no procedural or substantive relief. Instead, the letter can be fairly categorized as a “Notice of Intent to Negotiate” and heralds BNE’s virtues by stating its intent to contact the Petitioners to discuss “the terms of a settlement offer that it believes will address a number of the substantive concerns that have been raised to date in this proceeding”.

The letter is striking in two respects:

1. The letter *unilaterally* announces an intent to contact the Petitioners without having contacted Petitioner’s counsel in advance regarding the momentous occasion, suggesting that it was more important to signal their intent to negotiate to the Council, than to sincerely engage in discussions which require no announcement.
2. The letter indicates that BNE hopes to “address *a number of* the substantive concerns”, not even all of the substantive issues and apparently none of the procedural and fundamental fairness issues.

This filing was improper for several reasons. First, the letter is not authorized by any rule of practice<sup>2</sup>. While Petitioners expect BNE to comment on the Petition and the specific issues relating to the failure of process and impacts to natural resources of the State, Petitioners do not expect to see filings which serve no proper purpose but to tell the Council that they are “just a bunch of good guys who want to work things out” and signaling, perhaps, that Petitioners are not.

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the proceedings.

<sup>2</sup> For example, the letter might have been, but was not, a motion seeking an extension of time to allow for the negotiations pursuant to Sec. 16-50j-6. Extensions of time. Nor does the letter qualify as limited appearance material under Sec. 16-50j-15b as BNE is a party represented by counsel.

The rules of ethics and professional conduct apply in Council proceedings<sup>3</sup>. Rule 3.4(5) Fairness to Opposing Counsel - requires that “A lawyer shall not ...[i]n trial, allude to any matter that the lawyer does not reasonably believe is relevant...”. Whether the parties continue communications amongst themselves is of no consequence to these proceedings unless these discussions might have an impact on the proceedings themselves. Nothing in the July 31<sup>st</sup> letter suggests that would be the case. To the contrary, the letter clearly sets forth that “BNE will have sufficient time to present a response to the Petition before the Council’s October 29, 2020 deadline for action” regardless.

Moreover, as this letter is not one of the categories of items specified to be part of the Record of these proceedings in Sec. 16-50j-26. The proper remedy for such an extraneous filing is exclusion. Sec. 16-50j-28(b)<sup>4</sup>.

### **CONCLUSION**

It is the intent of Petitioners to discuss BNE’s communication directly and privately with BNE, but the Council should not allow that possibility to delay these proceedings which should continue unimpeded.

Respectfully Submitted,

Petitioners,

By \_\_\_\_\_  
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<sup>3</sup> Sec. 16-50j-24. Rules of conduct Where applicable, the canons of professional ethics and the canons of judicial ethics adopted and approved by the judges of the superior court govern the conduct of the council, state employees serving the council, and all attorneys, agents, representatives, and any other persons who shall appear in any proceedings or in any contested case before the council...

<sup>4</sup> Sec. 16-50j-28(b) Relevance. The Council may exclude evidence that is not probative or material and that tends not to prove or disprove a matter in issue.

## 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 3<sup>rd</sup> day of August 2020 and addressed to:

Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, plus 1 electronic) (US Mail/electronic)  
[siting.council@ct.gov](mailto:siting.council@ct.gov) .

And electronic copies to the service list as attached:

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