



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Robert Stein
Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

March 29, 2011
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CONNECTICUT
SITING COUNCIL

Re: Subpoena Served upon Frederick L. Riese, Petition No. 980, Petition of BNE Energy Inc. for a Declaratory Ruling for the Location, Construction and Operation of a 3.2 MW Wind Renewable Generating Project on New Haven Road in Prospect, Connecticut

Dear Mr. Stein:

On March 25, 2011, Frederick L. Riese of the Department of Environmental Protection ("Department") received a subpoena to compel his appearance before the Connecticut Siting Council ("Council") on March 31, 2011 at 11:00 a.m., relative to the above-referenced matter. Counsel representing FairwindCT, Inc. issued the subpoena.

The Department requests a ruling from the Council that Mr. Riese not be compelled to testify in this matter, thereby obviating his need to appear on March 31, 2011. The Department's reasoning is set forth as follows.

In its letter dated March 17, 2011, the Council indicated what will occur at the March 31, 2011 hearing regarding Petition No. 980. After making various rulings, the letter provides that at the hearing, cross examination of both the Petitioner and the remaining parties and intervenors will be permitted. Certain time has been allocated to the parties for this examination. The letter makes no mention of the ability of any party to provide new evidence. At this stage of the proceeding, given what the Council has indicated will occur at the hearing, there simply is no additional opportunity for any party to provide new evidence in the form of an examination of Mr. Riese.

It is the Department's understanding that parties to a Siting Council proceeding are required to submit pre-filed testimony. The remaining parties are then permitted to cross-examine the witnesses who provided pre-filed testimony. In this case, the Department has not sought nor has it been designated party or intervenor status with respect to Petition No. 980. While the Department did, pursuant to Conn. Gen. Stat. § 16-50j(h), submit comments regarding Petition No. 980, the submission of such comments, without more, does not somehow elevate the Department's status to that of a party or intervenor and as such cannot constitute pre-filed testimony. Since the Department is neither a party nor intervenor to Petition No. 980, and Mr. Riese's comments did not constitute pre-filed testimony, the Council's procedures do not permit the examination or "cross-examination" of him in this proceeding. Instead, as the Council's

information guide to parties and intervenors makes clear, “[p]re-filed testimony is the only chance for parties and intervenors to make a statement of position.”

In this case, the party that subpoenaed Mr. Riese needs to establish its case, not by issuing a subpoena to Mr. Riese and then trying to introduce his direct testimony, but rather must make a statement of its position through the submission of pre-filed testimony. In addition, there is no merit to the argument that Mr. Riese is being subpoenaed so that he may be “cross-examined.” Cross examination is permitted of witnesses who author pre-filed testimony. The Department’s comments, submitted pursuant to Conn. Gen. Stat. § 16-50j(h), do not constitute pre-filed testimony and as such, Mr. Riese is not properly a witness to this proceeding.

For the reasons noted above, the Department requests a ruling from the Council that Mr. Riese not be obliged to appear and testify at its March 31, 2011 hearing regarding Petition No. 980. Thank you in advance for your consideration of this matter.

Sincerely,



Melinda M. Decker
Agency Legal Director

Cc: Frederick L. Riese
Nicholas G. Harding, Reid and Riege.P.C.