

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**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 (“Wind Prospect”)**

**Petition No. 980**

**March 2, 2011**

**FAIRWINDCT, INC.’S REPLY TO PETITIONER’S  
OBJECTION TO MOTION FOR COUNCIL TO ISSUE SUBPOENA**

FairwindCT, Inc. (“FairwindCT”), hereby replies to the objection filed by the petitioner, BNE Energy Inc. (“BNE”) to FairwindCT’s motion for the Siting Council to issue a subpoena to GE Energy (“GE”) pursuant to Connecticut General Statutes § 4-177b. In support of its Reply, FairwindCT states the following:

1. On February 25, 2011, FairwindCT filed a motion asking that the Council issue a subpoena directed to the most appropriate representative(s) from GE Energy (“GE”), to testify about: (1) GE guidelines, rules, or policies regarding appropriate setbacks for siting wind turbines; and (2) the Mechanical Loads Assessment conducted by GE with respect to Wind Prospect.
2. On March 2, 2011, BNE filed an objection to FairwindCT’s motion. BNE’s objection cites no law and is based on its claims that the issuance of a subpoena by the Council would be “unprecedented” and that testimony by a GE representative would be “ineffectual” and “completely unnecessary.” (Objection at 1-2.)
3. First, FairwindCT notes that BNE’s objection to the motion contains no citation whatsoever to any legal authority. The utter lack of citation to authority or

meaningful analysis dictates that BNE's objection be overruled on this ground alone. See, e.g., Zeigler v. Sony Corp. of Am., 48 Conn. Supp. 397, 404, 849 A.2d 19 (2004) ("No case law or analysis is provided to the court. The claim is abandoned, given it consists of no more than its own conclusory allegation.").

4. Second, the applicable case law supports FairwindCT's request. Connecticut courts have continuously recognized the need for a party to an administrative hearing to seek a subpoena to compel the appearance of a third party whose testimony is important to the subject of the administrative proceeding. Failure to seek such a subpoena may be deemed a waiver of certain rights. See, e.g., Lawendy v. Conn. Bd. of Veterinary Medicine, 109 Conn. App. 113, 122, 951 A.2d 13 (2008) ("The board has the authority to issue subpoenas . . . but was not requested to do so by the plaintiff in this case."); Evans v. Freedom of Information Comm'n, Superior Court, judicial district of New Britain, No. CV040527344, 2005 WL 2129067, at \*5 n.3 (Aug. 10, 2005, Owens, J.) (citing Conn. Gen. Stat. § 4-177b); Biondi v. Conn. Dept. of Social Servs., Superior Court, No. CV010511997S, 2002 WL 1293033, at \*2 n.3 (May 14, 2002, Schuman, J.) ("Although the plaintiff testified that the sons were uncooperative, there is no indication that he requested the presiding officer to subpoena the sons to testify at the hearing. . . . See General Statutes § 4-177b."); see also E.K. v. Stamford Bd. of Educ., 557 F. Supp. 2d 272, 277 n.1 (D. Conn. May 28, 2008) (noting plaintiff's failure to utilize hearing officer's "authority to

subpoena witnesses and require production of documents or physical evidence” pursuant to Conn. Gen. Stat. § 4-177b).

5. Here, as a result of the protective order put in place by the Siting Council regarding the “confidential and proprietary” GE documents that BNE claims are now included in the record, FairwindCT will not be afforded an opportunity to conduct live cross-examination of any BNE witness regarding the sealed GE material.<sup>1</sup> Moreover, since the Mechanical Loads Assessment was apparently prepared by GE, only GE personnel would be qualified to respond to questions about its preparation.
6. Accordingly, the GE testimony is essential to this proceeding because only testimony by GE personnel will effectively allow for examination of whether BNE’s proposed siting complies with GE’s recommendations related to wind turbine layouts and setbacks. Testimony on that subject is highly relevant to the Council’s determination of this matter and to the FairwindCT’s opposition to BNE’s petition because they directly relate to matters of public safety. In requesting that the Council issue a subpoena to GE, FairwindCT simply seeks to preserve its right to meaningful cross-examination as mandated by Conn. Gen. Stat. § 4-177c(a)(2), and to assist the Council in assessing the merits of this petition.

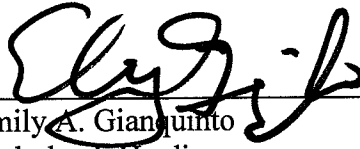
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<sup>1</sup>The Protective Order entered by the Council regarding the sealed material appears to permit such cross-examination, so long as the hearing is closed and those in attendance at the hearing have signed a non-disclosure agreement. (See Protective Order, issued Mar. 2, 2011, ¶ 9.) However, the undersigned has previously been informed by Council staff that no part of the hearing would be closed to the public and as a result, parties may only issue written interrogatories related to the allegedly “confidential and proprietary” material. Necessarily, then, FairwindCT will be deprived of in-person confrontation related to the information under seal.

7. Finally, BNE argues that issuing a subpoena is “completely unnecessary” because “[j]ust as BNE cannot publicly disclose GE’s confidential and proprietary information, GE will also not testify to the materials subject to such an agreement.” (Objection at 1.) BNE has no standing to raise that objection and speak for GE on this matter. As BNE itself admits, the allegedly “confidential and proprietary” information at issue belongs to GE. GE will choose how to respond when called by the Council to testify about GE’s “confidential and proprietary” information. GE will have the right to petition the Siting Council to quash or modify any subpoena the Council decides to issue. The possibility that GE may choose to fight the subpoena, however, is not a reason to deny FairwindCT’s request that the Council issue the subpoena.

For the foregoing reasons, and those stated in FairwindCT’s motion, FairwindCT respectfully requests that the Siting Council issue the requested subpoena directed to the most appropriate representative(s) from GE Energy (“GE”), to testify about: (1) GE guidelines, rules, or policies regarding appropriate setbacks for siting wind turbines; and (2) the Mechanical Loads Assessment conducted by GE with respect to Wind Prospect.

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 2nd day of March, 2011:

Carrie L. Larson  
Paul Corey  
Jeffrey J. Tinley  
Hon. Robert J. Chatfield  
Thomas J. Donohue, Jr.  
Eric Bibler  
Andrew W. Lord  
Cindy Gaudino

and sent via e-mail only to:

John R. Morissette  
Christopher R. Bernard  
Joaquina Borges King

  
\_\_\_\_\_  
Emily Gianquinto