

**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 14, 2011

**PETITIONER BNE ENERGY INC.’S OBJECTION TO PRE-FILED EXHIBITS AND
REQUESTS FOR ADMINISTRATIVE NOTICE FILED BY SAVE PROSPECT CORP.**

Petitioner BNE Energy Inc. (“BNE”) hereby objects to the inclusion in the record of proposed additional exhibits submitted by party Save Prospect Corp. (“SPC”). SPC has offered an additional 52 proposed exhibits (items 72-124) on March 8, 2011. With limited exception, these exhibits suffer the same infirmities as already noted in BNE’s objection filed on February 16, 2011—SPC does not have a single witness who can verify the exhibits and be subject to cross-examination concerning those exhibits. In addition, many of the exhibits are largely irrelevant to this proceeding. Therefore, the exhibits should be struck from the record.

In addition, SPC has offered an additional 40 items (items 71-121) as items to be included as administrative notice items. Again, with limited exception, none of these documents are appropriate for inclusion in the Council’s list of administrative notice documents. Therefore, none of these documents should be included in the record in this proceeding in any manner as further discussed below.

I. SPC’S PROPOSED SUPPLEMENTAL EXHIBITS MUST BE STRUCK

BNE filed this petition on November 17, 2011. The Council established February 16, 2011 as the pre-filing deadline for this proceeding. On February 17, 2011—one day after the filing deadline—BNE received copies of SPC’s pre-filed testimony, proposed exhibits and

requests for administrative notice. The Council established a second pre-filing deadline of March 8, 2011. Again, one day late, BNE received an additional 52 proposed exhibits from SPC. As the Council is well aware, proposed exhibits do not become part of the record in a Council proceeding unless and until they can be properly verified by a witness who prepared or assisted in the preparation of those documents and who can be cross-examined concerning the content of the proposed exhibits. Since SPC cannot do so for items 73-80, 82, 85, 89-90, 92-93, 101, 103-104, 106-117 and 119-124, these items should be struck from the record.

Proposed exhibits 96-100 suffer the same infirmity that SPC's previous news and journal articles suffer. The Council is well aware that news articles or journal articles are not appropriately included as exhibits or administrative notice items unless the author is present, under oath and subject to cross examination. *See, e.g.* Docket 396, denying request for administrative notice of similar items. News and journal articles, even assuming that the subject matter is relevant—many of the articles submitted by SPC are well outside the scope of the Council's jurisdiction over this proceeding—cannot be included as exhibits in this proceeding. None of the authors of the articles are proposed witnesses of SPC and therefore SPC cannot verify any of these documents. Furthermore, as noted, many of the proposed news article exhibits pertain to matters outside the Council's jurisdiction, including articles concerning impacts to property values. Council precedent is clear that economic impacts, including impacts to property values, are outside the Council's jurisdiction. *See* Docket 225C, Docket 366.

Turning the substance of the articles, many of these news or journal articles are not peer-reviewed scientific studies but are simply unsupported commentary, are outdated or discuss surveys or projects that are located outside the United States. These publications have not been published in a peer-reviewed publication that can be relied upon by expert witnesses. *State v.*

Porter, 241 Conn. 57 (1997). Under the *Porter* doctrine, an opinion by an expert whose methodology is not peer-reviewed should be excluded from the record. See *Klein v. Norwalk Hospital*, 229 Conn. 241, 262-264 (2010). As such, these publications are not reliable sources for the Siting Council to consider in rendering its decision. These shortcomings further highlight the irrelevancy of the proposed exhibits.

SPC has offered numerous bills and proposed regulations. See items 78, 79, 107, 109-110. Proposed legislation offers no probative value to the Council in this proceeding. As the Council is well aware, many proposed bills never even make it out of committee, let alone become law, so the fact that a bill is proposed is meaningless. Furthermore, as is true for the large majority of SPC's proposed exhibits, SPC has not offered a single witness who can verify these documents or be subject to cross-examination concerning the same.

The DVDs submitted as proposed exhibits 101 and 103 contain news clips and interviews with individuals who are not proposed witnesses in this proceeding. Therefore, the DVDs cannot be verified and there is no witness who can be cross-examined concerning the substance contained therein. Therefore, these two exhibits should likewise be struck from the record.

Finally, proposed exhibit 112 is not actually produced in SPC's exhibit submission. Since the document has not even been produced, it certainly is not appropriate as an exhibit. Furthermore, as discussed above, there is also no witness available to verify this exhibit and therefore it should be struck from the record for this reason as well.

For all of these reasons, SPC proposed exhibits 73-80, 82, 85, 89-90, 92-93, 96-100, 101, 103-104, 106-117 and 119-124 should be struck from the record.

II. SPC'S ADMINISTRATIVE NOTICE ITEMS SHOULD BE STRUCK

SPC's supplemental requests for administrative notice suffer similar shortcomings as its proposed supplemental exhibits and as its previous requests for administrative notice submitted on February 16, 2011. As discussed further below, items 90, 93-112 and 116-121 should not be included in items administratively noticed in this proceeding.

Items 90 and 119 are not reports or cognizable facts appropriate for administrative notice. Instead, they are Powerpoint presentations and there is no possible way to verify the information contained therein. Item 93 is a journal article that is four years old from another country. News and journal articles, particularly those from other countries, do not contain cognizable facts and therefore should not be included in items administratively noticed by this Council. Items 107-110 purport to be draft bills from other jurisdictions. Again, just as draft bills from this jurisdiction are not appropriate as exhibits, draft bills from other jurisdictions are equally not appropriate as administratively noticed items in this proceeding.

Item 112 is identical to proposed exhibit #112. Conveniently, SPC has not produced a copy of this proposed exhibit. In order to appropriately be included as an administrative notice item, a certified copy of the proposed ordinance must be produced in order to verify the authenticity of the document. Until such time, this item is not appropriately considered as an exhibit or as an administratively noticed document.

Item #116 is a link to BNE's website. This information is wholly irrelevant to this proceeding and is not appropriate for administrative notice. SPC submits as item #117 a purported portion of the WindPro manual, which is also listed as a proposed exhibit. First, there is no probative value to including a portion of the WindPro manual as either an exhibit or as an administrative notice item. Furthermore, if the Council considers including it as an

administrative notice item, the Council should only do so if the entire manual is included, not just a selected portion thereof.

Finally, SPC requests administrative notice of #121, which is also listed as SPC proposed exhibit #121. Of note, there is not document produced in tab #121. Instead, it refers to “Exhibit B” of the pre-filed testimony of Kurt Tramposch. First, BNE is moving to strike Mr. Tramposch’s testimony in its entirety because: 1) it is untimely; 2) Mr. Tramposch has no qualifications to express the opinions expressed therein; and 3) Mr. Tramposch’s opinions are not based on site-specific site study and are merely supposition. In addition, there is absolutely no reference to item #121 in Mr. Tramposch’s testimony. The document attached thereto as Exhibit B is indecipherable. It purports to be a document from Exxon Mobil or a company called Nordex. It is unclear whether it is in any way related to wind turbines. Whatever the document may be, it is clear that Mr. Tramposch—who apparently lectures on water policy—did not draft the document, cannot verify it and cannot be cross-examined concerning its contents. Therefore, just as this document is not appropriate as an exhibit, it is equally inappropriate as an item to be administratively noticed.

SPC’s “kitchen sink” approach of filing reams of irrelevant, unverifiable documents as proposed exhibits and administrative notice items should not be condoned by the Council. SPC’s proposed exhibits 73-80, 82, 85, 89-90, 92-93, 101, 103-104, 106-117 and 119-124 should be struck from the record because SPC does not have a witness capable of verifying those exhibits or a witness available for cross-examination concerning those exhibits. SPC’s proposed administrative notice items are equally deficient and do not meet the Council’s qualifications for documents to be administratively noticed. Therefore, items 90, 93-112 and 116-121 should also be struck and not included in the record in this proceeding.

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