

**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 28, 2011

**MOTION FOR RECONSIDERATION OF PROTECTIVE ORDER
AS IT RELATES TO BNE WIND DATA**

FairwindCT, Inc. (“FairwindCT”) hereby submits the within Motion for Reconsideration of the Council’s decision to overrule and deny the FairwindCT’s Objection to and Motion to Modify Protective Order, dated March 7, 2011, as such Protective Order relates to certain information and data regarding wind resources, wind speeds, and wind generation (the “BNE wind data”) submitted by the Petitioner, BNE Energy, Inc. (“BNE”). FairwindCT moves for reconsideration on the basis of newly obtained facts related to the material filed under seal by BNE and Paragraph 7 of the Protective Order, which permits modification.

In support of this Motion, FairwindCT states the following:

1. On February 16, 2011, BNE filed a Motion for Protective Order and Motion to File Under Seal in which it indicated that it intended to file with the Council the BNE wind data, which it alleged was confidential and proprietary. (BNE’s Motion for Protective Order, Feb. 16, 2011, at 1-2.)
2. On February 23, 2011, FairwindCT filed a Response to BNE’s motion and proposed protective order, stating that “[a]lthough FairwindCT does not concede that the information BNE seeks to protect from disclosure is, in fact, confidential

and proprietary, FairwindCT does not object in principle to the entry of such an order, provided that certain conditions outlined in this response are met.”

(FairwindCT’s Response, Feb. 23, 2011, at 1.)

3. At the February 24, 2011, evidentiary hearing, the Council granted BNE’s motion for protective order. That Protective Order – transmitted to the parties and intervenors nearly a week later – was stricter than BNE’s proposed order and did not contain any of the reasonable conditions requested by FairwindCT. Rather, the Protective Order approved by the Council imposed restrictions on the review and use of the BNE wind data that make it impossible for the parties and intervenors opposing the petition to effectively use the information at all.
4. As a result, on March 7, 2011, FairwindCT objected to the conditions of the protective order and moved to modify the order. At the March 15, 2011, evidentiary hearing, the Council voted to deny FairwindCT’s motion to modify, with one member of the Council dissenting.
5. FairwindCT now moves for reconsideration of the order in light of newly obtained evidence related to the content and scope of the material subject to the Protective Order.
6. On March 17, 2011, one of FairwindCT’s attorneys visited the Council offices to view the BNE wind data filed in the above-captioned petition. An Affidavit in support of this Motion executed by that attorney is attached hereto.

7. The BNE wind data is contained in two zipped .CSV files, viewable in Microsoft Excel spreadsheets. The spreadsheets contain approximately 64,000 lines of data, which amounts to millions of data entries in total.
8. First, upon review of the BNE wind data, FairwindCT disputes that BNE's claim that the BNE wind data is Critical Energy Infrastructure Information. The FERC guidelines regarding CEII themselves state that such "process is not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attach on the energy structure." (Federal Energy Regulatory Commission, Guidelines for Filing Critical Energy Infrastructure Information, at 1, available at <http://www.ferc.gov/help/filing-guide/file-ceii/ceii-guidelines/guidelines.pdf>.)
9. The FERC guidelines go on to state that the FERC "emphasizes that 18 CFR § 388.112(b)(1) requires that submitters provide justifications for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment." (Id.) BNE's statement that its wind data "may also contain CEII" utterly fails to meet this standard.
10. Second, FairwindCT disputes that BNE's wind data is information that warrants exemption from the presumption that ". . . all records maintained or kept on file by any public agency, . . . shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or

(3) receive a copy of such records in accordance with section 1-212.” Conn. Gen. Stat. § 1-210. The Freedom of Information Act does provide for protection of trade secrets, but the BNE wind data fails to meet the definition of trade secrets because it does not “derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use.” See Conn. Gen. Stat. § 1-210(5)(A)(i). As such, the BNE wind data should not be entitled to the “secrecy” afforded to trade secrets. See Conn. Gen. Stat. § 1-210(5)(A)(ii).

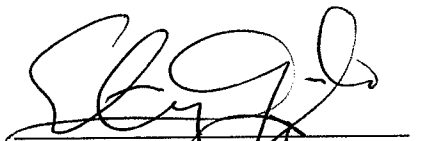
11. Moreover, as the owner of the allegedly proprietary and secret wind data, BNE is of course permitted to disclose so much of that data as is necessary for the Council’s determination of its petitions. FairwindCT submits that the Council should require BNE to allow any party’s expert to review the BNE wind data. Because BNE bears the burden of establishing that the instant petition should be granted, BNE can and should be required to allow for reasonable use of that data in its attempt to obtain permission to site the proposed wind turbines. At an absolute minimum, the Council should require BNE to permit opposing parties to use and disseminate the BNE wind data to their experts after signing non-disclosure agreements.
12. The protective order currently in place in this petition prevents any meaningful inquiry into such data and denies FairwindCT and the other parties and intervenors

any meaningful cross-examination whatsoever with respect to the BNE wind data, in contravention of Conn Gen. Stat. § 4-178.

13. Finally, FairwindCT reminds the Council that BNE has used significant sums of public money to gather the raw wind data it now seeks to protect from public disclosure. Considering the substantial financial investment provided by the public in BNE's proposed industrial wind project, the public has a right to examine whether the data collected by BNE, which collection was subsidized by the public, warrants construction of the proposed industrial wind turbines.

WHEREFORE, in light of the above facts – newly discovered upon consideration of the contents of the actual BNE wind data sealed pursuant to the Protective Order – FairwindCT moves the Council to reconsider its decision overruling and denying FairwindCT's Objection to and Motion to Modify Protective Order.

By:



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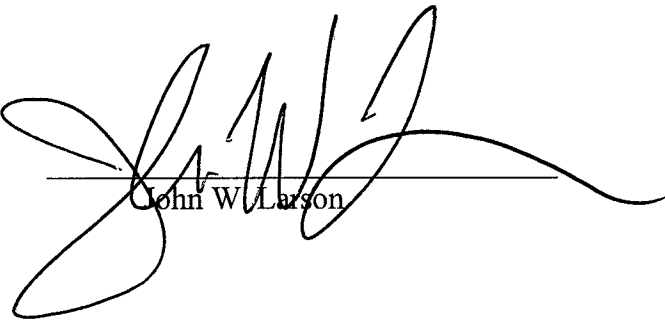
March 28, 2011

AFFIDAVIT OF JOHN W. LARSON

The undersigned being duly sworn does hereby depose and say:


1. I am over the age of eighteen, understand the meaning and obligation of an oath, and am competent to testify as to the matters stated herein.
2. I make this Affidavit on personal knowledge.
3. I am an attorney at Reid & Riege, P.C., and I represent FairwindCT, Inc., party to the Petition 980.
4. On March 17, 2011, I visited the offices of the Council in order to view the material filed under seal by BNE in Petition 980.
5. Included in such material was certain “raw wind data” provided to the Council by BNE related to that petition.
6. The BNE wind data is located on a CD that contains two zipped .CSV files, which may be viewed on the Council computer in Microsoft Excel spreadsheets.
7. The spreadsheets contain approximately 64,000 lines of wind data over numerous columns, totaling what appears to be over a million separate entries of wind data in the spreadsheets.

8. In the opinion of the undersigned, the BNE wind data is useless if such data cannot be removed from the Council offices and provided to expert witnesses for review.



John W. Larson

Subscribed and sworn to before
me this 28th day of March, 2011.



Sylvie L. Poulin
Notary Public
My Commission Expires: 11/30/2012

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 28th 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 A. Gianquinto