

**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

**OBJECTION TO NOTICE OF HEARING PROCEDURE
AND TO HEARING PROGRAM**

FairwindCT, Inc. (“FairwindCT”), hereby objects to the procedure established in the memorandum from the Siting Council addressed to the parties and intervenors, dated March 17, 2011 (the “Memorandum”). FairwindCT objects to the Council’s announced intention of deviating from the procedure described in the Hearing Program, the lack of opportunity for FairwindCT to cross examine parties who have been subpoenaed to appear and testify on March 31, 2011, the lack of opportunity for FairwindCT to present for cross examination a witness who has filed supplemental testimony, the absence of opportunity for the parties and intervenors to cross examine Epsilon Associates, Inc., who apparently has been providing the Council with ex parte advice and counsel throughout these proceedings and the limits imposed on the length of cross examination that will result from the procedure announced in the Memorandum.

1. The evidentiary hearing for this petition began on February 24, 2011 and was continued on March 3, 2011 and March 15, 2011.
2. On March 17, 2011, the Council issued the Memorandum, describing the Council’s rulings on several evidentiary motions and objections and describing

the procedure to be followed for what is scheduled to be the last day of evidentiary hearings in this matter.

3. The Memorandum states the following:

The next evidentiary hearing scheduled for March 31, 2011 shall commence with cross examination of the petitioner by the Town of Prospect. Thereafter, the hearing will continue with the cross examination of the remaining parties and intervenors (Satkunas/LaMontagne, Connecticut Water and CL&P) by the Council, petitioner and other parties and intervenors. Finally, the hearing will conclude with further cross examination of the petitioner by the Council and parties and intervenors. Parties and intervenors have two hours *collectively* remaining for cross examination of the petitioner. Satkunas/LaMontagne, Connecticut Water and CL&P shall have their first opportunity to cross examine the petitioner and any remaining time shall be allotted to SPC/Fairwind/Bibler.

4. FairwindCT objects to the procedure as set forth in the Memorandum.

5. First, the procedure set forth in the Memorandum conflicts with the procedure set forth in the various Hearing Programs issued by the Council in this proceeding, which dictated that the order of cross examination would be as follows: Town of Prospect, Save Prospect Corp/FairwindCT/Eric Bibler, LaMontagne/Satkunas, Connecticut Water Company and CL&P. Now, after less than half of the time allotted for cross examination has been used, the Council is changing the order of cross examination. FairwindCT objects to the changed order of cross examination.

6. Second, the procedure announced leaves no time for cross examination of individuals who have been subpoenaed by FairwindCT to appear on March 31, 2011. Specifically, FairwindCT has subpoenaed Michael Klemens and Frederick Riese. Michael Klemens was disclosed by BNE as a witness in Petition No. 983 on March 15, 2011 and in Petition No. 984 on March 25, 2011.

7. Mr. Klemens was apparently hired by BNE to conduct on-site vernal pool studies and related on-site surveys for frogs and salamanders with respect to the industrial wind turbine projects for Colebrook. BNE did not conduct, and has not proposed to conduct such surveys for its proposed Prospect project. FairwindCT could not have subpoenaed Mr. Klemens to appear at any earlier evidentiary hearing in this matter.
8. Mr. Riese is a Senior Environmental Analyst for the CT Department of Environmental Protection and the author of a letter dated March 14, 2011 to the Council regarding this petition. That letter was forwarded to the parties and intervenors on March 17, 2011. In his correspondence, Mr. Riese opines on numerous aspects of BNE's petition and references the Council's "initiative to secure independent expertise in the form of Epsilon Associates, Inc. to assist in evaluating this project" as "a wise decision which will benefit all parties and stakeholders in this proceeding." FairwindCT and the other parties and intervenors are entitled to examine Mr. Riese on the DEP's opinion of the proposed project and the basis for that opinion. FairwindCT could not have subpoenaed Mr. Riese to appear at any earlier evidentiary hearing in this matter.
9. Third, the procedure set forth in the Memorandum leaves no time for FairwindCT to have one of its witnesses swear to and adopt his second supplemental testimony. Mr. William Carboni submitted additional supplemental prefiled testimony after BNE submitted an entirely new set of site plans, a new stormwater prevention plan and a new erosion control plan. Mr. Carboni's testimony that

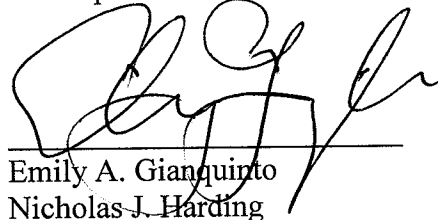
these plans still fail to comply with the water quality standards of the state is very relevant to the Council's deliberation on this petition. FairwindCT must be provided the time necessary to have him verify his testimony and be available for cross examination on that testimony by BNE and the other parties and intervenors.

10. Fourth, FairwindCT objects to the procedure set forth in the Memorandum because it does not allow the parties or intervenors the opportunity to cross examine a representative of Epsilon Associates, Inc. on the content of the apparent ex parte advice and counsel being provided to the Council by Epsilon. The DEP is apparently privy to that advice and counsel. Recent news reports have referenced the advice being provided by Epsilon to members of the Council. FairwindCT and the other parties and intervenors are entitled to examine Epsilon regarding the ex parte information, advice, counsel and "expertise" it has offered to the Council.
11. Finally, FairwindCT objects to the amount of time set aside by the Council for the remainder of this proceeding, particularly in light of recent events. The evidentiary hearing scheduled for March 31, 2011 will begin at 11 a.m. The Council has a regularly scheduled meeting at 2 p.m. Thus, the time remaining for this proceeding is limited to approximately 11 a.m. to 1 p.m. and then from approximately 4 p.m. to 5:30 p.m. Three and a half hours is not sufficient time to permit the Town of Prospect, the parties and intervenors to complete their cross examination of BNE's witnesses, one of whom, Joel Rinebold, has not previously

been available for cross examination by the parties and intervenors, nor is it sufficient to satisfy the previously announced time limits.

WHEREFORE, FairwindCT objects to the procedures set forth in the Memorandum.

By:

A handwritten signature in black ink, appearing to read "Emily A. Gianquinto", written over a horizontal line.

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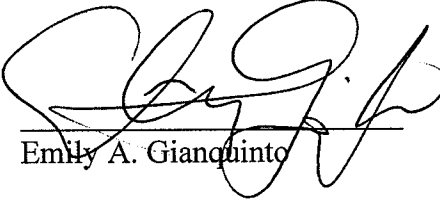
CERTIFICATION

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 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