

**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 980

March 29, 2011

**PETITIONER’S OBJECTION TO MOTIONS FOR RECONSIDERATION
OF PROTECTIVE ORDER**

The petitioner, BNE Energy Inc. (“BNE”), submits this objection to FairwindCT, Inc.’s (“Fairwind”) three motions for reconsideration of protective order dated March 28, 2011 (Motion for Reconsideration of Protective Order as it Relates to Mechanical Loads Assessment and Noise Emission Characteristics, Motion for Reconsideration of Protective Order as it Relates to BNE Wind Data, and Motion for Reconsideration of Protective Order as it Relates to GE Setback Recommendations).

Fairwind requests that the Council reconsider its decision to overrule and deny Fairwind’s Objection to and Motion to Modify Protective Order, dated March 7, 2011. Fairwind’s motions for reconsideration raise no new issues and no changed circumstances that would warrant the Council’s reconsideration of its already issued protective order or its denial of Fairwind’s previously filed objection thereto. Therefore, Fairwind’s motions should be denied. In support of this objection, BNE states as follows:

This petition was filed on November 17, 2010. During the course of interrogatories, various parties and intervenors have requested documents from BNE which are confidential, proprietary and subject to a confidentiality agreement between BNE and GE, the proposed manufacturer of the turbines proposed in this petition.

Notwithstanding the confidential nature of the documents, BNE has worked diligently to provide the Council and all parties and intervenors with the requested documents. BNE has done so pursuant to a motion for protective order, filed on February 16, 2011. On February 24, 2011, the Council granted BNE's protective order. The protective order issued by the Council permitted BNE to file the requested documents under seal but, at the same time, provides reasonable access to those documents to all parties, intervenors or witnesses. Those parties, intervenors and witnesses simply have to visit the Council's offices and sign a non-disclosure agreement in order to view the documents. This is consistent with past practices of the Council when dealing with critical energy infrastructure information or confidential and proprietary information. *See, e.g.* Docket 370, Docket 366.

Council staff further instructed all parties and intervenors that, should they have questions of BNE and its witnesses regarding the confidential information, the parties and intervenors must do so by issuing written interrogatories under seal and the petitioner would respond in a similar fashion.

Fairwind filed an objection to and motion to modify the protective order on March 7, 2011, claiming variously, without basis, that 1) the imposed order went further than what was requested by BNE in its motion; 2) the order was issued without BNE supplying its confidentiality agreement with GE; 3) the order applies to information that is publicly available; and 4) the order applies to information that is proprietary to BNE.

The Council considered and denied Fairwind's objection and motion to modify at its March 15, 2011 evidentiary hearing.

Fairwind now argues that the Council must reconsider its already issued protective order and its decision to deny Fairwind's objection to and motion to modify the same based on "newly obtained facts." In reality, Fairwind fails to cite any new evidence that would warrant reconsideration.

With respect to the GE setback information, Fairwind first claims that the public is entitled to such information and that the protective order keeps it "secret," and then argues that the setback information is already publicly available. First, the protective order and Council procedure provide procedural mechanisms by which this information is available, despite Fairwind's hysterical branding of this procedure as "absurdity." Second, Fairwind persists in arguing that the information is already publicly available on the New York State Public Service Commission website. In fact, the document that appears at the link provided by Fairwind is clearly marked on each and every page: "CONFIDENTIAL – Proprietary Information. DO NOT COPY without written consent from GE." Despite this obvious and clear marking, Fairwind argues that this information does not constitute trade secrets or proprietary information. The Council itself has stated that two wrongs don't make a right; just because the New York PSC has illegally posted this information on its website does not compel the Council to perpetuate its illegal reproduction. Also, a proposed exhibit containing the setback information (Save Prospect Corp.'s proposed exhibit 68) was already stricken from the record because Save Prospect Corp. did not have written permission to reproduce the proposed exhibit as noted on the document.

The fact remains that BNE is subject to a confidentiality agreement with GE, which BNE has filed pursuant to the protective order in this proceeding. As such, BNE and its witnesses simply cannot publicly discuss or disclose GE documents.

Fairwind's attempt to resurrect an argument that has already been made to the Council, considered by the Council, and rejected by the Council hardly constitutes "newly obtained facts" that would warrant reconsideration of the protective order or the Council's denial of Fairwind's objection to the same.

Similarly, Fairwind attempts to revive the argument that because BNE has received funding from the Connecticut Clean Energy Fund (CCEF), BNE cannot claim that any of its business records and documents are confidential and proprietary to BNE. The Council may recognize this argument, as Fairwind has propounded it in earlier filings and hearings relating to the protective order (see, e.g. Fairwind's Objection to and Motion to Modify Protective Order, dated March 7, 2011, at paragraph 13). Ignoring for a moment the fact that this recurring argument hardly constitutes "newly obtained facts," the argument fails on its substance as well. The funding obtained from CCEF is a loan that will be repaid by BNE; it is not as if public funding has simply been expended into thin air, as Fairwind would have the Council believe. Furthermore, Fairwind fails to cite any provision of the FOI act or any other law that requires any recipient of CCEF funding to publicly disclose all of its proprietary and confidential business records – because no such provision exists. There is no law, under the FOI Act or elsewhere, that requires public disclosure of confidential and proprietary documents of a private company, a fact that the Council has recognized time and time again during its proceedings. *See, e.g.*, docket 416, docket 415, docket 414, docket 413, docket 412, docket 410.

Fairwind's repeated recital of the same baseless argument that has already been made to the Council, considered by the Council, and rejected by the Council hardly

constitutes “newly obtained facts” that would warrant reconsideration of the protective order or the Council’s denial of Fairwind’s objection to the same.

WHEREFORE, Fairwind has not offered any new evidence or changed circumstances that would warrant the Council’s reconsideration of its already approved protective order in this proceeding or of its denial of Fairwind’s objection thereto. Fairwind’s motions for reconsideration should be denied.

Respectfully Submitted,

By: /s/ Carrie L. Larson
Attorney For BNE Energy Inc.
Carrie L. Larson, Esq.
clarson@pullcom.com
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702
Ph. (860) 424-4312
Fax (860) 424-4370

Certification

This is to certify that a copy of the foregoing has been mailed this date to all parties and intervenors of record.

Mayor Robert Chatfield
Town Office Building
36 Center Street
Prospect, CT 06712-1699

Jeffrey Tinley
Tinley, Nastri, Renehan & Dost LLP
60 North Main Street
Second Floor
Waterbury, CT 06702

Thomas J. Donohue
Killian & Donohue, LLC
363 Main Street
Hartford, CT 06106

John R. Morissette
Manager-Transmission Siting and Permitting
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270

Christopher R. Bernard
Manager-Regulatory Policy (Transmission)
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270

Joaquina Borges King
Senior Counsel
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270

Nicholas J. Harding
Emily A. Gianquinto
Reid and Riege, P.C.
One Financial Plaza
Hartford, CT 06103

Andrew Lord
Murtha Cullina LLP
CityPlace I
185 Asylum Street, 29th Floor
Hartford, CT 06103

Eric Bibler
31 Old Hyde Road
Weston, CT 06883

/s/ Carrie L. Larson
Carrie L. Larson

ACTIVE/72955.3/BHEIPLE/2426742v1