

**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

**OBJECTION TO SUBPOENA DUCES TECUM RE:
FREDERICK L. RIESE**

BNE Energy, Inc. (“BNE”) hereby objects to the Subpoena Duces Tecum issued by FairwindCT, Inc. (“Fairwind”) to Frederick L. Riese, Senior Environmental Analyst for the Connecticut Department of Environmental Protection (“CTDEP”) dated March 25, 2011. The subpoena is directed to a non-participant in this proceeding, who is not on Fairwind’s witness list, which was finalized on February 16, 2011. In addition, Fairwind has not pre-filed any testimony on behalf of Mr. Riese, as is required by the hearing procedures in this proceeding. Finally, Fairwind’s allotted time for presenting its case has already reached its end pursuant to the hearing schedule set out by the Siting Council in accordance with its statutory mandates. Therefore, Fairwind’s opportunity to present witnesses has passed, this request is untimely and should be denied.

Mr. Riese nor DEP are not participants in this proceeding nor can Fairwind credibly argue that they are. Connecticut DEP has not sought legal standing in this proceeding. Instead, DEP submitted written comments on March 14, 2011 pursuant to Conn. Gen. Stat. § 16-50j (h). Submission of written comments does not and cannot constitute pre-filed testimony or legal

participation in a proceeding. Rather, Conn. Gen. Stat. § 16-50j (h) makes it clear that agency comments are just that – comments and not testimony.

Pursuant to the schedule set out by the Siting Council in its Hearing Notice dated January 21, 2011, Fairwind, like all other parties to this proceeding, was required to submit its witness list and pre-filed testimony for all witnesses by February 16, 2011 with an additional pre-filing deadline of March 1, 2011 for additional materials. The purpose for these deadlines is for the parties to prepare for cross-examination and to prepare rebuttal testimony, if necessary. Fairwind's witness list did not include Mr. Riese. Fairwind did not supply pre-filed testimony for Mr. Riese. In fact, no other party to this proceeding included Mr. Riese on its witness list or provided pre-filed testimony for Mr. Riese. The untimely nature of this subpoena unduly prejudices BNE, which has already presented its case to the Siting Council. BNE has spent valuable resources reviewing extensive and largely irrelevant testimony filed by Fairwind. Fairwind has provided no reason why the Siting Council should depart from its standard procedures and allow a new witness to come into the proceeding now.

Furthermore, Fairwind's allotted time in which to present its case is now over. Fairwind presented its entire case during the evidentiary hearing before the Council on March 15, 2011. The final date for evidentiary hearings in this proceeding, March 31, 2011, is reserved for other parties/intervenors' cases and the petitioner's rebuttal. The hearing schedule does not permit rebuttal time for Fairwind. Fairwind cannot claim that it did not have notice of this procedure since it has been in place since January 21, 2011 nor can Fairwind claim prejudice by this procedure since it is identical to the format in which any court proceeding would take place—the petitioner presented its case in chief, the opposition presented its case in chief and now the petitioner has the opportunity for rebuttal. Furthermore, the Council specifically reserved March

15, 2011 for the other parties and intervenors cases--including Fairwind—at the specific request of Fairwind and Save Prospect Corp. in order to accommodate out of state witness travel. Given that Fairwind the accommodations that have already been made and the fact that Fairwind has already utilized its time allotted by the hearing schedule that the Council, Fairwind should not now be allowed to trample upon the rights of other parties/intervenors – and indeed, even the Council – by occupying even more time. The Council is under strict statutory time limits, and the hearing schedule is based upon the same. Fairwind has provided no rationale to compel the Council to depart from the hearing schedule and its statutory mandates to allow Fairwind to put on more evidence nor can it credibly argue that there is such rationale.

For the foregoing reasons, BNE objects to the Subpoenas Duces Tecum issued by Fairwind to Mr. Riese.

Respectfully Submitted,
BNE ENERGY, INC.

By: /s/ Carrie Larson
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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing was delivered by U.S. Mail, first class postage prepaid, to all parties and intervenors of record as follows:

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