

**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

February 23, 2011

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

FairwindCT, Inc. (“FairwindCT”), hereby objects to the procedure established in the notice of February 22, 2011, addressed to the parties and intervenors (the “Notice”) and the Hearing Program of February 22, 2011 (the “Program”). FairwindCT objects to the limits imposed on the length of cross examination set forth in the Notice, the limits imposed on the substance of cross examination set forth in the Notice, the lack of advance notice that these limitations would be imposed, the inclusion in the record of materials submitted by BNE to the Council under seal and not made available to the parties as set forth in the Program, and the lack of disclosure regarding documents and advice provided to the Council by Epsilon Associates, Inc.

1. On February 22, 2011, the Council issued the Notice, which outlines the procedure governing the evidentiary hearing regarding this petition. That evidentiary hearing is scheduled to begin on February 24, 2011.
2. FairwindCT objects to the procedure as set forth in the Notice.
3. BNE is scheduled to present eight witnesses in support of its petition. The Notice sets forth a schedule that provides for four hours of cross examination of those witnesses by the Council and four hours of cross examination of those witnesses by all parties and intervenors, collectively.

4. As a group, FairwindCT and Save Prospect are scheduled to present thirty-one witnesses in opposition to this petition. The Notice sets forth a schedule that provides for only two hours of cross examination of those witnesses by the Council, two hours of cross examination of those witnesses by BNE and two hours of cross examination of those witnesses by all other parties and intervenors, collectively.
5. These time limits are inadequate. FairwindCT and Save Prospect have gone to considerable effort and expense to present the Council with witnesses prepared to testify regarding issues ranging from environmental impacts to health effects to property value considerations. They have hired experts on these and other topics, experts who have offered prefiled testimony describing the inadequacy of BNE's petition.
6. FairwindCT and Save Prospect have offered the Council the opportunity to hear from residents of communities in other states whose lives have been devastated by the installation of similar industrial wind projects in proximity to their homes. Residents of Prospect who are members of Save Prospect and thereby prohibited under the Council's rules from speaking at the public hearing plan to testify at the evidentiary hearing.
7. All of these witnesses deserve the Council's full attention and respect. Imposing a two-hour time limit on cross examination of FairwindCT's and Save Prospect's witnesses is prejudicial and unfair. The time limit is prejudicial because the Council will not have adequate time to cross examine FairwindCT's and Save Prospect's witnesses.

8. The Notice also limits the substance of the cross examination to three general topics, namely, public health and safety, environmental impacts and facility operation. The Notice purports to do so on the grounds that only these topics “are relevant to the final decision to be rendered by the Council in this matter.”
9. FairwindCT objects to the substantive limitations on cross examination imposed by the Notice. First, the Notice fails to identify the statutory authority for consideration of only these topics.
10. Second, although the Council now apparently considers only these three topics to be relevant to its final decision, BNE has submitted evidence on numerous other topics, both in its petition, its interrogatory responses and its prefiled testimony. Despite the inclusion of that evidence in the record, the Council intends to prohibit cross examination on those topics. Permitting such apparently irrelevant evidence to remain as part of the record of this proceeding but prohibiting FairwindCT and Save Prospect to cross examine BNE’s witnesses on that evidence is prejudicial.
11. Third, the notices issued by the Council to the parties and the public dated January 21, 2011 and January 25, 2011 provided that “Applicable law for this proceeding includes the Public Utility Environmental Standards Act, General Statutes § 16-50g, et seq., and Sections 16-50j-1 through 16-50v-1a of the Regulations of Connecticut State Agencies.” (Hearing Notice, issued by the Council on January 21, 2011; Hearing Notice, issued by the Council on January 25, 2011.) To the extent that the Notice varies from these earlier hearing notices, FairwindCT objects.

12. Section 16-50g of the Connecticut General Statutes. (See, e.g., Hearing Notice, issued by the Council on January 21, 2011 (“Applicable law for this proceeding includes the Public Utility Environmental Standards Act, General Statutes § 16-50g, et seq., and Sections 16-50j-1 through 16-50v-1a of the Regulations of Connecticut State Agencies.”) Section 16-50g states that one of the purposes of the Public Utility Environmental Standards Act is “[t]o provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values.” The Council cannot analyze the adequacy and reliability of Wind Prospect or the cost of providing energy generated by Wind Prospect to consumers without reviewing the requested material.
- 13.
14. FairwindCT objects to the timing of the issuance of the Notice. Learning of these significant time limitations, the narrowing of the scope of the hearing and significant substantive limitations on cross examination less than 48 hours before the evidentiary hearing is scheduled to begin in this matter prejudices FairwindCT’s ability to effectively prepare to cross examine BNE’s witnesses and present its own case in opposition to the petition.
15. Finally, BNE objects to the Hearing Program issued by the Council on February 22, 2011. The Program provides details about the order of the evidentiary hearing and the contents of the record of this proceeding.


16. On page 7 of the Program, which details BNE's exhibits for identification, the Program lists as number 10 "Documents Filed Under Seal and Pursuant to Motion for Protective Order, dated February 16, 2011." Upon information and belief, those documents include the Mechanical Load Assessment conducted by GE regarding the layout of Wind Prospect, GE's rules, specifications and policies regarding setbacks and the raw wind data collected by BNE at the site.
17. FairwindCT requested that information in interrogatories to BNE dated February 9, 2011. BNE did not object to providing the information, but claims it is confidential and proprietary. BNE therefore filed the materials only with the Council and sought a protective order restricting access to the material.
18. FairwindCT offered to enter into an interim confidentiality agreement pending the Council's resolution of the motion for protective order, which would have provided FairwindCT's counsel and experts access to the requested materials. BNE refused that offer.
19. FairwindCT objects to the inclusion of material in the record that has not been made available to all parties in the proceeding. FairwindCT further objects because even if the material is made available to the parties at a later date, after the Council enters a protective order and designates the authorized recipients of such materials, the opportunity to cross examine BNE's witnesses on the content of those materials will have been lost to FairwindCT.
20. The inclusion of the documents described on page 7 of the Program in number 10 on the list of BNE's exhibits is therefore prejudicial to FairwindCT's ability to

effectively cross examine BNE's witnesses and its ability to effectively present its case in opposition to this petition.

21. FairwindCT also objects to the Program and Notice because they make no mention of the involvement of Epsilon Associates, Inc. ("Epsilon") in this matter. Upon information and belief, the Council has entered into a contract whereby Epsilon is providing it with assistance in analyzing renewable energy applications and petitions, including this petition. Upon information and belief, Epsilon is providing advice and information to the Council that the Council may or may not use in considering BNE's petition. The Program and Notice do not reflect the nature or content of that advice and information. FairwindCT objects to the Council's consideration of any advice and information provided by Epsilon to the Council that is not disclosed to all parties. The lack of disclosure regarding Epsilon's advice and information prejudices FairwindCT's ability to effectively cross examine witnesses and present its case opposing this petition.

WHEREFORE, FairwindCT objects to the procedures set forth in the Notice and the Program.

By:



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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 23rd day of February, 2011:

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Hon. Robert J. Chatfield
Thomas J. Donohue, Jr.
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