

**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 14, 2011

**MOTION TO STRIKE PRE-FILED TESTIMONY
OF JOHN HURLEY**

BNE Energy, Inc. (“BNE”) hereby moves to strike the pre-filed testimony of John Hurley. The Siting Council should strike the testimony as untimely. Further, the Siting Council should strike the testimony because the testimony is an attempt to improperly introduce hearsay and irrelevant material to the Siting Council. Further, as the Siting Council has indicated numerous times, the purpose of the Siting Council proceeding is to ensure that the Project meets Connecticut’s air and water quality standards as promulgated by the Connecticut Department of Environmental Protection. *See* Conn. Gen. Stat. §16-50k(a). Therefore, since the testimony addresses irrelevant issues and contains improper hearsay, it should be struck from the record in its entirety.

First, the testimony was not filed in timely. The Siting Council required that all testimony be filed by February 16, 2011. The Siting Council also required all parties to submit final witness and exhibit lists by February 16, 2011. The purpose for this deadline is for the parties to prepare for cross-examination and to prepare rebuttal testimony, if necessary. SPC failed to include Mr. Hurley on its final witness list and failed to produce relevant testimony regarding impacts to water sources at the original pre-filed testimony deadline. Now, at the last

minute, SPC has filed this additional testimony from a previously undisclosed witness. The untimely nature of the filing unduly prejudices BNE. BNE has already begun presenting its case to the Siting Council. BNE has spent valuable resources reviewing extensive and largely irrelevant testimony filed by SPC. The Siting Council should not allow further testimony by new witnesses now. Such an allowance adds additional resource constraints on BNE which could be better served responding to legitimately filed testimony and interrogatories. Furthermore, Mr. Hurley's testimony does not address any arguably new testimony or exhibits that have been filed by BNE since the February 16, 2011 original pre-filing deadline and therefore SPC cannot credibly argue that this testimony is rebuttal to new evidence in the record.

Turning to the substance of the testimony, Mr. Hurley's testimony attempts to introduce information about turbine foundations and engineering from a construction firm in Los Angeles, California. These materials constitute improper hearsay. The information submitted by Mr. Hurley cannot be examined by the Siting Council or BNE to determine its accuracy, relevance or probative value. The very essence of the hearsay rules would be violated by allowing this material into the record.

In addition, Mr. Hurley's testimony fails to address the fact that the Connecticut statutory requirements require that the Project meet and comply with Connecticut air and water quality standards as promulgated by the Connecticut Department of Environmental Protection. *See* Conn. Gen. Stat. §16-50k(a). The testimony, in part, addresses property valuation issues and financial hardships. Such considerations are not within the Siting Council's jurisdiction. As such, Mr. Hurley's pre-filed testimony is irrelevant to the Siting Council's determination as to whether the Petition complies with Connecticut statutory requirements.

For the foregoing reasons, the supplemental pre-filed testimony of Mr. Hurley should be struck in its entirety.

Respectfully Submitted,
BNE ENERGY, INC.

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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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