

**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

**PETITIONER’S OBJECTION TO FAIRWINDCT, INC.’S MOTION TO
MODIFY PROTECTIVE ORDER**

The petitioner, BNE Energy Inc. (“BNE”), submits this objection to FairwindCT, Inc.’s (“Fairwind”) motion to modify protective order dated March 7, 2011. Fairwind seeks to modify the protective order already voted on and approved by the Council. Fairwind’s motion raises no new issues and no changed circumstances that would warrant the Council’s reconsideration of its already issued order. Therefore, Fairwind’s motion should be denied.

In support of this objection, BNE states as follows:

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

4. 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.

5. 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.

6. As of the date hereof, not a single party, intervenor, attorney for any party or intervenor or witness for any party or intervenor in this proceeding has availed himself or herself of the opportunity to review the documents filed by BNE pursuant to the protective order.

7. As of the date hereof, not a single party or intervenor has issued any interrogatories to BNE concerning the documents filed pursuant to the protective order.

8. Despite this, Fairwind now argues that the Council must reconsider its already issued order. Conveniently, Fairwind lists no changed circumstances or new evidence to support its motion for reconsideration. Instead, Fairwind lists the following baseless grounds as reasons for reconsideration: 1) the imposed order goes further than what was requested by BNE in its motion; 2) the order was issued without BNE supplying its confidentiality agreement with GE; 3) applies to information that is publicly available (which, conveniently, has not been filed by any party or intervenor as an exhibit in this

proceeding); and 4) applies to information that is proprietary to BNE. All of these reasons are meritless as further discussed below.

9. First, it is within the Council's sound discretion to determine the scope of any order, including a protective order, issued during any proceeding. Therefore, the fact that the Council's order allegedly "goes further" than the order proposed by BNE is simply irrelevant.

10. Second, BNE has already testified and attested to the fact that it is subject to a confidentiality agreement with GE. Further, no party or intervenor has requested a copy of BNE's confidentiality agreement with GE. Clearly, there is sufficient information in the record to support BNE's attested to statements that BNE, and its witnesses, are subject to a confidentiality agreement with GE. The fact that the confidentiality agreement was not produced is irrelevant. Of note, Fairwind has since requested that agreement and the agreement was produced on March 8, 2011 pursuant to the protective order in place. And, again, not a single party or intervenor has availed themselves of the opportunity to review that agreement.

11. Third, Fairwind makes the unsupported claim that the protected GE information is publicly available. Fairwind makes this baseless claim despite the fact that it has not submitted a single proposed exhibit purporting to be publicly available GE document. In fact, to date, no party or intervenor has submitted any proposed exhibits from GE that are not subject to the same confidentiality provisions that BNE is subject to. *See* Save Prospect Corp.'s proposed exhibit 68, which has already been stricken from the record since Save Prospect Corp. did not have written permission to reproduce this proposed exhibit as noted on the document. Furthermore, even if a party or intervenor could produce

a GE document that is publicly available, that does not alleviate the fact that BNE and its witnesses are subject to a confidentiality agreement with GE and therefore cannot publicly discuss GE documents.

12. Finally, Fairwind makes the preposterous 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. Not surprisingly, Fairwind does not cite to a single state statute or regulation that requires private companies receiving funding from CCEF to disclose any and all business records to the public or subjecting such companies to the Freedom of Information Act. That is because no such statute or regulation exists. While BNE does not dispute the fact that it received funding from CCEF, that fact is wholly irrelevant to the issue of whether BNE should be forced to publicly disclose confidential business records. There is no law, under the Freedom of Information Act of 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.

13. As discussed herein, Fairwind has cited no new evidence or changed circumstances that would warrant the Council’s reconsideration of its already issued protective order. Furthermore, as discussed herein, it is disingenuous for Fairwind to request such modification on the purported basis that it is being prejudiced by the Council’s order when Fairwind has not even attempted to avail itself of the procedural mechanisms put in place for it to view and inquire as the confidential documents.

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. Fairwind's motion to modify should be denied.

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Certification

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**STATE OF CONNECTICUT
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**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 14, 2011

**PETITIONER BNE ENERGY INC.’S OBJECTION TO PRE-FILED EXHIBITS AND
REQUESTS FOR ADMINISTRATIVE NOTICE FILED BY SAVE PROSPECT CORP.**

Petitioner BNE Energy Inc. (“BNE”) hereby objects to the inclusion in the record of proposed additional exhibits submitted by party Save Prospect Corp. (“SPC”). SPC has offered an additional 52 proposed exhibits (items 72-124) on March 8, 2011. With limited exception, these exhibits suffer the same infirmities as already noted in BNE’s objection filed on February 16, 2011—SPC does not have a single witness who can verify the exhibits and be subject to cross-examination concerning those exhibits. In addition, many of the exhibits are largely irrelevant to this proceeding. Therefore, the exhibits should be struck from the record.

In addition, SPC has offered an additional 40 items (items 71-121) as items to be included as administrative notice items. Again, with limited exception, none of these documents are appropriate for inclusion in the Council’s list of administrative notice documents. Therefore, none of these documents should be included in the record in this proceeding in any manner as further discussed below.

I. SPC’S PROPOSED SUPPLEMENTAL EXHIBITS MUST BE STRUCK

BNE filed this petition on November 17, 2011. The Council established February 16, 2011 as the pre-filing deadline for this proceeding. On February 17, 2011—one day after the filing deadline—BNE received copies of SPC’s pre-filed testimony, proposed exhibits and

requests for administrative notice. The Council established a second pre-filing deadline of March 8, 2011. Again, one day late, BNE received an additional 52 proposed exhibits from SPC. As the Council is well aware, proposed exhibits do not become part of the record in a Council proceeding unless and until they can be properly verified by a witness who prepared or assisted in the preparation of those documents and who can be cross-examined concerning the content of the proposed exhibits. Since SPC cannot do so for items 73-80, 82, 85, 89-90, 92-93, 101, 103-104, 106-117 and 119-124, these items should be struck from the record.

Proposed exhibits 96-100 suffer the same infirmity that SPC's previous news and journal articles suffer. The Council is well aware that news articles or journal articles are not appropriately included as exhibits or administrative notice items unless the author is present, under oath and subject to cross examination. *See, e.g.* Docket 396, denying request for administrative notice of similar items. News and journal articles, even assuming that the subject matter is relevant—many of the articles submitted by SPC are well outside the scope of the Council's jurisdiction over this proceeding—cannot be included as exhibits in this proceeding. None of the authors of the articles are proposed witnesses of SPC and therefore SPC cannot verify any of these documents. Furthermore, as noted, many of the proposed news article exhibits pertain to matters outside the Council's jurisdiction, including articles concerning impacts to property values. Council precedent is clear that economic impacts, including impacts to property values, are outside the Council's jurisdiction. *See* Docket 225C, Docket 366.

Turning the substance of the articles, many of these news or journal articles are not peer-reviewed scientific studies but are simply unsupported commentary, are outdated or discuss surveys or projects that are located outside the United States. These publications have not been published in a peer-reviewed publication that can be relied upon by expert witnesses. *State v.*

Porter, 241 Conn. 57 (1997). Under the *Porter* doctrine, an opinion by an expert whose methodology is not peer-reviewed should be excluded from the record. See *Klein v. Norwalk Hospital*, 229 Conn. 241, 262-264 (2010). As such, these publications are not reliable sources for the Siting Council to consider in rendering its decision. These shortcomings further highlight the irrelevancy of the proposed exhibits.

SPC has offered numerous bills and proposed regulations. See items 78, 79, 107, 109-110. Proposed legislation offers no probative value to the Council in this proceeding. As the Council is well aware, many proposed bills never even make it out of committee, let alone become law, so the fact that a bill is proposed is meaningless. Furthermore, as is true for the large majority of SPC's proposed exhibits, SPC has not offered a single witness who can verify these documents or be subject to cross-examination concerning the same.

The DVDs submitted as proposed exhibits 101 and 103 contain news clips and interviews with individuals who are not proposed witnesses in this proceeding. Therefore, the DVDs cannot be verified and there is no witness who can be cross-examined concerning the substance contained therein. Therefore, these two exhibits should likewise be struck from the record.

Finally, proposed exhibit 112 is not actually produced in SPC's exhibit submission. Since the document has not even been produced, it certainly is not appropriate as an exhibit. Furthermore, as discussed above, there is also no witness available to verify this exhibit and therefore it should be struck from the record for this reason as well.

For all of these reasons, SPC proposed exhibits 73-80, 82, 85, 89-90, 92-93, 96-100, 101, 103-104, 106-117 and 119-124 should be struck from the record.

II. SPC'S ADMINISTRATIVE NOTICE ITEMS SHOULD BE STRUCK

SPC's supplemental requests for administrative notice suffer similar shortcomings as its proposed supplemental exhibits and as its previous requests for administrative notice submitted on February 16, 2011. As discussed further below, items 90, 93-112 and 116-121 should not be included in items administratively noticed in this proceeding.

Items 90 and 119 are not reports or cognizable facts appropriate for administrative notice. Instead, they are Powerpoint presentations and there is no possible way to verify the information contained therein. Item 93 is a journal article that is four years old from another country. News and journal articles, particularly those from other countries, do not contain cognizable facts and therefore should not be included in items administratively noticed by this Council. Items 107-110 purport to be draft bills from other jurisdictions. Again, just as draft bills from this jurisdiction are not appropriate as exhibits, draft bills from other jurisdictions are equally not appropriate as administratively noticed items in this proceeding.

Item 112 is identical to proposed exhibit #112. Conveniently, SPC has not produced a copy of this proposed exhibit. In order to appropriately be included as an administrative notice item, a certified copy of the proposed ordinance must be produced in order to verify the authenticity of the document. Until such time, this item is not appropriately considered as an exhibit or as an administratively noticed document.

Item #116 is a link to BNE's website. This information is wholly irrelevant to this proceeding and is not appropriate for administrative notice. SPC submits as item #117 a purported portion of the WindPro manual, which is also listed as a proposed exhibit. First, there is no probative value to including a portion of the WindPro manual as either an exhibit or as an administrative notice item. Furthermore, if the Council considers including it as an

administrative notice item, the Council should only do so if the entire manual is included, not just a selected portion thereof.

Finally, SPC requests administrative notice of #121, which is also listed as SPC proposed exhibit #121. Of note, there is not document produced in tab #121. Instead, it refers to "Exhibit B" of the pre-filed testimony of Kurt Tramposch. First, BNE is moving to strike Mr. Tramposch's testimony in its entirety because: 1) it is untimely; 2) Mr. Tramposch has no qualifications to express the opinions expressed therein; and 3) Mr. Tramposch's opinions are not based on site-specific site study and are merely supposition. In addition, there is absolutely no reference to item #121 in Mr. Tramposch's testimony. The document attached thereto as Exhibit B is indecipherable. It purports to be a document from Exxon Mobil or a company called Nordex. It is unclear whether it is in any way related to wind turbines. Whatever the document may be, it is clear that Mr. Tramposch—who apparently lectures on water policy—did not draft the document, cannot verify it and cannot be cross-examined concerning its contents. Therefore, just as this document is not appropriate as an exhibit, it is equally inappropriate as an item to be administratively noticed.

SPC's "kitchen sink" approach of filing reams of irrelevant, unverifiable documents as proposed exhibits and administrative notice items should not be condoned by the Council. SPC's proposed exhibits 73-80, 82, 85, 89-90, 92-93, 101, 103-104, 106-117 and 119-124 should be struck from the record because SPC does not have a witness capable of verifying those exhibits or a witness available for cross-examination concerning those exhibits. SPC's proposed administrative notice items are equally deficient and do not meet the Council's qualifications for documents to be administratively noticed. Therefore, items 90, 93-112 and 116-121 should also be struck and not included in the record in this proceeding.

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March 14, 2011

**PETITIONER BNE ENERGY INC.’S INTERROGATORY RESPONSES
TO FAIRWINDCT, INC.’S AMENDED FOURTH SET OF INTERROGATORIES**

Petitioner BNE Energy Inc. (“BNE”) submits the following responses to the Fourth Set of Interrogatories issued by FairwindCT, Inc. on March 8, 2011.

Q1. As we heard on March 3, 2011 during the Evidentiary Hearing before the Connecticut Siting Council, GE may have performed more than one Mechanical Loads Assessment (“MLA”) for siting the turbines in the petition. Please provide a copy of any MLA performed with respect to this site.

A1. BNE objects to this interrogatory because it is untimely. Specifically, in the Siting Council’s schedule, the deadline for issuing additional interrogatories was March 1, 2011.

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March 14, 2011

**OBJECTION TO SUBPOENA DUCES TECUM RE:
CONNECTICUT CLEAN ENERGY FUND AND
CONNECTICUT INNOVATIONS**

BNE Energy, Inc. ("BNE") hereby objects to the Subpoena Duces Tecum issued by Save Prospect Corp. ("SPC") to the Connecticut Clean Energy Fund ("CCEF") and Connecticut Innovations ("CII") dated March 11, 2011. SPC has issued subpoenas to CCEF and CII for the purpose of obtaining information relating to the funding of the Wind Prospect Project by CCEF and CII and the funding of two wholly unrelated projects, Wind Colebrook North and Wind Colebrook South (collectively, "Wind Colebrook"). The subpoenas are directed to non-participants in this proceeding, who are not on SPC's witness list which was finalized on February 16, 2011. In addition, the subpoenas seek information wholly irrelevant to the Siting Council's proceeding.

Both CCEF and CII are quasi-state agencies that provide funding to, among other things, renewable energy projects such as the Project pending before the Council. As the Council and all parties are aware, CCEF and CII have either provided or are committed to provide funding to the Wind Prospect Project. CCEF and CII are not parties to the Siting Council proceeding

because the funding sources and the decisions to fund the Wind Prospect Project by CCEF and CII are wholly irrelevant to the Siting Council proceedings.¹

As the Siting Council has indicated numerous times, the purpose of the Siting Council proceeding is to ensure that the Wind Prospect 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). The CCEF and CII funding decisions have no impact on the determination by the Council as to whether the Project meets either the air or water quality standards. To the extent that the subpoenas request wind data for the Project, BNE hereby represents to the Council that the only wind data available to CCEF and CII is the same wind data supplied to the Council in this proceeding under seal.

Further, the subpoenas request data for the Wind Colebrook projects. As the Council is certainly aware, there are two independent proceedings for the Wind Colebrook projects. As such, the Siting Council is reviewing each project as independent and not as a single Petition. Not only is the site information relating to the Wind Colebrook projects irrelevant to this proceeding, the funding of these projects by CCEF and CII are certainly way beyond the realm of relevant. Therefore, since the subpoenas request irrelevant information from non-party entities, the Council should not allow the subpoenas to be enforced and any documents related thereto should be struck from the record in its entirety.²

¹ It is also highly questionable whether a subpoena can be issued by a party without consent from the Chairman of the Siting Council. *See* Conn. Gen. Stat. §4-177b.

² BNE believes that SPC obtained certain documents from CII and CCEF on March 14, 2011 outside the hearing process of the Council. To the extent that the Council is inclined to allow such documents to enter the record, they should not enter the record without being authenticated by a CCEF or CII official who is subject to cross-examination by BNE.

Beyond the serious question of relevancy, the information is being sought from CII and CCEF in an untimely manner. The Siting Council 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 either CCEF or CII on its final witness list. Now, at the last minute, SPC has requested documentation from CCEF and CII—previously undisclosed witnesses. 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 and evidence 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, any evidence supplied by CCEF and CII that could possibly be viewed as relevant (although BNE doubts that any exists) will not address any arguably new testimony or exhibits that have been filed by BNE since the February 16, 2011 original pre-filing deadline. Therefore SPC cannot credibly argue that this testimony is rebuttal to new evidence in the record.

For the foregoing reasons, BNE hereby objects to the Subpoenas Duces Tecum issued by SPC to CCEF and CII and evidence derived therefrom should be struck in its entirety.

Respectfully Submitted,
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Petition 980

March 14, 2011

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

BNE Energy, Inc. (“BNE”) hereby moves to strike the pre-filed testimony of John Ford. The Siting Council should strike this testimony as untimely. Further, the Siting Council should strike the testimony because it appears to be an attempt at expert opinion by a non-expert. As can be seen from a review of the testimony, Mr. Ford is not qualified to make any of the conclusions that he asserts in his testimony. Therefore, his testimony has no probative value and should be struck from the record in its entirety.

First, the testimony was not filed in a timely manner. 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. Ford 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. Ford'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.

Second, the testimony is improper expert testimony. Mr. Ford opines that the Project has the potential to cause health issues and financial harm. However, Mr. Ford is not qualified to assert any of the baseless conclusions asserted in his testimony. Mr. Ford has no formal training in the area on which he makes his opinions.

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

Respectfully Submitted,
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**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 SUPPLEMENTAL PRE-FILED TESTIMONY
OF MICHAEL MCCANN**

Petitioner BNE Energy Inc. (“BNE”) hereby moves to strike the supplemental pre-filed testimony of Michael McCann.¹ Save Prospect Corp. (“SPC”) has submitted the supplemental pre-filed testimony of Michael McCann to support the proposition that the Project will adversely affect property values. However, evidence concerning property values is beyond the Siting Council’s jurisdiction. Therefore, the proposed pre-filed testimony concerning property damage is improperly before the Siting Council. Further, Mr. McCann is not a licensed Connecticut appraiser and is prohibited by law from rendering appraisal opinions in the State of Connecticut. In addition, Mr. McCann’s testimony attempts to improperly introduce hearsay and irrelevant material to the Siting Council.

The Project is pending before the Council pursuant to the declaratory ruling provisions in Conn. Gen. Stat. §16-50k(a). Under such provisions, the Council “shall” approve the Project “as long as such project meets air and water quality standards of the Department of Environment Protection.” Economic impacts, such as alleged impacts to property values, are not included in

¹ BNE previously filed a Motion to Strike the Pre-Filed Testimony of Mr. McCann. *See* Motion to Strike dated February 23, 2011. The arguments set forth therein are specifically incorporated into this Motion to Strike.

those items that the Council can consider when rendering a decision on a Petition. The Council has recognized the fact that economic impacts, such as property values, are outside the scope of its jurisdiction in previous dockets and properly excluded such information from the record. *See, e.g., Connecticut Siting Council Docket 366, Docket 225D.* Therefore, information pertaining to property values is irrelevant since it is beyond the scope of the Council's jurisdiction.

In addition to the irrelevance of the supplemental testimony, it should be noted that Mr. McCann is not a licensed appraiser in the State of Connecticut but yet again attempts to provide opinions in Connecticut. Because Mr. McCann is not a licensed Connecticut real estate appraiser pursuant to Conn. Gen. Stat. §20-500 et seq., he is prohibited by law from providing any opinions as to value in the State of Connecticut. Conn. Gen. Stat. §20-501.

Finally, Mr. McCann's supplemental testimony contains improper hearsay and fails to be relevant to this proceeding. Mr. McCann cites to email correspondence between himself and Mr. Hoen and a webinar by Mr. Hoen that Mr. McCann attributes to his own e-mail (although there is no evidence that Mr. Hoen ever read Mr. McCann's email, let alone based webinar material on the email). How Mr. McCann believes that he impacted Mr. Hoen's webinar material remains a mystery. Mr. McCann then attaches two "critiques" of Mr. Hoen which are clearly hearsay and cites to a "story" he read about a conversation between Mr. Hoen and Clif Schneider. Needless to say, the levels of improper hearsay in the testimony are too numerous to count.

For these reasons, BNE moves to strike the pre-filed testimony of Mr. McCann.

Respectfully Submitted,
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Petition 980

March 14, 2011

**MOTION TO STRIKE PRE-FILED TESTIMONY
OF DAVID PRESSMAN**

Petitioner BNE Energy Inc. (“BNE”) hereby moves to strike the supplemental pre-filed testimony of David Pressman.¹ Save Prospect Corp. (“SPC”) has submitted the pre-filed testimony and now the supplemental pre-filed testimony of Mr. Pressman which purports to attack the economic benefits of the Project and proposes the conclusion that alternative locations and technologies would better support Connecticut’s Class 1 energy goals. Mr. Pressman’s pre-filed testimony is irrelevant to the Siting Council’s determination as to whether the Petition complies with Connecticut statutory requirements. Therefore, the proposed testimony is improperly before the Siting Council and should be struck from the record.

The proposed evidence submitted by Mr. Pressman is simply an economic argument. Generally, economic arguments are outside the limited scope of the Council’s jurisdiction. *See* Conn. Gen. Stat. § 16-50g. The Project is pending before the Council pursuant to the declaratory ruling provisions in Conn. Gen. Stat. §16-50k(a). Under such provisions, the Council “shall” approve the Project “as long as such project meets air and water quality standards of the Department of Environment Protection.” Economic impacts are not included in those items that

¹ BNE previously filed a Motion to Strike the Pre-Filed Testimony of Mr. Pressman. *See* Motion to Strike dated February 23, 2011. The arguments set forth therein are specifically incorporated into this Motion to Strike.

the Council can consider when rendering a decision on a Petition. The Council has recognized the fact that economic impacts are generally outside the scope of its jurisdiction in previous proceedings and properly excluded such information from the record. *See, e.g.*, Connecticut Siting Council Docket 366 and Docket 396. Therefore, information pertaining to economic considerations is irrelevant to this proceeding.

For these reasons, BNE moves to strike the supplemental testimony of Mr. Pressman.

Respectfully Submitted,
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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.

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Petition 980

March 14, 2011

**MOTION TO STRIKE PRE-FILED TESTIMONY
OF KURT TRAMPOSCH**

BNE Energy, Inc. ("BNE") hereby moves to strike the pre-filed testimony of Kurt Tramposch. Save Prospect Corp. ("SPC") has submitted the pre-filed testimony of Kurt Tramposch for the proposition that the Project will harm surface source water supply in the vicinity of the Project. The Siting Council should strike the testimony as untimely. Further, the Siting Council should strike the testimony because, although purported to be an expert's opinion, it is nothing more than list of potential problems that could occur which are non-specific to the Project or to the Project site. Finally, as can be seen from a review of the testimony, Mr. Tramposch is not qualified to make any of the conclusions that he asserts in his testimony. Therefore, his testimony has no probative value and should be struck from the record in its entirety.

First, the testimony not filed in a timely manner. The Siting Council required all testimony to 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. Tramposch 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. Tramposch'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.

Second, the testimony is improper expert testimony. Mr. Tramposch opines that the Project has the potential to harm the Long Hill Reservoir. However, Mr. Tramposch provides no reasoning for this conclusion and clearly has not conducted a site specific study. Instead, he offers a series of potential harms and horrors that may possibly result from site excavation and turbine installation and proffers onerous suggested requirements. Although the opinion appears insightful at first blush, an opinion that an action has the potential to result in harm is nothing more than doomsaying. Further, the list of suggested requirements is not support for this conclusion, but an attempt to impose burdens on the Project that SPC hopes will make the Project infeasible. Pursuant to the Connecticut Supreme Court's decision in *State v. Porter*, 241 Conn. 57 (1997), SPC cannot demonstrate that Mr. Tramposch's opinions are based on reliable methodology. Mr. Tramposch fails to provide any methodology for his conclusions and his conclusions are not proper opinions.

Third and related to this, it is clear from the testimony that Mr. Tramposch is not qualified to proffer any of the baseless conclusions asserted in his testimony. Mr. Tramposch has a master's degree in public health and has studied water policy. This in no way qualifies him to render baseless opinions on: 1) impacts to wetlands, which requires a Connecticut licensed soil scientist; or 2) impacts to ground water quality, which requires a geotechnical engineer, a geologist or a hydrogeologist. In addition, it is clear from Mr. Tramposch's testimony that he has not conducted a site-specific study and unclear if he has ever even visited the site, since he makes the baseless conclusion that water will run uphill over 100 feet in elevation in order to impact private wells in the vicinity of the Project.

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

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Petition 980

March 14, 2011

**MOTION TO STRIKE SUPPLEMENTAL PRE-FILED TESTIMONY
OF TIMOTHY REILLY**

BNE Energy, Inc. (“BNE”) hereby moves to strike the supplemental pre-filed testimony of Timothy Reilly. Save Prospect Corp. (“SPC”) has inappropriately submitted the supplemental pre-filed testimony of Timothy Reilly in direct contravention of the scheduling order and pre-filing requirements set forth in this proceeding. Mr. Reilly’s supplemental testimony should be struck from the record on this basis alone. Turning to the substance of Mr. Reilly’s supplemental testimony, it is clearly 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.

The purpose of the additional pre-filing deadline in this proceeding, which permitted supplemental testimony, is to respond, in a rebuttal format, to the testimony or evidence of another party submitted on or after the original pre-filing deadline of February 16, 2011. Mr. Reilly’s supplemental testimony does not address any new testimony or exhibits submitted since

the original pre-filing deadline of February 16, 2011. As such, it is improper pursuant to the Council's pre-filing requirements. In addition, the testimony includes additional proposed exhibits, none of which are verifiable by the proposed witness and therefore should not be included in the record in this proceeding

Turning to the substance of the testimony, Mr. Reilly's supplemental testimony is riddled with improper hearsay testimony and fails to be relevant to this proceeding. Amazingly, Mr. Reilly attempts to speak on behalf of the Governor of the State of Connecticut. This is clearly inappropriate hearsay. If the Council is going to allow this type of testimony (which it should not), then it should also take note of comments by Governor Malloy in support of renewable energy projects like the one currently pending in this proceeding, an example of which are attached hereto as Exhibit 1.

Mr. Reilly's statements are nothing more than an attempt to introduce regulations and statutes from other states and countries and newspaper articles about wind turbines in other states for the sole purpose of trying to influence the Siting Council to view wind turbines negatively. These materials constitute improper hearsay. The information submitted by Mr. Reilly cannot be examined by the Siting Council or BNE to determine its accuracy, relevancy or probative value. The very essence of the hearsay rules would be violated by allowing this material into the record.

In addition, Mr. Reilly's testimony fails to address the fact that 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 includes information from Cape Cod, Massachusetts, Vermont, Maine, Wisconsin, Ohio, New York and other parts of the United States, as well as England. None of the exhibits or testimony address the issue before the Siting

Council. As such, Mr. Reilly'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. Reilly should be struck in its entirety.

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EXHIBIT 1

2/9/2011

WATR "Talk of the Town"

Larry Rifkin Question:

Do you feel there should a moratorium and regulations be written that are statewide in terms of setbacks and so forth before anything is sited or would you encourage the CT Siting Council just to do its work?

Malloy:

I think there *are* regulations. If we're talking about a delay for regulation purposes that's one thing. If we're talking about simply trying to kill wind turbines in the state of Connecticut then we should admit that's what we're trying to do: we're trying to do away with wind turbines as a way to generate electricity. But let's not parse words here – it's one or the other and I don't think really the design is to talk about regulations; I think the design is to end wind turbines. And I think that's the context in which to have the debate, not pretending that it's about regulations. And by the way, if the legislature decides that they want to kill wind turbines, then they should stand up and affirmatively vote that but not try to do it by saying well we just need regulations; we've been regulated to death in this state.

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