

**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**

**February 22, 2011**

**PETITIONER’S OBJECTION TO FAIRWINDCT, INC.’S MOTION TO  
DELAY PROCEEDING**

The petitioner, BNE Energy Inc. (“BNE”), submits this objection to FairwindCT, Inc.’s (“Fairwind”) motion to delay proceeding filed February 18, 2011. Fairwind yet again seeks to delay this proceeding for a variety of reasons, none of which have merit. For the reasons set forth below, Fairwind’s motion to delay should be denied and the evidentiary hearing in this proceeding should proceed as scheduled.

1. This petition was filed on November 17, 2010, more than three months ago.
2. The schedule for this proceeding was established when the Council voted to schedule a public hearing on January 6, 2011, more than a month ago.
3. In addition, the Council scheduled a pre-hearing conference for February 4, 2011. Notice of the pre-hearing conference, including pre-hearing procedures, was released prior to the pre-hearing conference. Council staff required all parties and intervenors to submit preliminary witness and exhibit lists at February 4, 2011 pre-hearing conference.
4. In its pre-hearing conference submission, BNE gave notice of its potential filing of amended plans and comments in response to Connecticut Water Company. *See* pre-conference preliminary witness and exhibit list. Importantly, no party or intervenor inquired as to the timing or substance of this potential filing.

5. As the Council is aware, the Council is subject to a statutory deadline of May 17, 2011 to render a decision on this petition.

6. Fairwind's motion to delay cites the following reasons as bases for delay: a) BNE filed revised plans pursuant to receipt of comments from Connecticut Water Company by the pre-filing deadline of February 16, 2011; b) BNE filed its final bat acoustic study by the pre-filing of February 16, 2011; c) BNE filed irrelevant but requested documents under seal and subject to protective order by the pre-filing deadline of February 16, 2011.

7. As noted above, BNE fully complied with the Council's pre-filing deadline in this proceeding. Of note, BNE was not required to conduct a bat acoustical study in this proceeding. However, BNE conducted such study at the request of the Connecticut Department of Environmental Protection. BNE included its interim report in its petition filing and submitted the final report in accordance with the Council's pre-filing deadline.

8. In addition, while Fairwind makes much of the filing of revised plans, the filing of revised plans is in accordance with typical Council procedure. As noted in the submission, Connecticut Water Company contacted BNE after receipt of BNE's abutters notification and presented BNE with a list of concerns and requested plan revisions. BNE met with Connecticut Water Company at the end of December, 2010. After ongoing discussion with Connecticut Water Company, BNE submitted the revised plans in accordance with the Council's pre-filing deadline. This is precisely the procedure that occurs in many pending proceedings before the Council and in fact is a practice that the Council often encourages. As the Council is aware, in many proceedings, numerous potential locations for proposed facilities can be discussed and investigated as the hearing process unfolds.

9. As can be seen, BNE fully complied with the Council's pre-filing procedure. Seemingly ignoring BNE's compliance, Fairwind objects and yet again requests a delay of the hearing in this proceeding despite the fact that it has been scheduled and legally noticed.

10. Fairwind argues that delay is warranted simply because Fairwind has spent money on "expert" review and legal counsel to represent Fairwind in this proceeding and review BNE's submissions. Certainly, it is Fairwind's own prerogative to hire legal counsel and "experts" to represent its interests in this proceeding. However, this is certainly not a valid basis for delay of this proceeding. Both Fairwind and Save Prospect Corp. issued BNE over fifty interrogatories less than a week before the pre-filing deadline, which required BNE to expend money on expert responses and legal counsel to prepare such responses. BNE did not seek additional time or delay of these proceeding to respond and likewise Fairwind should not be granted additional time or delay to review additional material.

11. Fairwind also argues that delay is warranted to allow time to review documents filed by BNE under seal and pursuant to a proposed motion for protective order. Fairwind's request wholly ignores the fact that the documents filed under seal are irrelevant to this proceeding. Specifically, the mechanical loads assessment and wind data simply document the expected capacity factor of the proposed turbines. Economic considerations such as capacity factors are outside the Council's scope of review. Furthermore, in reviewing an electric generating facility under 65 MW, the public need for such facility is assumed. Therefore, the anticipated output from the turbines, whatever it may be, is assumed to be needed and information pertaining to the capacity factor is simply irrelevant.

**WHEREFORE**, since BNE is in full compliance with the Council's pre-filing deadlines, BNE requests that the Council deny Fairwind's latest attempt to delay this proceeding.

Respectfully Submitted,

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### Certification

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

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