

**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**

**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 of proposed exhibits in the record submitted by party Save Prospect Corp. (“SPC”). SPC has offered 72 proposed exhibits in its pre-filing submitted on February 16, 2011. Without exception, SPC does not have a witness that can verify any of the 72 exhibits. This, coupled with the fact that many of these documents are either: 1) from outside the United States; 2) news or journal articles (and therefore irrelevant); or 3) deal with topics outside the Council’s jurisdiction can only lead to the finding that none exhibits should be included in the record of this proceeding.

In addition, SPC has proffered the identical list of proposed documents to be included in the administrative notice documents . With the exception of the Town of Prospect zoning map (item #70), which is already part of the record in this proceeding, 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 EXHIBITS MUST BE STRICKEN**

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.<sup>1</sup> 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 that can be cross-examined concerning the content of its proposed exhibits. Since SPC cannot do so for any of its proposed 72 exhibits, all 72 exhibits should be struck from the record.

SPC filed a list of 72 proposed exhibits but only produced copies of documents 1-59 to the petitioner. The major categories of SPC’s proposed exhibits can be characterized as follows:

- 1) Purported existing zoning regulations and purported proposed legislation or discussion of the same (items 1-9, 19, 60-63). Of note, none of these documents are certified copies;
- 2) New articles and articles from journals (items 10, 13-18, 20-35, 37-45, 49-53, 59);
- 3) An appraisal report concerning a wind turbine project in Wisconsin (item #36);
- 4) Documents not produced to BNE but listed (items 60-72);
- 5) Items from wind turbine manufacturers (items 11, 12, 68); and
- 6) Exhibits of other parties and intervenors (items 71 and 72).

As can be seen, there is not a single document included in this list that any witness of SPC can verify.

As to the zoning regulations and proposed legislation, SPC has not submitted certified copies of those documents and does not have a witness that can verify these documents. Since

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<sup>1</sup> Conveniently, SPC lists proposed exhibits 1-72. However, BNE was only given copies of exhibits 1-59. For this reason alone, Exhibits 60-72 should be stricken from the record.

the documents cannot be verified and no witness can be cross-examined concerning their content, these documents must be excluded from the record.

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 articles and journals, 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. Likewise, the appraisal report (item #36) is not only irrelevant to this proceeding but, again, SPC does not have a witness to verify this exhibit. 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. While these publications have been cited by numerous opponents to wind projects, these publications have not been published in a peer-reviewed journal 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 of literature for

the Siting Council to consider in the decision. These shortcomings even further highlight the irrelevancy of the proposed exhibits.

SPC failed to produce copies of proposed exhibits 60-72. On this basis alone these items should be excluded from the record. Furthermore, as can be seen from a review of these documents, they suffer from the same infirmity as the other proposed exhibits in that SPC does not have a witness to verify a single one of these exhibits. For example, SPC lists the minutes of the Connecticut Clean Energy Fund meetings as items #65 and #66. Even assuming these minutes are relevant, which they are not, SPC does not have a witness from CCEF on their proposed witness list and therefore cannot verify this exhibits.

SPC has offered three proposed exhibits from wind turbine manufacturers, items 11, 12 and 68. These items should be struck from the record since SPC does not have a witness from GE or from Vestas who can verify any of these exhibits. Furthermore, item #12 is from Vestas, a wind turbine manufacturer. This item is wholly irrelevant to this proceeding since BNE does not proposed to install Vestas turbines. Finally, BNE notes that item #68 is marked confidential by GE and there is no documentation of how SPC obtained this document, no documentation that they have permission from GE to break the terms of any confidentiality agreement and submit the document and no documentation from GE that this document actually refers to the turbines proposed for use by BNE.

Finally, for whatever reason, SPC includes items 71 and 72 on its proposed exhibit list as all exhibits listed by any party or intervenor and all items referred to in any interrogatory response or pre-filed testimony. These two requests are entirely inappropriate. First, SPC cannot offer exhibits of other parties or intervenors unless SPC can verify those exhibits. Furthermore, the request is unnecessary since those documents will become part of the record

once verified by the appropriate party or intervenors. In addition, SPC cannot include “any items referred to in any interrogatory or pre-filed testimony” as an exhibit. All proposed exhibits must be pre-filed, including items referenced in any other filings and must be capable of being verified by an SPC witness. Therefore, these two proposed exhibits are entirely inappropriate.

It is clear that SPC cannot verify a single exhibit it has proposed in this proceeding. For the foregoing reasons, all of the exhibits offered by SPC should be struck and not included in the record for this proceeding.

## **II. SPC’S ADMINISTRATIVE NOTICE ITEMS SHOULD BE STRICKEN**

SPC’s requests for administrative notice suffer similar shortcomings as their proposed exhibits. SPC has listed 70 items in their proposed administrative notice list, which are identical to items 1-70 of SPC’s proposed exhibit list.

Items appropriate for inclusion in the administrative notice list include governmental publications and existing national codes and standards (such as the NFPA, ANSI, etc.) For many of the same reasons that these items should not be included as exhibits, SPC’s proposed administrative notice items are equally inappropriate as items to be administratively noticed and should be stricken from the record in this proceeding.

The local zoning regulations included are for towns located outside the State of Connecticut and are therefore irrelevant to this proceeding nor has SPC submitted certified copies of those local zoning regulations so that all parties, intervenors and the Council are satisfied that these documents are what SPC purports them to be. Importantly, the Town of Prospect’s local land use regulations are already part of the record in this proceeding. The two proposed legislative bills in states other than Connecticut are likewise irrelevant. First, they are

only proposed bills, not enacted law and therefore are irrelevant. Second, pending legislation in other states is simply irrelevant to this proceeding.

SPC has included an identical list of news and journal articles as its proposed exhibits and as proposed administrative notice items. As discussed *supra*, these items are inappropriate for inclusion in the record in any form—as proposed exhibits or administrative notice items. As discussed *supra*, many of these articles pertain to subject matters outside the Council’s jurisdiction (*see, e.g.*, item 39 discussing property value impact), are not peer reviewed, scientific studies (*see, e.g.*, item 33) and are discussing wind farms or studies conducted outside the United States (*see, e.g.* item 25). These items are wholly inappropriate for inclusion in the list of items to be administratively noticed in this proceeding.

SPC has included the same documents from wind turbine manufacturers in their proposed list of items to be administratively noticed as was included in their proposed exhibits. For the same reasons these items should not be included as exhibits, they should also not be included as administrative notice items.

Finally, the one document arguably appropriate for inclusion in the administrative notice list is the Town of Prospect zoning map. However, the Council’s typical process includes the Town’s local regulations in the record but not as administrative notice items. For example, in this proceeding, BNE included copies of the local land use ordinances, including the zoning map, in its bulk filing, which accompanied BNE’s petition. Therefore, this item is already in the record and should not be included as an administrative notice item in keeping with Council custom and practice.

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. All of SPC's proposed 72 exhibits should be stricken 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, these items should also be stricken and not included in the record in this proceeding.

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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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