

**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 23, 2011

**MOTION TO STRIKE PRE-FILED TESTIMONY
OF ARLINE BRONZAFT, PH.D.**

BNE Energy, Inc. (“BNE”) hereby moves to strike the pre-filed testimony of Arline Bronzaft, Ph.D. Specifically, Save Prospect Corp. has submitted the pre-filed testimony of Arline Bronzaft, Ph.D. to support the proposition that noise from the Project will adversely affect the health of residents living in the proximity of the wind turbines. However, Dr. Bronzaft’s testimony is nothing more than a regurgitation of general platitudes relating to the health affects of noise generally on society but does not include any site-specific study. In addition, her testimony. Dr. Bronzaft’s testimony fails to address the fact that the Connecticut statutory requirements require that the Project to meet and comply with Connecticut air and water quality standards as promulgated by the Connecticut Department of Environmental Protection. Conn. Gen. Stat. §16-50k(a). As such, Dr. Bronzaft’s pre-filed testimony is irrelevant to the Siting Council’s determination as to whether the Petition complies with Connecticut statutory requirements. In addition to being irrelevant, Dr. Bronzaft’s statements fail to be supported by peer-reviewed literature and is hearsay based on information obtained from third-party sources. For all of these reasons, Dr. Bronzaft’s testimony should be struck from the record.

ARGUMENT

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.” Dr. Bronzaft’s testimony does not address this standard. Instead, Dr. Bronzaft cites to general noise pollution issues facing society today. In fact, Dr. Bronzaft never mentions the DEP’s air and water quality standards and does not challenge the findings by VHB that the Project complies with such standards.

Dr. Bronzaft’s testimony begins with a recitation of the problems associated with the increasing noise pollution in our society and thus claims that she is not “unusual or unreasonable” in raising noise as an issue.¹ Dr. Bronzaft’s then spends the next few pages pontificating on the general effects of noise on the human body and quality of life based on no study of her own. Although these reports may be interesting, they reveal nothing more than the basis for the DEP’s own regulations regarding noise pollution with which, incidentally, the Project complies.

After much generality, Dr. Bronzaft finally attempts to answer a question that is specific to the Project. However, the question is completely illegitimate. Instead of asking the only relevant question relating to noise: Does the Project comply with DEP’s regulations?; the question asked is whether the noise generated by the Project is “unreasonable”. Such a question and the answers that follow are completely irrelevant to the Petition. As Dr. Bronzaft states, even the smallest sounds can be deemed unreasonable and perhaps rise to the level of a Constitutional violation. PFT at 12. Connecticut does not allow for such subjective reviews of

¹ BNE leaves it up to the Council to determine whether Dr. Bronzaft is unusual.

noise. Instead, Connecticut requires that the Project meet an objective test set forth by DEP. Conn. Gen. Stat. §16-50k(a). Dr. Bronzaft's testimony does not attack the findings by VHB, nor does she claim that the tests were improperly performed. Instead, she advocates, in effect, that the noise regulations promulgated by the DEP and which are the sole basis of the Siting Council's decision be disregarded in favor of the standard that any noise that anyone finds bothersome is unreasonable and should be completely avoided. Such testimony is completely irrelevant to the Siting Council's determinations in this Petition.

The only wind related testimony in Dr. Bronzaft's testimony relates to the Nina Pierpont book "Wind Turbine Syndrome" and Laura Israel's documentary "Windfall". While these publications have been cited by numerous opponents to wind projects, neither of these publications have been published in a peer-reviewed journal that can be relied upon by expert witnesses. As the FairWindCT web site states, the Pierpont book has been highly criticized by well-respected experts such as Epsilon Associates. See <http://fairwindct.com/?p=356>. The conclusion by Epsilon is that the "Pierpont study does not reliably demonstrate a cause and effect relationship between low frequency sound and infrasound from wind turbines and health effects to residents near wind farms." Based on the Connecticut Supreme Court's decision in *State v. Porter*, 241 Conn. 57 (1997), SaveProspect cannot demonstrate that Bronzaft's opinions are based on reliable methodology. 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 two publications are not reliable sources of literature for the Siting Council to consider in the decision.

In addition to the testimony being in violation of the *Porter* standard, Dr. Bronzaft's testimony relies upon "facts" that inadmissible and not the type customarily relied upon by

expert witnesses. See Connecticut Code of Evidence, §7-4(b). Dr. Bronzaft is relying, completely, on non-peer reviewed material for rendering an opinion. Such opinions are hearsay and are properly excluded as improper expert opinion.²

For the foregoing reasons, the pre-filed testimony of Dr. Bronzaft should be stricken in its entirety.

Respectfully Submitted,
BNE ENERGY, INC.

By: /s/ Carrie Larson
Carrie L. Larson
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702
Juris No. 409177
860-424-4300 (p)
860-424-4370 (f)
Its Attorneys

² To the extent that Dr. Bronzaft relies on the opinions of Mr. Bahtiarian, Mr. Bahtiarian can certainly defend himself and offer his own opinions. Save Prospect Corp. should not be allowed to offer duplicative testimony.

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:

Mayor Robert Chatfield
Town Office Building
36 Center Street
Prospect, CT 06712-1699

Jeffrey Tinley
Tinley, Nasti, Renahan & Dost LLP
60 North Main Street
Second Floor
Waterbury, CT 06702

Thomas J. Donohue
Killian & Donohue, LLC
363 Main Street
Hartford, CT 06106

John R. Morissette
Manager-Transmission Siting and Permitting
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270

Christopher R. Bernard
Manager-Regulatory Policy (Transmission)
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270

Joaquina Borges King
Senior Counsel
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270

Nicholas J. Harding
Emily A. Gianquinto
Reid and Riege, P.C.
One Financial Plaza
Hartford, CT 06103

