

**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

**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,
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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