

**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 16, 2011

**PETITIONER’S REPLY RE: OBJECTION TO PRE-HEARING
PROCEDURE**

The petitioner, BNE Energy Inc. (“BNE”), submits this reply brief in response to party FairwindCT, Inc.’s (“Fairwind”) objection to pre-hearing procedure dated February 8, 2011. As detailed below, this petition has been pending for approximately three months with the Council, giving all parties and intervenors sufficient time to not only research and understand the Council’s hearing procedures but also to retain expert witnesses, prepare interrogatories and draft pre-filed testimony. Fairwind essentially seeks a reprieve from established Council procedure simply because it decided to seek legal standing in this proceeding more than two months after this petition was filed. Fairwind’s objection should not be considered and the Council should proceed with the established schedule for this petition.

1. This petition was filed on November 17, 2010, approximately 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. The schedule for this petition is the same schedule the Council sets for all of its contested proceedings, which includes a public hearing, a deadline for all parties and intervenors to exchange

interrogatories and a pre-filed deadline for direct testimony for all parties and intervenors seven days prior to the commencement of the public hearing.

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.

4. Fairwind waited until January 25, 2011 to file its request for party status and has now filed an objection to the pre-hearing procedure, arguing that the established schedule for this proceeding is prejudicial. Essentially, Fairwind argues that because it was late in requesting party status in this proceeding, it should be entitled to additional time to issue pre-hearing interrogatories and prepare and file pre-filed testimony.

5. Fairwind was formed on December 14, 2010, when it filed its certificate of incorporation with the Secretary of State. Fairwind gives no explanation in its objection to pre-hearing procedure as to why it took more than a month after its official formation for it to file its request for party status in this petition.

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

7. Fairwind's objection to the Council's established hearing procedure and schedule for this petition is clearly an attempt to delay this proceeding and Fairwind seeks this delay, in part, based on its own failure to seek legal standing in this proceeding in a timely manner. This argument is wholly insufficient to warrant any deviation from established Council procedure.

8. As a party to this proceeding, Fairwind has ample opportunity to provide direct testimony and to cross examine the petitioner. Simply requiring Fairwind to comply

with the same procedure with which all other parties and intervenors in this proceeding and every other contested proceeding before the Council are required to comply is not and cannot be prejudicial. To the contrary, permitting Fairwind to deviate from this procedure is prejudicial to BNE, the petitioner. Specifically, permitting Fairwind additional time to file pre-hearing interrogatories and produce direct testimony will unduly delay this proceeding.

WHEREFORE, BNE requests that the Council overrule Fairwind's objection and require Fairwind to comply with the established schedule for 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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