

**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**

Docket/Petition No. 980

February 24, 2011

**SAVE PROSPECT CORP'S OBJECTION TO BNE ENERGY INC.'S
REQUEST FOR ADMINISTRATIVE NOTICE**

Pursuant to § 4-178 of the Uniform Administrative Procedure Act (“UAPA”) and § 16-50j-28(d) and (e) of the Regulations of Connecticut State Agencies (“RCSA”), Save Prospect Corp (“SPC”), hereby objects to BNE Energy Inc.’s Request for Administrative Notice (the “Request”) dated February 16, 2011.

Standard for Administrative Notice

Administrative notice is proper for “judicially cognizable facts” or “generally recognized technical or scientific facts within the [Council’s] specialized knowledge.” § 4-178(6). “The purpose of administrative notice requirements is to allow parties to prepare intelligently for the hearing.” (citation omitted; internal quotation marks omitted.) Grimes v. Conservation Commission of Town of Litchfield, 243 Conn. 266, 274 (1997). The Connecticut Agency regulations provide further guidance. Under § 16-50j-28(d), the Council “may take notice of judicially cognizable facts, including prior decisions and orders of the [C]ouncil.” In addition to generally recognized technical or scientific data, the Council may take notice of “material noticed in any staff memoranda or data that may be submitted to the council for its consideration in the determination of the contested case.” RCSA § 16-50j-28(e). “The council shall

nevertheless employ its experience, technical competence, and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making its finding of facts and arriving at a decision in any contested case.” Id.

Nos. 1-2, 4 and 5

The material referenced in numbers 1, 2, 4 and 5 of BNE’s Request reflects general policy considerations of the federal government and Connecticut concerning the importance and development of renewable energy. BNE fails to provide the purpose for this Council to administratively notice any of this material, which cannot reasonably be considered to be “judicially cognizable facts” or “generally recognizable technical or scientific facts” within in the Council’s specialized knowledge as required by UAPA § 4-178(6) and RCSA § 16-50j-28(d)-(e). For example, the item listed at number 1 is a 586-page document concerning the short and long term goals and recommendations of the Connecticut Energy Policy Working Group. This type of material, along with those identified at numbers 2, 4 and 5, does not constitute judicially cognizable facts, scientific or technical data or other material necessary for the Council’s determination of Petition 980. As such, SPC respectfully requests that the Council refrain from taking administrative notice of numbers 1, 2, 4 and 5.

Nos. 6 & 7

In item number 6, BNE refers the Council to the “Wind Siting Policies and Regulations” page located on the U.S. Department of Energy’s website. This page contains more than ten links to various federal, state and local policies and regulations on wind siting. Moreover, it is unclear if BNE is requesting that the Council take administrative notice of all hyperlinks located on this page because it specifically refers to the hyperlink for “Wind Energy Guide for County

Commissioners” in item number 7 of its Request. Without further clarification from BNE, SPC is severely prejudiced in that it does not have adequate notice and therefore cannot intelligently prepare for the hearing. To the extent BNE requests administrative notice of all hyperlinked material on this page, SPC objects on the basis that some or all of the material does not qualify as judicially cognizable facts or generally recognized scientific or technical facts within the Council’s specialized knowledge. SPC further objects on the ground that the hyperlinked material is unnecessary for the Council’s determination of Petition 980.

No. 8

SPC asserts a limited objection to the extent that the document located at the hyperlink in BNE’s Request constitutes draft guidelines.

No. 9

SPC objects to BNE’s request for the Council to take administrative notice of DPUC docket nos. 05-11-01, 06-09-17, 07-09-14 and 09-10-09. SPC does not dispute that Connecticut has adopted a state policy that requires electricity providers to obtain a minimum percentage of their power from renewable energy resources by a certain date. See generally, Public Act 05-01, An Act Concerning Energy Independence, Public Act 06-74, An Act Concerning Biomass, and Conn. Gen. Stat. § 16-245b. Without more information, SPC respectfully submits that the annual RPS compliance reports in these dockets and the entire dockets are irrelevant to the current proceeding and inappropriate for administrative notice under UAPA § 4-178(6) and RCSA § 16-50j-28(d) and (e).

Conclusion

For the foregoing reasons, SPC objects to BNE's request for administrative notice of item numbers 1, 2, 4, 5, 6, 7, 8 and 9.

**Respectfully submitted,
SAVE PROSPECT CORP**

By: _____



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CERTIFICATION

This is to certify that a copy of the foregoing has been delivered via electronic mail and/or first class mail, postage pre-paid, on this 24th day of February, 2011 to the following:

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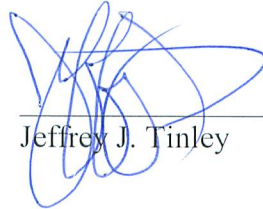
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A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

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