

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**Petitions of BNE Energy Inc. for a
Declaratory Ruling for the Location,
Construction and Operation of 4.8 MW
Wind Renewable Generating Projects on
Flagg Hill Road in Colebrook,
Connecticut (“Wind Colebrook South”)
and Winsted-Norfolk Road in Colebrook,
Connecticut (“Wind Colebrook North”)**

Petition Nos. 983 and 984

March 15, 2011

MOTION FOR PROTECTIVE ORDER AND TO FILE UNDER SEAL

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”) hereby asks that the Connecticut Siting Council (“Council”) enter a protective order in this docket to ensure that the identity of a witness remain confidential. The witness is afraid of the repercussions of submitting public pre-filed testimony in these proceedings. In support of this motion, the Grouped Parties state as follows:

1. In the above-captioned proceedings pending before the Council, BNE Energy Inc. (“BNE”) is seeking a declaratory ruling with respect to the construction and operation of industrial wind turbines in a residential neighborhood in Colebrook, Connecticut.
2. BNE is seeking permission to site three GE turbines on each site in a triangular formation. BNE’s proposed triangular arrangement is similar to the arrangement of three GE turbines on Vinalhaven, an island located approximately 12 miles off the coast of Maine. That project is known as the Fox Islands Wind project.
3. As part of the Grouped Parties’ submission of witnesses’ pre-filed testimony in the above-captioned proceedings, the Grouped Parties sought testimony from residents who live near the Fox Islands Wind Project.

4. One resident who lives near the Fox Islands Wind Project in Vinalhaven has submitted pre-filed testimony in the above-captioned proceedings (the “Witness”) but has requested that the testimony remain under seal and not be freely distributed to the public. The Witness’s pre-filed testimony details the noise problems that neighbors of the Vinalhaven turbines have experienced.
5. An acoustical engineer hired by the Witness and other neighbors has informed the neighbors that noise is a significant problem in part because of the triangular arrangement of the three turbines. The Witness’s pre-filed testimony also addresses the difficulties that the neighbors have had in working with the owners and operators of the Fox Islands Wind Project to take measures to address and perhaps mitigate in some way the noise associated with the turbines.
6. The Witness’s testimony is therefore highly relevant to the above-captioned proceedings.
7. As is detailed in the attached Affidavit, the Witness is afraid of the repercussions that are likely to result from filing public testimony. Neighbors who have spoken out publicly against the Fox Islands Wind Project have been harassed by other residents of their community.
8. Harassment has come in the form of threatening and malicious postings on the internet, personal attacks in written form that contain false claims, false claims made in public meetings, and events that have personally targeted neighbors of the turbines.
9. The Council, like judicial authorities, has the discretion to enter an order sealing the Witness’s testimony for good cause shown. See Conn. Practice Book § 13-5


(permitting a court “for good cause shown, . . . to make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense . . .”). See also, e.g., Estate of Cook v. Hall, Superior Court, judicial district of New Haven, Docket No. NNHCV106010851 (Feb. 9, 2011, Burke, J.) (“The extent of discovery and use of protective orders is clearly within the discretion of the trial judge.”); Farricielli v. State, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV 0905386369 (Jan. 8, 1997, McWeeny, J.) (18 Conn. L. Rptr. 520). (“[A] court may decide in its discretion to . . . impose protective orders and conditions when the interests of justice seem to require such action . . . The court must make such determinations in the light of the particular circumstances of the case.”).

10. Good cause “has been defined as ‘a sound basis or legitimate need to take judicial action’” and “must be based upon a particular and specific demonstration of fact, as distinguished from stereo typed and conclusory statements.” Welch v. Welch, 48 Conn. Supp. 19, 828 A.2d 707, 708-709 (2003).
11. This motion and the accompanying affidavit demonstrate good cause. The Witness and other neighbors of the Fox Islands Wind Project have been subjected to harassment and personal attacks for speaking about how their lives have been negatively affected by the wind turbines, and the harassment and personal attacks are directly related to their public statements. The Witness has a legitimate need for confidentiality, and the Grouped Parties have a legitimate need for the Council to review the Witness’s testimony.

12. For the reasons stated above, the Grouped Parties move for permission to file the Witness's pre-filed testimony under seal and moves that the Council impose a protective order on this testimony, as permitted by Conn. Gen. Stat. §§ 4-178, 16-50j 16-50o and Section 16-50j-28 of the Council's regulations. The Grouped Parties further ask the Council to permit cross examination of the Witness by written interrogatory only, as the Council permitted pursuant to a protective order requested by BNE in the related docket of Petition No. 980.

WHEREFORE, the Grouped Parties request that the Council enter a Protective Order in accordance with the attached draft order.

By:



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PROPOSED ORDER

WHEREAS, FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”) have filed with the Connecticut Siting (“Council”) pre-filed testimony by a certain witness who is a neighbor to the Fox Islands Wind Project on Vinalhaven, Maine; and

WHEREAS, the Grouped Parties have requested that the Witness’s pre-filed testimony remain confidential; and

WHEREAS, public disclosure of the Witness’s pre-filed testimony would result in repercussions for the Witness in the form of harassment and personal attacks at the hands of some of her fellow community members; and

WHEREAS, the Grouped Parties desire to protect such information from disclosure to the public.

IT IS HEREBY ORDERED, that the following procedures are adopted for the protection of the Witness in this proceeding.

1. This Protective Order shall govern all testimony submitted by the Witness (the “Confidential Information”).
2. All such Confidential Information made available pursuant to this Protective Order shall be used solely for the purposes of evaluating BNE’s Petition and for no other purpose whatsoever.

3. All Confidential Information made available in this petition shall be given by the Grouped Parties to the Council and people authorized by the Council to review such information, who shall all be bound by the terms of this Protective Order (such persons to be identified as “Authorized Recipient(s)” for purposes of this Protective Order); provided, however, that each person has executed the attached nondisclosure agreement to be bound by the terms of this Protective Order. Authorized Recipients shall include parties, intervenors and their experts, provided that each person has executed the attached nondisclosure agreement to be bound by the terms of this Protective Order
4. All persons granted access to Confidential Information shall take all reasonable precautions to keep this information secure in accordance with the purposes and intent of this Protective Order.
5. Confidential Information shall be marked as such and delivered in sealed envelopes to the Council. A statement in the following form shall be placed prominently on the outside of each envelope containing such information: “CONFIDENTIAL INFORMATION” with the identity of the filing entity, the date, and a brief description of the contents. Each page of the Confidential Information shall be marked with the words “CONTAINS CONFIDENTIAL INFORMATION – DO NOT RELEASE.”
6. Any Confidential Information made available pursuant to this Protective Order shall be part of the record in this proceeding, subject to conditions stated in Paragraphs 7 and 8.

7. If Confidential Information is used in any manner in any interrogatory, letter, petition, brief or other writing (“Document”), all references to the Confidential Information in the Document shall be either: (1) in a separate document prominently labeled, “Confidential Information”, which Document shall be safeguarded in accordance with this Protective Order and distributed only to Authorized Recipients; or (ii) solely referenced by title or exhibit, in a manner reasonably calculated not to disclose the Confidential Information. No witnesses may be cross examined regarding the Confidential Information unless such proceedings are closed to the general public and are open only to Authorized Recipients.
8. Nothing herein shall be construed as a final determination that any of the Confidential Information will be admissible as substantive evidence in this proceeding or at any hearing or trial. Moreover, nothing herein shall be considered a waiver or grounds for any entity to assert at a later date that the material is or is not proprietary or privileged. No information protected by this Protective Order shall be made public. If the Council rules that some or all of the Confidential Information should not be subject to the protections herein, said materials shall not be disclosed, but rather shall be returned immediately to the Grouped Parties.
9. If Confidential Information is disclosed to any person other than in the manner authorized by this Protective Order, the party responsible for such disclosure shall immediately upon learning of the disclosure inform the Grouped Parties of all

pertinent facts relating to such disclosure and shall make every effort to prevent disclosure by each unauthorized person who received such information.

10. Confidential Information made part of the record in this proceeding shall remain in the possession of the Authorized Recipients who have agreed to be bound by the instant Order until returned or destroyed. However, all other copies of such Confidential Information shall be returned to the Grouped Parties.

SO ORDERED:

CONNECTICUT SITING COUNCIL

By: _____
Daniel F. Caruso, Chairman

Date: _____

NONDISCLOSURE AGREEMENT
AND AGREEMENT TO BE BOUND BY THE TERMS OF PROTECTIVE ORDER

The undersigned hereby acknowledges review of the Protective Order with respect to the Confidential Information filed by the Grouped Parties in Siting Council Petition Nos. 983 and 984, and hereby agrees to be bound and abide by the terms thereof in exchange for being given access to such Confidential Information.

Name (print): _____

Title (print): _____

Signature: _____

Date: _____

CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by first-class mail and e-mail to the following service list on the 15th day of March, 2011:

Carrie L. Larson
Paul Corey
Jeffery and Mary Stauffer
Thomas D. McKeon
David M. Cusick
Richard T. Roznoy
David R. Lawrence and Jeannie Lemelin
Walter Zima and Brandy L. Grant
Eva Villanova

and sent via e-mail only to:

John R. Morissette
Christopher R. Bernard
Joaquina Borges King


Emily Gianquinto

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AFFIDAVIT OF EMILY GIANQUINTO

Emily Gianquinto, having been duly sworn, states the following:

1. I am over the age of eighteen, understand the meaning and obligation of an oath, and am competent to testify as to the matters stated herein.
2. I make this affidavit based on my personal knowledge and belief.
3. I am an attorney Reid and Riege, PC and have been admitted to practice law in the State of Connecticut since 2006.
4. I represent FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”) in the above-captioned proceedings pending before the Connecticut Siting Council, in which BNE Energy Inc. (“BNE”) is seeking a declaratory ruling with respect to the construction and operation of industrial wind turbines in a residential neighborhood in Colebrook, Connecticut.
5. As part of the Grouped Parties’ submission of witnesses’ pre-filed testimony in the above-captioned proceedings, I have been in contact with residents who live near other industrial wind turbine projects in New England.

6. One resident who lives near the Fox Islands Wind Project in Vinalhaven, Maine has submitted pre-filed testimony in the above-captioned proceedings (the "Witness") on the condition that that testimony remain under seal and be accessible only to parties and intervenors who execute a non-disclosure agreement.

7. I personally spoke to the Witness on the phone on March 13, 2011, and have exchanged e-mails with the Witness over the course of approximately one week.

8. The Witness has asked for confidentiality in order to protect the Witness from the repercussions suffered by neighbors of this project who have spoken out against it.

9. Neighbors who have spoken out against the Fox Islands Wind Project have been harassed and personally attacked by other residents of their small island community. The Witness told me that harassment and attacks have come in the form of threatening and malicious postings on the internet, personal attacks in written form that contain false claims, false claims made in public meetings, and events that have personally targeted neighbors of the turbines and made island life very difficult.


10. The Witness is afraid of similar repercussions if the Witness's testimony is made available to the general public.

11. Due to the small size of the island community in which the Witness lives, the Witness does not believe that redacting portions of the Witness's testimony will ^{EC} ~~not~~ provide the Witness with adequate protection.


Emily Gianquinto

Personally appeared Emily Gianquinto, who attests that to the best of her knowledge and belief, the foregoing affidavit is true and correct.

Subscribed and sworn to before me this 14th day of March, 2011.



Notary Public
My Commission Expires: 11/30/2012

CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by first-class mail and e-mail to the following service list on the 15th day of March, 2011:

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Thomas D. McKeon
David M. Cusick
Richard T. Roznoy
David R. Lawrence and Jeannie Lemelin
Walter Zima and Brandy L. Grant
Eva Villanova

and sent via e-mail only to:

John R. Morissette
Christopher R. Bernard
Joaquina Borges King


Emily Gianquinto