

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

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

**Petition No. 983**

**March 22, 2011**

**PETITIONER BNE ENERGY INC.’S  
OBJECTION TO MOTION FOR PROTECTIVE ORDER AND MOTION TO  
STRIKE TESTIMONY**

Petitioner BNE Energy Inc. (“BNE”) hereby objects to the Motion for Protective Order filed in the above-referenced proceeding on March 15, 2011 by FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”)<sup>1</sup>. The Grouped Parties request that the Council issue a protective order to protect from public disclosure the identity and pre-filed testimony of a proposed witness in light of concerns about potential harassment or bullying due to the content of the witness’ testimony. The motion for protective order does not fall under any of the Council’s disclosed bases for issuing a protective and therefore should be denied. To the extent that the witness refuses to publicly file his or her testimony and be subject to cross-examination, BNE moves that the testimony should be struck from the record in its entirety.

The Siting Council’s procedures for protective treatment are very clear. *See* Connecticut Siting Council, *Procedures for Filing Proprietary Information Under Protective Order*, available at: <http://www.ct.gov/csc/cwp/view.asp?a=945&q=438698&cscPNavCtr=#50398> (last modified Apr. 20, 2009). Pursuant to these procedures, only “proprietary information,” including but not limited to critical energy infrastructure information, is eligible for protective treatment.

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<sup>1</sup> Please note that Susan Wagner was not a party to this proceeding and therefore had no legal standing to assert this motion to consolidate evidentiary hearing when it was filed on March 15, 2011. Ms. Wagner was subsequently approved as a party to this proceeding on March 17, 2011.

“Proprietary Information” is defined as any information that may be exempt from public disclosure under the Freedom of Information Act (FOIA), Conn. Gen. Stat. §1-210(b). Conveniently, the Grouped Parties have not cited a single provision of the § 1-210 (b) as the basis for their protective order. That is because no such provision exists. Information exempted from public disclosure pursuant to Section 1-210(b), include items like medical files, trade secrets and tax returns. Specifically, § 1-210 (b) exempts “(4) Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled” and “(5) (A) Trade secrets, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy.” There is no Freedom of Information exemption listed for personal identity of a witness for fear of potential harassment or bullying. It simply does not exist.

Likewise, the Grouped Parties cannot argue that this proposed witness’ identity can somehow be construed as critical energy infrastructure information. “Critical energy infrastructure information” (CEII) is defined as specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates to details about the production, generation, transportation, transmission or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from

mandatory disclosure under FOIA, C.G.S. §1-210(b)(19); and (4) does not simply give the general location of critical infrastructure.

The identity and testimony of a witness in a Siting Council proceeding is not even arguably within the realm of proprietary information, as explicitly defined by statute, or CEII. As the information sought to be protected by the Grouped Parties' motion for protective order clearly does not comply with the Siting Council's guidelines for protective orders, BNE respectfully requests that the Siting Council deny the Grouped Parties' motion for protective order. Furthermore, to the extent that the proposed witness refuses or fails to publicly file his or her testimony and be subject to cross-examination on the same, BNE moves that the testimony should be struck from the record in its entirety.

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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