

**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

**OBJECTION TO MOTION FOR PROTECTIVE ORDER AS IT RELATES TO
MECHANICAL LOADS ASSESSMENT AND NOISE EMISSION CHARACTERISTICS**

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”), hereby object to the Motion for Protective Order and Motion to File Under Seal, dated March 15, 2011, filed by Petitioner, BNE Energy Inc. (“BNE”), as it relates to certain information regarding the Mechanical Loads Assessment (“MLA”) conducted by GE and certain noise emission characteristics of the proposed wind turbines. The Grouped Parties object to the motion because the anticipated protective order, likely to contain the same terms as those imposed in Petition 980, prevents meaningful review of the documents filed by BNE, which themselves contain formulas and other data related to BNE’s proposed wind turbines. Further, the protective order will prevent disclosure of noise data that is relevant to the health effects of the proposed turbines and which not only the parties, but also the general public, has a right to inspect.

In support of this Objection, the Grouped Parties state the following:

1. On March 15, 2011, BNE filed a Motion for Protective Order and Motion to File Under Seal. In that Motion, BNE indicated that it intended to file with the Council “certain confidential and proprietary information from GE relating to setback considerations” (BNE’s Motion for Protective Order, Mar. 15, 2011, at 2.)

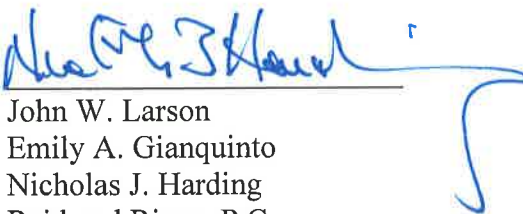
2. Accordingly, BNE seeks permission to file the MLA and noise emission characteristics under seal and further requests that such material be submitted to the Council subject to a proposed protective order. (Id.)
3. The Council has issued a protective order in Petition 980 covering the same type of MLA and noise emission characteristics information that BNE seeks to protect in this petition. That protective order, dated February 24, 2011 but not provided to the parties and intervenors until March 2, 2011, permits review of the information only at the Council offices, prohibits any note taking with respect to the information, and further prohibits the information from being disseminated to parties' experts, notwithstanding whether those experts have agreed to be bound by the protective order. (Protective Order, Petition 980, dated Feb. 24, 2011.)
4. On March 7, 2011, FairwindCT objected to the conditions of the protective order and moved to modify the order. At the March 15, 2011, evidentiary hearing, the Council voted to deny FairwindCT's motion to modify, with one member of the Council dissenting.
5. On March 27, 2011, one of the Grouped Parties' attorneys visited the Council offices in his role representing FairwindCT with regard to Petition 980 in order to view the information filed under seal in Petition 980. An Affidavit in support of this Objection executed by that attorney is attached hereto.
6. The MLA is a multi-page document containing what apparently is an assessment by GE of the project's feasibility, taking into account turbine locations, wind data, and the capabilities of the turbines themselves.

7. The noise emission characteristics filed under seal are contained in a document provided by GE that discusses the expected noise that would be caused by various wind speeds at various heights.
8. The Grouped Parties object to the sealing of the MLA and the noise emission characteristics.
9. First, the MLA contains significant general information about the proposed turbine site and describes data specific to the feasibility of the BNE proposal. Parties to this petition have a right to view and assess this information in order to decide how, if at all, such information affects the appropriateness of siting the BNE turbines, including, if necessary, testing GE's conclusion with respect to the project's feasibility.
10. Second, the document discussing noise emission characteristics directly implicates public health issues surrounding the proposed wind turbines. The public has a right to view and assess information provided by the turbine manufacturer related to expected noise levels, and the parties to this petition have a right to provide such data to their experts to permit them to testify as to the effects of the noise that the turbine manufacturer itself expects will be created. In fact, one of the experts advising the Grouped Parties in this petition has advised the counsel for the Grouped Parties that he always receives noise emission characteristics information from manufacturers when providing an expert opinion on noise-related issues.

11. The protective order currently in place in Petition 980, if adopted in this petition, would not only keep all of this information secret from the general public, but would also prevent any meaningful inquiry into such information and would deny the Grouped Parties and all other parties and intervenors any meaningful cross-examination whatsoever with respect to the MLA and noise emission characteristics, in contravention of Conn Gen. Stat. § 4-178.
12. The Grouped Parties further dispute that the MLA and the noise emission characteristics are information that warrants exemption from the presumption that “. . . all records maintained or kept on file by any public agency, . . . shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.” Conn. Gen. Stat. § 1-210. The Freedom of Information Act does provide for protection of trade secrets, but the MLA and noise emission characteristics fail to meet the definition of trade secrets because they do not “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.” See Conn. Gen. Stat. § 1-210(5)(A)(i). As such, the MLA and wind emission characteristics should not be entitled to the “secrecy” afforded to trade secrets. See Conn. Gen. Stat. § 1-210(5)(A)(ii).

13. Finally, the Grouped Parties remind the Council that BNE has used significant sums of public money to fund its petition and, accordingly, the MLA and noise emission documents subject to BNE's motion to seal. Considering the substantial financial investment provided by the public in BNE's proposed industrial wind project, the public has a right to know the anticipated noise that will be created by BNE's turbines, as set forth by the turbine manufacturer, as well as the turbine manufacturer's assessment of the feasibility of BNE's proposal.
14. In light of the above facts, the Grouped Parties object to BNE's motion for protective order as that motion relates to the MLA and noise emission characteristics.

WHEREFORE, for the foregoing reasons, the Grouped Parties object to BNE's motion for protective order as such motion relates to the setback information.

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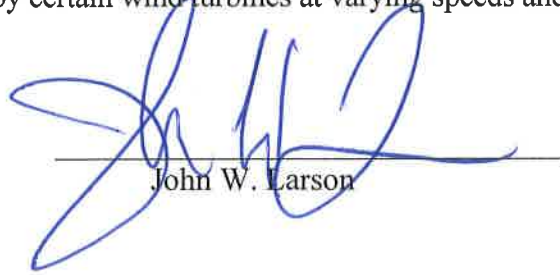
March 22, 2011

AFFIDAVIT OF JOHN W. LARSON

The undersigned being duly sworn does hereby depose and say:


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 on personal knowledge.
3. I am an attorney at Reid & Riege, P.C., and I represent FairwindCT, Inc., Susan Wagner and Stella and Michael Somers, parties to the above-captioned petition.
4. On March 17, 2011, I visited the offices of the Council in order to view the material filed under seal by BNE in Petition 980. FairwindCT is a party to Petition 980 and I represent FairwindCT with respect to that proceeding.
5. Included in such material was the Mechanical Loads Assessment conducted by GE with respect to the Prospect site, as well as certain information provided by GE related to noise emission characteristics of its turbines.
6. The MLA document contains information apparently related to an assessment by GE of the project’s feasibility, taking into account wind data, turbine placement, and the capabilities of the turbines themselves.

7. The noise emission characteristics document contains data provided by GE regarding expected noise created by certain wind turbines at varying speeds and heights.



John W. Larson

Subscribed and sworn to before
me this 22nd day of March, 2011.



Sylvie L. Poulin
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 22nd 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



Nicholas J. Harding