

**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 BNE WIND DATA**

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 and data regarding wind resources, wind speeds, and wind generation (the “BNE wind data”). 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 any meaningful use of the BNE wind data, thereby prejudicing the Grouped Parties and the other parties opposing BNE’s petition.

In support of this Objection, the Grouped Parties states 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 raw wind data collected by and belonging to BNE. (BNE’s Motion for Protective Order, Mar. 15, 2011, at 1.)
2. BNE further claimed that the BNE wind data “is proprietary and constitutes trade secrets and proprietary and confidential information” and speculated that the BNE

wind data, as well as other information filed under seal, “may also contain CEII [Critical Energy Infrastructure Information].” (Id. at 1-2.)

3. Accordingly, BNE seeks permission to file the BNE wind data under seal and further requests that such material be submitted to the Council subject to a proposed protective order. (Id.)
4. The Council has issued a protective order in Petition 980 covering the same type of wind data that BNE seeks to protect in this petition. That protective order, dated February 24, 2011 but not transmitted to the parties and intervenors until March 2, 2011, permits review of the BNE wind data only at the Council offices on a Council computer, prohibits any note taking with respect to the BNE wind data, and further prohibits the data 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.)
5. 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.
6. 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 BNE wind data filed in Petition 980. An Affidavit in support of this Objection executed by that attorney is attached hereto.

7. The BNE wind data for Petition 980 is contained in two zipped .CSV files, viewable in Microsoft Excel spreadsheets. The spreadsheets contain approximately 64,000 lines of data, which amounts to millions of data entries in total. Presumably, the BNE wind data that BNE seeks to protect here is of a similar size and format.
8. First, the Grouped Parties dispute that BNE's claim that the BNE wind data is Critical Energy Infrastructure Information. The FERC guidelines regarding CEII themselves state that such "process is not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attack on the energy structure." (Federal Energy Regulatory Commission, Guidelines for Filing Critical Energy Infrastructure Information, at 1, available at <http://www.ferc.gov/help/filing-guide/file-ceii/ceii-guidelines/guidelines.pdf>.)
9. The FERC guidelines go on to state that the FERC "emphasizes that 18 CFR § 388.112(b)(1) requires that submitters provide justifications for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment." (Id.) BNE's statement that its wind data "may also contain CEII" utterly fails to meet this standard.
10. Second, the Grouped Parties dispute that BNE's wind data is 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

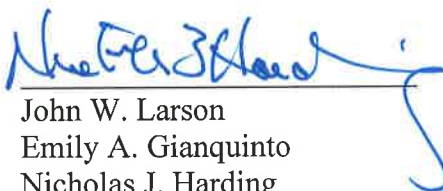
business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.” Conn. Gen. Stat. § 1-210. The Freedom of Information Act does provide for protection of trade secrets, but the BNE wind data fails to meet the definition of trade secrets because it does 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 BNE wind data should not be entitled to the “secrecy” afforded to trade secrets. See Conn. Gen. Stat. § 1-210(5)(A)(ii).

11. Moreover, as the owner of the allegedly proprietary and secret wind data, BNE is of course permitted to disclose so much of that data as is necessary for the Council’s determination of its petitions. The Grouped Parties submit that the Council should require BNE to allow any party’s expert to review the BNE wind data. Because BNE bears the burden of establishing that the instant petition should be granted, BNE can and should be required to allow for reasonable use of that data in its attempt to obtain permission to site the proposed wind turbines. At an absolute minimum, the Council should require BNE to permit opposing parties to use and disseminate the BNE wind data to their experts after signing non-disclosure agreements.
12. The protective order currently in place in Petition 980, if adopted in this petition, would prevent any meaningful inquiry into such data and would deny the grouped

Parties any meaningful cross-examination whatsoever with respect to the BNE wind data, in contravention of Conn Gen. Stat. § 4-178.

13. Finally, the Grouped Parties remind the Council that BNE has used significant sums of public money to gather the raw wind data it now seeks to protect from public disclosure. Considering the substantial financial investment provided by the public in BNE's proposed industrial wind project, the public has a right to examine whether the data collected by BNE, which collection was subsidized by the public, warrants construction of the proposed industrial wind turbines.
14. In light of the above facts, the Grouped Parties object to BNE's motion for protective order as that motion relates to the BNE wind data.

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

By: 
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AFFIDAVIT OF JOHN W. LARSON

The undersigned being duly sworn does hereby depose and say:

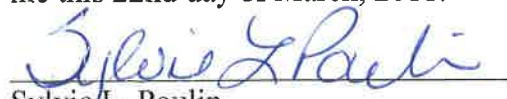
1. I am over the age of eighteen, understand the meaning and obligation of an oath, and am competent to testify as to the matters stated herein.
2. I make this Affidavit on personal knowledge.
3. I am an attorney at Reid & Riege, P.C., and I represent FairwindCT, Inc., Susan Wagner and Stella and Michael 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 certain “raw wind data” provided to the Council by BNE related to that petition.
6. The BNE wind data is located on a CD that contains two zipped .CSV files, which may be viewed on the Council computer in Microsoft Excel spreadsheets.
7. The spreadsheets contain approximately 64,000 lines of wind data over numerous columns, totaling what appears to be over a million separate entries of wind data in the spreadsheets.

8. In the opinion of the undersigned, the BNE wind data is useless if such data cannot be removed from the Council offices and provided to expert witnesses for review.



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

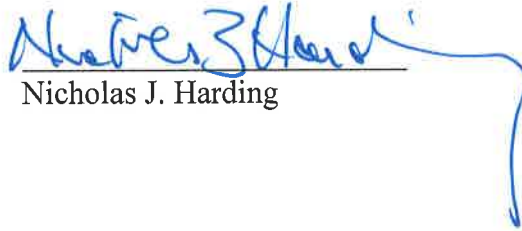
CERTIFICATION

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