

**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

April 7, 2011

**PETITIONER’S OBJECTION TO FAIRWINDCT, INC.’S MOTION FOR
COUNCIL TO ISSUE SUBPOENA**

The petitioner, BNE Energy Inc. (“BNE”), submits this objection to FairwindCT, Inc.’s (“Fairwind”) motion for the Council to issue a subpoena to Michael Guski, Principal of Epsilon Associates (“Epsilon”), dated March 29, 2011.

Fairwind requests that the Council issue a subpoena directing Mr. Guski to appear to testify at the April 14, 2011 evidentiary hearing in this proceeding, and to bring with him “any and all documents from the Epsilon file” relating to this proceeding. Fairwind apparently ignores the decision of the Council to Fairwind’s similar motions filed in Petition 980. Members of the Council noted that Fairwind can issue subpoenas itself, and therefore the Council declined to do so on Fairwind’s behalf.

Fairwind now moves the Council to subpoena a non-participant in this proceeding on Fairwind’s behalf. Epsilon is not a participant in this proceeding. Epsilon is simply a third party consultant retained by the Council in accordance with its statutory discretion – it is not a developer or proponent of BNE’s proposed wind renewable generating project. To the best of BNE’s knowledge, the Council’s contract with Epsilon indicates that information exchanged between the Council and Epsilon is confidential.

Fairwind's argument that Epsilon must be subjected to cross-examination regarding its work for the Council so that this evidence could then be produced as part of the record in this petition "is necessary for the Council's full and fair consideration of BNE's proposal" holds no water. Given that Epsilon is the Council's own consultant, the Council is already aware of "the work performed by Epsilon for the Council" and "any conclusions reached and recommendations made by Epsilon."

The Council has never issued a subpoena or required its own consultants to testify at proceedings and be subject to cross-examination. Fairwind is essentially attempting to force the Council to reveal its internal deliberations and decision-making. To grant this request would be to set a bizarre precedent for other proceedings going forward.

This motion represents yet another misguided attempt by Fairwind to dictate who the participants to this proceeding may or should be. Epsilon is simply a third party consultant to the Council and the Council should not be compelled to force Epsilon to open its entire file and to be hauled into a hearing to testify and be subject to cross-examination.

WHEREFORE, BNE requests that the Council deny Fairwind's motion for the Council to issue a subpoena to Epsilon to testify at the proceedings in this matter and provide all materials in its possession.

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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