

**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

May 24, 2011

PETITIONER BNE ENERGY INC.’S MOTION TO STRIKE

Petitioner BNE Energy Inc. (“BNE”) hereby moves to strike the references to confidential and protected information made by FairwindCT, Inc., Stella and Michael Somers and Susan Wagner (together, the “Grouped Parties”) in their post-hearing brief, dated May 20, 2011. Specifically, the Grouped Parties discuss confidential GE setback information that is subject to the protective order in place in this proceeding. This discussion explicitly violates the protective order, and as such should be stricken from the record.

On March 15, 2011, BNE provided pertinent and requested documents from GE pursuant to a motion for protective order and filed under seal. The Council granted the motion for protective order at the evidentiary hearing in this proceeding on March 23, 2011. As noted in this proceeding, BNE has executed a confidentiality agreement with GE that prohibits BNE from publicly disclosing GE documents. BNE notes that this confidentiality agreement itself was also produced pursuant to protective order and under seal.

The GE documents, including the GE setback information, fall under the Council’s guidelines for protective order, available at: <http://www.ct.gov/csc/cwp/view.asp?a=945&q=438698&cscPNavCtr=#50398>, and are exempt from public disclosure pursuant to the Freedom of Information Act, Conn. Gen. Stat. § 1-210 (b)

in that they are confidential and proprietary business records of GE (a non-party to this proceeding) and BNE and are subject to a confidentiality agreement.

The documents filed pursuant to the protective order were made available for review by all parties and intervenors at the Council's offices. Emily Gianquinto, counsel for the Grouped Parties, reviewed the confidential documents at the Council's offices and signed a non-disclosure agreement in order to do so. Ms. Gianquinto, who also signed the Grouped Parties' post-hearing brief, blatantly violates the non-disclosure agreement she signed by discussing the confidential setback information in the post-hearing brief.

Parties and intervenors were also permitted to propound interrogatories under seal to BNE regarding the protected confidential documents, though no party or intervenor chose to avail itself of this option.

Project opponents have continued to complain throughout this proceeding that the GE setback information is publicly available or in the public domain, and therefore should not be treated as confidential and subject to the protective order. Conveniently, after making a representation to this Council during the Petition 980 proceeding that the GE setback document is available on GE's own website, counsel for the Grouped Parties now apparently admit this representation was false and instead rely on a New York Public Service Commission website posting of the GE setback document as the basis for this argument.¹ The setback document is stamped "confidential and proprietary, do not reproduce without written permission" and no such written permission appears. Again, as the Council is well aware, simply because the New York Public Service Commission inappropriately posted a document in violation of a protective order does not make it acceptable for parties to this proceeding to do the same.

¹ BNE notes that counsel for the Grouped Parties has not availed itself of an opportunity to clear up this misrepresentation to the Council in petition 980 or in this proceeding.

Despite the Grouped Parties' repeated attempts to circumvent the protective order, discuss protected and confidential documents on the record, and to convince the Council that protected treatment is not appropriate, the Council has held firm and maintained that the GE information, including the setback document, is confidential and protected. *See, e.g.* Council's denial of FairwindCT/Wagner/Somers' Objection to Motion for Protective Order as it Relates to GE Setback Recommendations dated March 22, 2011.

Now, at the eleventh hour, the Grouped Parties continue to attempt to circumvent the protective order and the Council's rulings upholding the same. Continuing their refusal to respect the Council's practices and rulings, the Grouped Parties brazenly discuss the confidential GE setback information in detail on page 37 of their post-hearing brief.² BNE will not reproduce this discussion here in the interest of avoiding any further tainting of the record. However, this discussion clearly violates the protective order in place in this proceeding. As such, this discussion should be stricken from the record.

WHEREFORE, BNE respectfully requests that the Council strike from the record any discussion of confidential GE setback information contained in the Grouped Parties' post-hearing brief, as such discussion is in violation of the protective order in place in this proceeding.

In addition, because this error bears the likelihood of repeating itself in Petition 984, BNE further requests that the Council specifically order all parties and intervenors to refrain from the use of confidential information in this proceeding or in Petition 984, except as permitted pursuant to the terms of the protective order.

² BNE further notes that Grouped Parties' unauthorized disclosure of this confidential information is not even accurate.

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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