

**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 Winsted-Norfolk Road in
Colebrook, Connecticut (“Wind Colebrook North”)**

Petition 984

April 19, 2011

**PETITIONER BNE ENERGY INC.’S
MOTION TO COMPEL AND TO STRIKE**

Petitioner BNE Energy Inc. (“BNE”) hereby moves the Council to compel all parties and intervenors to this proceeding to comply with Council filing requirements, and also moves to strike any documents submitted into the record that fail to comply with such filing requirements. In particular, numerous parties and intervenors have filed and continue to file documents with both the petition 983 and 984 caption and simply file a single document for both proceedings and therefore have not been complying with filing requirements as far as service of hard copies of documents. In addition, turning to the substance of the submissions, parties and intervenors continue to submit proposed testimony and evidence pertaining to both petition 983 and 984. This is being done despite the fact that Council has twice denied motions to consolidate those two proceedings and has resulted in the record in this petition being littered with irrelevant information pertaining to an entirely separate proceeding. BNE moves to strike all information pertaining to petition 983 from the record in this proceeding and further moves to compel all parties and intervenors to comply with filing requirements that have been specifically established for this proceeding.

BNE, the petitioner in both 983 and 984, recognizes that the parcels of property in Petition No. 983 and Petition No. 984 are in close proximity to each other.¹ However, despite FairwindCT, Inc. (“Fairwind”), Stella and Michael Somers and Susan Wagner’s (the “Grouped

¹ It should be noted, however, that the parcels do not abut each other.

Parties”) repeated assertions and innuendos that BNE “chose” to file these two proceedings separately, BNE was *legally required* to file these projects as separate petitions because they involve separate parcels of property and, importantly, separate interconnections to the electrical grid. Since BNE appropriately filed the projects as separate petitions in accordance with relevant law, the petitions were each accepted individually by the Council and assigned different petition numbers and hearing schedules. Significantly, each petition was assigned its own hearing schedule and each petition filed by BNE currently pending before the Council is at different stages in the proceedings.

The Council has continued to hold firm to the separation of the proceedings in each of the three BNE petitions pending before the Council. Fairwind individually and the Grouped Parties collectively have formally attempted to consolidate these proceedings not once but now twice. By letter dated January 31, 2011, Fairwind requested that the Council consolidate this proceeding with pending petitions 980 and 983. On January 31, 2011, the Council denied this motion. The Council denied this motion based on the fact that the three separate petitions were filed on different dates, and involve different parties and intervenors, different site locations and different residents with site-specific concerns. *See* Council memorandum dated February 14, 2011.

By motion dated March 15, 2011, Fairwind, this time joined by Stella and Michael Somers and Susan Wagner, renewed its battle cry for the proceedings to be consolidated. This motion simply argued that consolidation was warranted because the petitioner is the same and many of the witnesses for the petitioner are the same. The Council denied this motion on March 23, 2011.

Despite the Council's adherence to the fact that the three pending BNE petitions are separate and its repeated refusal to consolidate the petitions, parties and intervenors, including but not limited to the Grouped Parties, continue to proceed as if the petitions were, in fact, consolidated. Filing after filing has poured into the Council's office purporting to apply to "Petition Nos. 983 & 984." It is unclear if these filings are sent to the service list for Petition 983, Petition 984, or both. BNE receives only one copy of these filings and must make copies itself in order to accurately maintain its records in the two proceedings; it can be assumed that other parties to both proceedings are forced to do as well. The Council itself receives only one copy and is similarly forced to perform additional administrative work in order to accurately maintain its records in both proceedings. What of the parties and intervenors who are involved in only one proceeding? Do they receive one copy, two—or none at all?

More important than the extra administrative work created by the Grouped Parties and other parties/intervenors who continually fail to comply with Council filing requirements is the fact that submitting documents into the record in one proceeding muddies the record in that proceeding when the documents refer—not only on their face but also in their substance—to another proceeding. The Grouped Parties in particular continue to submit documents into the record in this proceeding that refer to Petition No. 983 and, indeed, even lump the three turbines proposed in *that* petition in with the three turbines proposed in *this* petition. For example, the pre-filed testimony of Glenn Chalder, dated April 7, 2011, provides testimony and even a visual simulation featuring seven turbines. This testimony is incorrect and misleading and muddies the record in this petition, which again, as the Council is well aware, proposes only three turbines. Even if the Council has requested a cumulative analysis of the two projects, this testimony would still be false and misleading since the record could not be clearer that BNE is proposing a total of

six turbines in this proceeding and the petition 983 proceeding. While the Grouped Parties will undoubtedly argue that the Council must consider the cumulative impacts of both the project proposed in this petition and the project proposed in petition 983, the Council can do just that with the petition-specific information submitted by the petitioner. Therefore, the Grouped Parties' now expected outcry of "prejudice" is simply baseless.

The Chalder testimony is but one example of the ever-growing number of filings submitted by parties and intervenors in this proceeding that clearly do not comply with Council filing requirements. Choosing to ignore the Council's repeated iterations that the petitions are, in fact, separate, the Grouped Parties and other parties/intervenors have chosen to simply proceed as if the petitions were consolidated. The Council should not stand for such a glaring lack of deference to its procedures and its rulings, and should not continue to allow these parties/intervenors to muddy the record in this proceeding. To the extent that any filings submitted in this proceeding purport to apply to "Petition Nos. 983 & 984" or otherwise substantially reference Petition 983 and attempt to consolidate the two projects and proceedings, these filings should be stricken from the record. Therefore, any information contained in any filings to date discussing the substance and merits of the project proposed in Petition 983 should be stricken from the record. Going forward, the Council should compel all parties and intervenors to comply with Council filing requirements in order to maintain the integrity of these proceedings and the accuracy of the record.

WHEREFORE, BNE moves the Council to compel all parties and intervenors to this proceeding to comply with Council filing requirements, and also moves to strike any documents submitted into the record that fail to comply with such filing requirements.

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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