

**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 No. 984

May 4, 2011

**PETITIONER’S OBJECTION TO FAIRWINDCT, INC.,
STELLA AND MICHAEL SOMERS AND SUSAN WAGNER’S
MOTION TO COMPEL INTERROGATORY RESPONSES**

The petitioner, BNE Energy Inc. (“BNE”), submits this objection to FairwindCT, Inc., Stella and Michael Somers and Susan Wagner’s (the “Grouped Parties”) second motion to compel interrogatory responses, dated April 29, 2011. In their motion, the Grouped Parties seek to compel responses to interrogatories issued by the Grouped Parties that are irrelevant to this proceeding and go well beyond the scope of the topics specifically delineated by this Council as appropriate and relevant to the Council’s jurisdiction and determination of this matter. *See* Council Memorandum dated March 18, 2011. BNE appropriately objected to each of the interrogatories to which the Grouped Parties now seek to compel responses, as further discussed below. Therefore, the Grouped Parties’ motion to compel should be denied.

Further, BNE states the following:

1. This petition was filed on December 13, 2010, more than four months ago.
2. The Council set a pre-filing deadline of March 15, 2011 for this proceeding with an additional pre-filing deadline of April 19, 2011.
3. Throughout this proceeding, Fairwind has issued three sets of interrogatories to BNE, containing approximately 300 interrogatories, many of which are far

outside the scope of this proceeding, seek irrelevant information and are duplicative. Despite this, BNE has responded to all arguably relevant interrogatories.

4. On April 27, 2011, the Grouped Parties filed a motion to compel responses to its first set of interrogatories.
5. The Grouped Parties have now filed a *second* motion to compel responses to interrogatories. This time, the Grouped Parties seek to compel additional responses to Fairwind's second set of interrogatories.
6. Despite the fact that the second set of interrogatories were issued by Fairwind on March 8, 2011 and the fact that BNE provided responses on March 25, 2011, the Grouped Parties inexplicably waited over a month, until April 29, 2011, to file this motion to compel responses. Though the time limitations are entirely self-created, the Grouped Parties urge the Council to force BNE to provide additional responses to 34 interrogatories within two business days and to provide the Grouped Parties extra time, or even an additional hearing date, during which to cross-examine BNE on the additional responses.
7. BNE's objections to the interrogatories listed by Fairwind are appropriate. Therefore, BNE should not be compelled to provide responses.
8. Specifically, Questions 7 and 8 of Fairwind's second set of interrogatories request analyses of the combined effects of this project, petition 984, and Wind Colebrook South, petition 983. Despite Fairwind and the Grouped Parties' *repeated* attempts to consolidate these proceedings, the Council has continually maintained that petitions 983 and 984 will remain separate. Thus,

BNE objected to this interrogatory on the basis that the request was inappropriate because it requests cumulative information and the Council has made clear that the proceedings should not and will not be consolidated. Despite its objection, BNE also noted that the requested information is already available. BNE has submitted shadow flicker (Question 7) and noise (Question 8) evaluations in this petition and separately in petition 983; the Grouped Parties need only view these evaluations in tandem to achieve their desired result. It is not BNE's obligation nor its prerogative to build the Grouped Parties' case for them.

9. Questions 16-18 request distance information based on distances arbitrarily created by Fairwind and the Grouped Parties. In response to Fairwind Questions 14 and 15, BNE provided a list of all property lines, residences and related structures, roads, driveways, located within 984 feet of each proposed turbine location, and a list of all property lines and residences located within 0.5 mile of each proposed turbine location. BNE cannot and will not have its experts provide analyses from each and every arbitrary distance chosen only according to the Grouped Parties' whims. BNE gladly provided analyses for reasonable distances but properly objected to providing such analyses for anything over one mile away from the turbine locations as such requests are arbitrary, overly broad and unduly burdensome. Furthermore, the Grouped Parties' own witnesses have provided similar information. And, most importantly, this distance information is publicly available so it is just as

easily obtainable by the Grouped Parties as it is by BNE. For these reasons, BNE appropriately objected to these interrogatories.

10. In Question 21, Fairwind requested copies of any and all GE materials related to its 1.6 MW turbines, related to a laundry list of issues. BNE properly objected on the basis that the interrogatory was overly broad and unduly burdensome. BNE has endeavored to provide all arguably relevant GE materials in its possession, and has worked with the Council and parties and intervenors to make these materials available despite BNE's obligations to GE pursuant to its confidentiality agreement.
11. Question 25 demands the identities of any and all GE personnel with whom BNE has been in contact in the course the project. As BNE has stated on the record, a host of professionals have been involved with this project from its inception to the present, as BNE has sought expert opinion at every appropriate juncture. In order to present a manageable panel to the Council for cross-examination, BNE was forced to limit the number of professionals who would file testimony and appear at the hearings in this proceeding. Notwithstanding this effort, BNE still presented a very large panel of experts to the Council. Counsel for the Grouped Parties are presumably aware that they have the power to issue a subpoena to a corporate entity to have the appropriate representative from that entity appear at a specified time and place. Again, it is BNE's obligation nor its prerogative to build the Grouped Parties' case for them, but the Grouped Parties certainly are not prejudiced in any way by BNE's appropriate objection to their irrelevant question.

12. Questions 91-97, 99-101, 103-106, 108-111, 117, 118, 120, 124-129, 131, 133, 136 and 137 relate to site plans filed by BNE in this proceeding. BNE's responses to these questions largely referenced updates to the site plans or noted that the question pointed to a discrepancy in the plans that simply did not exist (*see, e.g.* responses to Questions 97 and 100). The Grouped Parties object and resurrect their complaints about BNE's submission of revised plans. Again, as the Council is well aware, revising plans pursuant to Council, party, intervenor and abutter suggestions and recommendations is standard practice in proceedings before the Council. Fairwind apparently seeks to put BNE in petitioner purgatory – it seeks to tear apart BNE's plans, but when BNE attempts to respond to concerns in a productive manner by modifying its plans (at its expense – including not only the revisions but the considerable cost of the revised measures, including siting turbines at less preferable locations in terms of wind speed), Fairwind shrieks prejudice. Not only is BNE revising plans to accommodate abutters' concerns in accordance with standard Council practice, it is also consistent with procedure in judicial proceedings, in which parties may conform pleadings to the evidence presented.

Council practice demands an iterative process in which parties, intervenors and stakeholders work together in order to maximize use of a site and, at the same time, minimize environmental impacts including impacts to property owners in the vicinity of a project. *See, e.g.*, Docket 370. In fact, in the Council's review of docket 370, a transmission project traversing multiple

towns, the applicant, the Connecticut Light and Power Company, even filed its application as two alternative projects in order to ensure that the Council and all stakeholders had the ability to weigh the benefits of impacts of different scenarios. BNE listened to the concerns of parties and intervenors to this proceeding and revised its plans to further minimize any potential impact the Project may have. This is a normal part of the Council process and BNE's indications that its plans have been revised to eliminate the points addressed by Fairwind in these interrogatories sufficiently answers the questions and is unobjectionable.

WHEREFORE, BNE objects to the Grouped Parties' motion to compel. BNE appropriately objected to the specific interrogatories propounded by the Grouped Parties and therefore the Grouped Parties' motion to compel should be denied.

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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