

**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 (SET 3)**

The petitioner, BNE Energy Inc. (“BNE”), submits this objection to FairwindCT, Inc., Stella and Michael Somers and Susan Wagner’s (the “Grouped Parties”) third motion to compel interrogatory responses, dated May 2, 2011. In their motion, the Grouped Parties seek to compel responses to interrogatories issued by Fairwind 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 responded or 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 Fairwind's first set of interrogatories.
5. On April 29, 2011, the Grouped Parties filed a motion to compel responses to Fairwind's second set of interrogatories.
6. The Grouped Parties have now filed a *third* motion to compel responses to interrogatories. This time, the Grouped Parties seek to compel additional responses to Fairwind's third set of interrogatories.
7. Though the time limitations are entirely self-created by its choice to issue not one but three separate sets of interrogatories, the Grouped Parties urge the Council to force BNE to provide additional responses to 27 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.
8. BNE's objections to the interrogatories listed by the Grouped Parties are appropriate. Therefore, BNE should not be compelled to provide responses.
9. Specifically, the Grouped Parties claim that BNE's answer to Question 15 is "completely non-response to the question asked." In fact, BNE's response simply referred the Grouped Parties to BNE's already-provided responses to Fairwind's first set of interrogatories, in which BNE stated "Pre-construction field surveys will be completed during November 2011. **Survey reports will**

**be completed up to 90 days following completion of field surveys.”**

(Response to Q.22, emphasis supplied).

10. The Grouped Parties claim that BNE’s responses to questions 20-25 are also “completely non-response to the questions asked.” These questions all concern wind data that was filed by BNE under seal pursuant to the protective order in place in this proceeding. The Council established specific procedures by which parties and intervenors could view and question BNE on these confidential materials. Rather than simply follow the established procedure and submit its interrogatories concerning confidential information under seal, the Grouped Parties included these interrogatories in their general laundry list of questions. Despite the Grouped Parties’ repeated protests to the contrary, the protective procedures for confidential information remain in place in this proceeding. The Council should reject the Grouped Parties’ umpteenth attempt to do an end-run around established procedure by attempting to force BNE to answer interrogatories about confidential documents filed under seal.
11. Regarding Question 26 and 27, this information has already been provided, as BNE indicated in its objection. Therefore, BNE’s objections were appropriate. Specifically with regard to Question 27, BNE notes that the response that information is publicly available and therefore just as accessible to either party is completely valid.
12. With regard to Question 35, BNE notes that there is an almost infinite amount of data that is not formally published but is publicly available.

BNE's response to the original question posited by Fairwind provided the information regarding the broadwinged hawks only for the sake of reference and to provide the Council with as much information as possible. The three broadwinged hawk deaths are in no way related to this project or this proceeding, and are irrelevant to the Council's determination in this proceeding. As such, BNE's objection was appropriate.

13. With regard to Question 53, this data is publicly available. As such, it is equally accessible to the Grouped Parties as it is to BNE. As such, BNE's objection was appropriate.
14. In Question 54, the Grouped Parties ask BNE about compliance with out-of-state guidelines for the umpteenth time. Again, it should be obvious to the Grouped Parties that BNE does not need to comply with guidelines from the states of Pennsylvania, New York or New Jersey since the Wind Colebrook South project is not located in any of those states.
15. With regard to Question 55, this data is publicly available. As such, it is equally accessible to the Grouped Parties as it is to BNE. As such, BNE's objection was appropriate.
16. The Grouped Parties claim that BNE's responses to question 59 is "completely non-response to the question asked." To the contrary, BNE responded that acoustic bat surveys were not completed at Colebrook North in 2010 and that pre-construction acoustic surveys are planned to be completed at Colebrook North between April 15 – October 31, 2011. BNE also noted that it committed to complete post-construction bat fatality

monitoring in addition to post-construction acoustic monitoring surveys. BNE has provided all of the information it has regarding bats, and has outlined its plan – with specific dates – to collect and provide additional information. BNE’s objection was appropriate.

17. The Grouped Parties claim that BNE’s response to Questions 61 and 63-69 are also “non-response to the questions asked.” Again, BNE filed its petition to site 3 turbines on the Colebrook North property and that has not changed. As part of its continuous review of this project and in response to comments and concerns raised by parties, intervenors, the general public, and the Siting Council, BNE proposed to re-locate turbine 1. The re-location accomplishes several goals including: further increasing setbacks from residential property lines and residences and, in addition, reducing wetlands impacts, reducing environmental impacts associated with the need to construct a separate, second access road for the original turbine 1 location. In addition, as was discussed in the pre-filed testimony of Curtis Jones, BNE revised the Colebrook north site plans to reduce the overall width of the access road due to increased availability of a narrow track crane, which again serves to reduce the environmental impact of the project as a whole. BNE submits that these changes even further reduce any environmental impact associated with the project and therefore believes that the revised location of turbine #1 is preferable for the Siting Council's approval and, as such, did not provide similar information concerning the original location of turbine #1. BNE recognizes, however, that the Siting Council has jurisdiction over the entire

property and can re-locate any of the three proposed turbines and the access road. Given that this decision is within the Siting Council's purview, not BNE's nor the Grouped Parties, BNE's objections to these interrogatories were appropriate.

18. The Grouped Parties claim that BNE's responses to questions 70 and 71 are also "non-response to the questions asked." These questions all concern wind data that was filed by BNE under seal pursuant to the protective order in place in this proceeding. The Council established specific procedures by which parties and intervenors could view and question BNE on these confidential materials. Rather than simply follow the established procedure and submit its interrogatories concerning confidential information under seal, the Grouped Parties included these interrogatories in their general laundry list of questions. Despite the Grouped Parties' repeated protests to the contrary, the protective procedures for confidential information remain in place in this proceeding. The Council should reject the Grouped Parties' umpteenth attempt to do an end-run around established procedure by attempting to force BNE to answer interrogatories about confidential documents filed under seal.
19. Question 72 refers to Question 25 of the Council's First Set of interrogatories to BNE, but incorrectly indicates that Question 25 requests the approximate distance that parts of the blade could be thrown from a turbine. Question 25 of the Council's First Set of interrogatories actually asks for information regarding how BNE "intend[s] to monitor the facility for ice build up on the

blades and potential ice throw,” and additionally asks “what could be done if ice does begin to build up on the blades.”

20. Regarding Question 74, BNE notes that the response that information is publicly available and therefore just as accessible to either party is completely valid. As such, BNE’s objection was appropriate.
21. Finally, Question 84 asked for the “reasonable area” that must be cleared to allow for construction activities. BNE responded that the limits of clearing for each of the turbine locations is depicted on Sheet C-003 of the plans. This answer is completely responsive to the question posed by the Grouped Parties.

**WHEREFORE**, BNE objects to the Grouped Parties’ motion to compel. BNE appropriately responded or 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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