

**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

April 19, 2011

**MOTION TO STRIKE PRE-FILED TESTIMONY
OF ARLINE BRONZAFT, PH.D.**

BNE Energy, Inc. (“BNE”) hereby moves to strike the pre-filed testimony of Arline Bronzaft, Ph.D. Specifically, FairwindCT, Inc. has submitted the pre-filed testimony of Arline Bronzaft, Ph.D. to support the proposition that noise from the Project will adversely affect the health of residents living in the proximity of the wind turbines. However, Dr. Bronzaft’s testimony is nothing more than a regurgitation of platitudes relating to the health affects of noise generally on society and does not include any site-specific study. In addition, Dr. Bronzaft’s testimony fails to address the fact that the Connecticut statutory requirements require that the Project to meet and comply with Connecticut air and water quality standards as promulgated by the Connecticut Department of Environmental Protection. Conn. Gen. Stat. §16-50k(a). As such, Dr. Bronzaft’s pre-filed testimony is irrelevant to the Siting Council’s determination as to whether the Petition complies with Connecticut statutory requirements. In addition to being irrelevant, Dr. Bronzaft’s statements fail to be supported by peer-reviewed literature and is hearsay based on information obtained from third-party sources. For all of these reasons, Dr. Bronzaft’s testimony should be stricken from the record.

ARGUMENT

The Project is pending before the Council pursuant to the declaratory ruling provisions in Conn. Gen. Stat. §16-50k(a). Under such provisions, the Council “shall” approve the Project “as long as such project meets air and water quality standards of the Department of Environment Protection.” Dr. Bronzaft’s testimony does not address this standard. Instead, Dr. Bronzaft cites to general noise pollution issues facing society today. In fact, Dr. Bronzaft never mentions the DEP’s air and water quality standards and does not challenge the findings by VHB that the Project complies with such standards.

Dr. Bronzaft’s testimony begins with a recitation of the problems associated with the increasing noise pollution in our society and thus claims that she is not “unusual or unreasonable” in raising noise as an issue.¹ Dr. Bronzaft’s then spends the next few pages pontificating on the general effects of noise on the human body and quality of life based on no study of her own. Although these reports may be interesting, they reveal nothing more than the basis for the DEP’s own regulations regarding noise pollution with which, incidentally, the Project complies.

After much generality, Dr. Bronzaft finally attempts to answer a question that is specific to the Project. However, the question is completely illegitimate. Instead of asking the only relevant question relating to noise: Does the Project comply with DEP’s regulations?; the question asked is whether the noise generated by the Project is “unreasonable”. Such a question and the answers that follow are completely irrelevant to the Petition. As Dr. Bronzaft states, even the smallest sounds can be deemed unreasonable and perhaps rise to the level of a Constitutional violation. PFT at 11. Connecticut does not allow for such subjective reviews of

¹ BNE leaves it up to the Council to determine whether Dr. Bronzaft is unusual.

noise. Instead, Connecticut requires that the Project meet an objective test set forth by DEP. Conn. Gen. Stat. §16-50k(a). Dr. Bronzaft's testimony does not attack the findings by VHB, nor does she claim that the tests were improperly performed. Instead, she advocates, in effect, that the noise regulations promulgated by the DEP and which are the sole basis of the Siting Council's decision be disregarded in favor of the standard that any noise that anyone finds bothersome is unreasonable and should be completely avoided. Such testimony is completely irrelevant to the Siting Council's determinations in this Petition.

The only wind related testimony in Dr. Bronzaft's testimony relates to the Nina Pierpont book "Wind Turbine Syndrome" and Laura Israel's documentary "Windfall". While these publications have been cited by numerous opponents to wind projects, neither of these publications have been published in a peer-reviewed journal that can be relied upon by expert witnesses. As the FairwindCT web site states, the Pierpont book has been highly criticized by well-respected experts. See <http://fairwindct.com/?p=356>. Based on the Connecticut Supreme Court's decision in *State v. Porter*, 241 Conn. 57 (1997), FairwindCT cannot demonstrate that Bronzaft's opinions are based on reliable methodology. Under the *Porter* doctrine, an opinion by an expert whose methodology is not peer-reviewed should be excluded from the record. See *Klein v. Norwalk Hospital*, 229 Conn. 241, 262-264 (2010). As such, these two publications are not reliable sources of literature for the Siting Council to consider in the decision.

In addition to the testimony being in violation of the *Porter* standard, Dr. Bronzaft's testimony relies upon "facts" that are inadmissible and not the type customarily relied upon by expert witnesses. See Connecticut Code of Evidence, §7-4(b). Dr. Bronzaft is relying

exclusively on non-peer reviewed material for rendering an opinion. Such opinions are hearsay should be excluded as improper expert opinion.²

For the foregoing reasons, the pre-filed testimony of Dr. Bronzaft should be stricken in its entirety.

Respectfully Submitted,
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² To the extent that Dr. Bronzaft relies on the opinions of Mr. Bahtiarian, Mr. Bahtiarian can certainly defend himself and offer his own opinions. FairwindCT should not be allowed to offer duplicative testimony.

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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