

**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 JOYCE HEMINGSON**

Petitioner BNE Energy Inc. (“BNE”) hereby moves to strike the pre-filed testimony of Joyce Hemingson. Specifically, FairwindCT, Inc. (“FairwindCT”) has submitted the pre-filed testimony of Joyce Hemingson which is replete with references to statements made by third-persons being offered into evidence to establish the truth of the matter asserted. See Code of Evidence, §8-1. While hearsay evidence is not automatically excluded in an administrative proceeding, hearsay evidence should be excluded when the statements lack probative value and reliability. *Jutkowitz v. Department of Health Services*, 220 Conn. 86, 108-09 (1991). The hearsay evidence being presented by Ms. Hemingson is neither probative or reliable.

1. Testimony relating to Vinalhaven, Maine

Ms. Hemingson’s testimony includes numerous references to her conversations with residents of Vinalhaven, Maine and information found on a website maintained by an anti-wind advocacy group, Fox Islands Wind Neighbors (FIWN). These conversations and references are clearly self-serving and unreliable as evidence in the current proceeding. The FIWN website fails to indicate who maintains the website, the members of FIWN and how the “evidence” contained on the website is gathered, analyzed and reported. Pre-Filed Testimony, page 6.

The “evidence” of conversations with Vinalhaven residents is also unreliable hearsay testimony. Ms. Hemingson states that “neighbors of Fox Islands Wind” spoke to her about the project. The nameless, faceless people are not subject to cross-examination and there is no reliable account of their conversations. See Pre-filed Testimony, page 13.

Beyond statements made by unknown persons in Vinalhaven, Maine, Ms. Hemingson attaches documentation relating to the Vinalhaven project that have no probative value to the current proceeding and that, for the purposes presented by Ms. Hemingson, are completely unreliable. Ms. Hemingson attaches as Exhibit 2 a “fact sheet” from the Vinalhaven developer which addresses, among other things, lightning issues and Salamander protection efforts. See Pre-filed testimony, page 7. If Exhibit 2 is read in its entirety, the Siting Council would recognize that (1) the developer is indicating that precautions are being taken to properly ground the turbines to avoid issues associated with lightning strikes, and (2) the 14 acre set aside for Salamander habitat was a regulatory requirement to protect the Salamander population. The fact that Ms. Hemingson can interpret this information as negative, when in fact they are highlighting positive protections that were included in the Fox Islands project, demonstrates why such hearsay is not probative and is highly unreliable as evidence in the current proceeding.

Ms. Hemingson then refers to Exhibit 3 attached to her testimony relating to the upgrades and training undertaken by the Vinalhaven emergency services personnel in connection with the turbine installation. Pre-filed Testimony, page 7. Ms. Hemingson’s purpose for including this information is to ask whether the State or BNE will fund a training program for Colebrook’s emergency services personnel. Once again, a full reading of Exhibit 3 does not state the costs of such training, how those costs were defrayed and whether similar training is necessary in Colebrook. The lack of information and the unsubstantiated inferences being made by Ms.

Hemingson demonstrate the unreliable nature of this exhibit. Further, Exhibit 3 has no probative value to the Siting Council. The Siting Council's review of the Petition does not extend to whether special training is required for local emergency personnel. As stated numerous times during this proceeding, the Siting Council's review is limited to reviewing the project's compliance with Connecticut's air and water quality standards. Conn. Gen. Stat. §16-50k(a). This additional information has no bearing on the Siting Council's review of those standards.

2. Testimony relating to the Connecticut Clean Energy Fund

In addition to the Exhibits relating to Vinalhaven, Maine being excluded, the Siting Council should also exclude as hearsay the Exhibits relating to the Connecticut Clean Energy Fund's involvement with this project project. Exhibit 1 is a letter from the Mayor of Colebrook to the Connecticut Clean Energy Fund which purports to support the Connecticut Clean Energy Fund's funding of the MET tower on the site. Ms. Hemingson claims that this letter was used as a basis for awarding BNE funds in 2009 and infers that Colebrook residents were not aware of meetings between CCEF and BNE, (2) Colebrook residents should have been made aware of meetings between CCEF and BNE and (3) the lack of awareness should be a ground to deny the Petition. This line of argument by Ms. Hemingson continues to demonstrate FairwindCT's lack of understanding of the Siting Council process and the interaction of the various governmental and quasi-governmental agencies with the Project. The Petitioner has complied with, and in fact gone far beyond, the notice and public hearing requirements for the Petition. The Siting Council does not concern itself with how a project is funded and whether adequate notices were given by CCEF during the funding process. While the Petitioner understands that Ms. Hemingson wants to complain about a process that she clearly does not understand to anyone that she thinks will

listen, the Siting Council should not appease such ignorance of its process by allowing clearly non-probative and unreliable hearsay evidence from entering the record.

3. Environmental Report Testimony

In addition to Exhibit 1, Ms. Hemingson attaches four purported “studies” or “reports” by various people relating to fauna and birds on a site near the Project. See Exhibits 4-7. The authors of these documents have not been disclosed as expert witnesses by FairwindCT, have not filed Pre-filed Testimony in support of the documents and are not subject to cross-examination. As the Siting Council has seen in these proceedings already, cross-examination of expert witnesses regarding documents, reports and studies is crucial to understanding the probative value of such documents and the reliability of such documents. All that can be known about Exhibits 4 and 5 is that one was written over 50 years ago by a master’s student (although the document itself has no indication of its origin and we are relying solely on Ms. Hemingson for its origins) and the other was written by a student intern almost 30 years ago.

As for Exhibits 6 and 7, these are presented as “evidence” for the proposition that many birds and other animals live near the project site. After a brief “google” search, the Petitioner was able to discover that the purported author of the “studies” and “lists” (Shelly Harms) is an attorney in Norfolk and is currently the Secretary of the Norfolk Conservation Commission/Wetlands Agency. Further, Ms. Harms “qualifications” as licensed bird-bander only means that she has the ability to safely trap, handle and band birds. This hobby license does not qualify her as an ornithologist, researcher or expert. The inability to cross-examine Ms. Harms and question her about the documents along with Ms. Harms apparent lack of expertise to support the documents demonstrates that these hearsay documents are not probative and unreliable.

Even if the Siting Council is inclined to allow hearsay relating to conversations that Ms. Hemingson may have had with individuals at Vinalhaven into evidence, it should be more stringent about allowing hearsay evidence being offered as purported expert reports.

For these reasons, BNE moves to strike the testimony of Joyce Hemingson.

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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