

**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 25, 2011

OBJECTION TO MOTION TO COMPEL AND TO STRIKE

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”) hereby object to the Motion to Compel and to Strike filed by the Petitioner, BNE Energy, Inc. (“BNE”), dated April 19, 2011. The Grouped Parties first note that an identical motion filed by BNE in Petition 983 was denied by the Council at the April 21, 2011, evidentiary hearing. In any event, with respect to the merits of the motion, BNE distorts the nature of the Grouped Parties’ filings in this petition, fails to recognize that the filing procedures that have been used by the Grouped Parties have been approved by the Council, and, most importantly, points to absolutely no prejudice suffered by BNE as a result of the Grouped Parties’ allegedly improper filing procedures. Accordingly, the Grouped Parties respectfully request that the Council deny BNE’s motion.

BNE finds fault with the fact that the Grouped Parties have, at times, filed documents with the Council that are captioned with both this petition’s number and that of Petition 983, where the documents filed are of assistance to the Council’s decision in both petitions. Such dual filing, BNE surmises, warrants striking all such filings now, halfway through the evidentiary hearing on this petition, despite the fact that many of the relevant files were

submitted over three months ago. As this objection will demonstrate, BNE's contention is unavailing.

First, BNE fails to recognize that at the pre-hearing conference on Petition 983, which occurred at the Council's offices on February 25, 2011, counsel for the Grouped Parties – in an attempt to reduce the burden on the Council – asked whether documents that were to be filed in both petitions should be filed separately or if, in the alternative, they could be dual captioned. The staff attorney for the Council indicated that either would be permitted. Therefore, and in reliance on that representation, the Grouped Parties have at times submitted dual-captioned filings where appropriate. Accordingly, the Council already has sanctioned the very behavior complained about by BNE.

Second, BNE claims that the filing procedures used by the Grouped Parties somehow indicate that the Grouped Parties think that the petitions are consolidated. Contrary to BNE's contentions, the Grouped Parties are well aware of the Council's decision not to consolidate the proceedings on these petitions. Nevertheless, as BNE's motion recognizes, the parcels subject to BNE's Colebrook petition "are in close proximity to each other," which ensures that much of the evidence relevant to this petition also is relevant to Petition 983. Any such evidence, then, properly is captioned with both pending petitions, not because the petitions are consolidated, but simply because the filing applies to both independent petitions.

BNE's own motion demonstrates why such filings are appropriate, because, as BNE observes, the Grouped Parties have taken the position that, regardless of whether the proceedings have been consolidated, both logic and analogous Council rules require consideration by the Council of the cumulative effects of both pending Colebrook petitions. Notwithstanding this

fact, BNE proceeds to regurgitate the argument from its motion in Petition 983 to strike the pre-filed testimony of Glenn Chalder, the Grouped Parties' visual simulation expert, a motion that the Council previously denied at the April 14, 2011, evidentiary hearing on that petition. BNE's arguments were not convincing then, and they are not convincing now.

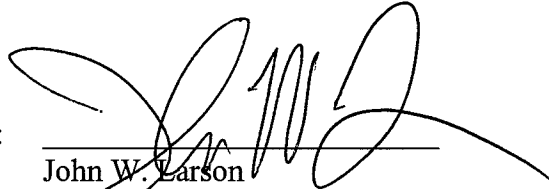
Third, BNE expresses concern regarding the number of copies provided to the Council, BNE, and the other parties to this case. With respect to the Council and BNE, if either desires additional hard copies of filings submitted in both petitions, the Grouped Parties would of course be happy to comply with any such request.¹ With respect to BNE's concerns regarding the other parties and intervenors, BNE will be relieved to learn that dual-captioned filings are sent to a service list containing all parties and intervenors to each petition, ensuring that all such parties and intervenors are in receipt of those filings.

Finally, BNE fails to identify any meaningful prejudice that it has suffered as a result of the Grouped Parties' filing procedures. This is, perhaps, not surprising when considering the fact that it has taken BNE nearly four months to raise an issue that has been evident since January. There is no indication that BNE has failed to receive notice of any filing by the Grouped Parties, and BNE has not claimed that the Grouped Parties' filing method has hindered its ability to adequately respond to any such filings. Despite all this, BNE seeks the drastic remedy of striking any dual-captioned filing by the Grouped Parties only a week before the evidentiary hearing in this petition is scheduled to commence, a remedy completely disproportionate to the alleged harm, such as it is, suffered by BNE.

¹In fact, one wonders why, sometime prior to filing its motion, BNE did not simply contact counsel for the Grouped Parties and ask for an additional copy of each such filing.

For the above reasons, the Grouped Parties hereby object to BNE's Motion to Compel and to Strike.

By:



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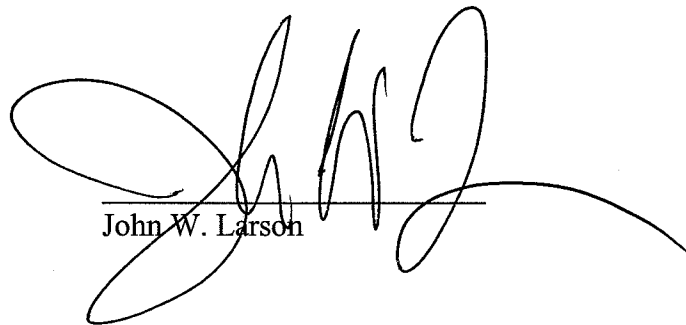
CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by first-class mail and e-mail to the following service list on the 25th day of April, 2011:

Carrie L. Larson
Paul Corey
Jeffery and Mary Stauffer
Thomas D. McKeon
David M. Cusick
Richard T. Roznoy
David R. Lawrence and Jeannie Lemelin
Walter Zima and Brandy L. Grant
Eva Villanova

and sent via e-mail only to:

John R. Morissette
Christopher R. Bernard
Joaquina Borges King



John W. Larson