

**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 29, 2011**

**OBJECTION TO MOTION TO STRIKE PRE-FILED TESTIMONY**

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”), hereby object to the Motion to Strike Supplemental Pre-Filed Testimony, dated April 28, 2011, filed by the petitioner, BNE Energy Inc. (“BNE”). In its motion, BNE asks that the Council strike the supplemental pre-filed testimony of Michael Klein, Eric Davison, and Scott Reynolds because BNE claims that the submissions are untimely.

Contrary to BNE’s argument, the supplemental testimony is timely and the timing of the filings does not prejudice BNE. Further, even if BNE were correct that the supplement deprived it of sufficient time to prepare an adequate cross-examination, the remedy for a late disclosure of testimony is not striking such testimony, but instead is continuing the hearing to afford such time. Accordingly, BNE’s motion should be denied.

BNE contends that the supplemental pre-filed testimony submitted by the Grouped Parties on April 27, 2011, is untimely because it was filed after the April 19, 2011, date by which the Council requested additional pre-filed testimony. Specifically, the Council memorandum regarding hearing procedures, dated March 18, 2011, stated: “Responses to interrogatories and any additional pre-filed testimony and exhibits are requested to be filed with the Council and other parties and intervenors on or before April 19, 2011.”

However, as BNE well knows, the schedule originally set forth by the Council has not held firm, in large part because BNE has twice moved for and been granted extensions of time with respect to pre-filing deadlines. Specifically, BNE moved to extend the original pre-filing deadline from March 15, 2011, to March 25, 2011, and later moved to extend the second pre-filing deadline from April 19, 2011, to April 25, 2011. BNE now wonders why the supplemental testimony filed by the Grouped Parties' experts, which responds to information contained in BNE's responses to interrogatories filed on April 25, 2011, was submitted to the Council and to parties on April 28, 2011. The simple answer is that BNE chose to seek extensions of its deadlines, and the time for the Grouped Parties' supplemental filings necessarily was extended as a result. BNE, then, is in no position to cry foul regarding the timeliness of those filings – particularly since the Grouped Parties' experts submitted responsive testimony just three days after receiving BNE's late-filed interrogatory responses.

Further, BNE's motion to strike is yet another example of BNE's improper attempts to strike certain evidence from the record as a result of alleged procedural defects that simply mirror BNE's own filing practices. BNE itself has filed supplemental testimony in the very same manner it now complains about. For example, in Petition 980, the Council's suggested deadline for submission of additional pre-filed testimony was March 8, 2011. BNE filed supplemental pre-filed testimony throughout that proceeding, up to and including supplemental testimony filed on March 28, 2011, just three days before the close of the evidentiary hearing in that petition and twenty days after the Council's deadline for additional testimony. Moreover, that supplemental testimony included brand-new site plans and accompanying stormwater management and erosion

control plans, the late submission of which certainly prejudiced the parties' and intervenors' ability to conduct cross examination.

Likewise, in Petition 983, BNE filed supplemental pre-filed testimony on April 12, 2011 – five days after the Council's suggested deadline of April 7, 2011 for pre-filed testimony. Then, BNE filed a motion to strike supplemental testimony filed by the Grouped Parties' experts in response to new information provided by BNE, just as it is doing here. Accordingly, it is clear that BNE's motion is another attempt to get the Council to impose one set of procedural rules upon the Grouped Parties while BNE is permitted to abide by a different, more flexible set of rules. The Council should not accept BNE's invitation to adopt preferential treatment for the petitioner, and the motion should be denied.

Finally, BNE's statement that by allowing the supplemental testimony to remain in the record, "the Council runs the risk of unfairly prejudicing BNE's ability to properly pursue its petition" is completely without merit. The supplemental testimony complained about by BNE was before the close of the evidentiary hearing on this petition, which gives the petitioner sufficient time to prepare any necessary cross-examination, especially given BNE's limited cross examination of all parties and intervenors when given the opportunity to cross witnesses to date in this proceeding and in Petition Nos. 980 and 983. Further, to the extent that BNE does not think its preparation time is sufficient, the proper remedy is not striking the Grouped Parties' supplemental testimony; rather, BNE should seek a continuance of the hearing date (and a corresponding continuance of the final decision date for this petition). See Rullo v. General Motors Corp., 208 Conn. 74, 79, 543 A.2d 279 (1988) ("A continuance is ordinarily the proper method for

dealing with late disclosure.” (Internal quotation marks omitted). The Grouped Parties note that they would not oppose such a motion should BNE decide that it needs to file one.

Accordingly, for the foregoing reasons, BNE’s motion to strike is without merit and should be denied.

By: \_\_\_\_\_

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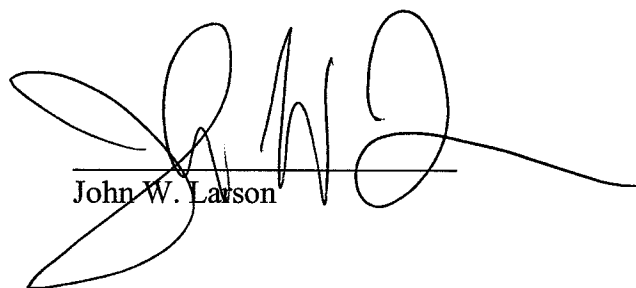
**CERTIFICATION**

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 29th 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

  
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John W. Larson