

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**Petition of BNE Energy Inc. for a
Declaratory Ruling for the Location,
Construction and Operation of a 3.2 MW
Wind Renewable Generating Project on
New Haven Road in Prospect,
Connecticut (“Wind Prospect”)**

Petition No. 980

March 28, 2011

**MOTION FOR RECONSIDERATION OF PROTECTIVE ORDER AS IT RELATES TO
MECHANICAL LOADS ASSESSMENT AND NOISE EMISSION CHARACTERISTICS**

FairwindCT, Inc. (“FairwindCT”) hereby submits the within Motion for Reconsideration of the Council’s decision to overrule and deny FairwindCT’s Objection to and Motion to Modify Protective Order, dated March 7, 2011, as such Protective Order relates to certain information regarding the Mechanical Loads Assessment (“MLA”) conducted by GE and certain noise emission characteristics of the wind turbines proposed by the Petitioner, BNE Energy, Inc. (“BNE”). FairwindCT moves for reconsideration on the basis of newly obtained facts related to the material filed under seal by BNE and Paragraph 7 of the Protective Order, which permits modification.

In support of this Motion, FairwindCT states the following:

1. On February 16, 2011, BNE filed a Motion for Protective Order and Motion to File Under Seal in which it indicated that it intended to file with the Council the MLA and noise emission characteristics related to its proposed turbines, information that BNE alleged was confidential and proprietary. (BNE’s Motion for Protective Order, Feb. 16, 2011, at 1-2.)

2. On February 23, 2011, FairwindCT filed a Response to BNE's motion and proposed protective order, stating that "[a]lthough FairwindCT does not concede that the information BNE seeks to protect from disclosure is, in fact, confidential and proprietary, FairwindCT does not object in principle to the entry of such an order, provided that certain conditions outlined in this response are met."
(FairwindCT's Response, Feb. 23, 2011, at 1.)
3. At the February 24, 2011, evidentiary hearing, the Council granted BNE's motion for protective order. That Protective Order – transmitted to the parties and intervenors nearly a week later – was stricter than BNE's proposed order and did not contain any of the reasonable conditions requested by FairwindCT. Rather, the Protective Order approved by the Council imposed restrictions on the review and use of the BNE wind data that make it impossible for the parties and intervenors opposing the petition to effectively use the information at all.
4. As a result, on March 7, 2011, FairwindCT objected to the conditions of the protective order and moved to modify the order. At the March 15, 2011, evidentiary hearing, the Council voted to deny FairwindCT's motion to modify, with one member of the Council dissenting.
5. FairwindCT now moves for reconsideration of the order in light of newly obtained evidence related to the content and scope of the material subject to the Protective Order.

6. On March 17, 2011, one of FairwindCT's attorneys visited the Council offices to view the setback information filed in the above-captioned petition. An Affidavit in support of this Motion executed by that attorney is attached hereto.
7. The MLA is a multi-page document containing what apparently is an assessment by GE of the project's feasibility, taking into account turbine locations, wind data, and the capabilities of the turbines themselves.
8. The noise emission characteristics filed under seal are contained in a document provided by GE that discusses the expected noise that would be caused by various wind speeds at various heights.
9. FairwindCT objects to the sealing of the MLA and the noise emission characteristics.
10. First, the MLA contains significant general information about the proposed turbine site and describes data specific to the feasibility of the BNE proposal. Parties to this petition have a right to view and assess this information in order to decide how, if at all, such information affects the appropriateness of siting the BNE turbines, including, if necessary, testing GE's conclusion with respect to the project's feasibility.
11. Second, the document discussing noise emission characteristics directly implicates public health issues surrounding the proposed wind turbines. The public has a right to view and assess information provided by the turbine manufacturer related to expected noise levels, and the parties to this petition have a right to provide such data to their experts to permit them to testify as to the

effects of the noise that the turbine manufacturer itself expects will be created. In fact, one of the experts advising FairwindCT in this petition has advised counsel for the FairwindCT that he always receives noise emission characteristics information from manufacturers when providing an expert opinion on noise-related issues.

12. The protective order currently in place in this petition not only keeps all of this information secret from the general public, but also prevents any meaningful inquiry into such information and denies to FairwindCT and all other parties and intervenors any meaningful cross-examination whatsoever with respect to the MLA and noise emission characteristics, in contravention of Conn Gen. Stat. § 4-178.
13. FairwindCT further disputes that the MLA and the noise emission characteristics are information that warrants exemption from the presumption that “. . . all records maintained or kept on file by any public agency, . . . shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.” Conn. Gen. Stat. § 1-210. The Freedom of Information Act does provide for protection of trade secrets, but the MLA and noise emission characteristics fail to meet the definition of trade secrets because they do not “derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means

by, other persons who can obtain economic value from their disclosure or use.”


See Conn. Gen. Stat. § 1-210(5)(A)(i). As such, the MLA and wind emission characteristics should not be entitled to the “secrecy” afforded to trade secrets.

See Conn. Gen. Stat. § 1-210(5)(A)(ii).

14. Finally, FairwindCT reminds the Council that BNE has used significant sums of public money to fund its petition and, accordingly, the MLA and noise emission documents subject to BNE’s motion to seal. Considering the substantial financial investment provided by the public in BNE’s proposed industrial wind project, the public has a right to know the anticipated noise that will be created by BNE’s turbines, as set forth by the turbine manufacturer, as well as the turbine manufacturer’s assessment of the feasibility of BNE’s proposal.

WHEREFORE, in light of the above facts – newly discovered upon consideration of the contents of the MLA and noise emission characteristics sealed pursuant to the Protective Order – FairwindCT moves the Council to reconsider its decision overruling and denying FairwindCT’s Objection to and Motion to Modify Protective Order.

By:



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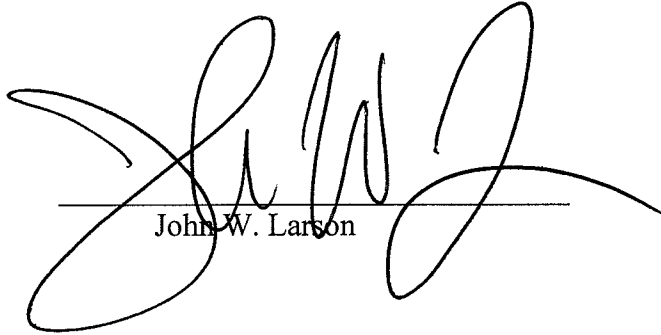
March 28, 2011

AFFIDAVIT OF JOHN W. LARSON

The undersigned being duly sworn does hereby depose and say:

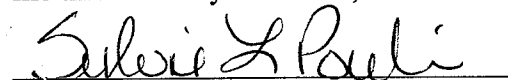
1. I am over the age of eighteen, understand the meaning and obligation of an oath, and am competent to testify as to the matters stated herein.
2. I make this Affidavit on personal knowledge.
3. I am an attorney at Reid & Riege, P.C., and I represent FairwindCT, Inc. party to Petition 980.
4. On March 17, 2011, I visited the offices of the Council in order to view the material filed under seal by BNE in Petition 980.
5. Included in such material was the Mechanical Loads Assessment conducted by GE with respect to the Prospect site, as well as certain information provided by GE related to noise emission characteristics of its turbines.
6. The MLA document contains information apparently related to an assessment by GE of the project’s feasibility, taking into account wind data, turbine placement, and the capabilities of the turbines themselves.

7. The noise emission characteristics document contains data provided by GE regarding expected noise created by certain wind turbines at varying speeds and heights.



John W. Larson

Subscribed and sworn to before
me this 28th day of March, 2011.



Sylvie L. Poulin
Notary Public
My Commission Expires: 11/30/2012


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 28th day of March, 2011:

Carrie L. Larson
Paul Corey
Jeffrey J. Tinley
Hon. Robert J. Chatfield
Thomas J. Donohue, Jr.
Eric Bibler
Andrew W. Lord
Cindy Gaudino

and sent via e-mail only to:

John R. Morissette
Christopher R. Bernard
Joaquina Borges King



Emily A. Gianquinto