

**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**

**February 18, 2011**

**MOTION TO DELAY PROCEEDINGS**

FairwindCT, Inc. (“FairwindCT”) hereby requests that the Council delay these proceedings for a minimum of 15 days from the production to the parties of all materials withheld as “confidential and proprietary” and states the following:

1. On February 16, 2011, petitioner BNE Energy Inc. (“BNE”) provided to the Council and to parties revised site plans. These plans were apparently revised in order to address the Connecticut Water Company’s concerns over the potential for sedimentation and/or impacts to the wetlands during the construction at the Site.
2. In correspondence dated February 3, 2011 that was submitted with those revised plans, Paul Corey states that the revised site plans “were agreed upon in concept at a December 14, 2010 meeting.” According to the prefiled testimony of Thomas Koning, the revised site plans were completed on January 31, 2010.
3. In other words, BNE knew that it would be filing revised site plans by at least December 14, 2010, but did not inform all parties of that fact for more than two months. Moreover, BNE had completed revised site plans in its possession more than two weeks before it provided those plans to all parties.

4. On February 11, 2011, FairwindCT engaged the services of William Carboni, a professional engineer, to review the plans contained in BNE's petition and submit prefiled testimony regarding deficiencies in those plans. FairwindCT was not aware that BNE had revised the site plans when it engaged Mr. Carboni.
5. Mr. Carboni's prefiled testimony is now out of date, since Mr. Carboni did not have the opportunity to review the revised site plans before submitting his testimony. FairwindCT has been prejudiced by BNE's delay because FairwindCT (1) paid an expert to review plans that had already been revised without notice to any parties and (2) will be required to pay Mr. Carboni to amend or supplement his prefiled testimony to incorporate review of the revised plans. FairwindCT will also be required to pay legal fees related to submitting the amended testimony.
6. On February 16, 2011, BNE responded to interrogatories issued by Save Prospect Corp ("Save Prospect") and FairwindCT.
7. In its responses, BNE provided, for the first time, a final report on the bat acoustic studies conducted by Western EcoSystems Technology, Inc. ("Western"). The report is dated February 7, 2011, but is based on data that was collected through November 1, 2010. In other words, BNE waited more than three months to compile and file its final bat acoustic study.
8. Save Prospect engaged environmental experts to submit prefiled testimony regarding the preliminary report on bat acoustic studies provided with BNE's report. FairwindCT is coordinating presentation of its case with Save Prospect, as

a grouped party, and has adopted the prefiled testimony of Save Prospect's environmental experts.

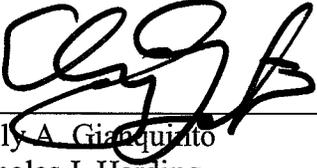
9. That prefiled testimony is now out of date, since the experts did not have the opportunity to review the final report before submitting their testimony. FairwindCT and Save Prospect have been prejudiced by BNE's delay because they (1) paid experts to review what was a stale report and (2) will be required to pay experts to amend or supplement their prefiled testimony to incorporate review of the now-final report. FairwindCT and Save Prospect will also be required to pay legal fees related to submitting the amended testimony.
10. On February 16, 2010, BNE filed a motion for protective order and motion to file under seal certain documents it claims are proprietary and confidential. Those documents include the Mechanical Load Assessment conducted by GE, GE's specifications regarding setbacks and the raw wind data that BNE collected at the Site. FairwindCT requested all of these materials in their interrogatories to BNE dated February 9, 2011.
11. FairwindCT understands that the Council will not issue a decision on BNE's motion until either February 24, 2011, the first day of evidentiary hearings in this matter, or March 3, 2011, the date of the Council's next regularly scheduled meeting. The result of that delay will be that FairwindCT will not have access to the requested materials until the evidentiary hearing in this matter has begun and likely several of BNE's witnesses have already testified.

12. On February 16, 2011, undersigned counsel for FairwindCT sent an e-mail to BNE's attorney, Carrie Larson, proposing that counsel execute an interim confidentiality agreement protecting the requested materials from disclosure to all but counsel and experts. The undersigned explained that FairwindCT desired to have access to the materials prior to the start of the evidentiary hearing and would agree not to refer to information contained in the materials in any public filing. The undersigned requested a response to the proposal by close of business February 17, 2011, and stated that if BNE agreed in principle to the idea, the undersigned would like to execute an agreement by February 18, 2011.
13. BNE's counsel did not respond to the undersigned's offer.
14. FairwindCT is prejudiced by BNE's delay because FairwindCT will not have the opportunity to review and have its experts review the requested materials, which are highly relevant to these proceedings, prior to the start of the evidentiary hearing. FairwindCT will therefore not be able to use any information contained in those materials to cross examine BNE's witnesses. Nor will FairwindCT's experts have an opportunity to include their analysis of those materials in their prefiled testimony.
15. FairwindCT asks for a delay in these proceedings in order to provide all parties with the opportunity to fully review and respond to these revised site plans, fully review and respond to the final bat acoustic study report and fully review and respond to (1) the Mechanical Loads Assessment; (2) GE's rules, specifications

and guidelines regarding setbacks; and (3) the raw wind data collected by BNE at the Site.

WHEREFORE, FairwindCT asks that the evidentiary hearing scheduled for February 24, 2011 be delayed for a minimum of 15 days from BNE's production to the parties of the Mechanical Loads Assessment, GE's rules, specifications and guidelines regarding setbacks and the raw wind data collected by BNE at the Site.

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



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**PROPOSED ORDER**

Whereas, the evidentiary hearing in this matter is scheduled to begin on February 24, 2011;

Whereas, the parties to this petition received revised site plans from the petitioner on February 16, 2011;

Whereas, the parties to this petition received the final report on the acoustic bat studies from the petitioner on February 16, 2011;

Whereas, the parties have not received materials the petitioner claims are confidential and proprietary, including the Mechanical Loads Assessment, GE’s rules, specifications and guidelines regarding setbacks and the raw wind data collected; and

Whereas, the parties opposing this petition have been and will continue to be prejudiced by BNE’s delay in producing the revised site plans and final report on bat acoustic studies and BNE’s failure to produce what it has deemed confidential and proprietary materials;

**IT IS HEREBY ORDERED** that the evidentiary hearing scheduled to begin on February 24, 2011, shall be delayed. The evidentiary hearing shall be re-scheduled to begin no earlier than 15 days after BNE's production of the Mechanical Loads Assessment, GE's rules, specifications and guidelines regarding setbacks and the raw wind data collected at the Site.

**SO ORDERED:**

CONNECTICUT SITING COUNCIL

By: \_\_\_\_\_  
Daniel F. Caruso, Chairman

Date: \_\_\_\_\_

**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 18th day of February, 2011:

Carrie L. Larson  
Paul Corey  
Jeffrey J. Tinley  
Hon. Robert J. Chatfield  
Thomas J. Donohue, Jr.  
John R. Morissette  
Christopher R. Bernard  
Joaquina Borges King  
Eric Bibler  
Andrew W. Lord, Esq.  
Cindy Gaudino

  
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Emily Granquinto