

**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 27, 2011

**MOTION TO COMPEL INTERROGATORY RESPONSES,
OR IN THE ALTERNATIVE TO STRIKE**

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”) hereby request that the Council compel BNE Energy Inc. (“BNE”) to respond to fully to certain interrogatory questions to which it has objected on the grounds of relevance. In the alternative, the Grouped Parties request that the Council strike BNE’s pre-filed testimony and the sections of BNE’s petition that concern the subject matter that BNE now claims is not relevant to this proceeding.

1. FairwindCT, Inc. (“FairwindCT”) issued its first set of interrogatories to BNE on February 18, 2011.
2. In those interrogatories, FairwindCT asked the following questions:
 - Q4. How many wind turbine projects in the Northeast that are presently operating have annual capacity factors of approximately 30 percent?
Please identify those projects by location, number of turbines and type of turbines (size and model).
 - Q5. How many wind turbine projects in the United States that are presently operating have annual capacity factors of approximately 30 percent?

Please identify those projects by location, number of turbines and type of turbines (size and model).

- Q6. Your petition states that this project will create “numerous” jobs. Please provide the specific number of jobs that will be created by this project.
- Q23. Please provide copies of all correspondence with GE about this project.
- Q35. Have you been in contact with the federal preservation officer at the U.S. Department of Energy regarding this project? If so, please provide copies of all correspondence with the U.S. Department of Energy.
- Q36. Please identify all sources of funding for this project.
3. The interrogatory questions are all based on information that BNE included in its petition for declaratory ruling or are otherwise relevant to BNE’s petition.
4. For example, on page 9 of its petition, BNE assumes that its project will have a capacity factor of 30 percent. The Grouped Parties have submitted prefiled testimony by David Pressman indicating that based on the average annual capacity of other wind projects in the Northeast, a more accurate estimate is in the 22 to 26 percent range. (See Prefiled Testimony of David Pressman, dated Mar. 15, 2011, at 3, 5-6, 13-14.) The basis for BNE’s inflated assumed capacity factor is relevant to this proceeding, and the parties are entitled to inquire about the information contained in BNE’s petition.
5. Similarly, on page 11 of its petition, BNE claims that its proposed project will create jobs. Paul Corey and Joel Rinebold have made similar statements in front of this Council and in their prefiled testimony and have indicated the project will

create numerous jobs, as discussed below in more detail. The parties are entitled to know BNE's definition of "numerous."

6. Questions 35 and 36 are relevant because the proposed project is located less than 1.5 miles from at least one property that is on the National Register of Historic Places. Placement on the Register entitles a property to special protection under the National Historic Preservation Act and related regulations if a proposed project is an undertaking. A project is an undertaking if it receives federal funding, and federal agencies, including the Department of Energy, employ their own preservation officers to comply with these requirements and conduct these reviews. Therefore, BNE's sources of public funding are entirely relevant to this proceeding, and the Grouped Parties are entitled to responses to their questions.
7. As such, the subject matter of Questions 4, 5, 6, 23, 35 and 36 is relevant to this proceeding. The Grouped Parties ask that the Council compel BNE to respond to the interrogatory questions to which it objected on relevance grounds. Moreover, given that the evidentiary hearing in this proceeding has already begun, the Grouped Parties ask that the Council order BNE to respond to those questions within two business days of the issuance of such an order and permit the Grouped Parties to examine BNE's witnesses regarding BNE's responses at a later hearing date.
8. In the alternative, the Grouped Parties ask that the Council compel responses to Questions 35 and 36 and strike all testimony submitted by BNE regarding the subject matter BNE claims is irrelevant to this proceeding. Although BNE now

claims that information regarding sources of funding, claimed efficiency, claimed local benefits, claimed job creation and communications with GE is irrelevant to the Council's decision, BNE not only discussed all of these issues in its petition, but it has also submitted prefiled testimony on all of these subjects.

9. For example, Paul Corey testifies regarding the alleged benefits to the community. Joel Rinebold testifies at great length about the tax benefits and job creation that will allegedly result from approval of this project. BNE's petition includes sections entitled "Community Relations," "Development Strategy and Schedule," "Service Life and Capacity Factor" and "Project Benefits."
10. BNE should not be permitted to refuse to answer questions posed by the parties on topics such as funding sources, efficiency and local benefits and then be permitted to offer testimony on such subjects and include information on these subjects in its petition for declaratory ruling. If these subjects are irrelevant to these proceedings such that BNE cannot be compelled to respond to interrogatories concerning these subjects, any testimony on these subjects should be stricken, as should any portions of BNE's petition concerning these subjects.
11. Further, with respect to Question 23, in the event BNE's correspondence with GE about this project is, as BNE claims, confidential and proprietary, BNE should file the same pursuant to a protective order. In order to consider BNE's petition for declaratory ruling, the Council and parties to this matter should know what GE has said about the public health and safety and facility operations of this project and whether BNE actually has GE's approval for this project.

WHEREFORE, the Grouped Parties ask that the Council issue an order compelling BNE to respond to Questions 4, 5, 6, 23, 35 and 36 of FairwindCT's first set of interrogatories to BNE. In the alternative, the Grouped Parties ask that the Council issue an order compelling responses to Questions 35 and 36 and striking the testimony of Joel Rinebold and portions of the testimony of Paul Corey, prohibiting any testimony on the subject of BNE's funding sources, communications with GE and other turbine manufacturers, claimed efficiency rates of this project, and claimed local benefits of this project, including job creation.

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PROPOSED ORDER

Whereas, the evidentiary hearing in this matter began on April 26, 2011;

Whereas, BNE objected to certain interrogatories that were issued by FairwindCT, Inc.
on February 18, 2011;

Whereas, the interrogatories request information relevant to this proceeding;

IT IS HEREBY ORDERED that BNE respond to Questions 4, 5, 6, 23, 35 and 36 of FairwindCT’s first set of interrogatories to BNE. It is further ordered that BNE supply its answers to these interrogatories within two business days of the date of this Order.

[OR, IN THE ALTERNATIVE]

IT IS HEREBY ORDERED that BNE respond to Questions 35 and 36 of FairwindCT’s first set of interrogatories to BNE. **IT IS HEREBY ORDERED** that no testimony shall be heard in this proceeding on the subject of BNE’s funding sources, communications with GE and other turbine manufacturers, claimed efficiency rates of this project, and claimed local benefits of this project, including job creation. Accordingly, **IT IS HEREBY FURTHER ORDERED** that the prefiled testimony of Joel Rinebold and Question and Answer No. 5 of the testimony of Paul Corey are stricken. **IT IS HEREBY FURTHER ORDERED** that the sections of BNE’s petition

for declaratory ruling entitled “Community Relations,” “Development Strategy and Schedule,”
“Service Life and Capacity Factor” and “Project Benefits” are stricken.

SO ORDERED:

CONNECTICUT SITING COUNCIL

By: _____
Robert Stein, Chair

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 27th 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


Denise L. Myron