

**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 22, 2011

OBJECTION TO MOTION FOR PROTECTIVE ORDER

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”), hereby object to the Motion for Protective Order and Motion to File Under Seal, dated March 25, 2011, filed by Petitioner, BNE Energy Inc. (“BNE”), as it relates to certain information and data regarding raw wind data collected by and belonging to BNE, GE’s setback rules, the Mechanical Loads Assessment reportedly conducted by GE for BNE and certain noise emission characteristics of the proposed wind turbines. The Grouped Parties object to the motion because the anticipated protective order, likely to contain the same terms as those imposed in Petition 983, prevents any meaningful use of the data and information to be filed under seal. Further, the protective order will prevent disclosure of noise data and setback information that is relevant to the public health and safety effects of the proposed turbines and which not only the parties, but also the general public, has a right to know. Additionally, some information proposed to be filed under seal by BNE is not subject to confidential protection because it has been previously publicly disclosed.

In support of this Objection, the Grouped Parties states the following:

1. On March 25, 2011, BNE filed a Motion for Protective Order and Motion to File Under Seal. In that Motion, BNE indicated that it intended to file with the Council

GE's setback rules, the Mechanical Loads Assessment reportedly conducted by GE for BNE (the "MLA") and certain noise emission characteristics of the proposed wind turbines (collectively, the "GE Safety Information") and raw wind data collected by and belonging to BNE. (BNE's Motion for Protective Order, Mar. 25, 2011, at 1.)

2. BNE claimed that the BNE wind data "is proprietary and constitutes trade secrets and proprietary and confidential information" and speculated that the BNE wind data, as well as other information filed under seal, "may also contain CEII [Critical Energy Infrastructure Information]." (Id. at 3-5.)
3. BNE further claimed that the GE Safety Information is "confidential and proprietary business information to both BNE and GE." (Id. at 6.)
4. Accordingly, BNE seeks permission to file the BNE wind data and the GE Safety Information under seal and further requests that such material be submitted to the Council subject to protective order. (Id. at 7.)
5. The Council has issued a protective order in Petition 983 covering the same type of data and information that BNE seeks to protect in this petition. That protective order, dated April 14, 2011, permits review of the BNE wind data and the GE Safety Information only at the Council offices on a Council computer, prohibits any note taking with respect to the BNE wind data and the GE Safety Information, and further prohibits the data and information from being disseminated to parties' experts, notwithstanding whether those experts have

agreed to be bound by the protective order. (Protective Order, Petition 983, dated Apr. 14, 2011.)

6. On April 18, 2011, one of the Grouped Parties' attorneys visited the Council offices in her role representing the Grouped Parties with regard to Petition 983 in order to view the material filed under seal in Petition 983. An Affidavit in support of this Objection executed by that attorney is attached hereto.
7. As detailed in the attached Affidavit, Ms. Gianquinto's review of the material filed under seal in Petition 983 revealed that at least three of the documents are already publicly available. (Aff. ¶¶ 7-10.) Specifically:
 - a. A fact sheet about GE's turbines that is filed under seal was is attached to BNE's petition as Exhibit A. That document is not entitled to protection.
 - b. A document titled "Setback Considerations for Wind Turbine Siting," that was filed under seal is publicly available on the internet, currently hosted by the New York State Public Service Commission at <http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId=%7BF6A567D4-3F56-4125-968F-28CBF62BD6F6%7D>. That document is not entitled to protection.
 - c. A brochure titled "1.5 MW Wind Turbine Series," that was filed under seal is available on GE's own website at http://www.gepower.com/prod_serv/products/wind_turbines/en/downloads/GEA14954C15-MW-Broch.pdf. That document is not entitled to protection.

8. There may be other documents filed under seal by BNE in Petition 983 that are similarly already public information. (Aff. ¶ 11.)
9. The MLA filed under seal in Petition 983 is a multi-page document containing what apparently is an assessment by GE of the project's feasibility using the 82.5-meter blades, taking into account turbine locations, wind data, and the capabilities of the turbines themselves. (Aff. ¶¶ 14-15.)
10. The noise emission characteristics filed under seal in Petition 983 are contained in a document provided by GE that discusses the expected noise that would be caused by various wind speeds at various heights. (Aff. ¶ 16.)
11. Also filed under seal in Petition 983 is a document concerning the turbines' expected power curve and other documents and brochures regarding the technical specifications of the turbines. (Aff. ¶ 17.)
12. The material filed under seal in Petition 983 totals approximately 125 pages and is an inch thick. (Aff. ¶ 5.)
13. The BNE wind data filed under seal in Petition 983 is contained in two zipped PDF files. At least one of the files is 1176 pages long, and contains more than 55,000 lines of data. (Aff. ¶¶ 18-20.)
14. The Grouped Parties object to the sealing of all of this material for several reasons.
15. First, the Grouped Parties dispute that BNE's claim that the BNE wind data is Critical Energy Infrastructure Information. The FERC guidelines regarding CEII themselves state that such "process is not intended as a mechanism for companies

to withhold from public access information that does not pose a risk of attack on the energy structure.” (Federal Energy Regulatory Commission, Guidelines for Filing Critical Energy Infrastructure Information, at 1, available at <http://www.ferc.gov/help/filing-guide/file-ceii/ceii-guidelines/guidelines.pdf>.)

16. The FERC guidelines go on to state that the FERC “emphasizes that 18 CFR § 388.112(b)(1) requires that submitters provide justifications for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment.” (Id.) BNE’s statement that its wind data “may also contain CEII” utterly fails to meet this standard.
17. Second, the Grouped Parties dispute that BNE’s wind data and the GE Safety Information is 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 BNE wind data and the GE Safety Information fail to meet the definition of trade secrets because it does 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 BNE wind data and the GE Safety Information should not be entitled to the “secrecy” afforded to trade secrets. See Conn. Gen. Stat. § 1-210(5)(A)(ii).

18. Anything that is in the public domain, whether through BNE’s public filings, GE’s postings on its own website, or the work of third parties, is in the public domain and certainly should not be entitled to the “secrecy” afforded to trade secrets under our statutory scheme. See Conn. Gen. Stat. § 1-210(5)(A)(ii).
Therefore, all of the GE setback information and other documents that are already publicly available should be not be allowed to be filed under seal.
19. Moreover, the fact that the GE setback information is already in the public domain also means that the information is not protected under the terms of the NDA between GE and BNE. Pursuant to the terms of that NDA, the setback information expressly does not constitute proprietary information requiring nondisclosure, because the NDA excludes from coverage material that is publicly available through no fault of the recipient of the otherwise-proprietary information. The NDA also excludes any material that was already public at the time it was given to BNE.
20. The NDA between GE and BNE thus expressly anticipates this occurrence and expressly excludes information that has been previously publicly disclosed from protection. Accordingly, the GE setback information filed under seal by BNE is not subject to the NDA, is not exempt from disclosure under FOIA, and should not be allowed in this Petition to be filed under seal.

21. Moreover, as the owner of the allegedly proprietary and secret wind data, BNE is of course permitted to disclose so much of that data as is necessary for the Council's determination of its petitions. The Grouped Parties submit that the Council should require BNE to allow any party's expert to review the BNE wind data. Because BNE bears the burden of establishing that the instant petition should be granted, BNE can and should be required to allow for reasonable use of that data in its attempt to obtain permission to site the proposed wind turbines. At an absolute minimum, the Council should require BNE to permit opposing parties to use and disseminate the BNE wind data to their experts after signing non-disclosure agreements.
22. Third, the GE Safety Information directly implicates public health and safety 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 recommendations regarding the appropriate distance between the wind turbines and any abutters. Further, the parties to this position have a right to provide such data to their experts to permit them to testify as to the public health and safety effects that the turbine manufacturer itself expects will be created.
23. The protective order currently in place in Petition 983, if adopted in this petition, would prevent any meaningful inquiry into such data and would deny the grouped Parties any meaningful cross-examination whatsoever with respect to the BNE wind data and the GE Safety Information, in contravention of Conn Gen. Stat. § 4-178.

24. Finally, the Grouped Parties remind the Council that BNE has used significant sums of public money to fund its petition and gather all related information, including the BNE wind data and the GE Safety Information it now seeks to protect from public disclosure. Considering the substantial financial investment provided by the public in BNE's proposed industrial wind project, the public has a right to examine whether the data collected by BNE, which collection was subsidized by the public, warrants construction of the proposed industrial wind turbines.

WHEREFORE, for the foregoing reasons, the Grouped Parties object to BNE's motion for protective order.

By: 
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AFFIDAVIT OF EMILY A. GIANQUINTO

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., Stella and Michael Somers and Susan Wagner, parties to Petition No. 984.

4. On April 18, 2011, I visited the offices of the Council in order to view the material filed under seal by BNE in Petition No. 983.

5. The material filed under seal consists of a computer disk and a stack of documents approximately an inch thick, totaling approximately 125 pages. Some of these documents appear to be duplicates, but I am unable to confirm that with certainty due to the restrictions of the protective order that prevented me from taking notes.

6. Included in such material was certain setback information provided to the Council by BNE related to that petition. The setback information contains information related to safety risks

from industrial wind turbines and therefore is related to possible adverse public health effects from siting the proposed wind turbines.

7. One of the setback-related documents filed under seal is a “fact sheet” about GE’s turbines. That fact sheet is, as far as I could tell under the restrictions of the protective order that prevented me from taking notes, an exact copy of the fact sheet attached as Exhibit A to BNE’s petition.

8. Also included in the material is another document about setbacks, titled “Setback Considerations for Wind Turbine Siting,” publicly available on the internet at <http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId=%7BF6A567D4-3F56-4125-968F-28CBF62BD6F6%7D>.

9. I was previously familiar with the document referenced in Paragraph 7 before visiting the Council office based on my own searches for information in the public domain regarding setback guidelines provided by GE and my own experience representing a party to Petition No. 980.

10. Also included in the materials is a document titled “1.5 MW Wind Turbine Series,” which is available on GE’s own website at http://www.gepower.com/prod_serv/products/wind_turbines/en/downloads/GEA14954C15-MW-Broch.pdf. I am familiar with that document based on my own searches for information in the public domain about GE’s turbines.

11. My review of the documents filed under seal therefore reveals that at least three of the documents are already publicly available. Due to the limitations of the protective order, which prevented me from taking notes on the other documents, I cannot be sure if other documents filed

under seal are likewise also already publicly available. Based on my review of the other documents, I suspect that some of them are in fact also already in the public domain.

12. Also filed under seal in Petition No. 983 is a copy of a Mutual Nondisclosure Agreement (“NDA”) between BNE and GE governing certain purportedly proprietary documents exchanged by the two parties to the NDA.

13. The NDA contains a provision that, to the recollection of the undersigned (who was prevented from taking notes under the terms of the protective order), exempts from coverage under the NDA information that is available to the public through no fault of the party receiving any otherwise-confidential information. To my recollection, the NDA also expressly states that any information that was previously available publicly before it was given to BNE is not protected under the NDA.

14. Also included in the material filed under seal is a Mechanical Loads Assessment conducted by GE for the 82.5-meter blades with respect to what I assume was the Colebrook South site (the document referred only to the “Colebrook site” and the “Colebrook project”), as well as certain information provided by GE related to noise emission characteristics, power curve and other specifications of its turbines.

15. The MLA document contains information apparently related to an assessment by GE of the project’s feasibility with the 82.5-meter blades, taking into account wind data, turbine placement, and the capabilities of the turbines themselves.

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

17. The power curve document contains GE data regarding the amount of energy generated by its turbines at various speeds.

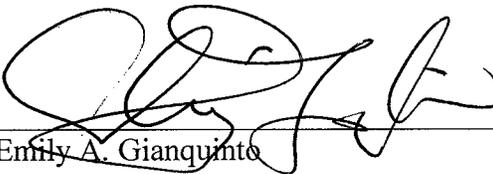
18. The computer disk filed under seal contains what appears to be BNE's raw wind data collected at the Colebrook South site. That data is in two static PDF files, not the native format that my clients requested.

19. One PDF file is 1176 pages long. I believe the second PDF file was the same length, but I had difficulty opening the files with the Council's outdated Winzip software, so I cannot state whether the two files are identical.

20. I estimate that each page of the PDF file I was able to open and view contains perhaps 50 lines of data, so that file likely contains more than 55,000 lines of data.

21. This data is useless in its current production format, which is a static form.

22. In my opinion, the wind data is rendered even more useless because it is available only on the Council's computer during the Council's limited business hours and because the parties cannot even take notes on the data.



Emily A. Gianquinto

Subscribed and sworn to before
me this 22nd day of April, 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 22nd 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