

**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 TO STRIKE
PRE-FILED TESTIMONY OF ARLINE BRONZAFT, PH.D**

FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”), hereby object to the Motion to Strike Pre-Filed Testimony of Arline Bronzaft, Ph.D, dated April 19, 2011, filed by Petitioner, BNE Energy Inc. (“BNE”). In its motion, BNE asks that the Council strike Dr. Bronzaft’s testimony as irrelevant because she offers expert testimony related to the adverse health effects of noise generated by BNE’s proposed wind turbines on nearby residents. BNE claims that any evidence not related to the proposed project’s ability to meet air and water quality standards is irrelevant to this proceeding. BNE also claims that Dr. Bronzaft’s testimony fails to satisfy the threshold of reliability so as to be admissible in this proceeding.

The Council should deny BNE’s motion because Dr. Bronzaft’s testimony is both reliable and directly relates to issues that the Council has determined are relevant to the petition. Further, the Council already has denied a nearly identical motion by BNE relating to the proceedings in Petition 980.

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

1. On March 15, 2011, Dr. Bronzaft submitted pre-filed testimony in this matter and in Petition No. 983. In her testimony, Dr. Bronzaft opined on the potential

negative impacts of the noise caused by BNE's proposed wind turbines on the residents living nearby. Dr. Bronzaft concluded that, based on her expertise and the noise reports in this case, the proposed wind turbines would negatively impact the health and wellbeing of those residents. Dr. Bronzaft further explained for the Council more generally the negative health impacts caused by excessive noise.

2. On March 18, 2011, the Council issued the evidentiary hearing procedures for Petitions Nos. 983 and 984. In that document, the Council indicated that the topics relevant to its consideration of BNE's petitions would include a category related to "Public Health and Safety." That category further contains four subcategories, one of which is "Noise."
3. On April 19, 2011, BNE filed its motion to strike Dr. Bronzaft's testimony from the record. In its motion, BNE argues that the only information relevant to the Council is evidence regarding whether the proposed project complies with DEP air and water quality standards. Because Dr. Bronzaft offers no opinion on those matters, BNE reasons, her testimony should be stricken.
4. BNE's motion further argues that Dr. Bronzaft's expert opinions should be stricken because they are not site-specific and are not supported by adequately reliable methodology in that Dr. Bronzaft references material that has not been peer reviewed and constitutes hearsay.
5. BNE's arguments are without merit.
6. First, as noted above, the Council's own procedural memorandum with respect to the evidentiary hearing on Petition No. 984 indicates that testimony related to

public health and safety, particularly with respect to noise, is relevant for purposes of the Council's decision. Accordingly, BNE's claim that such testimony is not relevant because it is on a subject other than whether BNE meets air and water quality standards is unavailing.

7. Second, BNE's argument that because Dr. Bronzaft's testimony must be stricken because is not site-specific also is unconvincing. Again, the Council's pre-hearing procedural memorandum expressly indicates that its consideration of BNE's petition will involve an assessment of the public health impacts of the noise produced by BNE's turbines. Dr. Bronzaft's testimony, relying in part on the site-specific data obtained by Michael Bahtiarian, provides evidence that can assist the Council in determining whether the noise produced by BNE's wind turbines will cause adverse health effects in nearby residents such that the petition should be denied. See DiPietro v. Farmington Sports Arena, LLC, 123 Conn. App. 583, 613 (2010) ("The general standard for admissibility of expert testimony in Connecticut is simply that the expert must demonstrate a special skill or knowledge . . . that, as properly applied, would be helpful to the determination of an ultimate issue."). Once the threshold question of usefulness to the jury has been satisfied, any questions regarding the expert's qualifications properly go to the weight, and not to the admissibility, of his testimony.").
8. Additionally, Dr. Bronzaft's testimony provides the needed context for Mr. Bahtiarian's more technical testimony on noise, thereby allowing the Council to consider the effects of the site-specific noise data provided by Mr. Bahtiarian.

It is clear, therefore, that although Dr. Bronzaft has not performed any site-specific studies herself, her testimony is probative of the issues determined by the Council to be relevant, and BNE's motion should be denied.

9. Finally, BNE argues that because Dr. Bronzaft's expert opinion does not rely upon peer-reviewed studies and does rely on hearsay statements, it necessarily should be stricken as insufficiently reliable. Contrary to BNE's contentions, Dr. Bronzaft's testimony utilizes reliable methodology and facts so as to be admissible in this administrative proceeding. See Conn. Gen. Stat. § 4-178 (any relevant oral or documentary evidence is admissible in contested administrative hearing). The Council is capable of assigning due weight to the evidence presented by Dr. Bronzaft, and accordingly, there is no need to strike her pre-filed testimony.
10. Lastly, the Grouped Parties note that BNE filed an essentially identical motion to strike Dr. Bronzaft's testimony in Petition Nos. 980 and 983. For the same reasons the Council denied BNE's motions then, it should deny BNE's motion again. BNE will have the opportunity to cross-examine Dr. Bronzaft regarding her opinions, and the Council is entitled to consider that testimony to the degree that it sees fit.

WHEREFORE, for the foregoing reasons, the Grouped Parties object to BNE's motion to strike Dr. Bronzaft's pre-filed testimony.

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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 22nd day of April, 2011:

Carrie L. Larson
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Thomas D. McKeon
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