

**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 29, 2011

MOTION TO COMPEL PRODUCTION AND 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 produce certain documents that it has represented to the Council and to the parties were filed under seal in response to interrogatories issued by the Grouped Parties. Specifically, the Grouped Parties request that the Council order BNE to produce the Mechanical Loads Assessments (“MLAs”) performed by GE regarding the proposed project. Moreover, the Grouped Parties move to strike all testimony regarding the results of the MLAs from the record, because the MLAs have not been filed with the Council, thereby preventing both the Council and the parties from cross examining BNE’s witnesses on the contents of the MLAs.

1. FairwindCT, Inc. (“FairwindCT”) issued its first set of interrogatories to BNE on February 18, 2011.
2. In those interrogatories, FairwindCT asked BNE to “provide a copy of any Mechanical Loads Assessment conducted by GE regarding this project.” (Question 3.)
3. On March 25, 2011, BNE responded: “A copy of the MLA will be filed separately pursuant to a motion for protective order and under seal.” (Answer 3.)

4. FairwindCT issued its second set of interrogatories to BNE on March 8, 2011.
5. In those interrogatories, FairwindCT referred to testimony in related Petition No. 980 that indicated GE may have performed more than one MLA for that site. FairwindCT therefore asked BNE to “provide a copy of any MLA conducted by GE with respect to this site.” (Question 24.)
6. On March 25, 2011, BNE objected on relevance grounds, but responded: “a copy of the MLA performed for the proposed turbine locations will be filed separately pursuant to a motion for protective order and under seal.” (Answer 24.)
7. FairwindCT issued its third set of interrogatories to BNE on April 12, 2011.
8. In those interrogatories, FairwindCT asked BNE: “How many Mechanical Loads Assessments were conducted for this site? Please provide copies of all Mechanical Loads Assessment conducted for this site.” (Question 3.)
9. On April 25, 2011, BNE responded: “Two MLAs were performed for the Colebrook North site. One MLA was conducted for the original layout as proposed in the petition. That MLA is already on file under seal with the Siting Council. When BNE proposed to re-locate turbine #1, a second MLA was performed. That MLA is also being filed separately and under seal pursuant to the protective order in place in this petition.” (Answer 3.)
10. On April 26, 2011, at approximately 5:30 p.m., the Council granted BNE’s motion for protective order in this matter. That order was not signed by Chairman Stein until April 28, 2011. The sealed materials were therefore first available for review by the parties on April 28, 2011.

11. On April 28, 2011, counsel for the Grouped Parties visited the Council's office to review the sealed materials. As detailed in the attached affidavit, neither of the two MLAs is in the sealed file for this docket.
12. BNE's representations in its interrogatories that it has filed the MLAs are therefore false.
13. During the April 28, 2011 evidentiary hearing, Paul Corey repeatedly represented that both MLAs had been filed under seal with the Council. That testimony is also false.
14. The Grouped Parties therefore ask the Council to order the immediate production of the MLAs, given the scheduled close of this hearing on May 5, 2011.
15. Mr. Corey repeatedly testified during the April 28 hearing that the proposed project "passed" both MLAs. Since the MLAs have not been filed with the Council, neither the Council nor the parties and intervenors had the opportunity to cross examine Mr. Corey regarding his statements. Therefore, all of Mr. Corey's testimony regarding the results of the MLAs should be stricken from the record.
16. Moreover, the Grouped Parties note that if BNE is not ordered to produce these materials until May 5, 2011, no party will have an opportunity to review the materials prior to the final hearing in this matter. All parties opposing the petition will therefore be prejudiced if the testimony regarding the results of the MLAs is not stricken from the record.

WHEREFORE, the Grouped Parties ask that the Council issue an order compelling BNE to immediately produce the MLAs. The Grouped Parties further ask that all testimony regarding

the results of the MLAs be stricken from the record because neither the Council, the parties nor the intervenors have had the opportunity to cross examine BNE's witnesses regarding the MLAs.

By:



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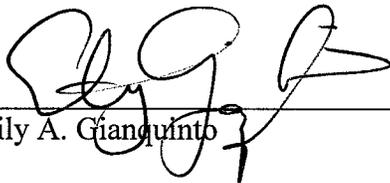
April 29, 2011

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 28, 2011, I visited the offices of the Council in order to view the material filed under seal by BNE in Petition No. 984.
5. In interrogatory responses and testimony during the April 28, 2011 evidentiary hearing in this matter, BNE repeatedly represented that two Mechanical Loads Assessments for the proposed project were filed with the Council under seal.
6. The sealed file does not include any Mechanical Loads Assessment for the proposed project.

7. Council staff searched for the Mechanical Loads Assessments and, to my knowledge, were unable to locate them.



Emily A. Gianquinto

Subscribed and sworn to before
me this 29th 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 29th 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



Emily A. Gianquinto