

**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

May 2, 2011

MOTION TO COMPEL INTERROGATORY RESPONSES

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

1. FairwindCT, Inc. (“FairwindCT”) issued its third set of interrogatories to BNE on April 12, 2011.
2. In those interrogatories, FairwindCT asked the following questions:
 - Q15. In response to Question 22 of FairwindCT’s First Set of Interrogatories, you stated “[p]re-construction field surveys will be completed during November 2011.” When will the results of these field surveys be reported in final form? Will those results be made public?

- Q20. In response to Question 41 of FairwindCT's First Set of Interrogatories, you again directed FairwindCT to review a response to one of the Council's interrogatories. That interrogatory did not ask you to provide the number of days of wind data collected at the Colebrook North site. Please provide the number of days of wind data that you have collected at the Colebrook North site, using the sodar unit or by other means.
- Q21. Please provide copies of all data collected from the sodar unit located on the Colebrook North property.
- Q22. In response to Question 46 in FairwindCT's First Set of Interrogatories, you referred to a 13.4-month period of wind data collection and did not provide the information by days, as requested. Please provide the number of days on which wind speeds were lower than 3.5 m/s for the period 1/1/09 through 12/31/09 and 1/1/10 through 12/31/10, for the wind data collected and used in your Colebrook North petition.
- Q23. Please provide the number of hours on which wind speeds were lower than 3.5 m/s for the period 1/1/09 through 12/31/09 and 1/1/10 through 12/31/10, for the wind data collected and used in your Colebrook North petition.
- Q24. Of the days on which you have collected wind data by sodar unit or other means at the Colebrook North site, how many days had wind speeds lower than 3.5 m/s? How many days had wind speeds higher than 25 m/s?

- Q25. Of the hours in which you have collected wind data by sodar unit or other means at the Colebrook North site, for how many day hours were wind speeds lower than 3.5 m/s? How many hours had wind speeds higher than 25 m/s?
- Q26. Question 46 of FairwindCT's First Set of Interrogatories asked for a definition of "fall zone requirements." Your lengthy response to that interrogatory did not answer the question. Again, please define the phrase "fall zone requirements."
- Q27. Please provide a list of all property lines, residences and related structures, roads, driveways, located within 898 feet of each proposed turbine location, including both the original and the "alternative" proposed locations for Turbine 1.
- Q35. In response to Question 35 of FairwindCT's Second Set of Interrogatories, you stated "To our knowledge only three broadwinged hawks have been documented as fatalities at 76 operating wind facilities in the US (WEST unpublished data)." Please provide copies of that unpublished data. If you refuse to do so, please provide the names, locations, turbine type and size and time of year for the wind facilities at which those three broadwinged hawks died.

- Q53. In response to Question 57 of FairwindCT's Second Set of Interrogatories, BNE lists the Cape Vincent Wind Project in New York as a site that used a similar acoustic monitoring protocol during the pre-construction site assessment. Please provide details of the sampling protocol at that site, including the timing of the survey, the sampling height of acoustic monitors, and the total sampling effort (in detector-nights).
- Q54. In response to Questions 58, 59 and 60 of FairwindCT's Second Set of Interrogatories, you objected on the basis that this project need not comply with the pre-construction monitoring guidelines in place in Pennsylvania, New York and New Jersey. Please confirm that you did not consult out-of-state pre-construction monitoring guidelines, despite the absence of such guidelines in Connecticut.
- Q55. Given that BNE claims that the data analysis approach used at the CWRA is similar to other monitoring projects conducted at wind development sites, please provide a citation for any acoustic monitoring project in the eastern United States that was not conducted by WEST and that uses the MF acoustic group.

- Q59. In response to Question 79 in FairwindCT's Second Set of Interrogatories, which asked you to justify why no bat activity monitoring was conducted at the Colebrook North site given the presence of a perennial flowing water system and large diameter hardwood trees that are not present at the Colebrook South site, you confirmed that no such monitoring was done in 2010 and again referred to the monitoring that will be done at a later date. Please provide a response to the question by explaining why you did not conduct monitoring at the Colebrook North site in 2010.
- Q61. If you are still seeking approval for the site plans, stormwater management plan and erosion and sediment control plan included in Exhibits F, G and H to the petition, please respond to Questions 91-99, 100-101, 103-106, 108-111, 117-120, 122, 124-129, 131-134, 136-139 and 141 of FairwindCT's Second Set of Interrogatories based on the site plans in Exhibit F.
- Q63. Does your response to Question 86 of FairwindCT's Second Set of Interrogatories refer to the original site plans or the revised site plans? Please provide a response for both the original site plans and the revised site plans.
- Q64. Does your response to Question 89 of FairwindCT's Second Set of Interrogatories refer to the original site plans or the revised site plans? Please provide a response for both the original site plans and the revised site plans.

- Q65. Does your response to Question 98 of FairwindCT's Second Set of Interrogatories refer to the original site plans or the revised site plans? Please provide a response for both the original site plans and the revised site plans.
- Q66. Does your response to Question 107 of FairwindCT's Second Set of Interrogatories refer to the original site plans or the revised site plans? Please provide a response for both the original site plans and the revised site plans.
- Q67. Does your response to Question 119 of FairwindCT's Second Set of Interrogatories refer to the original site plans or the revised site plans? Please provide a response for both the original site plans and the revised site plans.
- Q68. Does your response to Question 131 of FairwindCT's Second Set of Interrogatories refer to the original site plans or the revised site plans? Please provide a response for both the original site plans and the revised site plans.
- Q69. Does your response to Question 132 of FairwindCT's Second Set of Interrogatories refer to the original site plans or the revised site plans? Please provide a response for both the original site plans and the revised site plans.
- Q70. In response to Question 13 of the Council's Pre-Hearing Interrogatories, Set One, you stated that "BNE is following GE's recommended setbacks

for wind turbines adjacent to uninhabited land to ensure that the rotor blades are entirely on BNE property.” Does GE have different recommended setbacks for wind turbines adjacent to uninhabited property than it does for inhabited property? If so, please explain how the recommendations differ and how GE defines “uninhabited” and “inhabited.”

Q71. Please provide GE’s recommended setbacks for uninhabited land discussed in the preceding question and referenced in your response to the Council’s interrogatories.

Q72. Question 25 in the Council’s Pre-Hearing Interrogatories, Set One, asked you the “approximate distance that parts of the blades could be thrown from a turbine” and asked you to provide calculations regarding that distance. You did not provide that information in your lengthy response. Please do so.

Q74. In Question 5 of Mr. Tidhar's prefiled testimony, he refers to "bat fatality patterns" observed during post-construction monitoring projects "[a]t operating commercial wind-energy facilities located within the region within similar forest dominated landscapes (e.g., Noble Ellenberg NY, Noble Clinton NY, Maple Ridge NY, Lempster NH, Stetson Mountain ME and Mars Hill ME)." For each of those six listed facilities, please provide the type, height and number of the turbines located on the site and please provide the approximate dates of the post-construction monitoring studies referenced.

Q84. What is the reasonable area around the proposed tower, laydown and assembly areas that must be cleared and/or graded to allow for the construction activities (Sheet C-500)? Note that this question does not ask you to provide the entire cleared area on the site.

3. BNE's response to Question 15 is completely non-response to the question asked. BNE points to its response to interrogatory 13 which does not respond to the question about timing of pre-construction field surveys. The Grouped Parties are entitled to a response to the question asked.

4. BNE's responses to Questions 20-25 are also completely non-response to the questions asked. The Grouped Parties asked for specific data with regards to wind data collected at Colebrook North. BNE directing the Grouped Parties to sealed documents containing data that is essentially useless due to the restrictions of the protective order issued in this petition is not necessary when BNE could easily answer the question asked. BNE should be compelled to respond to the questions asked.
5. With regard to Question 26, which BNE claims has been "asked and answered", the Grouped Parties repeat its request that BNE answer the question that was asked. First, BNE's "asked and answered" objection is not a valid objection to an interrogatory question. Second, a response was provided to Question 46 of FairwindCT's First Set of Interrogatories but that response hardly answered the question asked. The Grouped Parties have yet to receive a response from BNE as to the simple request for the definition of a term used in its Petition, "fall zone requirements."
6. With regard to Question 27, which BNE claims has already been provided, the Grouped Parties disagree that the information requested has already been provided. Further, information that may be publicly available is not outside the scope of which BNE must provide to parties to this petition at their request. BNE should be compelled to answer this question.

7. With regard to Question 35, BNE has offered statistical data without pointing to a verifiable source. BNE responded to a previous interrogatory question with a statistic sourced by “West unpublished data” and now respond to the Grouped Parties’ request for a copy of such unpublished data claiming it is both irrelevant and publicly available. It is not clear how data can be both “unpublished” and “publicly available”, but in any event it is clearly within the reach of BNE if they used such data when formulating a response to the previous interrogatory question. The Grouped Parties simply ask BNE to share the source of this data which they have entered into the record.
8. With regard to Question 53, BNE has offered reference to data without pointing to a verifiable source. BNE responded to a previous interrogatory question with a comparison to another project without providing any source for their data. Whether publicly available or not, it is not the responsibility of the Grouped Parties to research what may or may not be the information that BNE is using to compare its protocol with others. The Grouped Parties simply ask BNE to share the source of this data which they have entered into the record.
9. With regard to Question 54, which BNE claims has been “asked and answered”, the Grouped Parties repeat its request that BNE answer the question that was asked. First, BNE’s “asked and answered” objection is not a valid objection to an interrogatory question. Further, BNE’s objection and response to Question 54 leads the Grouped Parties to believe that BNE does not understand the question. The Grouped Parties did not ask BNE whether BNE needs to comply with

guidelines from states outside of that which the proposed project is located, rather whether BNE consulted out-of-state preconstruction monitoring guidelines, despite the absence of such guidelines in Connecticut. The Grouped Parties are entitled to a response from BNE to the question as it was asked.

10. Again, in BNE's response to Question 55, BNE has offered reference to data without pointing to a verifiable source. If BNE is going to compare its work to that of other projects it needs to respond to this reasonable request by the Grouped Parties for sources to verify these comparisons.
11. BNE's response to Question 59 is completely non-response to the question asked. BNE points to its response to interrogatories 74 and 75 of FairwindCT's Second Set of Interrogatories which does not respond to the question. The Grouped Parties are entitled to a response to the question asked.
12. BNE's response to Questions 61 and 63-69 are non-response to the questions asked. BNE continues to fail to indicate whether it is seeking approval of the original site plans or the revised site plans. The Grouped Parties have asked for BNE to respond to various questions with response based both on the original site plans and the revised site plans. Until BNE indicates which set of plans it is seeking approval of, the Grouped Parties are entitled to a response to the questions asked and, further, entitled to response based on both sets of plans.

13. BNE's response to Questions 70 and 71 are non-response to the questions asked. BNE directing the Grouped Parties to sealed documents is not necessary when BNE could easily answer the question asked. Further, the sealed documents in this petition do not contain the information requested by the Grouped Parties in these interrogatories. The Grouped Parties are entitled to a response to the questions asked.
14. BNE's response to Question 72 is non-responsive to the question asked. The Grouped Parties are entitled to a response to the question asked.
15. With regard to Question 74, BNE's response that the requested information is publicly available is not a valid objection. BNE should be compelled to answer this question.
16. BNE's response to Question 84 is non-responsive to the question asked. The Grouped Parties are entitled to a response to the question asked.

WHEREFORE, the Grouped Parties ask that the Council issue an order compelling BNE to respond to Questions 15, 20-27, 35, 53-55, 59, 61, 63-72, 74 and 84 of FairwindCT's third set of interrogatories to BNE. 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.

By:



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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 April 12, 2011;

Whereas, the interrogatories request information relevant to this proceeding;

IT IS HEREBY ORDERED that BNE respond to Questions 15, 20-27, 35, 53-55, 59,
61, 63-72, 74 and 84 of FairwindCT’s third set of interrogatories to BNE. **IT IS HEREBY
FURTHER ORDERED** that BNE supply its answers to these interrogatories within two
business days of the date of this Order.

SO ORDERED:

CONNECTICUT SITING COUNCIL

By: _____
Robert Stein, Chair

Date: _____

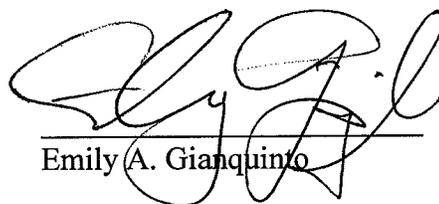
CERTIFICATION

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 2nd day of May, 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



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