

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7867

Application of Seneca Mountain Wind, LLC, for)
authority, pursuant to 30 V.S.A. §§ 246 and 248, to)
install four temporary meteorological stations, two)
in the Town of Brighton, Vermont, and one each in)
the towns of Ferdinand and Newark, Vermont)

Order entered: 10/16/2012

ORDER RE: MOTION TO INTERVENE

In this Order, I address a motion to intervene filed by Ramon and Etta Mathieu (the "Mathieus").

On September 25, 2012,¹ the Mathieus filed a motion to intervene. The Mathieus assert that they will be impacted by the outcome of this proceeding because of their home's proximity to one of the proposed meteorological towers ("MET towers"). The Mathieus state that their home could be as close as 2/10 of a mile from the MET tower site and that the tower would impact their views as well as wildlife on their land.²

On October 15, 2012, Seneca Mountain Wind, LLC ("SMW") filed comments in opposition to the Mathieus' intervention request. SMW states that, based on the abutters map on file with the Public Service Board ("Board") and a Google Earth analysis, it appears that the Mathieus' property is 1.35 miles from the proposed Hawk Rock MET tower, not the 2/10 of a mile alleged by the Mathieus.³ SMW contends that the Mathieus have not identified a substantial interest that will be affected by the outcome of the proceeding, and have instead raised only generalized concerns.⁴ SMW also asserts that the Mathieus have not raised any significant issues not already considered by the Board and therefore have not provided any basis

1. The Board received the Mathieus' motion on September 25, 2012. However, the Mathieus failed to provide copies to the other parties on the service list as required by PSB Rule 2.204.

2. Mathieus Motion at 1. Based on a review of the case file, it appears the Mathieus' property adjoins lands leased for the Hawk Rock MET tower.

3. SMW Opposition at 1.

4. SMW Opposition at 1–2.

for expanding the scope of the issues to be considered at the technical hearing.⁵ Lastly, SMW states that the generalized interests identified by the Mathieus are adequately represented by existing parties, including the Vermont Department of Public Service, the Vermont Agency of Natural Resources and the Town of Newark.

I am denying the Mathieus' motion to intervene because it was both filed and served in an untimely manner without justifiable explanation. Comments and motions to intervene from newly-identified adjoining landowners were due on or before September 24, 2012.⁶ The motion was received by the Board on September 25, 2012. However, more troubling, the Mathieus did not serve other parties to the proceeding until well after being notified by the Clerk of the Board that service on other parties was a requirement in order for the Mathieus' motion to be considered. SMW asserts that it did not receive the Mathieus' motion until October 9, 2012, some fifteen days after the motion should have been filed and served.⁷

Board Rule 2.204(A) requires that, "every filing shall, on the same day on which it is filed, be served by the party filing the same upon every other party who has filed a notice of appearance, unless the Board for good cause otherwise directs." Board Rule 2.204(C) provides that, when a party files something with the Board, "[s]uch filing shall constitute a representation by the attorney or pro se representative signing the same that a copy thereof has been or will be served on the same day on which it is filed upon every other party on whose behalf a notice of appearance has been filed." Lastly, Board Rule 2.201(B) requires pro se representatives like the Mathieus to comply with "any applicable rule, law, practice, procedure or other requirement . . ." and they "shall be under all the obligations of an attorney admitted to practice in this state with respect to the matter in which such person appears."

While the Mathieus' motion was only a day late in being filed with the Board, it was approximately two weeks late in being served on other parties, violating the rules of practice cited above without any justifiable explanation. Board rules require me to consider whether a grant of permissive intervention will "unduly delay the proceeding or prejudice the interests of

5. SMW Opposition at 2.

6. Docket 7867, Order of 9/20/12 at 2.

7. SMW Opposition at 1.

existing parties or of the public."⁸ Given the large number of parties to this proceeding, it is imperative that all parties follow the Board's rules of practice. In past intervention orders the Board has expressly noted this requirement with respect to *pro se* parties, and placed particular emphasis on the need to serve other parties when filing something with the Board.⁹ Given the unjustified nature of the Mathieus' failure to serve the parties in a timely fashion and the extended delay in completing service after having to be notified of that requirement by the Clerk of the Board, I hereby deny the Mathieus' motion to intervene.

SO ORDERED.

Dated at Montpelier, Vermont, this 16th day of October, 2012.

s/Bridgette Remington
Bridgette Remington, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: October 16, 2012

Attest: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

8. PSB Rule 2.209(B)(3).

9. *Joint Petition of Green Mountain Power et al.*, Docket 7628, Order of 9/3/10 at 1–2.