

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: 10/5/2012

ORDER RE: MOTION FOR INTERLOCUTORY REVIEW

I. Introduction

In this Order the Vermont Public Service Board ("Board") denies a motion for interlocutory review of nine individuals (the "Motion")¹ seeking intervention in this proceeding, and affirms the Hearing Officer's Order of July 30, 2012.

II. Background

On July 23, 2012, the Arborio Group submitted its motion to intervene in this proceeding.

On July 30, 2012, the Hearing Officer issued an Order denying the Arborio Group's motion.

On October 1, 2012, the Arborio Group filed the Motion seeking interlocutory review of the Hearing Officer's decision regarding the Arborio Group's intervention.²

On October 1, 2012, the Department of Public Service ("DPS" or "Department"), filed comment's on the Motion.

1. The nine individuals are Pam and Joe Arborio, Joel Cope, John Zuppa, Howard Storm, Al and Cathy Kinney, Kathleen Nelson and Evie Kinney (collectively, the "Arborio Group").

2. The Motion took the form of a letter asking the "full Public Service Board to reconsider the Hearing Officer's" decision on the Arborio Group's intervention request. Letter from Pam Arborio to Susan M. Hudson, Clerk of the Board, dated September 22, 2012.

III. Discussion and Conclusion

In the July 30, 2012, Order denying the Arborio Group's intervention, the Hearing Officer concluded that:

While the Arborio Group's letter raises several concerns about the proposed project, the Arborio Group did not explain why their concerns raise a substantial interest which may be affected by the outcome of this proceeding. In addition, although the Arborio Group's letter states that "[w]e have no other means to protect our Homes and our Health against the proposed project . . .," the Arborio Group failed to explain why its concerns regarding the proposed project will not be adequately protected by other parties, such as the Department or ANR.³

Permissive intervention in Board proceedings is governed by PSB Rule 2.209(B) which provides:

Upon timely application, a person may, in the discretion of the Board, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Board shall consider (1) whether the applicant's interest will be adequately protected by other parties, (2) whether alternative means exist by which the applicant's interest can be protected, and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

In applying the substantial interest standard under PSB Rule 2.209(B), the Board will deny a motion to intervene where a movant has failed to demonstrate a "specific particularized interest" that may be affected by the outcome of a proceeding. Simply raising generalized concerns is not sufficient to support intervention.⁴

We agree with the Hearing Officer that the Arborio Group's comments failed to raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248. The Arborio Group expressed only generalized concerns regarding potential impacts from the proposed meteorological towers, and failed to explain how any such impacts concerned each of its members specifically. Additionally, given the generalized nature of the concerns expressed by the Arborio Group, absent a detailed explanation to the contrary, we must conclude that the

3. Docket 7867, Order of July 30, 2012, at 5.

4. See e.g., *Joint Petition of Green Mountain Power Corporation, et al.*, Docket 7628, Order of 9/3/10 at 3-4.

group's interests are adequately represented by other parties, such as the Department or the Agency of Natural Resources.

Our review of the Arborio Group's July 23, 2012, motion to intervene also leads us to conclude that the concerns described by the group are likely related not to the proposed meteorological towers, but to the potential impacts that might result if a commercial-scale wind generation facility were constructed.⁵ Concerns associated with commercial-scale wind generation facilities are not relevant to this Docket and as such do not demonstrate a substantial interest that may be affected by the outcome of this particular proceeding. The instant proceeding is limited to potential impacts from the proposed temporary meteorological towers, and, while the Board has not yet decided whether to approve the proposed towers, if they are eventually approved, it should not be considered an indication of how the Board will decide any potential future application for the construction of a commercial-scale wind generation facility in the area. Any such application would be subject to full scrutiny under 30 V.S.A. § 248. If and when any such application is filed, the Arborio Group will have the opportunity to file a motion to intervene in that proceeding.

For the foregoing reasons, the Hearing Officer's July 30, 2012, Order is affirmed, and the Arborio Group's Motion is denied.

This matter is returned to the Hearing Officer.

SO ORDERED.

5. For example, the Arborio Group refers to potential health impacts for individuals residing up to 2.5 miles away from "this type of Industrial Project," and states that safety of those nearby the towers is a matter of deep concern. Arborio Motion at 1. These potential concerns appear to be more properly associated with commercial-scale wind turbines, not temporary meteorological towers.

DATED at Montpelier, Vermont, this 5th day of October, 2012.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: October 5, 2012

ATTEST: s/Susan M. Hudson
 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 technical errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.