

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: 6/29/2012

PROCEDURAL ORDER RE:
MOTIONS FOR INTERVENTION AND SCHEDULE

Introduction

On April 12, 2012, Seneca Mountain Wind, LLC ("Seneca") filed an application with the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 246 and 248, to install four temporary meteorological stations ("MET towers"), two in the Town of Brighton, Vermont, and one each in the towns of Ferdinand and Newark, Vermont.

On April 18, 2012, after Seneca corrected an error with providing adjoining landowners adequate notice, the application was considered complete.¹ Pursuant to Section 246 and the Board's *Section 246 Standards Order*, comments and requests for hearings were accepted for 30 days from the date Seneca's application was considered complete.²

During the formal public comment period, which ended on May 18, 2012, the Board received numerous comments expressing concerns regarding the application and requesting that

1. See *Memorandum Re: Updated Adjoining Landowners List*, issued by the Clerk of the Board on 5/7/12 (finding Seneca's application complete as of April 18, 2012); letter of April 30, 2012, from Andrew N. Raubvogel, Esq., on behalf of Seneca, to Susan Hudson, Clerk of the Board (confirming that Ken and Joan Gammell received notice of Seneca's application as of April 18, 2012); *Memorandum Re: Notice to Updated Adjoining Landowners List*, issued by the Clerk of the Board on 4/25/12 (requesting comments regarding notice); letter of April 19, 2012, from Andrew N. Raubvogel, Esq., on behalf of Seneca, to Susan Hudson, Clerk of the Board (updating the adjoining landowners map).

2. *Section 246 Standards Order* of 3/9/10 at 4; see also *Memorandum Re: Updated Adjoining Landowners List*, issued by the Clerk of the Board on 5/7/12 (stating that comments regarding Seneca's completed application were due 30 days from April 18, 2012, the date the application was considered complete).

the Board conduct a site visit, hold hearings, deny the application, and add several environmental-related conditions to any certificate of public good ("CPG") issued for the MET tower installations. In addition, during the formal public comment period, the Board received requests for intervention in this docket on behalf of the Town of Newark Planning Commission ("Newark Planning Commission" or "Planning Commission"), the Town of Newark Selectboard ("Newark Selectboard" or "Selectboard"), and Newark Neighbors United ("NNU").³

On May 17, 2012, the Vermont Agency of Natural Resources ("ANR") filed a letter requesting that the Board include several conditions in any CPG issued to Seneca, which addressed protecting significant food sources for black bear at the two proposed MET tower sites in Brighton, and protecting a significant food source for black bear and an historic peregrine falcon nesting site at the proposed Hawk Rock MET tower site in Newark.

On May 21, 2012, Seneca filed a letter expressing its intention to provide responses to public comments filed with the Board by June 4, 2012.⁴ On June 1, 2012, based on a request submitted by the Newark Planning Commission, the Clerk of the Board issued a memorandum requesting that comments regarding Seneca's June 4 filing be submitted to the Board by June 12, 2012.

On June 4, 2012, Seneca filed responses to the public comments on its application and to the motions to intervene filed by NNU, the Newark Selectboard, and the Newark Planning Commission.

On June 4, 2012, Michael Boylen filed a letter notifying the Board that he had filed a complaint with ANR alleging that Seneca had commenced site preparation activities for the MET tower installation on Hawk Rock in Newark.

On June 4, 2012, Dr. Gerhardt filed a letter with the Board asserting that "despite owning property that abuts the properties being leased for the [MET stations]" he had not received notice of Seneca's application. Dr. Gerhardt's June 4 filing also included substantive comments

3. See letter of May 18, 2012, from the Newark Planning Commission, to Susan Hudson, Clerk of the Board; letter of May 16, 2012, from the Newark Selectboard, to Susan Hudson, Clerk of the Board; letter of May 16, 2012, from Benjamin Bangs and Noreen Hession, on behalf of NNU, to Susan Hudson, Clerk of the Board.

4. See letter of May 30, 2012, from Andrew N. Raubvogel, Esq., on behalf of Seneca, to Susan Hudson, Clerk of the Board.

regarding Seneca's application, a request for intervention in this docket, and requests for a site visit and public hearing.

On June 5, 2012, the Clerk of the Board issued a memorandum requesting that comments regarding Mr. Boylen's and Dr. Gerhardt's filings be submitted to the Board by June 12, 2012.

On June 12, 2012, Seneca filed a letter with responses to Mr. Boylen's and Dr. Gerhardt's filings.

On June 12, 2012, the Vermont Department of Public Service ("Department") filed a letter stating that it did not believe that Seneca's application raised a significant issue regarding one or more of the relevant Section 248 criteria. The Department's letter, however, also requested that Seneca make an affirmative statement in this proceeding regarding whether it would abandon a future wind generation project if faced with negative votes in the proposed host towns.

On June 12, 2012, the Newark Selectboard filed a response to Seneca's June 4 filing and reiterated its requests for intervention, a site visit, and a public hearing.

On June 12, 2012, the Newark Planning Commission filed a response to Seneca's June 4 filing, requesting that the Board deny Seneca's request for a CPG and reiterating its request for a site visit and public hearing.⁵ Further, based on Dr. Gerhardt's June 4 assertion regarding notice, the Planning Commission requested that Seneca be required to "engage an independent third party to verify that all adjoiners in Newark, Brighton, and Ferdinand have been identified" On the same day, the Planning Commission also filed a letter requesting that the Board postpone taking up the question of site visits and hearings until after ANR "completes its investigation and issues a ruling" regarding Mr. Boylen's complaint and until after the Northeastern Vermont Development Association ("NVDA") holds its June meeting because the Planning Commission

5. The letter also contained a list of requests, some of which are considered throughout this Order and others that are either not germane to this proceeding (such as votes regarding industrial scale wind projects) or are not within the Board's jurisdiction (such as allegations of trespass). Letter of June 12, 2012, from Kim Fried, on behalf of Newark Planning Commission, to Susan Hudson, Clerk of the Board.

represents that the NVDA plans to hold a vote on a resolution to support suspending new construction of industrial wind projects in the Northeast Kingdom for a period of years.⁶

On June 12, 2012, NNU also filed a response to Seneca's June 4 filing and asserted that NNU was "aware of specific abutters who did not receive notice either of the 30-day pre-application notice or of the application itself."⁷

On June 14, 2012, ANR filed a letter responding to Mr. Boylen's filing and requested that a revised list of conditions regarding wildlife habitat be included in any CPG issued in this docket, based on the agreement reached between ANR and Seneca after ANR's May 17 filing.

On June 15, 2012, Seneca filed a letter stating that it "will seriously consider not proceeding with a project if the host communities ultimately vote against the project, but it would be extremely premature to require such a vote prior to construction of MET towers, when there is no specific project proposal on the table." In addition, Seneca's letter asserts that it properly noticed all landowners whose properties abut the tract of land upon which each MET tower is proposed to be located.

On June 18, 2012, Dr. Gerhardt filed a letter retracting the assertion that his property abuts the property upon which the Hawk Rock MET tower is proposed to be located.⁸ The letter also renewed Dr. Gerhardt's request to intervene in this docket.

On June 20, 2012, the Department filed a letter stating that it was not recommending that the "approval of the MET Towers, or any future wind power project, be made contingent upon a town-wide vote, since such a condition is not required by law." The Department's letter also stated that "when a developer chooses to make suggestions to that effect, clarity is crucial, which is why the Department requested a more formal statement regarding Seneca's position."

6. Even if ANR's and NVDA's internal processes were germane to the Board's review of Seneca's application, the statutory deadline for the issuance of a PFD in this proceeding would not accommodate such an indefinite delay.

7. I note here that NNU did not provide the names of, or any evidence regarding, the "specific abutters" mentioned in its letter.

8. Given Dr. Gerhardt's retraction and the lack of any other detailed evidence regarding notice, it appears the matter of notice has been resolved.

Today's Order addresses the motions for intervention received in this docket, the allegations regarding pre-CPG site work, the requests for evidentiary hearings, site visits, a balloon demonstration, and a public hearing, and sets a schedule for the remainder of this docket.

Motions to Intervene

In this Order, I will address motions to intervene filed by the following persons and entities: the Newark Selectboard, the Newark Planning Commission, NNU, and Dr. Gerhardt. I note that all of the moving parties are representing themselves. These *pro se* parties are reminded that, even though the Board makes accommodations to enable participation by non-attorneys, they are still required to adhere to all of the Board's Rules of Practice for appearing before the Board.⁹ This includes the requirement that all filings be served on all other parties to the proceeding. In addition, I encourage parties with similar interests to work together in the preparation of testimony and discovery, as well as the examination of witnesses.

Newark Selectboard and Planning Commission

The Newark Selectboard filed a motion to intervene on May 16, 2012. The Selectboard represents that Newark is the host community for the proposed Hawk Rock MET tower. The Selectboard notes its support for the Planning Commission, but seeks intervention in its own right, noting that "to the extent the Commission's views may not be supported by all our citizens, we respect their right to be heard on this issue as well."

The Newark Planning Commission filed a motion to intervene on May 18, 2012. The Planning Commission represents that it is an "affected body" given that Newark will be the location of the proposed Hawk Rock MET tower. The Planning Commission states that while it is concerned about the Project in its entirety, it will focus its comments primarily on resources located in, or directly impacting, Newark. The Planning Commission expresses its concerns about the proposed project's impacts on aesthetics, the local economy, natural resources, wildlife, and conservation lands in Newark, and about the potential for impacts in surrounding communities. The Planning Commission's motion specifically contends that the proposed MET

9. See Board Rule 2.201(B) governing *pro se* representation, available at www.state.vt.us/psb/rules/rules.stm.

towers do not conform with the Newark Town Plan and do not meet the following criteria: Orderly Development of the Region (30 V.S.A. § 248(b)(1)); Economic Benefit to the State and its Residents (30 V.S.A. § 248(b)(4)); and Aesthetics, Historic Sites, the Natural Environment and Public Health and Safety (30 V.S.A. §248(b)(5)).

Seneca filed a response to the motions of the Newark Selectboard and Planning Commission on June 4, 2012. Seneca asserts that the interventions should be denied because the Newark Selectboard and Planning Commission did not provide the requisite information required by Board Rule 2.209 and past Board precedent with respect to requests for intervention. In addition, Seneca noted that, in the past, the Board required municipalities to intervene as a single entity rather than through two separate municipal bodies.

On June 12, 2012, the Newark Selectboard filed a response to Seneca's assertion that the Selectboard's motion should be denied. The Selectboard's response states that:

[w]hile the Newark Selectboard is in support of the positions of our Planning Commission, we also are charged with representing the interests of all citizens within the Town. Because we are absent of a vote by our total citizen population in this matter, it remains conceivable that the views of the Planning Commission and the Selectboard could change in the future.¹⁰

As to Seneca's assertion that the Selectboard did not provide the requisite information required by Board Rule 2.209, the Selectboard states that they are a "small town with limited resources" and that they assume that the Board's rules were put in place to protect them, whether they "know the technicalities of the law or not."¹¹

The Planning Commission filed a response to Seneca's June 4 filing, but did not specifically discuss its motion to intervene.

While Section 246 provides that notice of the proceeding must be provided to "the legislative bodies and municipal and regional planning commissions in the communities where the project will be located," it does not confer automatic party status on these local and regional

10. Letter of June 12, 2012, from the Newark Selectboard, to Susan Hudson, Clerk of the Board.

11. The Selectboard's filing alluded to Seneca's failure to provide timely notice to adjoining landowners, without specifying which landowners, and noted that based on Seneca's failure to provide timely notice, the Selectboard was concerned about the accuracy and validity of Seneca's application. These issues are not germane to the motion to intervene and do not provide enough information to raise a significant issue under a specific criteria.

governmental bodies. Nonetheless, while the motions to intervene for the Newark Selectboard and Planning Commission may not have been as artfully drafted as they could have been with regard to the requirements of Board Rule 2.209, as the respective municipal legislative body and municipal planning commission each has demonstrated that the Town of Newark has a substantial interest which may be affected by the outcome of the proceeding and will not be adequately represented by other parties to this docket. Therefore, I grant the Town of Newark permissive intervention, pursuant to Board Rule 2.209(B), limited to the interests identified in the motions of the Selectboard and the Planning Commission. In turn, I deny the Selectboard's and Planning Commission's individual motions for intervention and direct the Town of Newark to designate an entity or person to represent its interests in this docket.¹² The Town of Newark must submit a determination regarding its representative by July 23, 2012. The designated representative shall be charged with serving discovery on Seneca, presenting evidence and testimony, examining witnesses at the evidentiary hearing in this proceeding, and submitting briefs after the evidentiary hearing.

Newark Neighbors United

NNU filed a motion to intervene on May 16, 2012. NNU's motion to intervene was accompanied by a petition, signed by 306 individuals, stating that "the people of Newark, oppose the proposal by [Seneca] to place a MET tower on Hawk Rock in Newark."¹³ NNU states that it is a "group composed of citizens from Newark and surrounding towns, including Brighton and Ferdinand."¹⁴ NNU represents that it will focus on the immediate concerns of Newark residents

12. See Docket 6860, Order of 10/17/03 at 7 (denying the intervention requests of two planning commissions and requiring that the planning commissions participate through the towns' municipal legislative bodies and also noting that the municipal legislative bodies could designate the planning commissions to participate in the docket as the representatives of the legislative bodies); Docket 7032, Order of 3/8/05 at 4 (finding that the interests of a town's selectboard and planning commission are not distinct and determining that because the planning commission is a "creature of the municipality," the selectboard is the proper entity to participate in a docket and also noting that the selectboard may designate the planning commission as its representative).

13. Letter of May 16, from Benjamin Bangs and Noreen Hession, on behalf of NNU, to Susan Hudson, Clerk of the Board, at Attached Petition. NNU indicated that over half of the registered voters on Newark's active list of voters had signed the petition. *Id.*

14. Letter of May 16, 2012, from Benjamin Bangs and Noreen Hession, on behalf of NNU, to Susan Hudson, Clerk of the Board. NNU's filing represents that Benjamin Bangs and Noreen Hession are its Co-Chairs.

and property owners, specifically with regard to the proposed tower on Hawk Rock in Newark. NNU expresses its concerns about the proposed project's impacts on aesthetics, public investments, the natural environment, and public health and safety. NNU's motion specifically requests party status under the Aesthetics, Historic Sites, the Natural Environment and Public Health and Safety (30 V.S.A. §248(b)(5)) criterion.

Seneca filed a response to NNU's intervention motion on June 4, 2012. Seneca asserted that NNU's intervention should be denied because it did not provide the requisite information required by Board Rule 2.209 and past Board precedent with respect to requests for intervention.¹⁵

On June 12, 2012, NNU filed a response to Seneca's June 4 assertion that NNU's motion should be denied. NNU's June 12 filing states that its goal is to: "protect the health and well being of our citizens, preserve the environmental integrity of our beautiful ridge lines, and ensure the preservation of our unique town and the Northeast Kingdom."¹⁶ NNU's filing also asserts that its "interest, as a community of citizens, is not adequately represented by other parties," such as the Newark Selectboard and Planning Commission, and that its participation would not unduly delay the proceedings or prejudice the interest of existing parties or the public.

Given NNU's limited interests and unique focus, I grant NNU's motion on a permissive basis, pursuant to Board Rule 2.209(B), limited to the interests that it has identified in its motion and to the significant issues discussed below. NNU must submit a formal determination, by July 23, 2012, to the Board establishing its designated representative for the remainder of the docket. The designated representative shall be charged with serving discovery on Seneca, presenting evidence and testimony, examining witnesses at the evidentiary hearing in this proceeding, and submitting briefs after the evidentiary hearing.

15. Letter of June 4, 2012, from Andrew N. Raubvogel, Esq., on behalf of Seneca, to Susan Hudson, Clerk of the Board.

16. Letter of June 12, 2012, from Benjamin Bangs and Noreen Hession, on behalf of NNU, to Susan Hudson, Clerk of the Board.

Fritz Gerhardt

Dr. Gerhardt filed a motion to intervene on June 4, 2012, and renewed his request for intervention on June 18, 2012. Although Dr. Gerhardt's property does not abut the Hawk Rock property, his June 4 letter represents that he lives less than one mile from the proposed Hawk Rock MET tower.¹⁷ Dr. Gerhardt's letters raise numerous concerns regarding the proposed Project, which include concerns under each of the substantive subcriteria of Section 248 considered under the Section 246 process.

Seneca opposes Dr. Gerhardt's request for intervention because he is not an adjoining landowner, fails to demonstrate any particularized interest with regard to the criteria on which he seeks intervention, and fails to explain why his interests are not adequately protected by other parties.

The question of whether an individual landowner has the right to intervene in a Section 246 proceeding is not limited to whether that landowner abuts the site of the proposed project. Instead the relevant question is whether the applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding."¹⁸ However, while Dr. Gerhardt's letters raise many concerns, Dr. Gerhardt never explained whether why his proximity to the proposed Hawk Rock MET tower installation raises a substantial interest which may be affected by the outcome of the proceeding and never explained whether his general concerns regarding the project will be adequately protected by other parties, such as the Department or ANR. Therefore, I deny Dr. Gerhardt's request to intervene because his requests lack sufficient information upon which to grant intervention.¹⁹ Dr. Gerhardt may refile his motion to intervene. If he chooses to

17. Letter of June 14, 2012, from Fritz Gerhardt, Ph.D., to Susan Hudson, Clerk of the Board (requesting intervention "due to the close proximity of our house and property to the site of the proposed [MET tower] on Hawk Rock"); letter of June 4, 2012, from Fritz Gerhardt, Ph.D., to Susan Hudson, Clerk of the Board (requesting intervention "because we live less than one mile from the proposed Hawk Rock meteorological station and because our property abuts one of the properties being leased . . .").

18. Board Rule 2.209(B) provides that in exercising its discretion to permit interventions 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.

19. I also note here that Dr. Gerhardt's June 4 motion to intervene was received after the May 18 deadline for public comments.

do so, he must explain why the concerns he has raised constitute a substantial interest(s) of his and why his substantial interest(s) cannot be adequately protected by other parties.²⁰

Pre-CPG Site Preparation

On June 4, 2012, Michael Boylen notified the Board that he had filed a complaint with ANR alleging that Seneca had commenced site preparation activities for the MET tower installation on Hawk Rock in Newark.

On June 12, 2012, Seneca filed a letter with responses to Mr. Boylen's filing. Seneca's letter represents that Seneca leased land from Hawk Rock Holdings ("HRH"), and that the land is subject to a Forest Management Plan and is part of the Vermont Current Use Program. Seneca's letter and accompanying affidavits represent that Seneca had not conducted any site work activities in preparation for the proposed Hawk Rock MET tower installation. In addition, Seneca's letter indicates that, as part of HRH's routine forest management work, HRH had conducted, and is currently conducting, work on the Hawk Rock land (including tree clearing, thinning, trail maintenance, and road work), but that such "work has nothing to do with [Seneca], and is not being done at [Seneca's] direction or on its behalf."

On June 12, 2012, the Newark Selectboard and Planning Commission each filed letters requesting that the Board consider the findings regarding Mr. Boylen's complaint with ANR in this proceeding.

On June 14, 2012, ANR filed a letter, which referenced Mr. Boylen's complaint, and stated that it was investigating a complaint "concerning road building activities in the vicinity of one or more of the MET tower sites," but that it was unclear whether any violations had occurred.

An application filed under 30 V.S.A. §§ 246 and 248 does not terminate the ability of the applicant to conduct otherwise lawful activities on its land, provided that these activities do not impact the testimony and exhibits submitted with the application, prior to the issuance of a CPG by the Board. Therefore, the fact that Seneca has submitted an application to construct a MET

20. The *Citizens' Guide to the Public Service Board's Section 248 Process*, available on-line at <http://psb.vermont.gov/statutesrulesandguidelines>, specifically addresses the standards used by the Board to evaluate intervention requests in Section 246 and 248 proceedings.

tower on a leased portion of HRH's Hawk Rock land does not prevent HRH from utilizing areas of its property for other purposes. The affidavit signed by the Land Manager for HRH includes the following statement: "I know where the MET tower is proposed to be located and that area has not been disturbed."²¹ However, Seneca did not make an affirmative statement that the work currently being undertaken by HRH on Hawk Rock will not impact the testimony and exhibits submitted to the Board in this docket.

In light of the submissions received to date and to ensure that Seneca's application adequately reflects the present site conditions on Hawk Rock, a site visit to Hawk Rock will be conducted by Board staff, as set forth in the schedule below.

Evidentiary Hearing, Site Visit, Balloon Demonstration, and Public Hearing

During the public comment period, the Board received numerous requests for evidentiary hearings, site visits and public hearings. In addition, almost all of the comments received by the Board during the public comment period, and, in response to Seneca's June 4 filing, raised concerns regarding the potential adverse impacts of the proposed project.

Evidentiary Hearing

The Board may determine to hear evidence on an issue if it concludes that the project raises a significant issue with respect to one or more of the substantive criteria of Section 248, listed in Section 3.3 of the Board's *Application for a CPG for Temporary Meteorological Stations, Pursuant to 30 V.S.A. §§ 246 and 248* ("MET Tower Application"), based upon its own review or upon comments filed with the Board. To raise a significant issue, a showing must provide specific information regarding potential impacts under the criteria and must go beyond general or speculative claims.²²

I conclude that comments submitted to the Board have shown that the pending application raises significant issues under 30 V.S.A. § 248(b)(5) with respect to the possibly

21. Letter of June 12, 2012, from Andrew N. Raubvogel, Esq., on behalf of Seneca, to Susan Hudson, Clerk of the Board, at Attachment B, ¶8.

22. Board's MET Tower Application.

adverse effect of: the Hawk Rock MET tower installation on black bear food sources and peregrine falcon habitat; the Hawk Rock MET tower installation on rare, threatened, or endangered species or natural communities; the Bull Mountain MET tower installation on black bear food sources; and the Brighton MET tower installation on black bear food sources. Accordingly, an evidentiary proceeding will be conducted on these discrete issues by Board staff, as set forth in the schedule below.

Site Visit

During the public comment period, the Board received numerous requests for a site visit and public hearing. Seneca maintains that a site visit is not necessary.²³ Given that the issues regarding the potential impacts of the two proposed Brighton MET tower installations are limited to the impact on seasonal black bear food sources,²⁴ I do not find that conducting a site visit at the Brighton MET tower site would be particularly helpful. Therefore, the evidentiary proceeding to resolve these limited issues for the Brighton sites will rely on the future filings and testimony of the parties. However, given that the Hawk Rock MET tower installation will include more than one acre of clearing and that the public comments raised significant issues regarding the presence of rare, threatened, or endangered species or natural communities in the area of the proposed Hawk Rock MET tower installation as well as significant issues regarding wildlife habitat, I find that a site visit to the Hawk Rock MET tower site could prove informative.

Balloon Demonstration

During the public comment period, the Board also received a letter from the Town of Brighton Selectboard ("Brighton Selectboard") requesting that Seneca be required to "hoist balloons" or use some other method that would show people where the MET towers would be

23. Letter of June 4, 2012, from Andrew N. Raubvogel, Esq., on behalf of Seneca, to Susan Hudson, Clerk of the Board.

24. See Seneca's MET Tower Application at Section 3.

located and the visual impact of the proposed towers.²⁵ In addition, the Board received a letter from the Brighton Planning Commission stating that it supported the position taken by the Brighton Selectboard in their May 4 filing.²⁶ In response, on May 16, 2012, Seneca and the Department filed letters stating that a balloon demonstration was not warranted given: the past presence of MET towers in the proposed project area; the limited visual impacts of temporary MET towers; and that the Board has approved several temporary MET towers without requiring a balloon demonstration.²⁷ I conclude that given the height, width, and the lacking of lighting and temporary nature of the proposed MET towers, no party raises a significant concern regarding the aesthetic impacts of the proposed towers which would warrant such a demonstration.²⁸ Therefore, the Board will not require that Seneca conduct a balloon demonstration as part of this proceeding.

Public Hearing

Finally, while Section 246 does not require that the Board hold public hearings regarding MET tower installations, and while the 30-day public comment period provides the public with a forum to raise issues regarding MET tower installations, in the interest of allowing the public to comment on the issues raised in this docket and learn more about the procedures related to the remainder of this docket, the Board will hold a public hearing in Newark on July 17, 2012, as adopted in the schedule below.

25. Letter of May 4, 2012, from the Brighton Selectboard, to Susan Hudson, Clerk of the Board; *see also Memorandum Re: Town of Brighton Comments*, issued by the Clerk of the Board on 5/7/12 (requesting comments regarding the Town of Brighton's request).

26. Letter of May 9, 2012, from the Brighton Planning Commission, to Susan Hudson, Clerk of the Board.

27. Letter of May 16, 2012, from Andrew N. Raubvogel, Esq., on behalf of Seneca, to Susan Hudson, Clerk of the Board; letter of May 16, 2012, from John Beling, Esq., on behalf of the Department, to Susan Hudson, Clerk of the Board.

28. In the Newark Planning Commission's June 12 filing, it also requested a "balloon test" be conducted to demonstrate the visibility of the towers from various points in Newark. Letter of June 12, 2012, from Kim Fried, Chairman, on behalf of Newark Planning Commission, to Susan Hudson, Clerk of the Board. The conclusion that a balloon demonstration is not warranted in Brighton also applies to the Planning Commission's request regarding the potential visual impacts in Newark.

Schedule

Pursuant to Subsection 246(d), the Board is required to issue a proposal for decision ("PFD") within five months of receiving a completed application. In this docket, that statutorily-mandated deadline dictates that a PFD be issued no later than September 18, 2012. With that deadline in mind and given the limited scope of the issues in this docket, and the Department's recommendation that the Board provide only one round of discovery,²⁹ I adopt the following schedule:

July 17, 2012	Hawk Rock Site Visit and Public Hearing in Newark
July 23, 2012	Deadline for Motions to Intervene
July 26, 2012	Deadline for Responses to Motions to Intervene
August 6, 2012	Parties Serve Discovery on Seneca
August 13, 2012	Response to Discovery by Seneca
August 20, 2012	Deadline for Parties to Submit Prefiled Testimony
August 27, 2012	Technical Hearing
September 4, 2012	Initial Briefs Deadline
September 10, 2012	Reply Briefs Deadline
September 17, 2012	Target For Proposal for Decision, which must be issued no later than September 18, 2012

SO ORDERED.

29. Letter of June 12, 2012, from John Beling, Esq., on behalf of the Department, to Susan Hudson, Clerk of the Board.

Dated at Montpelier, Vermont, this 29th day of June, 2012.

s/Bridgette Remington
Bridgette Remington, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: June 29, 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 apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)