

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 8816

Petition of Swanton Wind LLC for a certificate of)
public good, pursuant to 30 V.S.A. § 248, for the)
construction of an up to 20 MW wind-powered)
electric generation plant to be located in Swanton,)
Vermont)

REPLY IN SUPPORT OF MOTION TO INTERVENE

NOW COME Mark and Marianne Dubie (the “Dubies”), by and through counsel, Murphy Sullivan Kronk, and respectfully submit the following Memorandum in Support of their Motion to Intervene in the above referenced matter.

Swanton Wind LLC has objected to the Dubies’ intervention on the grounds that they have an alternative means of protecting their interests. Swanton Wind advances this argument because the Dubies have filed a trespass and nuisance action against Swanton Wind in Superior Court (see Exhibit A, Complaint).

Swanton Wind’s argument is without merit. The Dubies filed their complaint only after having been expressly advised by the Board that they could not pursue such claims as part of the Section 248 process. The Dubies were advised, and concur with said advice, that the Board lacks the jurisdiction to consider their civil claims for trespass and nuisance. The civil standards for proving trespass and nuisance are distinct from the regulatory standards established under Section 248 that Swanton Wind must demonstrate compliance with, as are the remedies available in the respective forums. The Dubies are not required to relinquish their right to protect their interests in the Board’s regulatory proceeding by virtue of having filed these claims. The Dubies

note that Swanton Wind has submitted no legal support for its argument, likely because none exists.

The Dubies ask that the Board take note of the trespass claims as they relate to whether Swanton Wind owns the property rights necessary for the construction of the project, an issue that does bear on this proceeding. The Board will see that Swanton Wind does not own the property rights necessary for the construction of the project and should deny the application on those grounds.

Dated at Burlington, Vermont, this 27th day of March, 2017.

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