

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

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) Docket No. 8816
plant powered by up to 7 wind turbines located along)
Rocky Ridge in Swanton, Vermont)

**MOTION FOR RECONSIDERATION RE: INTERVENTIONS AND
EXTENSION OF DEADLINE FOR FIRST ROUND DISCOVERY QUESTIONS**

Now comes Annette Smith of Vermonters for a Clean Environment (VCE), *pro se*, and moves to reconsider the intervention order in this docket. VCE requests that the Board rescind its requirement relating to VCE representing individuals who have been granted *pro se* intervention in this docket and are members of VCE, and allow them to represent themselves.¹ VCE supports the Board’s intent to consolidate for efficiency and agrees to coordinate with other parties. VCE also requests that the deadline for the first round of discovery questions be extended until two weeks after Public Service Board (“the Board”) responds to this Motion.

On April 6, 2017, the Board issued an Order Re: Interventions (“Order”) in this docket, stating:

Additionally, to the extent we grant intervention to any of the citizen intervenors in this order and those individuals are also members of VCE, then they may not participate individually on any issues for which VCE has been granted intervention, but instead must have their interests on those issues represented by VCE. Order at 7.

¹ VCE members submitted affidavits in support of VCE’s Motion to Intervene. None of those members moved to intervene in this docket and none of those members are citizen intervenors who have been granted intervention.

VCE is a 501(c)(3) organization that cannot be operated for the benefit of private interests and therefore cannot represent the private and particularized interests of individual members

VCE is legally prevented from complying with a requirement to represent individual interests of its members. As a 501(c)(3) organization, VCE represents the public interest of its members, not the particularized interests of its members. Further, VCE's representative, a non-attorney and public advocate, cannot be placed in the position of "representing" individuals with individualized interests.

Organizations qualifying under Internal Revenue Service Code 501(c)(3) "must not be organized or operated for the benefit of private interests".² By requiring VCE to "represent" individual *pro se* parties, rather than allowing individuals who are members of VCE to represent themselves, the Board is directing VCE to engage in private activities that compromise compliance with federal regulations.

VCE objects to the Board's requirement that we engage in activities that may result in a revocation of our 501(c)(3) status and requests that the Board rescind the requirement for VCE to "represent" VCE members who are *pro se* parties with individualized or particularized interests.

Complying with the direction to represent individuals with particularized interests will identify specific VCE members who are protected by the freedom of association under the 14th amendment

The U.S. Supreme Court has affirmed the right of privacy in group association in the decision NAACP v. Patterson, 357 U.S. 449 (1958), which was an important civil rights case brought before the United States Supreme Court in which Alabama sought to prevent the NAACP from conducting further business in the state. The Supreme Court

² <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations>

ruled that Alabama's demand for the membership lists had violated the right of due process guaranteed by the Fourteenth Amendment to the United States Constitution.

Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs. Cf. *United States v. Rumely*, supra, at 345 U. S. 56-58 (concurring opinion).³

The Board has granted intervention to 33 *pro se* parties, some of whom may be members of VCE. The Board is requiring any *pro se* parties who are members of VCE to have their interests represented by VCE. In order to comply with this requirement, VCE and the *pro se* parties will have to identify who our members are, which violates the right of privacy in group association.

VCE objects to the Board's directive to the extent it will require that VCE disclose who our members are as part of this proceeding on the ground it violates VCE and VCE's members' right of privacy in group association. VCE requests that the Board rescind the requirement for VCE to "represent" our members who are *pro se* parties with individualized or particularized interests.

VCE's representative is not an attorney and therefore cannot "represent" individuals before the Board

In January, 2016, VCE's Executive Director and representative in this docket received a "target" letter from Vermont's Attorney General, alleging the unlicensed practice of law based on a complaint filed by an attorney. The allegation related to VCE's director's assistance to parties in gaining access to and participation in the Board's processes. The letter stated "[t]he practice of law in Vermont is defined by case law as including the rendering of services for another involv[ing] the use of legal

³ <https://supreme.justia.com/cases/federal/us/357/449/case.html>

knowledge or skill on his [or her] behalf – where legal advice is required and is availed of or rendered in connection with such services.”⁴

As stated in its Press Release announcing the closure of the investigation without taking any action, the Attorney General said, “[p]ursuant to the rules of the Vermont Supreme Court, the unauthorized practice of law is punishable as criminal contempt of court.”⁵ The Attorney General provided an example of how the modern reality of advocacy before the growing number of judicial and quasi-judicial boards and commissions has changed, by noting “a rule of the Natural Resources Board Act allows a person to be represented by a non-attorney while **the PSB allows an organization, but not an individual, to be so represented.**” *[emphasis added]*

In ordering VCE’s representative to “represent” individuals with particularized interests who happen to be members of VCE, the Board is directing VCE’s Executive Director to engage in activities that may result in a more serious allegation of unlicensed practice of law, which is a criminal offense.

VCE objects to the Board’s requirement that VCE’s *pro se* representative “represent” VCE’s members with individualized interests in this docket and requests that the Board rescind the requirement for VCE to “represent” VCE members who are *pro se* parties with individualized or particularized interests.

⁴ <https://vermontersforacleanenvironment.wordpress.com/2016/01/31/i-represent-david-blittersdorf/>

⁵ <http://ago.vermont.gov/focus/news/attorney-generals-office-closes-investigation-into-the-unauthorized-practice-of-law-without-further-action.php>

VCE recognizes and supports the Board's goal of consolidation and efficiency

VCE recognizes the Board's intention in its Intervention Order is to achieve an efficiency of process by consolidating parties with similar interests. VCE supports the need for an efficient process given the large number of parties to this case, and will make every effort to comply with the spirit of the Order and will work with other parties.

1st Round Discovery Questions Should Start Two Weeks after Board Order Responsive to this Motion.

The schedule for this docket has been suspended, except for the Board's Order granting new intervenors the opportunity to file first round discovery questions two weeks after the Board's Intervention Response Order. At this time that deadline is April 20, 2017. VCE supports the recent Motion for Enlargement of Time filed by Paula Kane on April 12, 2017. VCE requests that the two weeks begin upon the Board's decision on this Motion for Reconsideration, in order to give parties sufficient time to develop and submit their discovery questions based on the Board's decision responsive to this Motion.

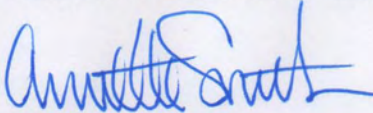
Conclusion

VCE is a 501(c)(3) membership organization which is enjoined by IRS law from representing the private interests of individuals. VCE's membership is protected by the freedom of association under the 14th Amendment and VCE does not disclose its members. VCE's representative in this docket is not an attorney and cannot "represent" the individualized interests of VCE's members which could be interpreted as unlicensed practice of law. VCE requests that the Board rescind the requirement for VCE to "represent" VCE members who are *pro se* parties with individualized or particularized interests in this docket. VCE supports the Board's intention to create as efficient a

process as possible given the large number of parties to this docket and will coordinate with other parties. VCE also requests that the deadline for the first round of discovery questions be extended until two weeks after the Board responds to this Motion.

Respectfully submitted this 13th day of April, 2017.

VERMONTERS FOR A CLEAN ENVIRONMENT, INC.



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