

**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 powered by up to 7 wind turbines located along)
Rocky Ridge in Swanton, Vermont)

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VT PUBLIC SERVICE BOARD

**MOTION TO INTERVENE OF
CURTIS SWAN AND SARA LUNEAU-SWAN**

Curtis Swan and Sara Luneau-Swan (the “Swans”) jointly *pro se* under Public Service Board Rule 2.209(A)(3), or alternatively under Board Rule 2.209(B), move to intervene in the above-referenced matter.

The Swans as non-adjoining neighbors have substantial, specific, and particularized interests that may be adversely affected by the outcome of this proceeding. This proceeding is the only means by which the Swans can protect their interests, and these interests will not be adequately protected by other parties to this proceeding. The Swans’ interests are unique to protecting the use and enjoyment of their residence and the public areas nearby, and their perspective is sufficiently distinct from that of other parties.¹

The Swans’ intervention will not unduly delay proceedings or prejudice the interests of existing parties or of the public.

Memorandum

The Swans respectfully move to intervene in this matter based on their substantial,

¹ The Swans acknowledge that some of their interests may appear similar to some of the interests articulated by Judith Luneau and Patrick Luneau who filed a joint motion to intervene in this proceeding, however the Swans believe that their interests are sufficiently distinct to justify separate party status and intervention, and they seek an opportunity through discovery to develop their unique positions. Nonetheless, if the Board finds that any of those interests do not warrant separate intervention, the Swans in the interests of justice and economy will readily join with the Luneaus in the discovery and presentation of evidence regarding those interests. Board Rule 2.209(C).

particularized interests in the following issues:

- (i) orderly development of the region, pursuant to 30 V.S.A. § 248(b)(1);
- (ii) public health and safety, § 248(b)(5);
- (iii) water pollution, conservation, and burden on water supply, 10 V.S.A. §§ 6086(a)(1)(A), (B), and (C), (3), and (4);
- (iv) scenic or natural beauty and aesthetics, § 248(b)(5) and § 6086(a)(8);
- (v) necessary wildlife habitat or endangered species, § 6086(a)(8)(A);
- (vi) transportation, § 6086(a)(5); and
- (vii) development affecting public investments, § 6086(a)(9)(K).

The following argument supports the Swans' motion to intervene in this matter.

I. Legal Standard

Intervention in proceedings before the Board is governed by Board Rule 2.209. Under Rule 2.209(A), a person upon timely application shall be permitted as of right to intervene in any proceeding:

(1) when a statute confers an unconditional right to intervene; (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest, and where the applicant's interest is not adequately represented by existing parties.

Under Rule 2.209(B), a person upon timely application may in the discretion of the Board be granted "permissive intervention" in any proceeding when the applicant "demonstrates a substantial interest that may be affected by the outcome of the proceeding." The Board in exercising its discretion under this rule 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.

The Board has ruled that, “individual intervenors may bring a perspective sufficiently distinct from those of existing parties to warrant their participation on specific issues.”²

For example, the Board has found particularized interest based on the following:

1. habitat and natural resources involving deer and black bear;³
2. aesthetics based on proximity to the proposed project;⁴ and
3. stewardship, use, and enjoyment of public resources;⁵

In proceedings under 30 V.S.A. § 248, the Board is not required to consider interests in private property.⁶

II. Potential Impact of the Project on the Swans' Interests

The Swans reside at 141 Sweet Hollow Road, Swanton, Vermont (mailing address: Sheldon), on land owned by family members Judith and Patrick Luneau, slightly more than a mile from the site of the proposed Project. The turbines associated with the Project would be visible from numerous points on their land and from nearby roads thereby affecting their views and daily commute. Additionally, the turbines would be audible at 35 dBA in their home.

The Swans appreciate the surrounding scenic, peaceful, natural setting including wildlife such as deer, bear, and migrating geese. In addition, the Swans enjoy using nearby Fairfield

² *Application of Seneca Mountain Wind, LLC*, Docket No. 7867, Order of 10/12/12, at 12.

³ *Application of Seneca Mountain Wind, LLC*, Docket No. 7867, Order of 10/12/12, at 2-4, 16-17; *Id.*, Order of 8/9/13, at 6.

⁴ *Petition of Barton Solar LLC*, Docket No. 8148, Order of 1/21/14, at 3-4.

⁵ *Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Vermont Electric Power Company, Inc.*, Docket No. 7628, Order of 9/3/10, at 12-13.

⁶ *See Vt. Elec. Power Co. v. Bandel*, 135 Vt. 141, 145 (1977) (“Proceedings under 30 V.S.A. § 248 relate only to the issues of public good, not to the interests of private landowners who are or may be involved.”)

Pond for swimming and fishing, and the nearby Missisquoi Valley Rail Trail for walking and biking.

* * *

The Project purports to advance the public good, however the Swans assert that any potential good may be outweighed by the likely harm. Accordingly, they move to intervene by right or permission on the following seven issues.

1. Orderly Development: 30 V.S.A. § 248(b)(1)

The Swans as nearby residents, fishermen, and users of Fairfield Pond and the Missisquoi Valley Rail Trail, possesses a unique understanding and perspective regarding the orderly development of the region, specifically in land use and conservation. Their participation in this proceeding may be useful to the Board in determining the potential nature and extent of the impact of the Project on regional development. As the Swans' particular interests will not necessarily be represented by other parties to this proceeding, their motion to intervene on this issue should be granted.

2. Public Health and Safety: § 248(b)(5)

The Project would be located slightly more than a mile from the Swans' home. This proximity subjects the Swans and their pet dog to potential health and safety risks caused by undue levels of sound, and blasting associated with the Project.

Particularly, the Swans care for, and intimately value as a member of their family, their pet dog named Brandy Jean, a Chesapeake Bay retriever who is sensitive to sound. The persistent noise from the turbines may cause Brandy Jean to bark throughout the night, thereby

requiring the Swans to consider drastic responses including euthanasia. Accordingly the Project may cause adverse effects including emotional distress on the Swans and Brandy Jean.

Furthermore, blasting and drilling associated with the Project may cause damage to the Swans' foundation or walls of their house. Similarly, blasting at a quarry located near Fairfield Pond Road caused a shift in the Swans' foundation.

Therefore, as this Project raises concerns over health and safety on the Swans' property, and no other party would adequately protect those interests, the Swans should be allowed to intervene on this issue.

**3. Water Pollution, Conservation, and Burden On Water Supply:
10 V.S.A. §§ 6086(a)(1)(A), (B), and (C), (3), and (4)**

Construction and operation of the Project may adversely affect the volume and quality of surrounding water. In this particular case, the Swans enjoy fishing, swimming, and kayaking on Fairfield Pond, which due to its proximity to the proposed Project may be polluted as a result of construction, operation, and run-off.

Furthermore, several brooks and streams that originate in the area underlying the proposed Project flow through the Swans' property and eventually drain into Lake Champlain. Approval, construction, and operation of the Project may result in cement, petroleum, or other toxic substances polluting the Lake. The Swans assert that the State should not approve this Project which may damage Lake Champlain, after spending millions of dollars to protect it.

Based on the Swans' experience and perspective as fishermen and outdoorsmen on Fairfield Pond, and residents on land through which water would flow from the Project to Lake Champlain, their participation in this proceeding may be useful to the Board in determining the potential nature and extent of the impact of the Project on the Pond and Lake. Therefore the

Swans should be allowed to intervene on this issue.

4. Scenic or Natural Beauty and Aesthetics: § 248(b)(5) and § 6086(a)(8)

The Swans decided to live in their home based substantially on the natural, tranquil, scenic environs including nearby Fairfield Pond, and the Missisquoi Valley Rail Trail. The imposing sight and persistent sound of industrial turbines in this otherwise natural setting would disrupt the visual and audible harmony in their home, and in nearby public areas.

Particularly, the Swans enjoy swimming, kayaking, and fishing in the quiet and peaceful atmosphere of Fairfield Pond. Yet construction and operation of the Project would be noisy and visually offensive to the Swans or anyone using the Pond for such recreation.

Additionally, the Swans enjoy access to the nearby Missisquoi Valley Rail Trail for recreation including walking and biking. This 26.2 mile multi-use public path extending from St. Albans to Richford would be at its nearest point less than a mile from the Project, with potential views of all seven proposed turbines.⁷ The proximity, visibility, and sound of this industrial complex in this otherwise country setting, would adversely affect the Swans' and the public's use and enjoyment of the Trail.

Accordingly, as the Swans have a particular interest in aesthetics on their property, on Fairfield Pond, and on the Missisquoi Valley Rail Trail, and they have a unique perspective as nearby residents, backcountry skiers, and bikers, their motion to intervene on this issue should be granted.

5. Necessary Wildlife Habitat or Endangered Species: § 6086(a)(8)(A)

The Swans appreciate the presence of wildlife inhabiting and traversing their land

⁷ Petitioner Ex. SW-DR-2 at 28-29.

including regular visits from deer, and occasionally bear. The Project may disrupt necessary wildlife habitat including travel corridors used by bears thereby forcing them to live closer to humans. Evidence shows that when bears live closer to humans, the bears are more likely to be regarded as nuisances and consequently euthanized.

Furthermore, the Swans twice annually observe hundreds of migrating Canada geese which feed and sleep in a corn field across next to their home, and routinely fly over the ridgeline from and toward Fairfield Pond. These geese cross the ridgeline at altitudes that would place them at risk of being injured or killed by the proposed turbines.

The Swans enjoy swimming, kayaking, and fishing at Fairfield Pond where bald eagles, a state-endangered species in Vermont, have in recent years been observed, as reported by the North Branch Nature Center in Montpelier, VT.⁸ Fairfield Pond has been determined by Vermont Fish & Wildlife Department as potentially suitable habitat for breeding bald eagles.⁹

The significant area, height, and scope of the Project in this natural setting may adversely affect necessary wildlife habitat or endangered species. The Swans acknowledge that in this proceeding the Agency of Natural Resources may be best situated to intervene on this issue, however they assert that their perspective as nearby residents, fishermen, and outdoorsmen may differ from that of other parties, and they may provide useful insight into the extent and nature of the impact of the Project on important wildlife and habitat. Thus in the public interest the Swans should be allowed to intervene on this issue.

⁸ See 'Birding: Birding Resources: VT eBird Bar Chart' <<http://ebird.org/content/vt/>>, at the North Branch Nature Center (Montpelier, VT) website. 26 January 2017.

⁹ Vermont Fish & Wildlife Department. "Vermont Bald Eagle Recovery Plan." October 2010. Web 27 January 2017.
<<http://www.vtfishandwildlife.com/common/pages/DisplayFile.aspx?itemId=111337>>.

6. Transportation: § 6086(a)(5)

Route 105 is a state highway located nearby and to the west of Rocky Ridge, the proposed site of the Project. The Swans regularly use Route 105 for commuting to and from work and otherwise. Due to the proximity of the Project to Route 105, shadow flickers cast by the Project may distract drivers and cause accidents resulting in injury or death to drivers, passengers, or pedestrians including the Swans. Therefore as the Swans have a particular interest in the safe use of Route 105, and unique experience as nearby neighbors and regular users of the road, they should be allowed to intervene on this issue.

7. Public Investments: § 6086(a)(9)(K)

The Swans by walking and biking regularly use and enjoy the Missisquoi Valley Rail Trail. As previously noted, the Trail would be at its nearest point less than a mile from the Project, with potential views of all seven proposed turbines. The proximity, visibility, and sound of the Project may unnecessarily or unreasonably endanger the public investment in the Trail, or interfere with the Swans' or the public's use or enjoyment of it. The Swans as nearby neighbors and regular users of the Trail have a unique familiarity, understanding, and perspective that may be useful to the Board in determining the potential nature and extent of the impact of the Project on the Trail. For these reasons, the Swans' motion to intervene on this issue should be granted.

III. Conclusion

The Swans assert that while this Project is purported to advance the public good, it also raises significant concerns over the public interest. Accordingly, in order to protect themselves, their family, and their neighbors throughout the State, the Swans upon on the evidence presented herein should be allowed to intervene in this proceeding.

Respectfully submitted this 16th day of February, 2017.

By:



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