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

June 14, 2017

**RESPONSE OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE TO
SWANTON WIND LLC'S MOTION TO LIMIT DISCOVERY**

The Vermont Department of Public Service (“Department”), by and through undersigned counsel, submits the following response to the *Swanton Wind LLC Response to Lang Motion and Motion to Limit Discovery Procedures* (hereafter “SW Motion”).¹ Consistent with its earlier filings on this topic, which are incorporated here by reference, the Department opposes the SW Motion.

The SW Motion should be denied because the Petitioner has not provided any facially sufficient basis for the Public Service Board to make any of the determinations required by V.R.C.P. 26 to support the relief sought. SW Motion at 3, quoting V.R.C.P. 26(b)(1). This Response first addresses the SW Motion as it relates to written discovery, and then discusses the question of depositions.

¹ The Lang Motion to Strike has been denied, and therefore this filing will only address the proposed discovery limitations.

ARGUMENT

In the SW Motion the Petitioner simply asserts, in the language of the applicable rule, that the standards for limiting discovery have been met. SW Motion at 4-5. Bare assertions do not and should not be considered adequate to limit the rights of the non-petitioning parties. The only fact proffered is that approximately 1,000 discovery requests have been served on the Petitioner in the first round. SW Motion at 4. Apart from that verifiable fact, Petitioner offers only bare assertions that the discovery has been unreasonably duplicative or burdensome, that the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issue at stake require the requested limitations. *Id.* at 4-5. No burdensome or duplicative interrogatories are provided in support, nor any analysis of discovery requests to substantiate the assertions, and no affidavit documenting the costs incurred by Petitioner in responding to discovery.²

The SW Motion does present as a policy argument that discovery should be limited because the proposed project is a renewable energy project, and the State has goals requiring construction of more renewable energy projects. SW Motion at 5. The same could be said about *any* renewable energy project, regardless of how poorly sited or deleterious to the interests reflected in the criteria of § 248. The Swanton Wind project must demonstrate that it meets all applicable criteria, in a process that adheres to standards of due process and fair treatment of all parties; if it cannot do so it must be rejected, regardless of the State's renewable energy goals.

² Petitioner's costs would presumably be reduced to the extent that it was asked "the same or substantially similar questions" by different parties. SW Motion at 4. A question asked for the second time does not require a new response, but simply cutting and pasting, or referring to, the answer provided when the question was first asked.

The State's energy goals are clearly very important, but do not justify the proposed restrictions on the rights of other parties to discovery.

On the matter of depositions, the Department recognizes that the process of scheduling and conducting a deposition in this docket would be cumbersome and challenging. However, the Petitioner's request to preemptively prohibit them is premature and unnecessary. If a party actually seeks to schedule a deposition, the Board could require such a party to propose an orderly process for conducting it, and allow other parties including Petitioner to respond.

Based on the foregoing, the Department of Public Service requests that the pending Motion to Limit Discovery be denied.

Dated at Montpelier, Vermont this 14th day of June, 2017.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE



Geoffrey Commons
Special Counsel

cc: Docket 8816 Service List