

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

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

SWANTON WIND LLC  
MOTION TO RECONSIDER ORDER RE: SCHEDULE

NOW COMES Swanton Wind LLC (“Swanton Wind”), Petitioner in the above-captioned matter, by and through the undersigned counsel, and moves for reconsideration pursuant to Vermont Public Utility Commission<sup>1</sup> Rule 2.105 and the Vermont Rules of Civil Procedure (V.R.C.P.) Rule 59(e). To avoid an unjust result, Swanton Wind asks the Commission to employ its broad power to reconsider and to amend its decision of June 22, 2017, finding the petition substantially insufficient or defective until a complete and final SIS has been filed.<sup>2</sup> In the same vein, Swanton Wind asks the Commission to reconsider its direction for Swanton Wind to file any

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<sup>1</sup> Any references to the “Public Service Board” or “the Board” herein refer to the body now (as of July 1, 2017) called the Public Utility Commission. The Public Utility Commission, in turn, is alternatively referred to herein as the Commission or the PUC.

<sup>2</sup> *Petition of Swanton Wind LLC*, Docket No. 8816, Order: Discovery Limitations, Expert Witness Fees, and Schedule, Order of 6/22/2017 (“Scheduling Order”). Swanton Wind does not object to providing status updates regarding the system impact study for the Swanton Wind Project. But we do oppose the imposition of a delay in the proceeding based on an improper fact finding and an incorrect interpretation of the applicable legal framework. The Commission’s stated basis for imposing a new requirement on Swanton Wind is prejudicial and unfair, and accordingly Swanton Wind asks the Commission to reconsider its decision.

supplement to the petition that Swanton Wind deems necessary by the same date that a final SIS is filed. In support of this motion, Swanton Wind offers the following memorandum of law.

## MEMORANDUM OF LAW

### Procedural History

Swanton Wind LLC filed its petition for a Certificate of Public Good for the construction of a wind-powered electric generation plant on September 9, 2016. On October 24, 2017, the Commission convened a pre-hearing conference per 30 V.S.A. §§ 10 and 248. On November 10, 2016, the Commission issued the first scheduling order in this matter, opting for a “workshop” that would not be held until early 2017.

On December 30, intervenors Dustin and Christine Lang filed with the Public Utility Commission a motion to dismiss the petition in this proceeding, or in the alternative to deem the petition incomplete (the “Lang Motion”). While the motion was pending, the case proceeded: Swanton Wind participated in the PUC-ordered workshop on February 9, and on February 16 was served with a first round of discovery requests from the existing parties.<sup>3</sup> On March 2, 2017, in a separate pending docket numbered 8571, the Commission dismissed Swanton Wind’s petition for approval of a Rule 4.100 power purchase agreement (which was filed under a version of the rule that was subsequently modified), without prejudice to Swanton Wind’s rights to proceed

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<sup>3</sup> See Docket No. 8816, Second Procedural Order Re: Rescheduled Workshop and Schedule, Order of 1/20/2017 at 3.

under the current iteration of Board Rule 4.100 to sell the output from the Project.<sup>4</sup> On the same date, the Commission denied the Lang Motion in the instant docket, declining to deem the Section 248 petition incomplete.<sup>5</sup> Subsequently, the Commission granted motions to intervene by an additional four (4) entities, including Green Mountain Power (GMP)<sup>6</sup> and fifty-four (54) private individuals.<sup>7</sup> Swanton Wind has now responded to approximately 1,000 first-round discovery requests from the non-petitioner parties, and has participated in numerous scheduling discussions with the parties. In the course of these scheduling discussions, Swanton Wind and the Department conferred about the possibility of Swanton Wind making a supplemental filing to provide updates with respect to the project (e.g. identifying a turbine model, if one is selected before a final order issues in this docket). But as it quickly became clear that this possibility was creating more confusion than value, Swanton Wind opted not to supplement its petition, which was complete upon filing.<sup>8</sup> Swanton Wind and multiple other parties participated in a May 24, 2017 status conference held by the Commission, which set June 2, 2017 as the date for the parties to propose a new schedule for the proceeding. In the Department of Public Service's June 2<sup>nd</sup> submission, it pointed to the Board's Docket No. 8571 (Swanton Wind power purchase agreement

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<sup>4</sup> Docket No. 8571, Order re Motion to Dismiss, Order of 3/2/2017 at 17.

<sup>5</sup> Docket No. 8816, Order of 3/2/2017.

<sup>6</sup> GMP filed a motion to intervene on February 16, 2016.

<sup>7</sup> See Docket No. 8816, Order Re Interventions, Order of 4/6/2017.

<sup>8</sup> See Petitioner's Letter to Judith C. Whitney of May 24, 2017 at 1; see also Tr. 5/24/2017 at 9.

petition) dismissal without prejudice,<sup>9</sup> issued a full three months earlier, to support its argument that the Section 248 petition Swanton Wind filed some nine months ago in the instant docket is “substantially defective and insufficient” because it allegedly “does not contain the information necessary for the Board to make the positive findings” with respect to the §248(b)(2) “need,” (b)(3) “system stability and reliability,” and (b)(10) “can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers” criteria.<sup>10</sup> Accordingly, the Department recommended that the Commission adopt a limited schedule with a deadline for Swanton Wind to supplement its petition.<sup>11</sup>

In its Scheduling Order dated June 22, 2017, the Commission adopted a modified version of the Department’s June 2<sup>nd</sup> proposal, declining to establish a schedule for the remainder of this proceeding until Swanton Wind “supplements its case, at a minimum, by filing a complete and final System Impact Study ‘SIS’ along with any related prefiled testimony and exhibits.”<sup>12</sup> The Commission reasoned that the “unique circumstances of this case” compel it to conclude that the complete and final SIS “must be part of the evidentiary record prior to technical hearings” in order for it to make affirmative findings under 248(b)(3) (system stability and reliability) or (10) (existing or planned

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<sup>9</sup> See fn. 3, *supra*.

<sup>10</sup> See Proposed Schedule and Supporting Memorandum of the Vermont Department of Public Service, dated June 2, 2017 at 3, 6.

<sup>11</sup> *Id.* at 1, 6-7.

<sup>12</sup> Scheduling Order at 3,5. The Commission also addressed Swanton Wind’s motion for discovery limitations. Swanton Wind is not asking the Commission to reconsider its decisions with respect to those proposed limitations.

transmission facilities).<sup>13</sup> Accordingly, pursuant to the Scheduling Order, and citing PUC Rule 2.208 (Defective Filings), the Commission directed Swanton Wind to file a complete and final SIS “within a reasonable time,” and to file monthly status reports on the SIS and its expected completion and filing dates, starting July 6.<sup>14</sup> The Commission also observed that the Department had “raised significant questions on the sufficiency of Swanton Wind’s testimony on need” under § 248(b)(3) given the Board’s dismissal of the Docket No. 8571 petition, and directed Swanton Wind to file any supplement on need (or any other criteria) that Swanton Wind deems necessary by no later than the time it files a complete and final SIS, or else file a certification that it will not be supplementing its case thereon.<sup>15</sup>

### Standard

Pursuant to Rule 59(e) of the Vermont Rules of Civil Procedure, which are applicable in Commission proceedings pursuant to Commission Rule 2.105, courts have “broad power to alter or amend a judgment.”<sup>16</sup> In reviewing a Rule 59(e) motion, “the court may reconsider issues previously before it, and generally may examine the correctness of the judgment.”<sup>17</sup> The purpose of Rule 59(e) is to avoid an unjust result

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<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 6-7.

<sup>16</sup> *Petition of Rutland Renewable Energy, LLC*, Docket No. 8188, Order of 5/6/2016 at 4 (*citing* V.R.C.P. 59(e) Reporter's Notes). Rule 59(e) “codified the trial court's inherent power to open and correct, modify, or vacate its judgments.” *In re SP Land Co.*, 2011 VT 104 (*citing Drumheller v. Drumheller*, 2009 VT 23, ¶ 28, 185 Vt. 417, 972 A.2d 176).

<sup>17</sup> *Id.* at 4 (*citing Drumheller v. Drumheller*, 185 Vt. 417, 432 (2009) (internal citation omitted)).

due to inadvertence of the court.<sup>18</sup> While Rule 59(e) is not a vehicle for introducing new evidence or arguments that could and should have been raised before an order issued, it is “well within” the Commission’s discretion to re-consider questions of law intrinsic to an order, whether or not a given issue is asserted for the first time in a Rule 59(e) motion.<sup>19</sup>

### Basis for Reconsideration and Amendment

#### I. System Impact Study Requirement

To avoid an unjust result, Swanton Wind asks the Commission to employ its broad power to reconsider and amend its decision to suspend the proceeding until a complete and final SIS has been filed, for the reasons that follow.

##### 1. *The Commission’s decision is not supported by the applicable PUC rules*

The Commission erred by relying on PUC Rule 2.208 and in not following PUC Rule 5.402(C)(4) in requiring Swanton Wind to file a complete and final SIS before the case may proceed. Rule 2.208 states:

Substantially defective or insufficient filings may be rejected by the Board, provided, that if it will not unreasonably delay any proceeding nor

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<sup>18</sup> *Id.* (citing *Osborn v. Osborn*, 147 Vt. 432, 433 (1986)).

<sup>19</sup> See e.g. *In re SP Land Co.*, 2011 VT 104, ¶¶ 15-19, 190 Vt. 418, 35 A.3d 1007. Swanton Wind is not introducing new evidence or arguments that could and should have been introduced previously. While the Department recently raised the allegation of substantial defectiveness or insufficiency in its memorandum on scheduling, this memorandum was not filed as a motion and therefore the deadline for responding to motions did not apply. Moreover, the Commission did not set a deadline for other parties to respond to the Department. Swanton Wind is, however, asking the Commission to reconsider some questions of law intrinsic to its order (e.g. the soundness of the decision to require a complete and final SIS, contrary to its past orders and the plain language of PUC Rule 2.208.)

unreasonably adversely affect the rights of any party, the Board shall allow a reasonable opportunity to a party to cure any defect or insufficiency. A filing which is found to be defective or insufficient shall not be deemed to have been cured until the date on which the last document is filed which removes the defect or makes the filing complete. A filing is substantially insufficient if, inter alia, it fails to include all material information required by statute or rule.

The plain language of PUC Rule 2.208 and the Commission's past orders make clear that a filing is substantially defective or insufficient "if, inter alia, it fails to include all material information required by statute or rule."<sup>20</sup> And as the Commission has held previously, in no uncertain terms, "[n]either Section 248 nor Board Rules require that a final SIS must be filed prior to issuing a CPG."<sup>21</sup> To the contrary, "Board precedent involving solar, wind, and transmission projects shows that a CPG may be issued subject to a post-approval review of a final SIS."<sup>22</sup>

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<sup>20</sup> See e.g. *Petition of Coolidge Solar I*, Docket No. 8586, Order Staying Proceedings, Order of 11/18/2015, 2015 WL 7587680 (Vt.P.S.B.) at 6 ("A filing is defective or insufficient 'if, inter alia, it fails to include all material information required by statute or rule.'").

<sup>21</sup> *Petition of Coolidge Solar I, LLC*, Order of 3/23/17 at 17.

<sup>22</sup> *Petition of Coolidge Solar I, LLC*, Order of 3/23/17 at 17 (citing *Petition of GMPSolar - Williston, LLC*, Docket No. 8562, Order of 3/4/16 at 14 (approving a 4.69 MW solar electric generation facility is a CPG where petitioner GMPSolar filed an SIS after the close of evidence but before issuance of the final order; the CPG was conditional on Board approval of the SIS); *Petition of Champlain VT, LLC*, Docket No. 8400, Order of 1/5/16 at 100 (authorizing the installation and operation of a high voltage direct current underwater and underground electric transmission line with a capacity of 1,000 MW, a converter station, and other associated facilities subject to inter alia the condition that the petitioner file a final system impact study prior to construction); *WE 46 Precision Drive Farm*, CPG #NMP-5538, Order of 2/9/15 at 7 (authorizing a 500kW net-metered solar farm conditional on Petitioner's pre-construction filing of documentation from the interconnecting utility demonstrating the utility's concurrence that a system impact study is not necessary and that the project will not adversely affect system stability and reliability, and including a completed Fast Track review and explanation as to how any items that did not pass the Fast Track screening are to be resolved); *Joint Petition of Green Mountain Power Corp.*, Docket No. 7628, Order of 5/31/11 at 161-62 (authorizing construction of an up to a 63 MW wind electric generation facility and associated facilities on Lowell Mountain); *Petition of Chittenden Cty. Solar Partners, LLC*, Docket No. 7611, Order of 9/15/10 (authorizing the installation and operation of a 2.2 MW solar electric generation facility conditional on post-CPG approval of an SIS, with the caveat that the petitioner "may seek permission from the Board to commence construction activities prior to approval of the System

While the Commission does need to make affirmative findings with respect to 30 V.S.A. § 248(b)(3) system stability and reliability prior to issuing a CPG, it does not need to base these findings on pre-CPG review of a final system impact study. As the Commission explained with respect to the Georgia Mountain Community Wind (GMCW) Project:

We recognize that there are valid reasons for allowing the SIS to be conducted after a CPG has been issued for a project, and accordingly the Board allowed that in other wind generation cases. [A]s those other cases demonstrate, even without an SIS, a petitioner can still provide sufficient evidence to allow the Board to make positive findings on Sections 248(b)(3) and (10). GMCW cites the Board's review of proposed wind projects in Dockets 7156 and 7250; in both cases, the petitioner provided testimony from a qualified witness supporting findings that the proposed project would satisfy Sections 248(b)(3) and (10). The Board required, as a condition to the CPGs issued in those dockets, that the petitioners provide a completed SIS to parties and the Board; however, the Board found that petitioners had provided sufficient evidence to make positive findings under the relevant criteria, in advance of the SIS.<sup>23</sup>

Accordingly, because the sole basis for the Commission's Scheduling Order pursuant to Rule 2.208 is the purported need for a complete and final SIS prior to

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Impact Study, provided that the construction activities do not involve the installation of any electrical equipment related to the interconnection of the Project with Green Mountain Power Corporation's distribution system"); *Petition of EOS Ventures, LLC*, Docket No. 7618, Order of 9/8/10 (authorizing construction of a 2.2 MW solar electric generating facility where the Petitioner's expert determined that the project would not adversely affect the reliability or stability of the interconnection utility's system and that Petitioner would be able to reasonably implement any standard control strategies that the utility might identify in the forthcoming System Impact Study); *Petition of Ga. Mountain Cmty. Wind, LLC*, Docket No. 7508, Order of 6/11/10 at 23 (authorizing the construction and operation of a 5-turbine, 12 MW wind generation facility); *Petition of Deerfield Wind, LLC*, Docket No. 7250, Order of 4/16/09 at 26; *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 8/8/07 at 31).

<sup>23</sup> *Petition of Georgia Mountain Community Wind, LLC*, Docket No. 7508, Order of 3/19/2010 at 4. Moreover, in each of these cases, the petitioner had the opportunity to testify at a technical hearing and the Commission's decision was based on a full record.

proceeding any further in this docket, the Commission should re-consider and rescind its decision to change the rules and impose such a requirement.

Moreover, Rule 5.402(C)(4), which addresses filing requirements for Section 248 proceedings, does not authorize the process established by the Commission's June 22 order. The rule specifies what action the Commission is authorized to take if it determines that a Section 248 petition "is not complete or does not sufficiently address the requirements of Section 248," which precisely what the Commission concluded in its Scheduling Order. If the Commission makes such a determination, "no proceedings thereon shall be initiated" until the [Commission] determines that the deficiency has been cured.<sup>24</sup> The obvious purpose of the rule is to relieve the Commission and statutory parties from burden and expense of initiating a proceeding if a Section 248 petition does not meet the filing requirements set by statute and rule.

Here, the Commission did more than simply initiate the present proceeding by issuing a notice of a pre-hearing conference for October 24, 2016. It also issued a scheduling order, directed Swanton Wind to attend a "workshop" so that members of the public could ask its experts questions about the Project, issued orders granting intervention to more than 50 individual parties, and set deadlines for the first round of written discovery on the Petitioner by the statutory parties and intervenors.<sup>25</sup> The

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<sup>24</sup> Pub. Serv. Comm'n Rule 5.402(C)(4) (emphasis added).

<sup>25</sup> See Procedural History section, above.

Commission clearly erred by finding Swanton Wind's petition deficient *after* it had already initiated the proceeding, thereby violating Rule 5.402(C)(4) and Swanton Wind's substantial rights.

2. *The Scheduling Order misapprehends the Vermont Administrative Procedures Act and offends due process by making factual findings without notice or hearing and by concluding that a final SIS "must be part of the evidentiary record prior to technical hearing"*

In breaking from statute, rule and the Commission's past decisions by requiring a complete and final SIS before this docket can move forward, the Commission erroneously makes factual findings based on factual assertions in Green Mountain Power's (GMP) motion to intervene. Specifically, while acknowledging that in the past the Commission "has made affirmative findings under these two criteria [248(b)(3) and (10)] conditioned upon the completion of and compliance with a final SIS," the Commission finds that the instant case has "unique circumstances" compelling a break from precedent (and PUC Rules), namely: "[t]he region of Vermont where this project is proposed to be located experiences transmission capacity issues that can lead to curtailment of existing generation facilities, a situation that could be influenced by the proposed project."<sup>26</sup> "As a result," the Commission concludes, "the information in the SIS might also be relevant to the questions of need (30 V.S.A. § 248(b)(2)) and economic

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<sup>26</sup> Scheduling Order at 6 (*citing* GMP Mot. to Intervene at 2-3).

benefit (30 V.S.A. § 248(b)(4)).”<sup>27</sup> GMP’s Motion to Intervene at pages 2-3 is the sole citation provided for these factual findings on the purportedly “unique” circumstances in this case – regional transmission capacity issues that could potentially lead to curtailment and the project’s potential influence thereon.

The Commission’s factual findings based on GMP’s motion to intervene are problematic for a number of reasons. Firstly, the findings go to an ultimate issue in this matter that has been the subject of discovery and has not been the subject of a hearing. The Administrative Procedures Act requires factual findings to be based exclusively on evidence admitted at a duly noticed hearing. 3 V.S.A. § 809(g). Indeed, in a contested case proceeding like the instant case, there is no evidentiary record until evidence is offered and admitted at the technical hearing, not prior to it as the Commission’s order concludes.<sup>28</sup> Simply put, the Commission has put the proverbial cart before the horse by making findings on an ultimate issue in the case without first affording Swanton Wind its right to a hearing.<sup>29</sup> As the Commission has stated, it is the “[Commission’s] responsibility to function as a quasijudicial forum in which contested case proceedings are conducted to develop an evidentiary record subject to the safeguards of due

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<sup>27</sup> Scheduling Order at 6.

<sup>28</sup> See e.g. Docket No. 7508, Order of 5/4/2009 at 3 (explaining that “under Vermont law the [Commission’s] decision must be based upon the evidence presented by formal parties during the evidentiary hearings.”) Compare with Scheduling Order at 6 (concluding that the complete and final SIS “must be part of the evidentiary record prior to technical hearings.”)

<sup>29</sup> Swanton Wind and other parties, if given the opportunity, might present evidence inter alia on other projects being proposed in Northern Vermont that goes to whether the Swanton Wind Project is in fact “unique,” or evidence with respect to transmission capacity in that region and the possible implications, if any, for system stability and reliability in the Swanton Wind Project is constructed.

process.”<sup>30</sup> Procedural due process, including notice and right to a hearing, guarantees Swanton Wind a full and fair decision making process.<sup>31</sup> Notably, it would put Petitioner’s substantial investment in the Project at risk if an SIS cannot be obtained from a third party in a time period that the Commission deems “reasonable.”

Next, the statements in GMP’s motion to intervene were made by counsel for GMP, rather than a sworn expert witness. The statements are made in support of a motion to participate in the docket, and are not appropriately used as the basis for factual findings to support the imposition of a new and uniquely stringent standard on the Petitioner in this case: the requirement that Petitioner file a final SIS before the project review can proceed any further. But even assuming (without conceding) that reliance on a motion to intervene was an appropriate basis for fact findings by the Commission, the statements made in GMP’s motion appear to have been taken out of context by the Commission, and do not support the PUC’s ultimate conclusion.<sup>32</sup> GMP’s statements about transmission capacity and potential curtailment were made in support of its request to intervene on the economic benefit criterion, not the system

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<sup>30</sup> Docket No. 8643, Order of 7/15/2016 at 5.

<sup>31</sup> See e.g. *Stone v. Town of Irasburg*, 98 A.3d 769, 776–77, 196 Vt. 356, 367, 2014 VT 43, ¶ 27 (Vt. 2014).

<sup>32</sup> While the Commission does not quote any specific statements made by counsel for GMP, GMP’s motion to intervene at the pages cited (2-3) includes general statements such as the assertion that the undefined region of “Northern Vermont” faces “issues relating to transmission capacity” and that “some generators, including GMP’s owned-resources, have experienced curtailment by ISO-New England in the past. GMP understands that adding additional generation resources in this area may have the potential to increase curtailment of existing resources and otherwise restrict the benefits of those resources at the same time.” GMP Mot. to Int. at 2. Moreover, nothing in these statements compels the conclusion that the addition of the Swanton Wind Project to Northern Vermont is in any way “unique.”

stability and reliability criterion, and do not support the conclusion that a complete and final SIS is needed prior to technical hearings in this case.<sup>33</sup> On the contrary, system impact studies examine the capability of the transmission system to accommodate a generator interconnection without adversely affecting the system; they do not address potential curtailments, which are typically considered an operational condition.<sup>34</sup> Accordingly, there are real questions as to whether the Commission's findings are properly grounded in the assertions GMP made in its motion to intervene.

3. *The Commission's order is untimely and unfair*

The requirement of a complete and final SIS before this docket may move forward is an about-face from the Commission's previous orders approving both transmission and generation projects conditional on post-CPG review and approval of a final SIS.<sup>35</sup> This new requirement is being unfairly imposed on Swanton Wind partway through the case. As outlined above, significant amount of time (over 9 months) has passed since Swanton Wind filed its petition last September, and substantial resources

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<sup>33</sup> See GMP Mot. to Int. at 4 ("The Project may raise potential concerns about transmission and other costs, constraints and potential curtailments that could result in adverse economic impacts on existing generating sources in Vermont (and therefore additional net costs to GMP customers). In the event there prove to be such impacts, they could negatively impact costs to GMP and its customers....")

<sup>34</sup> See Swanton Wind's response to Q.BED:SWANTON1-9, enclosed.

<sup>35</sup> See fn. 21, *supra*. See also *Petition of Champlain VT, LLC*, Docket No. 8400, Final Order, Order of 1/5/16 at 30, 100 (Finding that "In light of the information available to date, interconnection and operation of the [Project] should not result in an adverse impact on transmission system stability or reliability because mitigation measures can be developed to relieve overloads on critical transmission facilities, or the [Project] output could be modified by ISO-NE if necessary to ensure that the New England transmission system is operated in accordance with applicable reliability criteria", and therefore issuing a CPG conditioned on subsequent approval of a final SIS).

have been expended in advancing the case in the meantime, including a five-hour workshop with a number of Swanton Wind's experts in February and a first round of discovery with nearly 1,000 questions.<sup>36</sup> Moreover, over four months have passed since GMP filed the Motion to Intervene that the Commission relies on for its factual findings.<sup>37</sup> The Petition has already survived a motion to dismiss the petition as deficient or alternatively deem it incomplete.<sup>38</sup> The Scheduling Order would (at best) delay this already-protracted proceeding indefinitely pending a complete and final study which, as the Commission observes, is at least in part beyond the Petitioner's control. This could harm Petitioner's interests a number of ways, inter alia by jeopardizing its ability to meet deadlines external to the Section 248 process.<sup>39</sup> Moreover, as noted above, it would put Petitioner's substantial investment in the Project at risk if an SIS cannot be obtained from a third party in a time period that the Commission deems "reasonable."

The Petition was complete and sufficient when filed – it is supported by testimony and exhibits addressing each of the 248 criteria<sup>40</sup> – and there has been no

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<sup>36</sup> See procedural history, *supra* at 2-4.

<sup>37</sup> *Id.*

<sup>38</sup> See Lang Motion; see also Petition of Swanton Wind, Docket No. 8816, Order of 3/2/2017. Moreover, as noted in the procedural history section above, the Commission's order denying the motion to dismiss was issued on the same date that the Commission dismissed Swanton Wind's Rule 4.100 petition for a power purchase agreement, timing which undermines the Department's suggestion that the dismissal of that petition put Swanton Wind on notice of its Section 248 petition's insufficiency or defectiveness. See DPS Proposed Schedule and Supporting Memo, dated 6/2/2017 at 6.

<sup>39</sup> See e.g. Letter from Leslie A. Cadwell to Judith C. Whitney Re: Docket No. 8816 - Proposed Procedural Schedule at 2 (discussing the deadline for the 2021 capacity supply obligation).

<sup>40</sup> See the PUC Rule 5.402 Index filed with the Petition.

change with respect to the status of the SIS between the time of filing and the present that would merit a conclusion that the petition is now somehow insufficient or defective.<sup>41</sup> It is unjust to deem the petition insufficient or defective at this stage in the proceeding, particularly when the alleged defect or insufficiency is not based on any statute or rule.

## II. General Deadline for Supplementing the Petition

Finally, as part and parcel of its decision requiring a final SIS, the Commission set a concurrent deadline for supplementing the Petition with respect to any other Section 248 criteria, ordering that “if Swanton Wind decides to supplement its case on need (or any other criteria), it shall file such supplement no later than the time it files the complete and final SIS.” Because the Commission should revoke its decision to impose a deadline for a complete and final SIS, it follows that Commission should also reconsider and remove the related deadline for Swanton Wind to supplement the petition on other criteria. As stated above, the Petition was complete and sufficient upon filing, consistent with Section 248 and the Commission’s rules, and remains so today. To the extent that the Department and other parties to this docket have questions or identify potential issues, they can raise them in a timely manner through

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<sup>41</sup> See [2014 Vt. PUC LEXIS 53, \\*232-233](#) (Observing that “An application for a zoning permit is proper when ‘validly brought and pursued in good faith’” and that “[a]n Act 250 application is complete when it addresses all Act 250 criteria,” and rejecting an argument that a Section 248 petition was incomplete because the “petition was accompanied by supporting testimony and exhibits that addressed each of the required § 248 criteria and was therefore properly considered complete at the time it was filed.”)

the contested case process and Swanton Wind will respond in due course as the proceeding moves forward.

### CONCLUSION

In accordance with the foregoing, Swanton Wind asks that the Public Utility Commission reconsider and amend its decision deferring scheduling for the remainder of the proceeding until a complete and final System Impact Study is filed, and requiring any supplements to the petition to be filed on or before the SIS filing date.

Dated at Burlington, Vermont this 7th day of July, 2017.

By: 

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