

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket No. 8816

July 24, 2017

Petition of Swanton Wind

PRO SE INTERVENORS' OBJECTION TO APPLICANT'S

MOTION TO RECONSIDER ORDER RE: DISCOVERY SCHEDULE

The Pro Se intervenors as indicated in this filing object to the V.R.C.P. Rule 59(e) motion of the applicant Swanton Wind filed on July 7, 2017 which asks that the Vermont Public Utility Commission (PUC) reconsider and amend its decision of June 22, 2017 which found that Swanton Wind's petition was substantially insufficient or defective. It ordered that Swanton Wind correct the deficiency by filing a complete and final System Impact Study (SIS) along with any related pre-filed testimony and exhibits and that it supplement its petition prior to the Commission establishing a schedule for the remainder of the proceeding. Swanton Wind states in its motion to reconsider that it does not object to providing status updates regarding the system impact study but opposes the imposition of any further delay in the proceeding, contending that the PUC's order is based on improper fact finding and an incorrect interpretation of the correct legal framework. (See Swanton Wind's Motion to Reconsider, p. 1, Footnote 2.)

- 1) The Pro Se Intervenors join in Public Service Department's Response of July 24, 2017 opposing Swanton Wind's Motion to Reconsider and asking that in addition to a System Impact Study (SIS) that a curtailment study assessing the project be performed.

- 2) The pro se intervenors further comment. Swanton Wind argues that the Commission incorrectly relied on PUC Rule 2.208 and should have relied instead on Rule 5.402(C)(4). Rule 2.208 allows the Commission to reject substantially defective or insufficient filings and allows the Commission to give a party reasonable opportunity to cure. Swanton Wind argues that in previous cases, which it cites, that there is no requirement that a final SIS must be filed prior to obtaining a Certificate for the Public Good. While it may be true that in other cases a final SIS did not have to be filed, Swanton Wind's case is distinguishable because of the March 3, 2017 PSB order. This order denied approval of a power purchase agreement (PPA) containing 20-year-level rates pursuant to Board Rule 4.100 as in effect September 15, 2016. This order granted Green Mountain Power Corp.'s (GMP) motion to dismiss the proposed PPA in Docket No. 8571. This action substantially changed Swanton Wind's petition because it could no longer show the need for the power and that it would not have an adverse impact on the grid, i.e. could not meet the Section 248(b)(2) and (b)(10) criteria. While Swanton Wind contends that because its petition was complete and sufficient when it filed it on September 9, 2016 that it should not now be ordered to supplement its petition nor to do a final SIS study, that would ignore the impact of the denial of the proposed purchase power agreement on the project. Swanton Wind basically is asking the PUC to ignore this order and to let it proceed without delay, even though it cannot meet the 248 criteria.

- 3) Swanton Wind argues that the PUC should not have let it initiate proceedings to start with if its petition was deficient or defective and because the Board did, it cannot now delay proceedings in light of subsequent events, such as the adverse ruling on the PPA on March 3, 2017. It argues that since the initial petition was allowed, that it now must be allowed to proceed, contending that it would be a violation of Rule 5.402(C)(4) and Swanton Wind's rights by requiring a complete and final SIS and supplementation. It also argues that the PUC should not rely on the ruling in Docket 8571 because it was based on an attorney's representation and not on affidavit of the parties nor were the facts alleged taken as sworn testimony. Swanton Wind does not argue that the representations and facts found were untrue. Nor, tellingly, did it appeal the order in Docket No. 8571. Given this, the PUC properly relied on the order and given it, can now require Swanton Wind to supplement and to furnish a system impact study.
- 4) Swanton Wind points out that it has withstood a motion to dismiss (the Lang motion filed on December 30, 2016 which was ruled on on March 3, 2017 and which declined to deem the Swanton Wind's petition as incomplete under section 248 at that time.) It implies that the ruling on that motion and the fact that the Board made subsequent orders and allowed further action in terms of granting intervenors status and allowing discovery to proceed somehow constituted a ruling on the sufficiency of its petition once the purchase power agreement was rejected. The Pro Se intervenors point out that the bases for the Lang motion did not include the rejection of the proposed purchase power agreement, as that had

not been ruled on at the time the Lang motion was filed. The fact that further action was allowed to proceed during the appeal period for the ruling on Docket No. 8571 did not jeopardize Swanton Wind.

- 5) Swanton Wind has made it clear both in its letter to Judith Whitney dated May 24, 2017 and in its Rule 59(e) Motion for Reconsideration that it opted not to supplement its petition and contends that petition is complete and sufficient, despite the PSB's ruling in 8571. It has chosen not to appeal that order. The Commission's Order of June 22, 2017 should be upheld. It is well within the Commission's power to require Swanton Wind to supplement its petition and to do a final SIS, in light of the March ruling and the questions raised. It is also well within the Commission's power to do a performance curtailment study such as the Public Service Department has requested. Really, it is to Swanton Wind's advantage to comply with the Commission's June 22nd order, as it may not wish to proceed if there are insurmountable deficiencies that cannot be corrected. They may not want to put additional resources into a proposed project that cannot be certified to be in the public good. The Commission did it a favor by allowing it to correct its deficiencies and to supplement, if necessary. It is a natural place for proceedings to be delayed, since if Swanton Wind cannot correct the deficiencies in its petition, the petition should be dismissed with prejudice as it will not be able to meet the 248 criteria.

Dated at Saint Albans, Vermont this 24th day of July, 2017.

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FOR the PRO SE INTERVENORS