

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket No. 8816

11 December 2017

Petition of Swanton Wind
For Seven Wind Turbines
Rocky Ridge, Swanton, VT

INTERVENOR D. GREGORY PIERCE'S OBJECTION TO PETITIONER'S MOTION:
NOTICE OF WITHDRAWAL AND VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Pro Se intervenor D. GREGORY PIERCE (hereinafter PIERCE) as indicated in this filing objects to the V.R.C.P. Rule 41(a) (1) motion of the petitioner Swanton Wind (hereinafter SW) filed on 27 November 2017 in which SW notifies the Vermont Public Utility Commission (hereinafter VT-PUC) that: "*SW is withdrawing its Petition in the above-referenced proceeding, which was filed on September 9, 2016 and which the Commission later concluded was incomplete upon filing under Commission Rule 2.208. Order re: Discovery Limitations, Expert Witness Fees and Schedule, June 22, 2017 at 6, motion for reconsideration denied, Order of Aug. 31, 2017. This voluntary dismissal is being made without prejudice. In light of the Commission's incompleteness determination, Swanton Wind respectfully requests a return of the \$100,000 filing fee paid in accordance with 30 V.S.A. § 248b on September 9, 2016.*"

PIERCE objects to the above cited SW motion for the specific reasons cited hereinafter:

1. – PIERCE contends that the Vermont Rules of Civil Procedure (VRCP) were originally crafted for the exclusive purpose of guiding actions through the formal Vermont justice system and further that the VRCP have never been formally modified to specifically address the many peculiarities of the quasi-judicial functions of the Vermont Public Utility Commission (VT-PUC). PIERCE further argues that VT-PUC, in the past, has used their unique authority to make their own adaptive, practical adjustments in their use of the VRCP. PIERCE asserts the herein matter raises issues that require such adaptive, practical adjustments as to an appropriate interpretation of Rule 41 as it applies to SW's letter of withdrawal and dismissal.

2. - The SW motion cites V.R.C.P. 41 (a) (1). Through its procedural order re: responses to notice of withdrawal dated 29 November 2017, PIERCE asserts that VT-PUC is clearly exerting its authority to act on the SW notice of withdrawal under the terms of V.R.C.P. 41 (a) (2) and is thereby vacating SW's basis call for a V.R.C.P 41 (a) (1) withdrawal and dismissal.

3. – Citing from V.R.C.P. 41 (a) (2): "By Order of Court. -- Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper" (and further goes on to state)... .. "Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice."

4. – PIERCE contends it would be seriously inimical to the public interests of Vermont citizens, as represented by Vermont Department of Public Service (VT-DPS), for VT-PUC to support a dismissal without prejudice. PIERCE cites, below, the several specific reasons that VT-PUC should reject SW's request for dismissal without prejudice and, instead, order dismissal WITH PREJUDICE. PIERCE asserts that insofar as SW has pursued its objectives to date, of securing a CPG for its project, SW has clearly demonstrated from the very beginning that its case has no merit whatsoever and that SW lacks the necessary probity of organizational character to meet the reasonable expectations of Vermont citizens as to a beneficial outcome from its project, were it to go forward. PIERCE further asserts that it is appropriate and pertinent for VT-PUC to affirm the lack of any positive merits in SW's performance efforts to date, thereby justifying issuance of a dismissal order to SW, WITH PREJUDICE.

MET TOWER INCIDENT: Demonstrates SW organizational character inconsistent with the best standards of performance VT-PUC has established for petitioners for a CPG.

UNPROFESSIONAL TECHNICAL CONDUCT: SW, either through its own technical incompetence or in order to sow confusion and muddle the technical authority's response to SW's petition for a CPG, deliberately chose an unprofessional technical approach in addressing CPG petition requirements. The VT-PUC leaves the method of approach to fulfilling CPG petition information requirements up to the applicant's own option. This is an excellent technique as it immediately reveals, to full scrutiny, both the

technical sagacity and the commitment to technical ethics of the applicant. SW chose to submit a petition which inherently presumed that three quintessential review elements were so obviously, on their face, already satisfied, fulfilled and complete, that their formal review was a 'done deal' and consequently not at issue. Those three review elements were: (1) – a system impact study; (2) – a study of the displacement of the existing revenue streams of existing VT-PUC permitted power generation facilities and the damage those revenue displacements will work on the already permitted facilities; (3) – a careful, in-depth investigation of known problematic technical issues. Those three matters are separately addressed, directly below.

SYSTEM IMPACT STUDY:

A system impact study (SIS) looks at the purely technical issue of how the energy to be produced by a newly permitted generation facility would be "fitted into" an existing power transmission grid without causing upset and disturbance to existing power loads, already being moved through the grid by VT-PUC permitted facilities. The issues an SIS subtends and encompasses are myriad, complex and require extensive, detailed study of multiple options. A negative outcome from an SIS, if sufficiently severe, could provide a basis for rejection of a proposed project at the earliest project planning stages.

Although an SIS negative outcome would be disturbing and upsetting to the entrepreneurs promoting the project, as practical matter it would be in all party's best interests—and particularly the best interests of Vermont citizens—to receive the bad news early and save time, money and energy for other more acceptable projects. If an

applicant for a CPG does not comprehend the foregoing simple fact, then that applicant is either not technically equipped to pursue such a project or is acting in a morally—ethically— unacceptable manner. At some early stage of the project's technical review, such a project must, in the best interests of the Vermont public, be dismissed by VT-PUC, WITH PREJUDICE.

DISPLACEMENT OF EXISTING FACILITIES:

Existing VT-PUC generation facilities which hold existing CPG's issued by VT-PUC, have been granted a unique franchise to supply energy to Vermont citizens in a responsible manner. Such already permitted facilities through their receipt of a VT-PUC license, have been encouraged to build and operate their generation facilities to fulfill a need for power. Their existence only makes sense insofar as there is a verifiable need for electric power wherein such verifiable need either existed at the time of licensing or was predicted to exist in the foreseeable future. Such existing facilities, relying on their VT-PUC license to operate, have committed large sums of investor money to fulfill their franchise responsibilities. To displace—supplant—existing generation sources with new facilities, and thereby jeopardize the business models of existing facilities, makes no sense and is unacceptable unless there is a verifiable demand for additional new energy. Proof of such a demand is an essential first step and the immediate or near term future demand must be proved through a careful study by a competent regional energy authority such as ISO New England (ISO-NE). A study to prove the need for new energy should not be put off to the end of the CPG petition data review. In the case

of SW, they have either deliberately avoided, or out of technical incompetence, prematurely pushed into the CPG permitting process without first proving the need for the generation facility they are proposing. On the foregoing grounds, alone, VT-PUC owes Vermonters the duty of care to dismiss the SW petition WITH PREJUDICE.

KNOWN PROBLEMATIC TECHNICAL ISSUES:

At the time SW submitted its petition for a CPG, it was well known to followers of wind industry existing projects in Vermont that SOUND was evolving as a serious technical issue. The information on problems with SOUND had existed for a considerable period of time and not only in Vermont but throughout New England, the U.S. and the entire planet. SW either knew or should have known of these SOUND issues and should have taken steps long prior to submission of its petition for a CPG to satisfactorily address, in advance, all of those issues through a number of courses of action. First off, careful field testing should have been conducted at all nearby homes which were likely to be impacted by SOUND. Such testing should have involved VT-DPS field representatives along with community members opposing the project and their own technical representatives as active participants and observers. Further, SW should have made available the acoustic software program and assisted VT-DPS in making a public computer terminal readily available to both VT-DPS technical review personnel as well as to opposition community members and their technical review consultants. Early interaction—of an open receptive nature—by SW, through active engagement with the Vermont review authority and the concerned community members could have revealed

the major problems with SOUND at the Rocky Ridge site and saved all parties from their enormous expenditure of time, money and personal energy.

5. - In summation, PIERCE contends SW's petition for a CPG flowed either from gross technical incompetence or from a conscious determination to circumvent and bypass a thoroughgoing, conscientious technical review of their petition, by the technical review authority and by concerned, directly-impacted, community members. Therefore, for all of the above-cited causes, VT-PUC should refuse SW's request for withdrawal and should order dismissal of SW's ill-considered energy project, WITH PREJUDICE.

6. – SW's request for refund of its one hundred thousand dollar application fee should be denied as it is without precedent and would be grossly unfair to all other parties.

Dated at Saint Albans, Vermont this 11th day of December, 2017.

A handwritten signature in black ink that reads "D. Gregory Pierce". The signature is written in a cursive style with a large, stylized initial "D" and a prominent "P" at the end.

D. Gregory Pierce, P.E. (CE), ret.

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