

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

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 ) Docket No. 8816  
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  
VERMONTERS FOR A CLEAN ENVIRONMENT, INC.**

Vermonters for a Clean Environment, Inc. (VCE) hereby moves to intervene as a party under Public Service Board Rule 2.209(A) or 2.209(B). VCE is a Vermont non-profit membership organization with its principal place of business in Danby. VCE has more than 500 members throughout Vermont, including Franklin County and the directly affected towns of Fairfield, Swanton, and St Albans. Many of VCE's members who live in these towns, as well as members throughout Vermont who support VCE's mission, will be affected by the project. The construction and operation of Swanton Wind would also undermine VCE's organizational mission which is to support "the economic well-being of all Vermonters assuring appropriate use of our resources -- our people, our land, our air and our water, and to pursue the common goals of encouraging economic development with minimal environmental impacts and preserving Vermont's natural beauty."

According to Rule 2.209(A) of the Board's Rules of Practice, a person has a right to intervene if the person demonstrates a substantial interest that may be adversely affected by the outcome of a proceeding, the proceeding affords the exclusive means for the person to protect its interest, and the person's interest is not adequately represented by

existing parties. Furthermore, under Board Rule 2.209(B), in the Board's discretion, a person may be permitted to intervene if the person demonstrates a substantial interest that may be affected by the outcome of the proceeding. In exercising its discretion, the Board must consider whether that interest will be adequately protected by other parties, whether alternative means exist by which the person's interests can be protected, and whether intervention will unduly delay the proceedings or prejudice the interests of existing parties or the public.

In this proceeding, the Board will consider whether the proposed Swanton Wind project would meet a number of economic and environmental criteria enumerated at 30 V.S.A. § 248(b) including some of the criteria of 10 V.S.A. § 6086(a). VCE seeks to represent the interests of its members in ensuring that the construction and operation of the turbines meets these criteria and does not degrade the natural environment or harm the economics of the State or its residents.

### **Description of the Area**

The Swanton Wind project is proposed to be located on Rocky Ridge, a low elevation plateau in Swanton, Vermont. Despite its relatively low elevation, Rocky Ridge and the ridges to the north and south are the most prominent features in the landscape of the area, as noted in the Northwest Regional Plan and the Swanton Town Plan. Aptly named, Rocky Ridge is rock. Atop the rock is a wetlands complex of a type that is rare in Vermont, similar to the George D. Aiken Wilderness area in southern Vermont. Because of its unique ecological aspects with vernal pools, peat bogs, and high elevation ponds, Rocky Ridge is shown as a high value habitat block in the Agency of

Natural Resources' BioFinder, which ascribes the highest values for habitat in the area for miles around.

Rocky Ridge is a very wet site. Its waters feed Fairfield Pond to the east, and Hungerford Brook which drains into St Albans Bay of Lake Champlain to the west. Less than a mile to the east is Fairfield Pond with loons, osprey, heron, eagles and waterfowl that summer on Fairfield Pond and that fly over Rocky Ridge to glean corn from the farm fields to the west. The wind project site borders an important deeryard.

Many residential and seasonal camps surround Fairfield Pond, some of which rely on groundwater and others get their water directly from the pond. The residences nearest to the wind project site are in closer proximity to the turbines than any other operating wind projects in Vermont, with the closest residence about 1960 feet to the west. The St. Albans Town forest borders the wind project about half a mile to the south.

The ridge itself provides wildlife habitat for a diversity of species, including bear, bobcat, possibly lynx, and other furbearers, as well as migratory waterfowl. Rocky Ridge contains a diversity of trees, including sugar maples sufficient to provide income to several families who rely on the sugarbush for their living. Maple sugaring on the ridge consists of low impact human activity.

The proposed turbines would be seen and heard by residents in St Albans and Fairfield, as well as Swanton. Residences in both towns are within the project impact zone and the turbines would be visible and audible from a number of locations in both towns.

About 3/4 miles to the north are two dairy farms and a beef farm. To the west are residential areas that depend on wells for drinking water.

**VCE Meets the Intervention Standards**

As described in the attached affidavits, VCE's members enjoy the scenic beauty of Rocky Ridge and Fairfield Pond. They appreciate the quiet, rural character of the area and the ability to enjoy listening to and watching birds. They use Fairfield Pond for swimming, fishing and boating. They hike on the ridge and in the woods adjacent to the pond, and seek refuge from urban environments to enjoy the peace and tranquility of Rocky Ridge and its surroundings.

VCE meets the standards for both intervention as of right and permissive intervention. VCE and its members have substantial, specific, and particularized interests that may be adversely affected by the outcome of this proceeding. The proceedings afford the exclusive means by which VCE can protect that interest. There are no other proceedings in which VCE's substantial interests in the outcome of this proceeding can be protected.

Furthermore, the interests of VCE and its members will not be represented by any other party. Although the State is a party and some municipalities may move to intervene, neither can adequately represent the unique interests of VCE's members. See *In re Vermont Public Power Supply Authority*, 140 Vt. 424, 440 A.2d 140, 144 (1981) ("It is the culmination of the private interests of each of Vermont's citizens which produces the public interest." The State's representation of the public interest does not bar private citizen intervention as their interests may not be identical.) VCE's interests

are unique to protecting its members' use and enjoyment of Rocky Ridge, Fairfield Pond and its adjacent forests, Hungerford Brook, St. Albans Bay and the public areas nearby. VCE's and its members' perspective and interests are distinct from those of the general public, the municipalities, and state agencies and VCE's members rely on the organization to represent these interests.

Similarly, other individuals who may seek intervention may not have the same interests as does VCE and its members.

In the alternative, the Board should exercise its discretion to permit VCE to intervene in this proceeding as a permissive party. As noted, VCE's interests are substantial; there are no alternative means by which VCE and its members can protect its interests; and other parties will not represent the interests of VCE and its members. In addition, VCE's intervention will not delay the proceedings or prejudice the interests of other parties, as it is anticipated that the proceedings will involve a variety of parties and interests and the Board has already determined a schedule that VCE would meet.

### **30 V.S.A. § 248(b) Criteria**

30 V.S.A. § 248(b) provides that before issuing a certificate of public good, the Board "shall find that the purchase, investment, or construction" of a proposed project meets a number of listed criteria. VCE and its members have substantial, specific, particularized interests in the issues raised by certain of those criteria, as described in detail below.

**30 V.S.A. § 248(b)(1) With respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative**

**bodies, and the land conservation measures contained in the plan of any affected municipality.**

The proposed Swanton Wind project does not comply with the Swanton Municipal Plan or the Northwest Regional Plan in a number of respects. Members of VCE who are residents of Swanton and Franklin County have a legitimate interest in ensuring that the desires of the residents for the orderly development of their town and region as expressed in their plans are respected by the developer and upheld in this process.

**30 V.S.A. § 248(b)(4). Will result in an economic benefit to the State and its residents.**

The Swanton Wind project site's location on Rocky Ridge in Swanton is in close proximity to a number of homes in Swanton, Fairfield, and St Albans. VCE is concerned about the reduction in the grand lists of the towns that will be affected by the construction and operation of the wind turbines so close to numerous private properties. Property values have decreased in other places in Vermont where there are operating wind projects. The noise, shadow flicker, lights at night, glare from the blades, and the overall intrusiveness of these turbines both at night when people are trying to sleep and during the day when people are often outdoors on and around their properties would substantially interfere with residents' peaceful enjoyment of their properties. As a result, the desirability and therefore the values of the affected real estate will decrease, thereby decreasing the grand list of the affected towns.

VCE's mission includes supporting the economic well-being of Vermonters. A loss in property values will cause a reduction in the grand list and a resulting rise in

property taxes caused by the Swanton wind project. A number of VCE members live in the area and will be affected when the grand lists of St Albans, Fairfield, and Swanton are diminished. VCE's members in the area also depend on the economic activity generated by the maple sugaring operations that are threatened with flyrock from blasting and ice throw and other possible hazards known to be caused by wind turbines such as blade throw and turbine collapse.

VCE intends to present witnesses who will testify to the loss of property values and grand lists due to wind projects in other areas of Vermont, as well as witnesses to testify to experiences with flyrock, ice throw and other hazards from operating wind projects in New England.

**Section 248(b)(5). With respect to an in-state facility, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts to primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts.**

VCE members who live in the area of the Swanton Wind project – and those who spend time in the affected areas - will be impacted by the degradation of aesthetics include distracting ribbon-like streams of lights at night, loss of dark night sky, shadow flicker, glare and distracting movement from the blades, and noise. These impacts will combine to create a harsh contrast of industrial operations in these rural residential areas, and will result in the loss of peaceful enjoyment of the residents both in their homes and when spending time outdoors. The scenic beauty of Rocky Ridge and the area around it will be substantially diminished by the imposition of an industrial operation.

VCE will present testimony from current and former neighbors of operating wind projects concerning the impacts those projects have had on the aesthetics of the area and on their ability to enjoy their homes and properties.

The unusual wetlands complex on Rocky Ridge is a rare and irreplaceable natural area. Opening up the tree canopy and blasting for roads and turbine pads will alter the hydrology and harm the wetlands. The headwaters on Rocky Ridge supply recharge waters to area aquifers. According to the Petitioner, 95% of the headwaters would drain into St Albans Bay and Hungerford Brook, both of which are impaired waters, and 5% would drain to the east into Fairfield Pond. The Petitioner's storm water plan is inadequate to prevent degradation of the wetlands and streams. The stormwater from the project will degrade the headwaters, exposing them to elevated temperatures, increased sedimentation, and loss of aquatic biota. Erosion will increase excessive sedimentation of the streams, thereby altering their natural condition.

VCE will present expert witnesses who will testify about the failures of the stormwater systems at the operating wind projects and the consequences of the altered hydrology potentially caused by this project that will further degrade already impaired waters.

According to ANR's biofinder, Rocky Ridge contains the highest value habitat block in the area. It is rich with wildlife habitat for animals such as bear, fisher, bobcat, and possibly lynx. It is home to endangered bats and a large variety of birds as well as a significant deeryard. The Swanton wind project will degrade the habitat for these animals as well as the waterfowl including resident loons and bald eagles and nesting



ducks. VCE will present experts who will testify about the harm that this project will cause to the wildlife that lives in the area and passes through, based on the negative impacts to wildlife habitat and reproduction of species resulting from wind projects in other areas. VCE's members place a very high value on the wildlife that live in the area. VCE has worked in other areas in the state to conserve large tracts of land for wildlife protection, as is consistent with our mission.

VCE's members have substantial interests in the protection of the existing aesthetics and natural resources of the Rocky Ridge site and its surroundings and will testify about the undue adverse impacts that the Swanton Wind project will have.

Under 10 V.S.A. § 6086(a)(1)(B), the injection of waste materials and harmful or toxic substances into groundwater or wells is prohibited. VCE's members have a substantial interest in ensuring that the oil used for fueling the construction equipment and the fuel oil that is injected into the groundwater during blasting will not be harmful to the sensitive ecology of Rocky Ridge or Fairfield Pond or their individual water supplies.

### **Conclusion**

While VCE has not previously sought to intervene in a PSB proceeding, VCE has assisted numerous other intervenors participating in the PSB process. VCE has assisted parties with understanding the process, evaluating the impacts of proposed solar and wind projects, determining how their interests would be affected, and preparing testimony for technical hearings. VCE has also spent seventeen years working throughout Vermont on a wide variety of development proposals and their impacts on groundwater quality and quantity and surface water, on natural resources, on aesthetics including the impacts of

noise. Consistent with our mission, VCE's work has resulted in the protection of large areas of wildlife habitat for connectivity and from fragmentation around the state, including in Brighton, Danby, Ferdinand, Grafton, Ira, Newark, Pittsford, Waitsfield, and Windham.

VCE has been involved in Act 250 cases involving the impacts of blasting compounds that can contaminate surface water and change groundwater flows, and as a result, initiated the effort that resulted in updating Vermont's groundwater protection law that put groundwater into the public trust. Based on VCE's extensive experience with the types of substantive issues raised by the proposed Swanton Wind project, VCE is able to uniquely represent its members' interests in this proceeding.

Although this Project is purported to advance the public good, it raises significant concerns relevant to VCE's mission. In order to protect the interests of VCE and its members in Swanton, St. Albans, Fairfield and throughout the State, VCE should be allowed to intervene in this proceeding.

Respectfully submitted this 16<sup>th</sup> day of February.

By:



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**CERTIFICATE OF SERVICE**

I, Annette Smith, certify that on February 16, 2017, copies of the foregoing *Notice of Appearance and Motion to Intervene of Vermonters for a Clean Environment* in the above-referenced matter, were mailed via First-Class U.S. Mail to the persons on the following Service List.

Respectfully submitted this 16<sup>th</sup> day of February, 2017.

By:



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