

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

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VT PUBLIC SERVICE BR

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

**MOTION TO INTERVENE OF
DAVID BUTTERFIELD**

David Butterfield *pro se* under Public Service Board Rule 2.209(A)(3), or alternatively under Board Rule 2.209(B), moves to intervene in the above-referenced matter.

Mr. Butterfield as a non-adjointing neighboring property owner has substantial, specific, and particularized interests that may be adversely affected by the outcome of this proceeding. This proceeding is the only means by which Mr. Butterfield can protect his interests, and these interests will not be adequately protected by other parties to this proceeding. Mr. Butterfield's interests are unique to protecting the use and enjoyment of his property and the public areas nearby, and his perspective is sufficiently distinct from that of other parties.

Mr. Butterfield's intervention will not unduly delay proceedings or prejudice the interests of existing parties or of the public.

Memorandum

Mr. Butterfield respectfully moves to intervene in this matter based on his substantial, particularized interests in the following issues:

- (i) orderly development of the region, pursuant to 30 V.S.A. § 248(b)(1);
- (ii) economic benefit to the State and its residents, § 248(b)(4);
- (iii) public health and safety, § 248(b)(5);

- (iv) water pollution, conservation, and burden on water supply, 10 V.S.A. §§ 6086(a)(1)(A), (B), and (C), (3), and (4);
- (v) scenic or natural beauty and aesthetics, § 248(b)(5) and § 6086(a)(8);
- (vi) necessary wildlife habitat or endangered species, § 6086(a)(8)(A); and
- (vii) development affecting public investments, § 6086(a)(9)(K).

The following argument supports Mr. Butterfield's motion to intervene in this matter.

I. Legal Standard

Intervention in proceedings before the Board is governed by Board Rule 2.209. Under Rule 2.209(A), a person upon timely application shall be permitted as of right to intervene in any proceeding:

(1) when a statute confers an unconditional right to intervene; (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest, and where the applicant's interest is not adequately represented by existing parties.

Under Rule 2.209(B), a person upon timely application may in the discretion of the Board be granted "permissive intervention" in any proceeding when the applicant "demonstrates a substantial interest that may be affected by the outcome of the proceeding." The Board in exercising its discretion under this rule shall consider:

(1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

The Board has ruled that, "individual intervenors may bring a perspective sufficiently

distinct from those of existing parties to warrant their participation on specific issues.”¹

For example, the Board has found particularized interest based on the following:

1. habitat and natural resources involving deer and black bear;²
2. aesthetics based on proximity to the proposed project;³ and
3. stewardship, use, and enjoyment of public resources;⁴

In proceedings under 30 V.S.A. § 248, the Board is not required to consider interests in private property.⁵

II. Potential Impact of the Project on Mr. Butterfield’s Interests

Mr. Butterfield and his wife since August, 2000, have owned and resided in their home on Sheldon Road in Swanton, Vermont, approximately 3,000 feet from the site of the proposed Project. The Butterfields decided to purchase and someday retire in their home based substantially on the scenic, peaceful, natural setting, and access to the nearby Missisquoi Valley Rail Trail. The turbines associated with the Project would be visible and audible from their home.

Additionally, the Butterfields enjoy observing local wildlife such as bear, birds, deer, and migrating geese, and Mr. Butterfield as an avid fisherman enjoys the quiet, peaceful atmosphere of nearby Fairfield Pond. The turbines would be visible and audible from the Pond.

¹ *Application of Seneca Mountain Wind, LLC*, Docket No. 7867, Order of 10/12/12, at 12.

² *Application of Seneca Mountain Wind, LLC*, Docket No. 7867, Order of 10/12/12, at 2-4, 16-17; *Id.*, Order of 8/9/13, at 6.

³ *Petition of Barton Solar LLC*, Docket No. 8148, Order of 1/21/14, at 3-4.

⁴ *Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Vermont Electric Power Company, Inc.*, Docket No. 7628, Order of 9/3/10, at 12-13.

⁵ *See Vt. Elec. Power Co. v. Bandel*, 135 Vt. 141, 145 (1977) (“Proceedings under 30 V.S.A. § 248 relate only to the issues of public good, not to the interests of private landowners who are or may be involved.”)

* * *

The Project purports to advance the public good, however Mr. Butterfield asserts that any potential good may be outweighed by the likely harm. Accordingly, he moves to intervene by right or permission on the following seven issues.

1. **Orderly Development: 30 V.S.A. § 248(b)(1)**

Mr. Butterfield as a longstanding Swanton-area homeowner, fisherman, and user of the Missisquoi Valley Rail Trail, possesses a unique understanding and perspective regarding the orderly development of the region, specifically in land use and conservation. His participation in this proceeding may be useful to the Board in determining the potential nature and extent of the impact of the Project on regional development. As Mr. Butterfield's particular interests will not necessarily be represented by other parties to this proceeding, his motion to intervene on this issue should be granted.

2. **Economic Benefit: § 248(b)(4)**

Construction and operation of the Project would have a significant impact on the economy of the State. Mr. Butterfield acknowledges that his interest in private property has no bearing in this case, however he asserts that the Project – an industrial complex in a bucolic residential setting -- would adversely affect property values locally and regionally, and thereby harm the economic interests of the State and its residents. Real estate agents have informed Mr. Butterfield that the value of his and nearby homes would decrease if the proposed Project were approved. Supporting this assertion, Mr. Butterfield points to the fact that Petitioner in this case has offered a “Neighboring Property Buy-Out Option” which neighbors may exercise at fair market value, no earlier than six months plus fifteen business days after the Project's

commencement of commercial operations. At that point in time, however, neighbors' properties would be afflicted by persistent sound, shadow flickers, and the overwhelming presence of industrial turbines. If Petitioner believed that the Project would not adversely affect property values, then Petitioner would offer to buy neighbors' properties *upon approval* of the project at *current appraised value*, rather than *after commencement* of operations at *fair market value*. The fact that Petitioner does not, indicates their belief that the Project may adversely affect surrounding property values.

Accordingly, as Mr. Butterfield has a unique perspective, and particular interest in this issue not necessarily represented by other parties to this proceeding, he should be allowed to intervene on this issue.

3. Public Health and Safety: § 248(b)(5)

The Project would be located approximately 3,000 feet from the Butterfields' home. This proximity subjects Mr. Butterfield, his wife, and their pets to potential health and safety risks caused by sound, shadow flickers, and blasting associated with the Project.

Particularly, as Mrs. Butterfield is a very light sleeper, sounds caused by the Project may significantly disrupt her ability to obtain necessary, restorative sleep. Additionally, the Butterfields care for and intimately value four indoor cats which may suffer from stress, anxiety, and adverse health effects due to excessively chasing shadow flickers caused by the Project.

Furthermore, blasting and drilling associated with the Project may cause damage to the Butterfields' drilled well, septic system, or foundation or walls of their house.

Therefore, as this Project raises numerous concerns over public health and safety on Mr. Butterfield's property, and no other party would adequately protect those interests, Mr.

Butterfield should be allowed to intervene on this issue.

**4. Water Pollution, Conservation, and Burden On Water Supply:
10 V.S.A. §§ 6086(a)(1)(A), (B), and (C), (3), and (4)**

Potable water service to the home of Mr. Butterfield is provided by a drilled well on his property. This well is recharged at an adequate rate with water flowing from the area underlying the proposed Project. The Project would require blasting due to the surrounding hard substrate (rock, ledge, bedrock), and pouring concrete in the ground, either or both of which may adversely affect the volume and quality of nearby surface- and ground-water. For example, these activities may: cause ground vibrations that crack Mr. Butterfield's well; inject harmful or toxic substances into ground water or wells; decrease the amount of recharge waters to aquifers; cause unreasonable soil erosion or reduction in the capacity of the land to hold water; or otherwise disrupt or place a burden on the existing water supply. As water is vital to the Butterfields' health, and the Project would be constructed on their source of water, Mr. Butterfield should be granted intervention on this issue.

Additionally, Mr. Butterfield regularly enjoys fishing on Fairfield Pond, which due to its proximity to the proposed Project may become contaminated from construction, operation, and run-off.

Based on Mr. Butterfield's unique situation and perspective as a regular fisherman on Fairfield Pond, his participation in this proceeding may be useful to the Board in determining the potential nature and extent of the impact of the Project on the Pond. Therefore Mr. Butterfield should be allowed to intervene on this issue.

5. Scenic or Natural Beauty and Aesthetics: § 248(b)(5) and § 6086(a)(8)

The Butterfields selected the site for their home and retirement based substantially on the natural, tranquil, scenic environs. The Butterfields live among wildlife and habitat, brooks and streams, and sights and sounds of the natural world. Particularly, from their home and porch the Butterfields regularly enjoy the songs of birds, and otherwise they value the peaceful repose of silence. However the persistent sound caused by the Project would disrupt this harmony.

With respect to recreation, the Butterfields regularly walk and bike on the nearby Missisquoi Valley Rail Trail. This 26.2 mile multi-use public path extending from St. Albans to Richford would be at its nearest point less than a mile from the Project, with potential views of all seven proposed turbines.⁶ The proximity, visibility, and sound of this industrial complex in this otherwise rural setting, would adversely affect the Butterfields' and the public's use and enjoyment of the Trail.

Finally, as previously noted, Mr. Butterfield regularly fishes on Fairfield Pond where he enjoys the quiet and peaceful atmosphere. Conversely, construction and operation of the Project would be noisy, disruptive, and offensive to Mr. Butterfield or anyone using the pond for recreation.

Accordingly, given Mr. Butterfield's particular interest in these issues – aesthetics on his property, on the Missisquoi Valley Rail Trail, and on Fairfield Pond – and his relevant experience, knowledge, and understanding as a longstanding resident of the area, his motion to intervene on this issue should be granted.

6. Necessary Wildlife Habitat or Endangered Species: § 6086(a)(8)(A)

⁶ Petitioner Ex. SW-DR-2 at 28-29.

Mr. and Mrs. Butterfield appreciate the wildlife that lives on and visits their land. They enjoy regularly observing a variety of birds and deer, and occasionally bear. Moreover, the Butterfields twice annually observe hundreds of migrating Canada geese which feed and sleep in a corn field across from their house, and routinely fly over the ridgeline from and toward Fairfield Pond. These geese cross the ridgeline at altitudes that would place them at risk of being injured or killed by the proposed turbines.

In addition, as previously stated Mr. Butterfield regularly fishes on Fairfield Pond where bald eagles, a state-endangered species in Vermont, have in recent years been observed, as reported by the North Branch Nature Center in Montpelier, VT.⁷ Fairfield Pond has been determined by Vermont Fish & Wildlife Department as potentially suitable habitat for breeding bald eagles.⁸

The significant area, height, and scope of the Project in this natural setting may adversely affect necessary wildlife habitat or endangered species. Mr. Butterfield acknowledges that in this proceeding the Agency of Natural Resources may be best situated to intervene on this issue, however he asserts that his perspective as a longstanding landowner and fisherman may differ from that of other parties, and he may provide useful insight into the extent and nature of the impact of the Project on important wildlife and habitat. Thus in the public interest Mr. Butterfield should be allowed to intervene on this issue.

7. Public Investments: § 6086(a)(9)(K)

Mr. and Mrs. Butterfield by walking and biking regularly use and enjoy the Missisquoi

⁷ See 'Birding: Birding Resources: VT eBird Bar Chart' <<http://ebird.org/content/vt/>>, at the North Branch Nature Center (Montpelier, VT) website. 26 January 2017.

⁸ Vermont Fish & Wildlife Department. "Vermont Bald Eagle Recovery Plan." October 2010. Web 27 January 2017.
<<http://www.vtfishandwildlife.com/common/pages/DisplayFile.aspx?itemId=111337>>.

Valley Rail Trail. As previously noted, the Trail would be at its nearest point less than a mile from the Project, with potential views of all seven proposed turbines. The proximity, visibility, and sound of the Project may unnecessarily or unreasonably endanger the public investment in the Trail, or interfere with the Butterfields' or the public's use or enjoyment of it. Mr. Butterfield as a nearby neighbor and regular user of the Trail has a unique familiarity, understanding, and perspective that may be useful to the Board in determining the potential nature and extent of the impact of the Project on the Trail. For these reasons, Mr. Butterfield's motion to intervene on this issue should be granted.

III. Conclusion

Mr. Butterfield asserts that while this Project is purported to advance the public good, it also raises significant concerns over the public interest. Accordingly, in order to protect himself, his wife, and his neighbors throughout the State, Mr. Butterfield upon on the evidence presented herein should be allowed to intervene in this proceeding.

Respectfully submitted this 16th day of February, 2017.

By:



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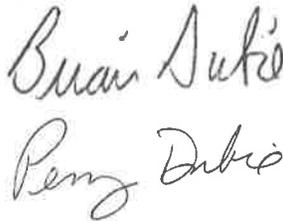
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VT PUBLIC SERVICE BOARD

CERTIFICATE OF SERVICE

We, Brian and Penny Dubie, et.al., certify that on February 16, 2017, copies of the foregoing *Notices of Appearance*, and *Motion to Intervenes of Brian and Penny Dubie, Jeanne Royer, Judith and Patrick Luneau, Karen and Leo McLaughlin, Sally and Bruce Collopy, Kaye and Frank B. Mehaffey, Jr., Terrance Smith, David A. Goodrich, Robert Perkins, Patricia Messier, Sarah & Ed Ferguson, Ian and Danielle Garrant, Curtis Swan and Sara Luneau-Swan, Dan and Nancy Dunne, Erynn & Tyrell Boudreau, Dennis Hendy and Diane Bell, Mary and Mark Bushey, Steve Woodward, Kenneth Fox, Michelle and Luc Deslandes, David Butterfield, Bradley Stott and Jennifer Belanger, Clark and Carol Palmer, Paula Pearsall, Greg Pierce and Paula Kane, Mark and Marianne Dubie, Marie and Gil Tremblay, Patricia Rainville and John Smith, Kevin and Dolores Nichols, Jessica Decker and Lance Desautels, Suzanne Seymour, Mary Hunter, Todd Poirier* in the above-referenced matter, were served via First-Class U.S. Mail on the interested persons designated in the following Service List.

Respectfully submitted this 16th day of February, 2017.

By:



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