

STATE OF VERMONT  
PUBLIC SERVICE BOARD

FEB 16 '17 PM 8:48  
VT PUBLIC SERVICE BRD

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  
DIANE BELL AND DENNIS HENDY**

We, Diane Bell and Dennis Hendy, jointly *pro se* under Public Service Board Rule 2.209(A)(3), or alternatively under Board Rule 2.209(B), move to intervene in the above-referenced matter.

We as non-adjoining neighboring property owners have substantial, specific, and particularized interests that may be adversely affected by the outcome of this proceeding. This proceeding is the only means by which we can protect our interests, and these interests will not be adequately protected by other parties to this proceeding. Our interests are unique to protecting the use and enjoyment of our property and the public areas nearby, and our perspective is sufficiently distinct from that of other parties.

Our intervention will not unduly delay proceedings or prejudice the interests of existing parties or of the public.

**Memorandum**

We respectfully move to intervene in this matter based on our 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) transportation, § 6086(a)(5).

The following argument supports our 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.”<sup>1</sup>

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

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

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

## **II. Potential Impact of the Project on the Bell-Hendy’s Interests**

We have resided since August, 2012, on our property at 537 Whites Camp Road, Fairfield, Vermont (mailing address: P.O. Box 1603, Williston). Our home is located on the east side of Fairfield Pond, approximately 4,000 feet northeast of Rocky Ridge, the proposed site of the Project. The turbines associated with the Project would be visible and audible from our home, which is located downwind at a lower elevation.

Diane works as a nurse practitioner. Dennis is retired after working for 31 years at I.B.M., and 16 years co-owning and operating Vermont Construction and Repair LLC. Additionally, Dennis is an active member of the Fairfield Pond Recreation Association.

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

<sup>2</sup> *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.

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

<sup>4</sup> *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.

<sup>5</sup> *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.”)

We decided to purchase our property, and build and retire in our home, based substantially on the surrounding scenic views, wildlife, and peaceful country setting; and the ready access to natural acreage including Fairfield Pond for hiking, snowshoeing, hunting, fishing, swimming, boating, kayaking, and outdoor activity with our grandchildren. Construction and operation of the Project would materially diminish the visual and auditory harmony of our home, and adversely affect our use and enjoyment of our property and nearby public areas.

\* \* \*

The Project purports to advance the public good, however we assert that any potential good may be outweighed by the likely harm. Accordingly, we move to intervene by right or permission on the following seven issues.

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

We as neighboring homeowners, business owners, sportsmen, and outdoorsmen, have unique experience and particular interest in the orderly development of the region which other parties to this proceeding may not necessarily represent. Our use and enjoyment of our property and nearby public land for hiking, hunting, fishing, boating, and appreciation of nature, may be adversely affected by the construction and operation of the Project. Our perspective regarding land use, natural resources, commerce, and conservation, may be useful to the Board in determining the potential nature and extent of the impact of the Project on regional development. Therefore our 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. We acknowledge that our interest in private property has no bearing in this case, however we assert 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. Our assertion is based on evidence showing that properties located near or within the viewshed of industrial wind turbines in other towns in Vermont have depreciated in value, thereby decreasing the property tax base and increasing the tax rate. Likewise local real estate agents have informed us that construction and operation of the Project would adversely affect the value of properties located nearby or within the viewshed of the Project. The familiar realtor's refrain -- location, location, location – is instructive here: a prospective homebuyer given the choice of living near seven noisy, flickering, imposing turbines, or elsewhere, likely would go elsewhere.

In this case, the Project would be located closer to surrounding homes than in any existing industrial wind development in Vermont. Accordingly, the impact of this Project on surrounding and regional property values is unprecedented and likely greater than elsewhere. Our home is located both nearby and within the viewshed of the Project, therefore we have a unique perspective and particular interest in this issue that is not necessarily represented by other parties, and we should be allowed to intervene on this issue.

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

The Project would be located approximately 4,000 feet from our property. The turbines would interfere with light from the sun and moon setting over Rocky Ridge on the southwest side of our home. The noise and infrasound caused by the Project would travel downhill, downwind, and amplify over the water on Fairfield Pond. Thus the proximity of the turbines to

our property subjects us to potential health and safety risks caused by significant levels of shadow flickers and sound associated with the Project.

Particularly, as Diane is a working nurse practitioner, it is important for herself and her patients that she obtain necessary, restorative sleep. She is a sound sleeper, however when awoken during her nighttime sleep cycle – in this case, by shadow flickers or fluctuating sound caused by the Project – she has difficulty returning to sleep. Such disruption would interfere with her ability to perform her job. Numerous studies indicate that noise and infrasound from wind turbines have adverse effects on neighbors. In this case, the noise traveling from the turbines downhill, downwind, amplified over Fairfield Pond, likely would have an impact in our home. To illustrate this point, under certain wind conditions we are able to hear noise from the trains running through St. Albans, which is six miles away. Therefore it is probable that the level and frequency of noise caused by seven industrial turbines, 4,000 feet from our home, would be unduly disruptive.

Accordingly, as our particular concerns over public health and safety on our property would not be adequately represented by other parties to this proceeding, we 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)**

We built our home on the shore of Fairfield Pond because we enjoy many activities on the water including fishing, swimming, boating, kayaking, and spending time with our grandchildren. Construction and operation of the Project may cause run-off, cement, petroleum, or other toxic substances to pollute the Pond. Therefore due to our particular situation on the shore of the Pond, and Dennis' membership in the Fairfield Pond Recreation Association, our

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. Accordingly, our motion to intervene on this issue should be granted.

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

We selected the site for our home and retirement based substantially on the scenic views and quiet, peaceful surroundings. We particularly appreciate the surrounding wildlife and habitat, and the ready access to natural acreage including Fairfield Pond for hiking, snowshoeing, hunting, fishing, swimming, boating, kayaking, and outdoor activity with our grandchildren. We regularly walk out our back door with our dog and spend a few hours simply wandering through the woods, enjoying a variety of wildlife, finding animal tracks, watching waterfalls after a rain, and observing activity in the high-elevation ponds. In the wintertime our friends visit and we go snowshoeing in the woods. However these aesthetic sights and sounds, and our use and enjoyment of our property and nearby public areas, would be adversely affected by the imposing presence and persistent sound of the turbines.

Additionally, from our deck, patio, and bedroom we enjoy views of the sun and moon setting over Rocky Ridge. Yet according to the proposed Project, that ridge would be studded with seven turbines casting shadow flickers across our deck and patio and into our bedroom, thereby disrupting our sleep, daily routines, and leisure. The pervasive peace that we now enjoy would be unsettled by persistent noise, and the visual and auditory harmony of our home would be destroyed.

Furthermore, as previously noted, Dennis recently retired. He plans to work outside and around the home in order to create a comfortable and enjoyable environment as a reward for his

many years of hard work. Additionally, he hopes to enjoy some moments of leisure and peace. Conversely, construction and operation of the Project would create visual distraction and noise, and thereby destroy the peaceful setting that he had envisioned for himself, his wife, and grandchildren, and devalue all that he has worked so long to obtain.

Finally, the Swanton Town Plan notes that Interstate 89 is the gateway from Canada into the United States. Rocky Ridge is the only prominent ridge in Swanton, and from Interstate 89 it dominates the view to the East. This view would be adversely affected if the Project were constructed. Likewise, the Missisquoi Rail Trail is located in close proximity to the west of Rocky Ridge, and construction and operation of the Project would materially diminish the scenic, natural views from the Trail.

Accordingly, our particular experience, interest, and perspective as landowners, hikers, hunters, outdoorsmen, and conservationists may be useful to the Board in determining the potential nature and extent of the impact of the Project on aesthetics. Therefore we should be allowed to intervene on this issue.

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

We appreciate the wildlife that lives on and visits our land and surrounding areas. In the woods we place game cameras through which we have seen hundreds of deer, and many bobcats, fox, mink, otter, and turkeys. However construction and operation of the Project would disrupt the habitat of these animals. For example, as deer during the winter require quiet areas to remain safe from predators, the Project and associated noise and vibrations would disrupt the quiet setting and cause deer to abandon these wintering areas.

In addition, thousands of geese each year fly back and forth over Rocky Ridge between Fairfield Pond on the east side, and corn fields on the west side. This year from our house we counted over 1,000 geese on the Pond during the Fall season. These geese cross the ridgeline at altitudes that would place them at risk of being injured or killed by the proposed turbines.

Additionally, over the course of the winter we feed birds approximately 140 pounds of seed -- daily we fill the bird feeders and enjoy watching the many types of birds that entertain us. These birds, which also eat the fruits of invasive species in the area including European Buckthorn (*Rhamnus cathartica*), Multiflora Rose (*Rosa multiflora*), would disseminate those seeds on the exposed soils of the Project thereby exacerbating the problem of invasive species.

In addition, as previously stated Dennis is a member of the Fairfield Pond Recreation Association. One of his duties, along with state loon biologist Eric Hanson, is monitoring the behavior and nesting habits of loons on the Pond. Dennis and Eric built loon nesting rafts in order to support loon nesting and reproduction; also they placed signs throughout the nesting areas to protect the loons from boaters and other visitors. Currently during summertime two pairs of loons live on the Pond. However the noise, infrasound, and pollution from the Project, and the turbines that would impede flight over Rocky Ridge, may deter loons from living and breeding on Fairfield Pond. Similarly, we have an interest in protecting bald and golden eagles which regularly we observe flying over our home and Rocky Ridge, and living on Fairfield Pond which has been determined by Vermont Fish & Wildlife Department as potentially suitable habitat for breeding bald eagles.<sup>6</sup>

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<sup>6</sup> 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>>.

In sum, the significant area, height, and scope of the Project in this natural setting may adversely affect necessary wildlife habitat or endangered species. We acknowledge that in this proceeding the Agency of Natural Resources may be best situated to intervene on this issue, however we assert that our perspective as a landowners, hikers, hunters, fisherman, outdoorsmen, and conservationists, may differ from that of other parties, and we 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 we should be allowed to intervene on this issue.

**7. Transportation: § 6086(a)(5)**

Every day, rain or shine, we enjoy walking with our dog along our dead-end dirt road. However this enjoyment may be adversely affected by blasting, heavy truck traffic, and shadow flicker associated with the construction and operation of the Project.

Therefore due to our unique experience and perspective as nearby homeowners and regular users of these roads, we should be allowed to intervene on this issue.

**III. Conclusion**

We assert 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 ourselves, our family and grandchildren, and our neighbors throughout the State, we should be allowed upon the evidence presented herein to intervene in this proceeding.

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

By:



Diane Bell  
Dennis Hendy  
P.O. Box 1603  
Williston VT 05495  
803-734-1333  
Djhendy1@gmail.com

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**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 16<sup>th</sup> day of February, 2017.

By:



Brian Dubie  
Penny Dubie  
770 McKenzie Road  
Fairfield, VT 05455  
(802) 734-1877  
[pennydubie@gmail.com](mailto:pennydubie@gmail.com)

**SERVICE LIST**

Leslie Cadwell, Esq,  
Alison Milbury Stone, Esq.  
Legal Counselors and Advocates PLC  
PO Box 827  
Castleton, VT 05735

Green Mountain Power Corp.  
163 Acorn Lane  
Colchester, VT 05446

Aaron Kisicki, Esq.  
Vermont Department of Public Service  
112 State Street, Third Floor  
Montpelier, VT 05620-2601

Edward Adrian, Esq.  
Monaghan Safar Ducham, PLLC  
156 Battery Street  
Burlington, VT 05401

Cindy Ellen Hill, Esq.  
144 Mead Lane  
Middlebury, VT 05753

Melanie Kehne, Esq.  
Vermont Agency of Agriculture  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

William F. Ellis, Esq.  
McNeil, Leddy & Sheahan, P.C.  
271 South Union Street  
Burlington, VT 05401

Joseph S. McLean, Esq.  
David W. Rugh, Esq.  
Stitzel, Page & Fletcher, P.C.  
171 Battery Street, P.O. Box 1507  
Burlington, VT 05402-1507

Leslie Welts, Esq.  
Vermont Agency of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3901

David Englander, Esq.  
Vermont Department of Health  
108 Cherry Street – Drawer 39  
PO Box 70  
Burlington, VT 05402

Dale E. Azaria, Esq.  
Vermont Division for Historic Preservation  
1 National Life Drive  
Davis Building, 6<sup>th</sup> Floor  
Montpelier, VT 05620-3901

John Dunleavy  
Assistant Attorney General  
Vermont Agency of Transportation  
One National Life Drive  
Montpelier, VT 05633