

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

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)

FEB 16 '17 4:48 PM
VT PUBLIC SERVICE BOARD

**MOTION TO INTERVENE OF
JUDITH LUNEAU AND PATRICK LUNEAU**

Judith Luneau and Patrick Luneau (the “Luneaus”) 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.

The Luneaus as non-adjoining landowners 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 the Luneaus can protect their interests, and these interests will not be adequately protected by other parties to this proceeding. The Luneaus’ interests are unique to protecting the use and enjoyment of their property and the public areas nearby, and their perspective is sufficiently distinct from that of other parties.¹

The Luneaus’ intervention will not unduly delay proceedings or prejudice the interests of existing parties or of the public.

Memorandum

The Luneaus respectfully move to intervene in this matter based on their substantial,

¹ The Luneaus acknowledge that some of their interests may appear similar to some of the interests articulated by Curtis Swan and Sara Luneau-Swan who filed a joint motion to intervene in this proceeding, however the Luneaus believe that their interests are sufficiently distinct to justify separate party status and intervention, and they seek an opportunity through discovery to develop their unique positions. Nonetheless, if the Board finds that any of those interests do not warrant separate intervention, the Luneaus in the interests of justice and economy will readily join with the Swans in the discovery and presentation of evidence regarding those interests. Board Rule 2.209(C).

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);
- (vii) transportation, § 6086(a)(5); and
- (viii) development affecting public investments, § 6086(a)(9)(K).

The following argument supports the Luneaus' 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.”²

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

1. habitat and natural resources involving deer and black bear;³
2. aesthetics based on proximity to the proposed project;⁴ and
3. stewardship, use, and enjoyment of public resources;⁵

In proceedings under 30 V.S.A. § 248, the Board is not required to consider interests in private property.⁶

II. Potential Impact of the Project on the Luneaus’ Interests

The Luneaus own property and reside at 141 Sweet Hollow Road, Swanton, Vermont (mailing address: Sheldon), slightly more than one mile from the site of the proposed Project. The Luneaus decided to buy and someday retire in their home based substantially on its potential agricultural use, and the surrounding scenic, peaceful, natural setting including a variety of wildlife. The Luneaus enjoy hunting on their land, and using nearby Fairfield Pond for fishing and swimming, and the nearby Missisquoi Valley Rail Trail for walking and biking.

The turbines associated with the Project would be visible from numerous points on the

² *Application of Seneca Mountain Wind, LLC*, Docket No. 7867, Order of 10/12/12, at 12.

³ *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.

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

⁵ *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.

⁶ *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.”)

Luneaus' property and from nearby public lands and roads thereby affecting views and daily driving. Additionally, the turbines would be audible at 35 dBA in the Luneaus' home, and audible throughout the surrounding area.

* * *

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

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

The Luneaus as owners of agricultural land, and as residents, hunters, fishermen, and users of Fairfield Pond and the Missisquoi Valley Rail Trail, possesses a unique understanding and perspective regarding the orderly development of the region, specifically in land use, natural resources, and conservation. Their 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. Therefore, as the Luneaus' particular interests will not necessarily be represented by other parties to this proceeding, their 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. The Luneaus acknowledge that their interests in private property have no bearing in this case, however they 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. This adverse effect is self-evident: a prospective homebuyer given the choice of living near seven noisy, flickering, ice-throwing

turbines, or elsewhere, likely would purchase a home elsewhere.

Accordingly, considering the Luneaus' unique experience and perspective as residents and owners of agricultural land, and their particular interest that is not adequately represented by other parties to this proceeding, the Luneaus should be allowed to intervene on this issue.

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

The Project would be located slightly more than one mile from the Luneaus' home. This proximity subjects them and their pet dog to potential health and safety risks caused by undue levels of sound, and blasting associated with the Project.

Particularly, the Luneaus care for, and intimately value as a member of their family, their pet dog named Brandy Jean, a Chesapeake Bay retriever who is sensitive to sound. The persistent noise from the turbines may cause Brandy Jean to bark throughout the night, thereby requiring the Luneaus to consider drastic responses including euthanasia. Accordingly, the Project may cause adverse effects including emotional distress on the Luneaus and Brandy Jean.

Furthermore, blasting and drilling associated with the Project may cause damage to the Luneaus' foundation or walls of their house. Similarly, blasting at a quarry located near Fairfield Pond Road caused a shift in the Luneaus' foundation.

Therefore, as this Project raises concerns over health and safety on the Luneaus' property, and no other party would adequately protect those interests, the Luneaus 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)**

Construction and operation of the Project may adversely affect the volume and quality of surrounding water. In this particular case, the Luneaus enjoy fishing and swimming on Fairfield

Pond, which due to its proximity to the proposed Project may become contaminated as a result of construction, operation, and run-off.

Furthermore, several brooks and streams that originate in the area underlying the proposed Project flow through the Luneaus' property and eventually drain into Lake Champlain [VERIFY]. Approval, construction, and operation of the Project may result in cement, petroleum, or other toxic substances polluting the Lake. The Luneaus assert that the State should not approve this Project which may damage Lake Champlain, after spending millions of dollars to protect it.

Based on the Luneaus' experience and perspective as fishermen and outdoorsmen on Fairfield Pond, and owners of land through which water would flow from the Project to Lake Champlain [VERIFY], their 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 and Lake. Therefore the Luneaus should be allowed to intervene on this issue.

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

The Luneaus decided to buy and retire in their home based substantially on the natural, tranquil, scenic environs including nearby Fairfield Pond, and the Missisquoi Valley Rail Trail. The intrusive sight and persistent sound of industrial turbines in this otherwise rural setting would disrupt the visual and audible harmony in their home, and in nearby public areas.

Particularly, the Luneaus enjoy fishing and swimming in the quiet and peaceful atmosphere of Fairfield Pond. Yet construction and operation of the Project would be noisy and visually offensive to the Luneaus or anyone using the Pond for such recreation.

Additionally, the Luneaus enjoy access to the nearby Missisquoi Valley Rail Trail for

recreation including walking and biking. 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.⁷ The proximity, visibility, and sound of this industrial complex in this otherwise country setting, would adversely affect the Luneaus' and the public's use and enjoyment of the Trail.

Accordingly, as the Luneaus have a particular interest in aesthetics on their property and nearby public areas including Fairfield Pond and the Missisquoi Valley Rail Trail, and they have a unique perspective as nearby landowners, fisherman, and bikers, their motion to intervene on this issue should be granted.

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

The Luneaus appreciate the presence of wildlife inhabiting and traversing their land including regular visits from deer, and occasionally bear. The Project may disrupt necessary wildlife habitat including travel corridors used by bears thereby forcing them to live closer to humans. Evidence shows that when bears live closer to humans, the bears are more likely to be regarded as nuisances and consequently euthanized.

Furthermore, the Luneaus twice annually observe hundreds of migrating Canada geese which feed and sleep in a corn field across from their home, 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.

The Luneaus enjoy fishing and swimming at Fairfield Pond where bald eagles, a state-endangered species in Vermont, have in recent years been observed, as reported by the North

⁷ Petitioner Ex. SW-DR-2 at 28-29.

Branch Nature Center in Montpelier, Vermont.⁸ Fairfield Pond has been determined by Vermont Fish & Wildlife Department as potentially suitable habitat for breeding bald eagles.⁹

The significant area, height, and scope of the Project in this natural setting may adversely affect necessary wildlife habitat or endangered species. The Luneaus acknowledge that in this proceeding the Agency of Natural Resources may be best situated to intervene on this issue, however they assert that their perspective as nearby landowners, fishermen, and outdoorsmen may differ from that of other parties, and they 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 the Luneaus should be allowed to intervene on this issue.

7. Transportation: § 6086(a)(5)

Route 105 is a state highway located nearby and to the west of Rocky Ridge, the proposed site of the Project. The Luneaus regularly use Route 105 including Judith's daily commute to work. Due to the proximity of the Project to Route 105, shadow flickers cast by the Project may distract drivers and cause accidents resulting in injury or death to drivers, passengers, or pedestrians including the Luneaus. Therefore, as the Luneaus have a particular interest in the safe use of Route 105, and unique experience as nearby neighbors and regular users of the road, they should be allowed to intervene on this issue.

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

The Luneaus through walking and biking regularly use and enjoy the Missisquoi Valley Rail Trail. As previously noted, the Trail would be at its nearest point less than a mile from the

⁸ 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.

⁹ 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>>.

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 Luneaus' or the public's use or enjoyment of it. The Luneaus as nearby neighbors and regular users of the Trail have 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, the Luneaus' motion to intervene on this issue should be granted.

III. Conclusion

The Luneaus 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 themselves, their family, and their neighbors throughout the State, the Luneaus upon on the evidence presented herein should be allowed to intervene in this proceeding.

Respectfully submitted this 16th day of February, 2017.

By:

Judith M. Luneau
Patrick Luneau

Judith and Patrick Luneau
141 Sweet Hollow Road
Sheldon, VT 05483
802-524-2291
judy.luneau@yahoo.com

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

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)

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:

Brian Dubie
Penny Dubie
770 McKenzie Road
Fairfield, VT 05455
(802) 734-1877
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, 6th Floor
Montpelier, VT 05620-3901

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