

**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)

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VT PUBLIC SERVICE BOARD

**MOTION TO INTERVENE OF
MARIANNE DUBIE AND MARK DUBIE**

Marianne Dubie and Mark Dubie (the “Dubies”), jointly 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 Dubies as adjoining 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 the Dubies can protect their interests, and these interests will not be adequately protected by other parties to this proceeding. The Dubies’ 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.

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

Memorandum

The Dubies respectfully move to intervene in this matter based on their 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) scenic or natural beauty and aesthetics, § 248(b)(5) and § 6086(a)(8);
- (v) necessary wildlife habitat or endangered species, § 6086(a)(8)(A); and
- (vi) unlawful site preparation, § 248(a)(2)(A).

The following argument supports the Dubies' 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 does not consider interests in private property.⁵

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

For four generations, the Dubies’ family has owned land in Fairfield and Swanton. The Dubies themselves own 450 acres of land adjoining the site of the proposed Project. The Dubies reside on their land at 1086 McKenzie Road -- named after Mr. Dubie’s grandfather, John McKenzie – in a home located approximately 4,800 feet northeast of the nearest proposed turbine. The Dubies work on their land in operating their business M & M Vermont Maple LLC, a 50,000-tap maple sugarmaking company founded in 2004, by Mr. Dubie and his brother Brian Dubie who resides at 770 McKenzie Road. M&M Vermont Maple provides income to six families. Two of the turbines proposed by Petitioner would be located within 100 feet of M&M Vermont Maple’s operation.

M&M Vermont Maple since 2008, has sugared the Dubies’ land that adjoins the site of the proposed Project, preceding by four years Petitioner’s installation of the MET tower associ-

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 *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.”).

ated with the Project. Evidence shows that Petitioner in violation of 30 V.S.A. § 248(a)(2)(A), trespassed on this land and began site preparation directly connected to the Project. The Dubies in addition to using their land for business, use it for sport as fourth-generation hunters and hosts of an annual deer camp for family and friends. Furthermore, the Dubies appreciate the scenic and peaceful environment of their rural community, and the access to nearby public areas including Fairfield Pond, and the Missisquoi Valley Rail Trail.

The Dubies assert that the Project, in addition to interfering in the operations of M&M Vermont Maple, would have a significant impact on orderly development, public safety, aesthetics, and wildlife and habitat.

* * *

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

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

The Dubies as fourth-generation landowners, business owners, and sportsmen, have unique experience and particular interest in the orderly development of the region which other parties to this proceeding may not necessarily represent. The Dubies' use and enjoyment of their property and nearby public land for sugarmaking, hunting, fishing, swimming, and appreciation of nature, may be affected by the construction and operation of the Project. Their 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 the Dubies' 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 and its residents, specifically by deflating the value of properties in the region, and by interfering with the operations of the Dubies' maple sugaring business.

a. Deflation of Property Values

The impact of Swanton Wind on regional property values should be expected based on the impact of Sheffield Wind and Georgia Wind on regional property values. Specifically, the Boards of Civil Authority of Barton and Georgia reduced the assessed value of homes affected by the sight and sound, respectively, of nearby turbines. In the present 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 property values is unprecedented and likely greater than elsewhere. Such adverse effect is self-evident: a prospective homebuyer given the choice of living near seven noisy, flickering, ice-throwing turbines, or elsewhere, likely would go elsewhere.

Furthermore, the Dubies assert that the Board in determining the level of deflation in property values caused by the Project should consider the full loss of use and enjoyment, and the loss of future development rights in each property. Specifically, the Board should measure sound and safety levels at the property line of adjoining land as those landowners have a right to full use and future development of their *entire* property, not merely near their home or within attenuating walls. Should the Board not consider full use and future development, and subsequently approve the Project, the Board would effectively grant to Petitioner easements for nuisance noise and hazard without fairly compensating landowners, in violation of Article Two of the Vermont Constitution.

Accordingly, as the Dubies are longstanding homeowners and businessmen with a unique

perspective and particular interest in the economy that is not necessarily represented by other parties to this proceeding, they should be allowed to intervene on this issue.

b. Interference with Business Operations

The Dubies and employees of M&M Vermont Maple during the months of November through April regularly work on land that adjoins the site of the proposed Project, tapping trees and maintaining nearly 200 miles of pipeline for their 50,000-tap maple sugaring operation.

Construction and operation of the Project may interfere with business operations of M&M Vermont Maple, specifically as ice throw or pieces of blade or debris from the turbines may injure or kill employees, or damage sugaring property or equipment including maple trees, pipeline, and harnessing pipeline. Evidence supporting this claim is found in Petitioner's Exhibit SW-DF-2 which states that turbine blade icing – which would occur during M&M Vermont Maple's operations on the land from November through April -- may cause 2.2-pound ice fragments to be thrown up to 1,000 feet; and blade failure may cause pieces of blade or debris to be thrown up to 1,640 feet. Considering that two proposed turbines would be located only 100 feet from the Dubies' property line, such ice throw or blade failure may be dangerous, destructive, and harmful to M&M Vermont Maple's sugaring operations, and thereby affect the greater economy through lost wages to employees, reduced sales of maple syrup, or decreased spending on sugarmaking equipment or other business supplies.

Accordingly, as the Dubies have a particular interest in the regional and statewide economy, and their unique experience and perspective as business owners may be useful to the Board in determining the outcome of this proceeding, the Dubies should be allowed to intervene on this issue.

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

As stated in the previous section, ice throw and blade failure may injure or kill the Dubies or their employees in the course of operations for M&M Vermont Maple. Likewise, guests at the Dubies' annual deer hunting camp would be exposed to similar danger. These concerns over safety are amplified by the fact that sugaring operations and deer hunting routinely occur between November and April, the time period during which ice is most likely to be thrown from the turbines.

Therefore, as the Dubies' particular concerns over the health and safety of their employees and guests would not be adequately represented by other parties to this proceeding, the Dubies should be allowed to intervene on this issue.

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

The Dubies enjoy in the course of their work and recreation on their land the natural, scenic, and tranquil setting. Additionally, as previously noted, the Dubies annually host a deer hunting camp for family and friends, thereby preserving a tradition that spans four generations of hunting on family land.

However the surrounding aesthetics of sight and sound, and the widespread enjoyment of the Dubies' land, would be adversely affected by the turbines on Rocky Ridge. The natural scenery would be marred by industry, and the peace would be destroyed by noise.

Moreover, the impact of the Project would extend beyond the Dubies' land to the public areas nearby such as Fairfield Pond and Beach, the Missisquoi Valley Rail Trail, and public roads including Interstate 89 which has been identified in the Swanton Town Plan as the gateway from Canada into the United States. The prominence of Rocky Ridge as the only ridgeline in Swanton; combined with the quantity, size, and scope of the turbines at issue; and their proximity to Fairfield Pond, the Rail Trail, and the Interstate, would have a significant impact on the vis-

ual and audible aesthetics of the surrounding area.

Accordingly, the Dubies' unique perspective as homeowners, stewards of the land, hunters, and outdoorsmen, may be useful to the Board in determining the potential nature and extent of the impact of the Project on aesthetics. Therefore the Dubies should be allowed to intervene on this issue.

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

The Dubies appreciate the wildlife that lives on and visits their land and surrounding areas. In the woods they place game cameras through which they have seen many deer, coyotes, and turkeys. Also, as noted above, the Dubies annually host a hunting camp for family and friends during which they hunt deer on their land. Construction and operation of the Project, however, would disrupt the habitat of these animals. For example, as deer during the winter require quiet areas in order to evade predators, the Project and associated noise and vibrations would disrupt the quiet and cause deer to abandon these wintering areas.

The Dubies 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 landowners, hunters, outdoorsmen, and sugarmakers, 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. Therefore in the public interest the Dubies should be allowed to intervene on this issue.

6. Unlawful Site Preparation: § 248(a)(2)(A)

Evidence shows that Petitioner unlawfully entered adjoining property and began site preparation directly connected to the Project. Specifically, Petitioner at some time before December 2014, trespassed and performed resource mapping directly related to the Project on prop-

erty formerly owned by Marcotte Revocable Trust, and now owned by the Dubies. Since May 2008 this property has been leased to the Dubie's who now own said property. Then, Petitioner at some time before September, 2015, trespassed approximately 1,000 feet onto adjoining property formerly owned by Marcotte Revocable Trust and now owned by the Dubies, and performed tree cutting and excavation work directly connected to the Project. Despite receiving notice of this trespass in October, 2015, Petitioner in November, 2015, again trespassed and performed resource mapping directly relating to the Project.

The controlling statute in this matter, 30 V.S.A. § 248(a)(2)(A), states in part:

no company...and no person...may begin site preparation for or construction of an electric generation facility or electric transmission facility within the State which is designed for immediate or eventual operation at any voltage... unless the Public Service Board first finds that the same will promote the general good of the State and issues a certificate to that effect.

In this case, the Board has not issued to Petitioner a certificate of public good. Yet Petitioner -- prematurely, in trespass, and despite notification -- began excavation and resource mapping directly connected to the Project, contrary to § 248. The Board should look unfavorably on this misconduct and weigh it against Petitioner's claim to the public good.

Accordingly, as the Dubies are owners of the property subject to this apparent unlawful site preparation, and they have a perspective that may be useful to the Board in determining the outcome of this case, they should be allowed to intervene on this issue.

III. Conclusion

The Dubies 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, their employees, and their neighbors throughout the State, the Dubies should be allowed upon the evidence presented herein to intervene in this proceeding.

Respectfully submitted this 16th day of February, 2017.

By:



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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 16th day of February, 2017.

By:



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