

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Swanton Wind, LLC for a)	
certificate of public good, pursuant to)	
30 V.S.A. § 248, for the construction of an up)	Case No. 8816
to 20 MW wind-powered electric generation)	
plant powered by up to 7 turbines located)	
along Rocky Ridge in Swanton, Vermont)	

**PRO SE INTERVENORS' REQUEST FOR DISMISSAL WITH PREJUDICE
AND OBJECTION TO APPLICANT'S MOTION FOR RETURN OF FILING FEE**

The below named *Pro Se* intervenors, in response to the PUC's Procedural Order dated November 29, 2017 inviting comments regarding Swanton Wind's notice of withdrawal and voluntary dismissal without prejudice of its petition in this proceeding state as follows:

- 1) They have no objection to the withdrawal of this petition.
- 2) Insofar as the request to withdraw results in dismissal, they request that the PUC dismiss the application "With Prejudice" for the following reasons.

In its May 24, 2017 letter to the PUC and in later argument, Swanton Wind contended that its application was complete and that it did not have to supplement its application and/or that it could be supplemented with discovery. It later filed a motion to this effect which was denied on June 22, 2017 and on reconsideration on August 31, 2017. It has been apprising the PUC of its progress in having the systems evaluation done that the PUC determined was needed for a complete application since then, until its request to withdraw its application. It is unknown if the systems evaluation has been started or completed. While ordinarily, a motion to withdraw would result in a dismissal without prejudice

under V.R.C.P. 41(a), here, in light of the lengthy litigation thus far, and the PUC's determination that the application was inadequate to comply with the statutory criteria of Section 248 without the SIS study information, it would be appropriate for the PUC to dismiss with prejudice and in effect make an adjudication on the merits that the certificate of public good could not be given. A Vermont court has the power to dismiss on its own motion, V.R.C.P. 41(b) and the PUC could have simply dismissed the petition earlier due to its inadequacy. It is apparent that Swanton Wind could not correct the deficiency and so wants to withdraw its application. Dismissing with prejudice would in effect be adjudicating the merits and would preclude the intervenors and other parties from having to face this proposed project again.

- 3) The Pro Se intervenors object to the return of Swanton Wind's filing fee. Swanton Wind requests that its \$100,000 filing fee be returned given that the PUC determined that its application was incomplete upon filing in its Order re: Discovery, Limitations, Expert Witness Fees and Schedule dated June 22, 2017 and Motion for Reconsideration Denied dated August 31, 2017. A filing fee by a plaintiff is a prerequisite in any court action in Vermont as well as by a petitioner in a PUC application for a certificate of public good under 30 VSA section 248b. The fee is required to commence the action, regardless of the ultimate outcome of the case. In most court cases, if there is a hardship with the amount of the filing fee, general rules of civil procedure allow for a party to apply for, and, if granted, have the fee waived and be allowed to proceed *in forma pauperis*, V.R.C.P. 3.1.

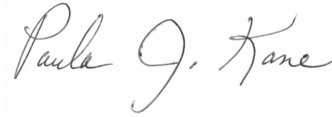
Whether or not to waive the fee would be a determination made at the outset of the case. Once a complaint or petition is filed and the action commenced, a party does not get the filing fee back even if they end up withdrawing a complaint or if it is dismissed, for whatever reason, including if the pleadings are insufficient or here, where an application was deemed inadequate to make findings based on the substantive criteria of Section 248. While the PUC is not a court, the situation is analogous. While the amount of the filing fee for an application for a new electric generation facility greater than 5MW in plant capacity is considerably more than the filing fee for an ordinary civil suit in a Vermont court (\$2.50 for each \$1000 of construction costs not to exceed \$100,000) and Swanton Wind paid \$100,000 because of the expected output of its proposed facility, 30 V.S.A. section 248b makes it clear that the purpose of the fee is to use it to support the role of the Agency of Natural Resources in reviewing applications for such in-state facilities. The check or money order is actually paid to the Vermont Agency of Natural Resources, not the PUC. In this case, Swanton Wind's petition was filed September 9, 2016 but it had stated an intent to file a full year earlier and the Agency of Natural Resources had already spent time and resources on the project by meeting with the applicant's lawyer and experts, doing a site visit, meeting with the landowner, engaging in discovery and participating in the litigation, even if the Section 248 review had not been completed.

In addition to the time ANR has spent, Swanton Wind has actively pursued its petition for over a year, during which time there has been considerable time and

resources expended by the PUC itself; the PSD; three municipalities; the Northwest Regional Planning office and all other parties and their attorneys, including participation at hearings; discovery; motions; objections and countermotions; the hiring of experts, etc. both for and against this project. All sides have expended considerable resources including attorneys' fees and expert expenses. No one is going to get their money back and it would be manifestly unjust for Swanton Wind to get its filing fee back under circumstances where its application necessitated so much expenditure of time and money by everyone, even if the application ultimately ended up being withdrawn. The equities certainly argue against Swanton Wind in this case. This is not a situation where someone changed their mind about going forward a day or two after filing and before ANR had acted and other parties had intervened and expended substantial resources. Arguably, besides the stated purpose of defraying some of the costs of 248b review by ANR, the amount of the filing fee acts to deter frivolous filings and to insure that anyone proposing projects of this magnitude file complete applications. Swanton Wind should not have its filing fee returned.

4) Should the PUC determine that Swanton Wind should be dismissed without prejudice, if Swanton Wind resubmits its petition at a later date, *Pro Se* parties to this case reserve the right to request recovery of costs expended in Case No. 8816 at the beginning of any new proceeding submitted by Swanton Wind, Travis and Ashley Belisle, or any future landowner of the parcel on which Swanton Wind is proposed to be sited.

Dated at Saint Albans, Vermont this 11th day of December, 2017.



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FOR the PRO SE INTERVENORS