

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case 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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Order entered: 01/10/2019

ORDER RE: REMAND

On November 27, 2017, Swanton Wind, LLC (“Swanton Wind”) filed with the Vermont Public Utility Commission (“Commission”) a notice of withdrawal and voluntary dismissal without prejudice withdrawing its petition in this proceeding. As part of its withdrawal, Swanton Wind requested that a \$100,000 fee that it paid to the Agency of Natural Resources (“ANR”) in accordance with 30 V.S.A. § 248b on September 9, 2016, be returned because the Commission subsequently determined that Swanton Wind’s petition was incomplete.

On January 3, 2018, the Commission issued an order dismissing Swanton Wind’s petition without prejudice pursuant to V.R.C.P. 41(a)(2) (the “dismissal order”). In that order, the Commission denied Swanton Wind’s request for a refund of the fee it had paid to ANR because there is no provision in § 248b that grants the Commission authority to direct such a refund.¹

On February 6, 2018, Swanton Wind appealed the dismissal order to the Vermont Supreme Court, asserting in part that the Commission erred in not ordering a refund of the \$100,000 fee paid to ANR.

On December 21, 2018, the Vermont Supreme Court issued an order reversing and remanding to the Commission that portion of the dismissal order in which the Commission found that it did not have authority to direct a refund of the \$100,000 fee Swanton Wind paid to ANR. The Vermont Supreme Court found that the Commission did have such authority and remanded the case for further proceedings on that topic, during which ANR is to be provided an

¹ Case No. 8816, Order of 1/3/18 at 9.

opportunity “to provide an account of its activities in petitioner’s proceeding and evidence of the reasonable cost of those activities.” After reviewing ANR’s evidence, the Commission is directed to “exercise its discretion to order a refund of that portion of the § 248b fee, if any, which the Agency cannot reasonably justify retaining.”²

In today’s order we: (1) appoint John J. Cotter, Esq. to serve as hearing officer to address the remand from the Vermont Supreme Court and (2) direct ANR to file prefiled testimony and exhibits setting forth “an account of its activities in petitioner’s proceeding and evidence of the reasonable cost of those activities” no later than February 8, 2019. As part of its filing, ANR shall include its procedures and work-flow goals for the timely review of applications under Section 248.³ ANR shall also include copies of any reports that it filed with the Legislature pursuant to § 248b(f) for any year in which it was engaged in activities related to Swanton Wind’s plans to construct its wind electric generation project.

All filings related to the Supreme Court’s remand shall be made in the “remand” subcase of Case 8816. The process for making a filing in a remand subcase in ePUC is identical to that for filing in the main part of a case, with one exception. After a remand subcase is created, regardless of which “add” form you choose from the “Select Action” drop-down menu, a different first screen will appear. Click on the drop-down arrow to see a list of all subcases in that case and select “Add to Remand.” The rest of the form will be identical to the form you see when the case does not have a remand subcase. Instructions and screenshots illustrating these steps are available on the Commission’s website at: <https://puc.vermont.gov/document/using-epuc-file-remand-subcase>.

The hearing officer is directed to convene a status conference at the earliest practicable opportunity to develop a schedule for the remainder of this proceeding.

² *In re Petition of Swanton Wind LLC*, 2018 VT 141, ¶ 11.

³ *See* 30 V.S.A. § 248b(f).

PUC Case No. 8816 - SERVICE LIST

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