

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: 01/24/2019

ORDER RE: RESPONSES TO MOTION IN LIMINE

On January 17, 2019, the Public Utility Commission (“Commission”) issued an order instituting this remand proceeding. In that order I was appointed to serve as hearing officer and the Agency of Natural Resources (“ANR”) was directed 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 was directed to include its procedures and work-flow goals for the timely review of applications under Section 248 and copies of any reports that it filed with the Legislature pursuant to 30 V.S.A. § 248b(f) for any year in which it was engaged in activities related to Swanton Wind LLC’s plans to construct its wind electric generation project.

On January 24, 2019, Swanton Wind filed a motion *in limine* seeking an immediate order limiting ANR’s February 8 filing to activities “undertaken between September 9, 2016, the date Swanton Wind filed its petition with the Commission, and November 27, 2017, the date the petition was voluntarily withdrawn.” According to Swanton Wind, activities undertaken by ANR outside that time frame are not within the scope of this remand and it therefore “should not have to incur more time and expense to recover its fee by having to file objections or serve discovery on evidence” related to any such activities.

The purpose of a motion *in limine* is “to allow the trial court to rule in advance of trial on the admissibility and relevance of certain *forecasted* evidence.”¹ “Evidence should be excluded on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. [C]ourts considering a motion *in limine* may reserve judgment until trial, so that the motion is placed in the appropriate factual context.”^{2 3}

At this point in time, the only scheduled event in this matter is the filing of ANR’s testimony on February 8, 2019. Based on Swanton Wind’s request, which is grounded wholly in a public comment made by an ANR official in a recent news article, I am not going to limit what ANR files on that date, nor am I suspending or continuing the deadline for ANR to make its filing.

I am, however, establishing deadlines for responses to Swanton Wind’s motion and replies thereto that are different than the deadlines that would otherwise apply under V.R.C.P. 78(b). Responses to Swanton Wind’s motion are due no later than close of business on February 22, 2019. Replies to any responses are due no later than close of business on March 8, 2019.

I am establishing these deadlines to allow the parties to review what ANR actually files because of the possibility that it may largely moot the motion, and in the event it does not, because it may provide an “appropriate factual context” to assist me in determining the admissibility of any prefiled testimony and supporting materials. It is my expectation that providing Swanton Wind an opportunity to reply to any responses to its motion will be sufficient for Swanton Wind to protect its interests without having to file further objections to any testimony filed by ANR that is related to activities outside the time frame identified by Swanton Wind. However, nothing in this order precludes Swanton Wind from filing further objections to any such testimony.

¹ *In re GII INDUSTRIES, INC. v. New York State Dept. of Transp.*, 495 B.R. 209, 211 (Bankr. E.D. N.Y. 2010) (citations omitted) (emphasis added).

² *Id.* (citations omitted).

³ I also note that another purpose of motions *in limine* is to prevent juries from hearing references to evidence that is ultimately ruled inadmissible thereby avoiding the potential for improper influence on a jury’s decision. In the context of an administrative hearing, this concern is significantly lessened. *Cf. USGen New England, Inc. v. Town of Rockingham*, 2004 VT 90, ¶ 26 (citing and quoting *Smithkline Beecham Corp. v. Apotex Corp.*, 247 F.Supp.2d 1011, 1042 (N.D.Ill.2003)).

Deadlines for further process, including discovery, will not be established until after the issues raised by Swanton Wind's motion have been resolved. In that way, Swanton Wind will not have to expend any unnecessary resources pursuing the relief it seeks in this remand.

SO ORDERED.


Dated at Montpelier, Vermont this 24th day of January, 2019.



John J. Cotter, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: **January 24, 2019**

Attest: 
Deputy Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 8816 - SERVICE LIST

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