

Joseph C. McNeil (1919-1978)  
Joseph E. McNeil  
John T. Leddy  
Nancy G. Sheahan  
William F. Ellis  
Susan Gilfillan  
Joseph A. Farnham  
Colin K. McNeil  
Kevin J. Coyle+  
Andrew M. Bolduc  
Michael J. Leddy



**McNEIL LEDDY & SHEAHAN PC**  
ATTORNEYS AT LAW

T 802.863.4531  
F 802.863.1743

271 South Union Street  
Burlington, VT 05401

www.mcneilvt.com

November 8, 2016

+Also licensed in New York

Judith C. Whitney, Clerk  
Vermont Public Service Board  
112 State Street – Drawer 20  
Montpelier, VT 05620-2701

Re: *Petition of Swanton Wind, LLC for Approval of a Rule 4.100 power purchase agreement*  
Docket No. 8571

*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 to be located in Swanton, Vermont*  
Docket No. 8816

Dear Judy:

Enclosed for filing with the Board in the above-referenced matters please find an original and six (6) copies of Burlington Electric Department's *Motion to Intervene* and *Memorandum of Law in Support of Motion to Intervene*.

Copies of the forgoing are being sent to the parties on the attached service lists via first class mail.

Thank you for your assistance.

Very truly yours,

  
William F. Ellis

WFE/

Enclosures

cc: Attached Service Lists  
211050-76 Swanton

2016 NOV 10 9 21  
VERMONT PUBLIC SERVICE BOARD

JW  
X JV  
MC  
SH  
JC  
GF  
MK  
DW

STATE OF VERMONT  
PUBLIC SERVICE BOARD

VERMONT PUBLIC  
SERVICE BOARD

2016 NOV 10 AM 9 21

Docket No. 8571

Petition of Swanton Wind, LLC for Approval of a Rule )  
4.100 power purchase agreement )

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 to be located in Swanton, Vermont )

**MOTION TO INTERVENE**

**NOW COMES** City of Burlington Electric Department (“BED”), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to Rule 2.209 of the Board’s Rules of Practice, hereby moves to intervene in the above-captioned proceedings. In support of this motion, BED respectfully submits the accompanying Memorandum of Law.

DATED at Burlington, Vermont, this 8<sup>th</sup> day of November 2016.

BURLINGTON ELECTRIC DEPARTMENT

By: William F. Ellis

William F. Ellis, Esq.  
McNeil, Leddy & Sheahan, P.C.  
271 South Union Street  
Burlington, VT 05401  
Attorneys for Movant

**McNEIL  
LEDDY &  
SHEAHAN**

271 South Union St.  
Burlington, VT 05401

T 802.863.4531

F 802.863.1743

www.mcneilvt.com

STATE OF VERMONT  
PUBLIC SERVICE BOARD

VERMONT PUBLIC  
SERVICE BOARD

2016 NOV 10 AM 9 21

Docket No. 8571

Petition of Swanton Wind, LLC for Approval of a Rule )  
4.100 power purchase agreement )

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 to be located in Swanton, Vermont )

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO INTERVENE**

City of Burlington Electric Department (“BED”) respectfully submits this Memorandum of Law in support of its Motion to Intervene in the above-captioned proceedings.

**I. BED IS ENTITLED TO INTERVENTION AS OF RIGHT**

BED seeks intervention as of right under Rule 2.209(A), which provides in part:

Upon timely application, a person shall be permitted to intervene in any proceeding... 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.

Vt. P.S.B. Rule 2.209(A)(3). As outlined below, BED satisfies the criteria entitling it to intervention as of right.

**A. BED’s Motion to Intervene is Timely.**

To BED’s knowledge, no deadlines for motions to intervene have been formally established in either proceeding as of the date of this filing. BED’s motion, therefore, must be considered timely.

**McNEIL  
LEDDY &  
SHEAHAN**

271 South Union St.  
Burlington, VT 05401  
T 802.863.4531  
F 802.863.1743

www.mcneilvt.com

B. BED has Substantial Interests that may be Adversely Affected by the Outcome of these Proceedings.

Swanton Wind, LLC's (Swanton Wind's") petition in Docket 8571 requests approval of a long-term power purchase agreement ("PPA") with levelized rates and, as such, must be found to satisfy the substantive criteria of 30 V.S.A. § 248 before it can be approved. Vt. P.S.B. Rule 4.104 (H) (now superseded). As a Vermont electric distribution utility, BED is required to purchase its pro-rata share of all electricity produced by Swanton Wind under the superseded version of Rule 4.100, assuming Swanton Wind establishes its entitlement under that version of the Rule. BED, on behalf of its consumer-owners, has a substantial interest in ensuring that the energy and capacity it may be required to purchase from Swanton Wind under the proposed PPA if its facility is approved and constructed is needed to meet Vermont's present and future demand for service under 30 V.S.A. § 248(b)(2).

BED also has a substantial interest in ensuring the purchase of the output from the proposed facility pursuant to the proposed PPA will result in an economic benefit for the State of Vermont and its residents, including BED's consumer-owners. 30 V.S.A. § 248(b)(4). BED's required purchase of the output from the proposed facility where the output is not needed to meet present and future demand and/or where such purchase does not result in an economic benefit to the State would adversely affect BED's substantial interests.

Moreover, BED has made a significant investment in both owned and contracted-for renewable generation located in the Northern Vermont region (i.e., McNeil Generating Station, Winooski One hydroelectric facility, Georgia Mountain Community

Wind, Vermont Wind, and solar arrays). These renewable generation facilities have been subject to curtailment by ISO-New England in the past. Information in BED's possession indicates that additional power injections in the Northern Vermont region could increase the frequency and magnitude of such curtailments to BED's (and Vermont's) financial detriment. Additionally, construction of the proposed generation in an "export constrained" area of Vermont's electrical system could reduce the per hour value of existing renewable generation in Northern Vermont. All of these substantial interests could be adversely impacted by the construction of the proposed generating plant.

C. These Proceedings Provide BED with the Exclusive Means by Which it can Protect its Substantial Interests and its Interests will not be Adequately Represented by Existing Parties.

Dockets 8571 and 8816 are the only proceedings of which BED is aware that will allow it to protect its substantial interests as outlined above. Furthermore, BED's substantial interests are unique given the amount of owned and contracted-for renewable generation in its portfolio (both in total and relative to its load). These interests will not be adequately represented unless it is allowed to intervene. In light of the foregoing, BED should be allowed to intervene in these proceedings as a matter of right.

**II. IN THE ALTERNATIVE, BED IS ENTITLED TO PERMISSIVE INTERVENTION**

In the alternative, BED moves for permissive intervention. Rule 2.209(B) provides in part that the Board, in its discretion, may permit a person to intervene when that person "demonstrates a substantial interest which may be affected by the outcome of the proceeding." Vt. P.S.B. Rule 2.209(B). In exercising its discretion, the Board is to consider the following:

- (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.

*Id.* As set forth above, BED's substantial and unique interests will not adequately represented in these proceedings unless it is allowed to intervene, and no alternative means for protecting BED's interests exist. In addition, BED's intervention will not unduly delay these proceedings or prejudice the interests of the parties or the public.

### CONCLUSION

WHEREFORE, based upon the foregoing, BED's motion to intervene as of right should be granted. In the alternative, BED should be granted permissive intervention.

DATED at Burlington, Vermont, this 8<sup>th</sup> day of November 2016.

Respectfully submitted,



William F. Ellis, Esq.  
McNeil, Leddy & Sheahan, P.C.  
271 South Union Street  
Burlington, VT 05401  
Attorneys for Burlington Electric  
Department

cc: Attached Service Lists

211050-76 Swanton

McNEIL  
LEDDY &  
SHEAHAN

271 South Union St.  
Burlington, VT 05401  
T 802.863.4531  
F 802.863.1743

www.mcneilvt.com

James L. Gibbons  
City of Burlington Electric Department  
585 Pine Street  
Burlington, VT 05401

(Not a Party, but requests Notices and Orders)

JoAnn Q. Carson (Court Reporter)  
11 Northshore Drive  
Burlington, VT 05408

Kim Sears (Court Reporter)  
18 Paddock Lane  
Williston, VT 05495

PSB Docket No. 8816 - Service List - Parties

Parties:

Aaron Kisicki, Esq.  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601

Leslie A. Cadwell Esq.  
Alison Milbury Stone, Esq.  
Legal Counselors & Advocates, PLC  
PO Box 827  
Castleton, VT 05735

(For Swanton Wind LLC)

Evan Meenan, Esq.  
Enforcement and Litigation Section  
Vermont Agency of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3901

Melanie Kehne, Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

(For Agency of Agriculture, Food & Markets)

Edward Adrian, Esq.  
Monaghan Safar Ducham PLLC  
156 Battery Street  
Burlington, VT 05401

(For Town of Swanton Selectboard  
and Planning Commission)

\*Cindy Ellen Hill, Esq.  
Hill Attorney PLLC  
144 Mead Lane  
Middlebury, VT 05753

(For Christine and Dustin Lang)

\*Dale E. Azaria, General Counsel  
Vermont Dept. of Housing & Community Development  
One National Life Drive, Davis Building, Floor 6  
Montpelier, VT 05620-0501

(For Vermont Division for  
Historic Preservation)

\*Motion to intervene pending.

Interested Persons:

James Volz, Margaret Cheney, Sarah Hofmann, Board Members  
John J. Cotter, Esq., Gregg Faber, Mary Jo Krolewski, David Watts (PSB)



William H. Rice, A.A.G.  
Vermont Agency of Transportation  
National Life Building, One National Life Drive  
Montpelier, VT 05633-5001

David C. Englander, Esq.  
Vermont Department of Health  
108 Cherry Street  
Burlington, VT 05401

Brian and Penny Dubie  
PO Box 1075  
St. Albans, VT 05478

Greg Pierce  
12 Farrar Street  
St. Albans, VT 05478-1540

Robert Pforzheimer  
339 Michaud Drive  
Sutton, VT 05867

Sally Collopy  
157 Swizler Point  
Fairfield, VT 05455

Patricia P. Rainville  
1952 Sheldon Road  
St. Albans, VT 05478

Annette Smith, Executive Director  
Vermonters for a Clean Environment  
789 Baker Brook Road  
Danby, VT 05739

Sara Jane Luneau-Swan  
141 Sweet Hollow Road  
Sheldon, VT 05483

Judith and Patrick Luneau  
141 Sweet Hollow Road  
Sheldon, VT 05483

Fred & Kathy Parks  
98 South Street  
Essex Junction, VT 05452

Sally Lindberg  
PO Box 865  
St. Albans, VT 05478

Representative Marianna Gamache  
PO Box 435  
Swanton, VT 05488

Ed Stanak  
58 Pleasant Street  
Barre City, VT 05641

JoAnn Q. Carson (Court Reporter)  
11 Northshore Drive  
Burlington, VT 05408

Kim Sears (Court Reporter)  
18 Paddock Lane  
Williston, VT 05495