

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)

Order entered: 11/10/2016

PREHEARING CONFERENCE AND SCHEDULING ORDER

On October 24, 2016, the Vermont Public Service Board (“Board”) convened a prehearing conference in this matter. Appearances at the prehearing conference were entered by Leslie A. Cadwell, Esq. and Alison Milbury Stone, Esq., Leslie Cadwell Legal Counselor & Advocate, PLC, on behalf of Swanton Wind, LLC (“Swanton Wind”); Aaron Kisicki, Esq., on behalf of the Vermont Department of Public Service (the “Department”); Evan Meenan, Esq., on behalf of the Vermont Agency of Natural Resources (“ANR”); Cindy Hill, Esq., on behalf of Dustin and Christine Lang (the “Langs”); Ed Adrian, Esq., Monaghan, Safar & Ducham, PLLC, on behalf of the Town of Swanton (“Swanton”); Annette Smith, on behalf of Vermonters for a Clean Environment (“VCE”); Taylor Newton, on behalf of the Northwest Regional Planning Commission (“NRPC”); Dale Azaria, Esq., on behalf of the Vermont Division for Historic Preservation (“DHP”); Melanie Kehne, Esq., on behalf of the Vermont Agency of Agriculture, Food, and Markets (“AAFV”); and David Englander, Esq., on behalf of the Vermont Department of Health (“DOH”).¹ Several interested persons also attended the prehearing conference.

At the prehearing conference, competing scheduling proposals were discussed among the existing parties as well as persons and entities that had expressed an interest in intervening as parties to this proceeding. During the course of these discussions, it became apparent that the

1. Motions to intervene have been filed by the Langs and DHP. Other persons or entities that made appearances at the prehearing conference indicated an intent to file motions to intervene.

parties could not reach consensus on a proposed schedule. As a result, the Board directed the parties to file proposed schedules by October 28, 2016.

On October 28th, two competing scheduling proposals were filed: the first by Swanton Wind, and the second by the Department on behalf of itself, ANR, DOH, AAFM, Swanton, the Langs, and VCE. Generally speaking, Swanton Wind sought a schedule that commenced with an intervention deadline and discovery during the month of November, while the schedule filed by the Department commenced with a workshop in early January, followed shortly thereafter by an intervention deadline and commencement of discovery.

According to Swanton Wind, setting deadlines for intervention and commencement of discovery in early January of 2017, as opposed to later in November of this year, is unwarranted because it “ignores” the amount of time and money that Swanton Wind has expended in the preparation of its petition. Swanton Wind also emphasizes the level of advance public notice regarding its proposed project in support of its request to commence the next stages of this proceeding sooner, rather than later.²

The Department asserts that its proposal is appropriate because it will allow for a more efficient review of Swanton Wind’s petition. The Department states that it anticipates renewing a motion to dismiss that it filed in Docket 8571, an investigation opened in response to a petition by Swanton Wind seeking Board approval of a long-term contract for the sale of the output from the proposed project at levelized rates. According to the Department, the terms of any power purchase agreement are relevant to the 30 V.S.A. § 248(b)(2) (need) and (4) (economic benefit) criteria in this proceeding. The Department further contends that Swanton Wind’s prefiled testimony addressing the need criterion in this proceeding at least in part relies on Board approval of the contract that is the subject of Docket 8571. This, the Department argues, means that Swanton Wind would need to amend its current testimony to address the need criterion in this proceeding if the Board dismisses or fails to approve the Docket 8571 petition.³

We believe that there is the potential to realize some amount of administrative efficiency in this proceeding by allowing for a reasonable period of time for the parties in Docket 8571 to engage in motion practice prior to commencing the next phase of this investigation. However,

2. Letter from Leslie A. Cadwell, Esq. to Judith Whitney, Clerk of the Board, dated October 28, 2016, at 3-5.

3. Non-petitioners’ proposed schedule at 2-3.

we do not believe that some of the time intervals proposed in the non-petitioners' schedule are necessary to allow for a full and fair examination of the issues in this proceeding.⁴

Accordingly, we hereby establish the following schedule for this proceeding:

Event	Date
Workshop	Week of January 2, 2017 (note: state offices are closed on Monday January 2, 2017)
Deadline for motions to intervene	11 calendar days after workshop
Responses to intervention motions	7 calendar days after motion deadline
First round written discovery on petitioner (persons or entities with intervention motions pending may serve discovery)	February 6, 2017
Responses to written discovery	February 27, 2017
Second round written discovery on petitioner	March 6, 2016
Responses to written discovery	March 20, 2016
Non-petitioner direct testimony	April 17, 2017
Written discovery on non-petitioners	April 24, 2017
Responses to written discovery	May 15, 2017
Petitioner rebuttal testimony	June 5, 2017
Written discovery on petitioner rebuttal	June 19, 2017
Deadline for deposition notices on petitioner (parties to schedule depositions among themselves)	June 26, 2017
Responses to written discovery	July 10, 2017
Public hearing and site visit	Week of July 17, 2017
Non-petitioner rebuttal testimony	July 31, 2017
Written discovery on non-petitioner rebuttal	August 7, 2017
Deadline for deposition notices on	August 14, 2017

4. For example, there are time intervals in the non-petitioners' proposal that allow the petitioner greater time to meet its obligations than the petitioner sought in its own proposal. The non-petitioners' proposal also allows the petitioner to serve a second round of discovery on the non-petitioners' prefiled direct testimony, something the petitioner did not request in its own proposal.

non-petitioners (parties to schedule depositions among themselves)	
Responses to written discovery	August 28, 2017
Technical hearing	Week of September 11, 2017
Briefs	To be determined post-hearing

Workshop

As proposed by the non-petitioners, the schedule incorporates a workshop during the week of January 2, 2017. The purpose of the workshop will be to provide non-petitioning parties and potential intervenors an opportunity to ask Swanton Wind questions about the proposed project in order to better understand project details in advance of initiating formal discovery or making a decision on whether to seek intervention. Recommendations on the place, date, and time for the workshop must be filed no later than December 12, 2016.⁵ Recommendations shall include contact information for the recommended location and confirmation that the location is able to accommodate a moderate to large number of attendees and that the site is handicapped accessible. The Clerk of the Board will issue a separate notice confirming the place, date, and time of the workshop.

Discovery Matters

The schedule also recognizes the possibility that there may be motions to intervene still pending on the date the first round of written discovery is served on Swanton Wind. Accordingly, the schedule allows persons or entities that have such a pending motion to serve discovery on Swanton Wind. In the event the motion is granted, Swanton Wind shall respond to any such discovery. In the event such a motion is denied, Swanton Wind shall not be required to provide responses.

Additionally, because the schedule varies from both of the submitted proposals, we decline to specify dates on which any noticed depositions will occur. We expect that the parties will, in good faith, be able to identify mutually acceptable dates for conducting any depositions. If it becomes necessary, we will appoint a discovery officer to resolve any disputes regarding the scheduling of depositions.

5. The Board's Susan M. Hudson Hearing Room is only available on January 3rd of that week.

Filing and Service of Documents

The Board is in the process of implementing an electronic filing and case management system, the intent of which is to facilitate participation in Board proceedings by parties and members of the public, to be known as ePSB. It is anticipated that this system will be active sometime early in 2017. The Board is currently considering whether and which pre-existing cases might be migrated into ePSB. In the event this proceeding is migrated into ePSB, then all previously filed documents will be uploaded by Board staff into the ePSB database, and parties will have the option to participate in this case going forward either electronically or in hard copy.⁶

When ePSB first goes on line, there will be a period of time when parties can opt to participate in a case that is started in or has been migrated to ePSB in either electronic or hard copy format. If a party opts to participate in electronic format, then most of that party's non-confidential filings⁷ can be filed electronically using ePSB and need not be served in hard copy on other parties who have also elected to participate electronically.⁸ Rather, ePSB will send to other parties who have also opted to participate electronically a notice that a filing has been made in that case that provides a link to access, download, save and/or print the filing. A party that elects to file documents electronically will also be deemed to have consented to receive electronic notice of other parties' filings and Board-issued documents and will not be entitled to receive hard copies of those documents. If a party elects to participate in paper format in a case that is being processed in ePSB, then that party must be served with hard copies of all filings by all other parties and with Board-issued documents, and must file with the Board and serve all other parties with paper copies of all filings made or documents served by that party.

Unless and until a determination is made to migrate this proceeding into ePSB, parties shall continue to file in hard copy pursuant to the Board's applicable rules of procedure. Parties

6. Prior to activating ePSB, the Board will issue a procedures order setting forth the requirements for, and the exceptions to, electronic filing of documents with the Board and will provide training materials so users can familiarize themselves with use of the system.

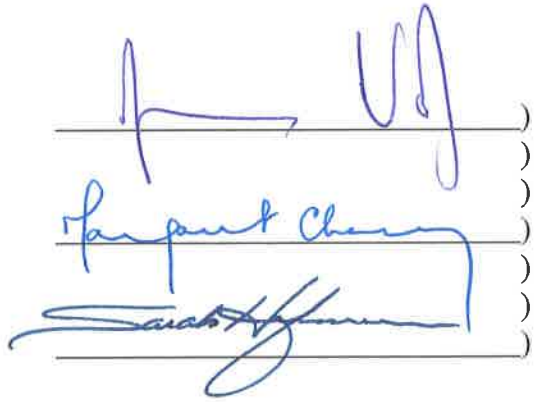
7. Until further notice, confidential or allegedly confidential documents shall not be filed electronically using ePSB. Rather, hard copies of any such documents shall continue to be filed in a sealed envelope marked "confidential" with copies being provided by the filing party only to those parties authorized to review such documents. Redacted, public versions of such documents shall be filed using ePSB in cases being processed electronically.

8. A limited number of document types will continue to be filed in hard copy. These exceptions will be set forth in the Board's procedures order governing use of ePSB.

must submit an original and six copies of all filings with the Board, with the exception of discovery requests and responses, where only one copy needs to be filed. In addition to the required hard copies, parties are requested to submit all filed materials in electronic format via e-mail attachment to the Clerk of the Board at psb.clerk@vermont.gov or on a CD or DVD delivered along with the paper copies. Documents submitted in .pdf format should be in an "unlocked" format, i.e., searchable and extractable, rather than in an image format.

SO ORDERED.

Dated at Montpelier, Vermont, this 10th day of November, 2016.

Three handwritten signatures in blue ink, each written over a horizontal line. The signatures are stylized and difficult to read precisely, but they appear to be the names of the board members.

PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

FILED: November 10, 2016

ATTEST: Judith C. Whitney
Clerk of the Board

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

PSB Docket No. 8816 - Service List

Rent 11/10/16

✓ web ✓

Parties:

year

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

AV 11/10/16

✓ 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 the 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)

✓ *William F. Ellis Esq.
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401

(For City of Burlington Electric Department)

*Motion to intervene pending.

Interested Persons:

James Volz, Margaret Cheney, Sarah Hofmann, Board Members
John 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

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~~

Statutory Interested Persons:

✓ Office of the Vermont Attorney General
c/o Mary-Kay Swanson, Executive Assistant
Pavilion Building, 109 State Street
Montpelier, VT 05609

✓ Harry Chen, M.D., Commissioner
Vermont Department of Health
108 Cherry Street, P.O. Box 70
Burlington, VT 05402

✓ James Duggan
Scott Dillon
Vermont Historic Preservation Division
One National Life Drive, Floor 6
Montpelier, VT 05620-0501

✓ Chris Cole, Secretary
Vermont Agency of Transportation
National Life Building, Drawer 33
Montpelier, VT 05633-5001

✓ Chuck Ross, Secretary
Vermont Agency of Agriculture, Food & Markets
116 State Street, Drawer 20
Montpelier, VT 05620-2901

✓ Catherine Dimitruk, Executive Director
Northwest Regional Planning Commission
75 Fairfield Street
St. Albans, VT 05478

10-Mile Towns:

✓ Town of St. Albans Select Board
PO Box 37
St. Albans Bay, VT 05481

✓ Town of St. Albans Planning Commission
PO Box 37
St. Albans Bay, VT 05481

✓ St. Albans City Council
PO Box 867, 100 North Main Street
St. Albans, VT 05478

✓ St. Albans City Planning Commission
PO Box 867, 100 North Main Street
St. Albans, VT 05478

✓ Swanton Village
PO Box 279, 120 First Street
Swanton, VT 05488

✓ Town of Fairfax Select Board
12 Buck Hollow Road
Fairfax, VT 05454-9662

✓ Town of Fairfax Planning Commission
12 Buck Hollow Road
Fairfax, VT 05452-9662

✓ Town of Georgia Select Board
47 Town Common Road North
St. Albans, VT 05478

✓ Town of Georgia Planning Commission
47 Town Common Road North
St. Albans, VT 05478

✓ Town of North Hero Select Board
PO Box 38
North Hero, VT 05474

✓ Town of North Hero Planning Commission
PO Box 38
North Hero, VT 05474

✓ Town of Highgate Select Board
PO Box 189
Highgate Center, VT 05459

✓ Town of Highgate Planning Commission
PO Box 189
Highgate Center, VT 05459

✓ Town of Franklin Select Board
PO Box 82
Franklin, VT 05457

✓ Town of Franklin Planning Commission
PO Box 82
Franklin, VT 05457

✓ Town of Sheldon Select Board
PO Box 66
Sheldon, VT 05483

✓ Town of Fairfield Select Board
PO Box 5
Fairfield, VT 05455

✓ Town of Fairfield Planning Commission
PO Box 5
Fairfield, VT 05455

✓ Town of Enosburgh Select Board
PO Box 465
Enosburg Falls, VT 05450

✓ Town of Enosburgh Planning Commission
PO Box 465
Enosburg Falls, VT 05450

✓ Town of Bakersfield Select Board
PO Box 203
Bakersfield, VT 05441

✓ Town of Bakersfield Planning Commission
PO Box 203
Bakersfield, VT 05441

Town of Fletcher Select Board

✓ 215 Cambridge Road

Cambridge, VT 05444

✓ Town of Fletcher Planning Commission

215 Cambridge Road

Cambridge, VT 05444

PSB Docket No. 8816 - ADJOINING LANDOWNERS

✓ Gerry Belisle
PO Box 1345
St. Albans, VT 05478

✓ Greens Corners Maple Products, LLC
30 Pond Road
Sheldon, VT 05483

✓ Jeannine Boulet Life Estate
3 Pond Road
Sheldon, VT 05483

✓ John Chase
4 Comstock
Swanton, VT 05488

✓ Mahoney Family Trust
81 Sholan Road
St. Albans, VT 05478

✓ Mark & Amanda St. Pierre
1546 Richford Road
Richford, VT 05476

✓ Richard & Patricia Bourbeau
18 Pond Road
Sheldon, VT 05483

✓ Mark & Michelle Bourbeau
PO Box 1536
St. Albans, VT 05478

✓ Brian & Deanna Boudreau
2056 Sheldon Road
St. Albans, VT 05478

✓ Sara Hayes
1936 Sheldon Road
St. Albans, VT 05478

✓ Cody Lesperance & Jennifer Dodd
47 Sweet Hollow Road
Sheldon, VT 05483

✓ Rosaie & Shannon Laroche
PO Box 123
Swanton, VT 05488

✓ Moore Family Trust
35 Stevens Hill Road
Nottingham, NH 03290

~~✓ Patrick & Judith Luneau
141 Sweet Hollow Road
Sheldon, VT 05483~~

✓ Mary Franklin Yates
3906 Pond Road
Sheldon, VT 05483

✓ Osgood Living Trust
4112 Pond Road
Sheldon, VT 05483

✓ David & Chantel Persons
4148 Pond Road
Sheldon, VT 05483

✓ Steven & Renae Masse
4237 Pond Road
Sheldon, VT 05483

✓ Randy & Beth Reynolds
4129 Pond Road
Sheldon, VT 05483

✓ Lisa Wallentine
86 Pond Road
Sheldon, VT 05483

✓ Carolyn Clark Palmer Life Estate
63 Swanton Hill Road
Fairfield, VT 05455

✓ Aaron Bartemy
2058 Sheldon Road
St. Albans, VT 05478

Jeanne Royer

✓ 2066 Sheldon Road
St. Albans, VT 05478

Terrance Smith

✓ 2070 Sheldon Road
St. Albans, VT 05478

Austin & Sandra Ballard

✓ 2071 Sheldon Road
St. Albans, VT 05478

Allen & Tammy Brady

✓ 15 Sweet Hollow Road
Sheldon, VT 05483

Gilbert Spaulding

✓ 7 Sweet Hollow Road
Sheldon, VT 05483

David & Peggy Howrigan

✓ 320 Menard Road
Fairfield, VT 05455

James & Danny Bouthilette Paquette

✓ 468 Fortin Road
Swanton, VT 05488

Betsy Taylor

✓ 25 Sweet Hollow Road
Sheldon, VT 05483

Richard & Linda Domina

✓ PO Box 26
Sheldon, VT 05483

Gary & Diane Koch

✓ 43 Sweet Hollow Road
Sheldon, VT 05483

~~Brian & Penny Dubie~~

~~PO Box 1075
St. Albans, VT 05478~~