

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: 11/18/2016

PROCEDURAL ORDER RE: INTERVENTIONS

This Docket concerns the petition filed with the Vermont Public Service Board (“Board”) on September 9, 2016, by Swanton Wind, LLC (“Petitioner”), for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the installation and operation of an up to 20 MW wind-powered electric generation plant in Swanton, Vermont (the proposed “Project”).

In today’s Order, the Board grants the motion to intervene filed by the Vermont Division for Historic Preservation (“DHP”), and grants in part the motion to intervene filed by Dustin and Christine Lang.

Legal Standard

Board Rule 2.209 governs intervention in proceedings before the Board. Rule 2.209(A) provides, upon timely application, that a person shall be entitled to intervene in a proceeding in three circumstances:

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or
- (3) 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.

In addition, Rule 2.209(B) reserves to the Board the authority to grant intervenor status on a permissive basis when an applicant “demonstrates a substantial interest which may be affected by the outcome of the proceeding.” In exercising the discretionary authority reserved in Rule 2.209(B), the Board considers three factors:

- (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.

Rule 2.209(C) further provides that the Board may impose certain restrictions on an intervenor’s participation in a proceeding. Specifically, the Board may restrict such party’s participation to only those issues in which the party has demonstrated an interest; may require such party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters; or may otherwise limit such party’s participation, all as the interests of justice and economy of adjudication require.

DHP’s Motion

On October 25, 2016, DHP filed a motion to intervene in this proceeding (“DHP Motion”). DHP states that it is the state entity responsible for reviewing issues concerning historic sites in Section 248 proceedings.¹

No party objected to the DHP Motion.

In the absence of any objections, we grant DHP party status as a permissive intervenor pursuant to Board Rule 2.209(B) for the interests identified in the DHP Motion.

The Langs’ Motion

On October 24, 2016, the Langs filed a motion to intervene (“Lang Motion”). The Langs seek intervention to address the following criteria under 30 V.S.A. § 248: orderly development, (b)(1); system stability and reliability, (b)(3); economic benefit, (b)(4); and aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and public health

1. DHP Motion at 1.

and safety, (b)(5). In addition, the Langs seek intervention to address the following criteria under 10 V.S.A. § 6086(a), incorporated for due consideration by the Board by 30 V.S.A. § 248(b)(5): water conservation, (1)(C); streams, (1)(E); wetlands, (1)(G); burden on existing water supply, (3); soil erosion, (4); transportation, (5); and scenic and natural beauty of the area, aesthetics, historic sites, and rare and irreplaceable natural areas, (8).

According to the Langs, they have substantial and particularized interests in each of these criteria and will be directly affected by the Project's impacts under these criteria, no other party will adequately protect their interests, and this proceeding is the only means by which they can protect those interests.

On October 31, 2016, Swanton Wind filed a response to the Lang Motion. Swanton Wind does not object to the Langs being granted permissive intervention to address aesthetics regarding views from their residence and sound levels and shadow flicker from the Project at their residence; public health and safety related to ice throw; potential impacts on the Langs' well-water supply; and transportation with respect to traffic impacts potentially affecting access to the Lang residence. In the event the Board is considering allowing the Langs to intervene on additional matters, Swanton Wind requests that the Board direct the Langs to better articulate their asserted interests and why they are substantial. Additionally, Swanton Wind asks that the Board require the Langs to coordinate their activities with other parties if they are allowed to participate on matters that also will be addressed by those other parties. Lastly, Swanton Wind asserts that the Board should not consider any expectation the Langs claim to have of the use of the Petitioner's adjoining land for recreational purposes.

For the reasons set forth below, we grant the Lang Motion in part and deny it in part. We will address each of the criteria raised in the Lang Motion, below.

Orderly Development: 30 V.S.A. § 248(b)(1)

We grant the Lang Motion with respect to orderly development of the region. We find that the Langs, as residents of the region that would be subject to potential impacts from the Project, may provide useful insight into the extent and nature of any such impacts for the Board's consideration in rendering its decision in this matter. Because the Langs' perspective may differ from that of other parties, such as the Department of Public Service ("Department"), we also find

that their interests are not necessarily represented by other parties to this proceeding, and that this proceeding is the exclusive means by which the Langs can assert their interest.

Economic Benefit: 30 V.S.A. § 248(b)(4)

We grant the Langs permissive intervention on a limited basis to address the issue of economic benefit. While this proceeding will not address the impact of the proposed Project on individual property values,² one factor relevant to determining whether the Project will provide an economic benefit to the state is the overall impact of the Project on property values in general.³ Thus, we will allow the Langs to address such overall economic benefit issues.

Aesthetics and Public Health and Safety: 30 V.S.A. § 248(b)(5); 10 V.S.A. § 6086(a)(8)

Swanton Wind does not object to the Langs' participation on aesthetics regarding views from their residence and sound levels and shadow flicker effects from the Project at their residence. Additionally, Swanton Wind does not object to the Langs' participation on public health and safety issues related to the potential for ice throw from the Project. We agree that these are appropriate subjects for the Langs to address and grant them permissive intervention to do so.

Water Conservation and Burden on Existing Water Supply: 10 V.S.A. § 6086(a)(1)(C) and (3)

Swanton Wind does not object to the Langs' participation regarding potential Project impacts on their well-water supply. We agree that this is an appropriate topic for the Langs to address and grant them permissive intervention to do so.

Transportation: 10 V.S.A. § 6086(a)(5)

Swanton Wind does not object to the Langs' participation regarding transportation with respect to Project-related traffic potentially affecting access to the Lang residence. We believe that this is an appropriate subject for the Langs to address and grant them permissive intervention

2. *See Vt. Elec. Power Co. v. Bandel*, 135 Vt. 141, 145 (1977) ("Proceedings under 30 V.S.A. § 248 relate only to the issues of public good, not to the interests of private landowners who are or may be involved.")

3. *Lamoille County Project*, Docket 7032, Order of 3/16/06 at 26.

to do so. However, we do not limit their participation on this issue to access to their residence. The Langs have indicated in affidavits that accompanied the Lang Motion that they use the road not only to access their residence, but for other purposes such as recreational walking. Accordingly, we will allow the Langs to address potential Project impacts on their use of the road generally.

System Stability and Reliability: 30 V.S.A. § 248(b)(3)

We deny the Lang Motion with respect to system stability and reliability. The Lang Motion fails to explain why the Langs' interest in reliable electric utility service is any different from the interest of the public generally in that same reliable service. Further, the Lang Motion fails to articulate why the Department's subject matter experts will not adequately represent that interest when they review the engineering effects of the Project.

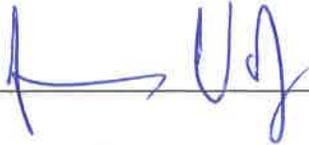
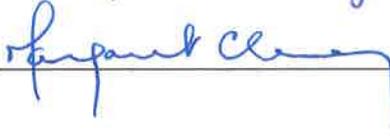
Historic Sites, Air and Water Purity, the Natural Environment, Use of Natural Resources, Streams, Wetlands, Soil Erosion, Rare and Irreplaceable Natural Areas: 30 V.S.A. § 248(b)(5); 10 V.S.A. §§ 6086(a)(1)(E) and (G), (4), and (8)

We deny the Lang Motion with respect to historic sites, air and water purity, the natural environment, use of natural resources, streams, wetlands, soil erosion, and rare and irreplaceable natural areas. The Lang Motion fails to articulate why the Langs' interest in these matters is unique and any different from the general public's interest. Additionally, the Lang Motion does not explain why participation by the Agency of Natural Resources and DHP on behalf of the public with respect to these matters will not sufficiently represent those interests in this proceeding.

At this time, we decline to exercise our authority under Board Rule 2.209(C) to direct the Langs to coordinate with other parties that also may be addressing the issues on which we have granted intervention to the Langs. However, as this proceeding progresses we will reconsider this decision if it becomes apparent that requiring such coordination is necessary to ensure an orderly process for all involved.

For the foregoing reasons, the Lang Motion is granted in part and denied in part. The DHP Motion is granted.

Dated at Montpelier, Vermont, this 18th day of November, 2016.


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PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

FILED: November 18, 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 - Parties

*Sent 11/18/2016
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*Motion to intervene pending.

(For Swanton Wind LLC)

PHONE	<input checked="" type="checkbox"/>
BOOK	<input type="checkbox"/>
BINDER	<input checked="" type="checkbox"/>
STAFF	<input checked="" type="checkbox"/>
COMPUTER	<input checked="" type="checkbox"/>
WEBSITE	<input type="checkbox"/>
WEB	<input checked="" type="checkbox"/>

(For Agency of Agriculture, Food & Markets)

(For Town of Swanton Selectboard
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(For Christine and Dustin Lang)

(For Vermont Division for
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(For City of Burlington Electric Department)

Interested Persons:

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