

**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 )

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VT PUBLIC SERVICE BOARD

**MOTION TO INTERVENE OF  
MARIE TREMBLAY AND GILBERT TREMBLAY**

Marie Tremblay and Gilbert Tremblay (the “Tremblays”) under Public Service Board Rule 2.209(A)(3), or alternatively under Board Rule 2.209(B), jointly move to intervene in the above-referenced matter.

The Tremblays as adjoining property owners have substantial, specific, and particularized interests that may be adversely affected by the outcome of this proceeding. This proceeding is the only means by which the Tremblays can protect their interests, and these interests will not be adequately protected by other parties to this proceeding. The Tremblays’ interests are unique to protecting the use and enjoyment of their property and the public areas nearby, and their perspective is sufficiently distinct from that of other parties.

The Tremblays’ intervention will not unduly delay proceedings or prejudice the interests of existing parties or of the public.

**Memorandum**

The Tremblays respectfully move to intervene in this matter based on their substantial, particularized interests in the following issues:

- (i) orderly development of the region, pursuant to 30 V.S.A. § 248(b)(1);
- (ii) economic benefit to the State and its residents, § 248(b)(4);

- (iii) public health and safety, § 248(b)(5);
- (iv) water pollution, conservation, and burden on water supply, 10 V.S.A. §§ 6086(a)(1)(A), (B), and (C), (3), and (4);
- (v) scenic or natural beauty and aesthetics, § 248(b)(5) and § 6086(a)(8);
- (vi) necessary wildlife habitat or endangered species, § 6086(a)(8)(A); and
- (vii) transportation, § 6086(a)(5).

The following argument supports the Tremblays' motion to intervene in this case.

**I. Legal Standard**

Intervention in proceedings before the Board is governed by Board Rule 2.209. Under Rule 2.209(A), a person upon timely application shall be permitted as of right to intervene in any proceeding:

(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.

Under Rule 2.209(B), a person upon timely application may in the discretion of the Board be granted "permissive intervention" in any proceeding when the applicant "demonstrates a substantial interest that may be affected by the outcome of the proceeding." The Board in exercising its discretion under this rule shall consider:

(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.

The Board has found that, "individual intervenors may bring a perspective sufficiently

distinct from those of existing parties to warrant their participation on specific issues.”<sup>1</sup>

For example, the Board has determined in some cases particularized interest based on the following:

1. habitat and natural resource concerns involving deer and black bear;<sup>2</sup>
2. aesthetics based on proximity to the proposed project;<sup>3</sup> and
3. stewardship, use, and enjoyment of public resources;<sup>4</sup>

In proceedings under 30 V.S.A. § 248, the Board is not required to consider interests in private property.<sup>5</sup>

## **II. Potential Impact of the Project on the Tremblays’ Interests**

For nearly forty years, the Tremblays have owned land that adjoins the site of the proposed Project. Over those years the Tremblays built and sold numerous homes. Eight years ago the Tremblays built on their land and retired to a home which is located approximately 2,000 feet from the Project site. The Tremblays’ 65 year old tenant also resides on their land located approximately 2,000 feet from the Project site and their daughter, son-in-law and four grandchildren living approximately 2500 feet from the Project site. The Project’s nearest 499-foot turbine would stand approximately 600 feet from the Tremblays’ land with the blade tips reaching approximately 400 feet away from the Tremblay’s land.

Presently, the Tremblays use and enjoy their land and surrounding public areas through

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<sup>1</sup> *Application of Seneca Mountain Wind, LLC*, Docket No. 7867, Order of 10/12/12, at 12.

<sup>2</sup> *Application of Seneca Mountain Wind, LLC*, Docket No. 7867, Order of 10/12/12, at 2-4, 16-17; *Id.*, Order of 8/9/13, at 6.

<sup>3</sup> *Petition of Barton Solar LLC*, Docket No. 8148, Order of 1/21/14, at 3-4.

<sup>4</sup> *Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Vermont Electric Power Company, Inc.*, Docket No. 7628, Order of 9/3/10, at 12-13.

<sup>5</sup> *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.”)

the following activities: viewing the scenic, natural landscape; appreciating the quiet, peaceful setting; observing a variety of wildlife and habitats, harvesting natural and economic resources including maple syrup and firewood and watching their children and grandchildren enjoy their land with skating on their pond, collecting sap, taking rides on the ridge, and visiting their grandparents home

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The Project purports to advance the public good, however the Tremblays assert that any potential good may be outweighed by the likely harm. Accordingly, the Tremblays move to intervene by right or permission on the following seven issues.

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

The Tremblays as longstanding adjoining landowners, homebuilders, landlord, sugarmakers, and woodcutters, have a unique experience and particular interest in the orderly development of the region. Other parties to this proceeding may not necessarily share or represent this interest. The Tremblays' perspective regarding land use, natural resources, commerce, and conservation, may be useful to the Board in determining the potential nature and extent of the impact of the Project on regional development. Accordingly, the Tremblays' motion to intervene on this issue should be granted.

**2. Economic Benefit: § 248(b)(4)**

Construction and operation of the Project would have a significant impact on the economy of the State. The Tremblays acknowledge that their interests in private property have

no bearing in this case, however they assert that the Project – an industrial complex in an otherwise bucolic residential setting -- would adversely affect property values locally and regionally, and thereby harm the economic interests of the State and its residents. This adverse effect is self-evident: a prospective homebuyer given the choice of living near seven noisy, flickering, ice-throwing turbines, or elsewhere, likely would purchase a home elsewhere. In addition having a tenant, if the tenant is affected by noise, infrasound, shadow flickers and/or her health worsens she would need to move which would result in a loss of income to the Tremblays'. That is an income that the Tremblays' would lose out on and finding a new tenant that can live under these conditions would be hard to do. That would be a loss of a yearly income to Tremblay's.

Furthermore, the Project would be located approximately 600 feet with the blade tips being approximately 400 feet from the Tremblays' property boundary and nearby sugarbush and woodlot and 2000 feet from their tenant apartment. All of which the Tremblays rely upon as economic resources for producing maple syrup and firewood and a yearly income from a tenant. Considering the potential risk to safety caused by ice throw – particularly during late-winter sugarmaking and woodcutting operations -- the Project's close proximity to the Tremblays' property line may adversely affect the economic prospects for the Tremblays and others, e.g., suppliers of sugarmaking and woodcutting equipment, or manufacturers of products containing maple syrup.

Additionally, the Tremblays' tenant, by virtue of living in the region, contributes to the economy

through purchases of, for example, food, clothing, gas, etc. However the construction and operation of the Project – and associated blasting, noise, shadow flicker, ice throw, and unsightliness -- may cause the tenant, or other prospective tenants, to seek housing elsewhere thereby resulting in lost rental income, lower regional spending, and deflated property values. Moreover these circumstances likely would repeat in cases of other landlords and tenants in the area, and therefore cause a significant impact to the regional economy.

Thus the Tremblays' experience in the region as longstanding landowners and homebuilders, landlord, sugarmakers and woodcutters, provide them with a particular interest not represented by other parties, and a unique perspective that may assist the Board in determining the outcome of this proceeding. For these reasons, the Tremblays should be allowed to intervene on this issue.

**3. Public Health and Safety: § 248(b)(5)**

The Project would be located approximately 600 feet with the blade tips being approximately 400 feet from the Tremblays' property line, and 2,000 feet from the homes of their family and tenant. This proximity subjects the Tremblays and others on their property to potential health and safety risks caused by undue levels of noise, shadow flickers, ice throw, and blasting associated with the Project. The Tremblays have even more of an interest than anyone else since the project documents show that the turbine closest to them would be required to operate in Noise Reduction Mode (NRO). The back of the Tremblays house which faces the ridge where the turbines are proposed is a wall of windows. This wall of windows will result in much less attenuation of noise from outside to inside which will increase the noise levels inside

the Tremblay's home.

Particularly, Marie Tremblay and the Tremblays' tenant both have heart conditions which may worsen due to stress and sleeplessness caused by noise, infrasound, and shadow flickers from the Project. Furthermore, the Tremblays are sound sleepers; when awoken during their nighttime sleep cycle – in this case, by fluctuating noise or early-morning shadow flicker -- they have difficulty returning to sleep. Accordingly, the Project may significantly disrupt the Tremblays' ability to obtain necessary, restorative sleep. Similarly, the intrusive, persistent sound generated by the Project may adversely affect the Tremblays' home-schooled grandchildren, specifically by causing sensory overload, sleep disturbance, and deficits in concentration, learning, memory, language processing, and cognition.

Additionally, ice throw from the Project may cause injury to the Tremblays, their family, and tenant; or damage to the Tremblays' property including buildings, vehicles, sugarbush, and woodlot.

Finally, blasting and potential flying debris associated with the Project may cause injury to the Tremblays and others on their property; or damage to property including the Tremblays' home, garage, outbuildings, vehicles, agricultural equipment, sugarbush, woodlot, and tenant's apartment. Likewise, vibrations from blasting in the bedrock may cause damage to the Tremblays' drilled well, septic system, or foundation or walls of their house.

Therefore, as this Project raises numerous particular concerns over public health and safety on the Tremblays' property, and these concerns would not be adequately addressed by other parties to this proceeding, the Tremblays should be allowed to intervene on this issue.

**4. Water Pollution, Conservation, and Burden On Water Supply:  
10 V.S.A. §§ 6086(a)(1)(A), (B), and (C), (3), and (4)**

Potable water service to the home of the Tremblays and their tenant is provided by a drilled well on the west side of their home. This well is recharged at an adequate rate with water flowing from the area underlying the proposed Project. The Project would require blasting due to the surrounding hard substrate (rock, ledge, bedrock), and pouring concrete in the ground, either or both of which may adversely affect the volume and quality of nearby surface- and ground-water. For example, these activities may: cause ground vibrations that crack the Tremblays' well; inject harmful or toxic substances into ground water or wells; decrease the amount of recharge waters to aquifers; cause unreasonable soil erosion or reduction in the capacity of the land to hold water; or otherwise disrupt or place a burden on the existing water supply. The drilled well is the only source of water supply on the Tremblays' land. There is no town/city water pipeline to hook up to if ground water is contaminated or disturbed.

Therefore, as the Project may particularly affect the Tremblays' supply of potable water, and other parties would not adequately protect this interest, the Tremblays should be allowed to intervene on this issue.

**5. Scenic or Natural Beauty and Aesthetics: § 248(b)(5) and § 6086(a)(8)**

The Tremblays selected the site for their home and retirement based substantially on the peaceful, natural, scenic environs. The Tremblays live among wildlife and habitat, running water, and sights and sounds of the natural world. From their home the Tremblays regularly see the sun and moon rising over a nearby prominent ridge, and particularly from their deck they enjoy drinking coffee at sunrise.

However according to the proposed Project, that ridge would be studded with wind turbines; the sun- and moonshine would cast shadow flickers in their home and across their deck; and the persistent sound from the Project would disrupt the peace and harmony that now exist.

Furthermore, the intrusive sight, flickering, and sound caused by the Project would have an impact on the public areas surrounding Rocky Ridge including Fairfield Pond, and the Missisquoi Valley Rail Trail.

In sum, the Project would particularly affect the visible and audible aesthetics near the Tremblays' home, and the homes of their family and tenant, and surrounding public areas; no other party to this proceeding would adequately represent those interests; and the Tremblays' unique experience and perspective may be useful to the Board in determining the outcome of this proceeding. Accordingly, the Tremblays should be allowed to intervene on this issue.

**6. Necessary Wildlife Habitat or Endangered Species: § 6086(a)(8)(A)**

A pond on the Tremblays' land attracts a variety of wildlife. The Tremblays enjoy watching near their pond and around their land a variety of wildlife including bald eagles, bobcats, deer, geese, turkey, and other animals. Bald eagles, a state-endangered species in Vermont, have in recent years also been observed on nearby Fairfield Pond, as reported by the North Branch Nature Center in Montpelier, VT.<sup>6</sup> Fairfield Pond has been determined by Vermont Fish & Wildlife Department as potentially suitable habitat for breeding bald eagles.<sup>7</sup>

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<sup>6</sup> See 'Birding: Birding Resources: VT eBird Bar Chart' <<http://ebird.org/content/vt/>>, at the North Branch Nature Center (Montpelier, VT) website. 26 January 2017.

<sup>7</sup> Vermont Fish & Wildlife Department. "Vermont Bald Eagle Recovery Plan." October 2010. Web 27 January 2017.

The significant area, height, and scope of the Project in this natural setting may adversely affect necessary wildlife habitat or endangered species. The Tremblays acknowledge that in this proceeding the Agency of Natural Resources may be best situated to intervene on this issue, however the Tremblays assert that their perspective as longstanding landowners and stewards, builders, and woodsmen, may differ from that of other parties, and therefore they may provide useful insight into the extent and nature of the impact of the Project on important wildlife and habitat. Thus in the public interest the Tremblays' motion to intervene on this issue should be granted.

**7. Transportation: § 6086(a)(5)**

The Tremblays use nearby public roads for regular transportation and for activities particularly relating to sugarmaking and woodcutting. However the Project may during construction or operation adversely affect the Tremblays' ability to normally and safely use the roads. Specifically, debris from blasting, or ice throw during operation, may damage or imperil cars and drivers near the Project, and thereby restrict the Tremblays' ability to harvest maple sap or firewood. Therefore, as the Tremblays have a particular interest in the use of the roads, and that interest would not be adequately represented by other parties to this proceeding, the Tremblays should be allowed to intervene on this issue.

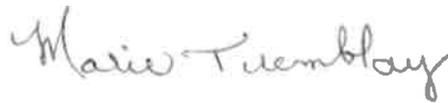
**III. Conclusion**

The Tremblays assert that while this Project is purported to advance the public good, it also raises significant concerns over the public interest. Accordingly, in order to protect themselves, their family, their tenant, and their neighbors throughout the State, the Tremblays

upon the evidence presented herein should be allowed to intervene in this proceeding.

Respectfully submitted this 16<sup>th</sup> day of February, 2017.

By:



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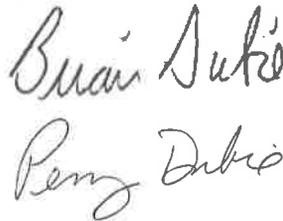
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VT PUBLIC SERVICE BOARD

CERTIFICATE OF SERVICE

We, Brian and Penny Dubie, et.al., certify that on February 16, 2017, copies of the foregoing *Notices of Appearance*, and *Motion to Intervenes of Brian and Penny Dubie, Jeanne Royer, Judith and Patrick Luneau, Karen and Leo McLaughlin, Sally and Bruce Collopy, Kaye and Frank B. Mehaffey, Jr., Terrance Smith, David A. Goodrich, Robert Perkins, Patricia Messier, Sarah & Ed Ferguson, Ian and Danielle Garrant, Curtis Swan and Sara Luneau-Swan, Dan and Nancy Dunne, Erynn & Tyrell Boudreau, Dennis Hendy and Diane Bell, Mary and Mark Bushey, Steve Woodward, Kenneth Fox, Michelle and Luc Deslandes, David Butterfield, Bradley Stott and Jennifer Belanger, Clark and Carol Palmer, Paula Pearsall, Greg Pierce and Paula Kane, Mark and Marianne Dubie, Marie and Gil Tremblay, Patricia Rainville and John Smith, Kevin and Dolores Nichols, Jessica Decker and Lance Desautels, Suzanne Seymour, Mary Hunter, Todd Poirier* in the above-referenced matter, were served via First-Class U.S. Mail on the interested persons designated in the following Service List.

Respectfully submitted this 16<sup>th</sup> day of February, 2017.

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