

**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 )

FEB 15 '17 10:39  
VT PUBLIC SERVICE BOARD

**MOTION TO INTERVENE OF  
DOLORES NICHOLS AND KEVIN NICHOLS**

We, Dolores Nichols and Kevin Nichols, jointly *pro se* under Public Service Board Rule 2.209(A)(3), or alternatively under Board Rule 2.209(B), move to intervene in the above-referenced matter.

We 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 we can protect our interests, and these interests will not be adequately protected by other parties to this proceeding. Our interests are unique to protecting the use and enjoyment of our property and the public areas nearby, and our perspective is sufficiently distinct from that of other parties.

Our intervention will not unduly delay proceedings or prejudice the interests of existing parties or of the public.

**Memorandum**

We respectfully move to intervene in this matter based on our substantial, particularized interests in the following issues:

- (i) public health and safety, pursuant to 30 V.S.A. § 248(b)(5);

- (ii) water pollution, conservation, and burden on water supply,  
10 V.S.A. §§ 6086(a)(1), (3), and (4);
- (iii) orderly development of the region, § 248(b)(1);
- (iv) economic benefit to the State and its residents, § 248(b)(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 our motion to intervene in this matter.

**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 ruled 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 found particularized interest based on the following:

1. habitat and natural resources 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 does not consider interests in private property.<sup>5</sup>

## II. Potential Impact of the Project on the Nichols’ Interests

We move to intervene in this matter based on the following facts and applicable law:

1. We reside at 15 Rocky Ridge Road. Our mailing address is St. Albans, but our physical location is Swanton. Our home adjoins the site of the proposed project. The project would be visible and audible from our home, which is located at a lower elevation than the project. Our home would be approximately 1,500 feet from the nearest turbine.
2. We have lived at this address since May, 2012. The remarkable wildlife sightings and quiet country surroundings were significant factors in our selection and purchase of our home. Construction of the project would diminish the value of our home and significantly destroy the quality of life for us and our 2 year-old daughter.
3. Another important factor in purchasing our home was the access, granted by Mr. Travis Belisle, to many acres for outdoor recreation such as hiking, snowshoeing, and enjoying the offerings of nature. Previously we were allowed to freely wander through the nearby woods enjoying various wildlife sightings (such as deer, turkey, raccoons, red tailed hawks, humming birds, coyotes, beavers, bald eagles, etc.),

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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> *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.”).

finding various animal tracks, and watching the activities of animals in our nearby wetland areas. We could do this almost any time of year, but we always had to be conscious of the wet areas and wear appropriate footwear. In the wintertime, we attempted our first snowshoeing activity in the woods up along the ridge near the site of the proposed project. However our access to that land was revoked and we are no longer welcome nor permitted to hike and enjoy any of the property on the ridge. Construction of this project would mean that this land would be inaccessible to us forever. We fear that all of this current wildlife experience and education for our daughter and other young children in the neighborhood will be lost if this project is approved. Additionally, we believe that the run-off water from the ridge which eventually drains into to Lake Champlain would be contaminated if the project were approved.

4. Our daughter, who will be 3 years old in April, 2017, has been diagnosed by the University of Vermont Hospital as having “Absent Seizures.” Since being diagnosed in 2015, she has had at least a dozen of these seizures of which we are aware. We fear that if the wind turbines were built on this ridgeline, the “shadow and flicker effect” from the turbine blades would aggravate her condition. We also believe that the sounds from the turbines could affect her health. These beliefs are based on discussions with medical professionals.

5. With our property line being less than 2,000 feet from the nearest turbine, we are concerned about ice thrown damaging our land, vehicles, our home, and ourselves. Turbines have been known to throw ice more than 2,000 feet. Construction of this project would cause us to have concerns on all cold days, and especially damp or snowy days, such as the current and past winter when it was warmer than average, causing ice buildup on trees and powerlines including in our driveway and on our road. I am concerned over the possible ice buildup on the turbines, and the amount of damage that may be caused by the turbines in fluctuating temperatures.

6. The sun comes up over the ridge and shines on the face of our home as our front porch faces east. Construction of this project would create shadow flicker at least half the day over our home and front yard. In addition, the moon rises over the ridge in the evenings and our family enjoys looking up at the stars on clear nights. Places near large cities do not have that luxury. However, construction of this project would create shadow flicker from the moon as it rises over the ridge. This may be disruptive to our restful night sleep, and also our ability to admire the stars and constellations in the sky. Also, it is a fact that bird species such as the Bald Eagle, hawks, large groups of Canada Geese, bats, and turkey vultures, frequently fly above this same ridge, and near Fairfield Pond on the other side of the ridge.

7. Our road is a dirt, dead-end road that is not maintained by the town but rather by our “Rocky Ridge Home Owners Association.” Construction of this project and related noise and shadow flicker would not only disrupt the walks on the road that

some residents take during the warmer months, but the road may be torn apart by the heavy equipment associated with the project that would be driven in excessive weight, leaving us residents having to repair it.

8. We feed birds at our home from bird feeders that are hung from our front porch. Our young daughter enjoys watching the variety of birds such as humming birds, cardinals, blue jays, etc. This is another exceptional opportunity for such a young child, as she grows with her mind like a sponge, taking in all that she can. We fear that the project would disrupt nature and force such species of birds to leave their habitat.

9. Our well is located on the northwest corner of our property where it would be in close proximity to the proposed project. Presently we have good potable water and a decent flow rate. Construction of this project would put tons of cement into the ground which may leach down into our water supply. Blasting could also cause some property damage such as altering the flow of water; or degrading our water source by introducing sediment; or reducing the flow or recharge rates; or cracking or causing other damage to our home's foundation; or damaging our septic system. Also, we've been informed by homeowners near other wind projects of large pieces of rock flying through the trees. Also, it's likely that the 11 young children that live near this project would be affected by the loud blasting sounds, especially as some of the children are under the age of one.

10. Our town plan notes that Interstate 89 is the gateway from Canada into the United States. As it passes through Swanton, Rocky Ridge is the only prominent ridge in Swanton, and it dominates the view to the east. Also, the Missisquoi Valley Rail Trail is located in close proximity to the west of this project with many views of this ridge. Construction of this project would materially diminish the natural view along the gateway and the Rail Trail. Instead of this wind project, we would favor a solar panel farm, provided that there was no harm due to run-off waters, and no harm to children, or damage to wetlands, or local habitat, or residential property, etc. We believe that there are better uses of this property than hosting a wind farm, and this project would cause more harm than good for the Town of Swanton, and the State of Vermont.

**A. Public Health and Safety**

As explained above, the project poses many risks to public health and safety.

Specifically, ice throw may cause property damage or personal injury; shadow flicker and noise may exacerbate our daughter's health condition, or otherwise interfere with our ability to obtain necessary, restorative sleep; and blasting, construction, and operation of the project may damage

our septic system, drinking well, or walls or foundation of our home, or otherwise affect the volume or quality of our drinking water.

As we have an interest in protecting ourselves and our daughter from harm, and as no other party would adequately represent this interest, we move to intervene on this issue.

30 V.S.A. § 248(b)(5).

**B. Water Quality**

As stated in the previous section, blasting, drilling, construction, and operation of the project may affect the structural integrity of our well or septic system; or the volume or quality of our drinking water. Therefore, as we have a particular interest in protecting our water, and no other party would adequately protect that interest, we should be allowed to intervene on this issue. 10 V.S.A. §§ 6086(a)(1), (3), and (4).

**C. Orderly Development; Economic Benefit to the State**

We are concerned that approval, construction, and operation of the project would cause a decrease in the value of our property. We understand that our interest in private property may not be considered in this case, however we assert that the project would not only affect the value of our home, but rather all the homes in the surrounding area thereby affecting the regional and statewide economy. In disrupting this rural residential setting, the project would interfere with the orderly development of the region.

As homeowners and parents of a young child, we have a distinct interest in the orderly development of the region, and in the statewide economy. As our perspective may be useful to the Board in determining the impact of the project on development and economics, we should be allowed to intervene on these issues. § 248(b)(1), and (4).

**D. Aesthetics; Natural Areas; Wildlife Habitat**

As indicated in the statements above, construction and operation of the project would affect our enjoyment of the scenic views, natural setting, and wildlife on our property; and likewise the project would affect surrounding public areas including Fairfield Pond, the Missisquoi Valley Rail Trail, and nearby roads. As adjoining landowners, we have a unique interest and perspective that would not necessarily be represented by other parties, and which may be useful to the Board in determining the outcome of this proceeding.

Therefore, we respectfully move to intervene on aesthetics, natural areas, and wildlife habitat. § 6086(a)(8), and § 248(b)(5).

**E. Transportation**

Construction and operation of the project may affect our ability to use and enjoy the roads nearby – for driving and walking -- and may affect the quality of the roads and the frequency and cost of maintaining them. As we have a particular interest in using and maintaining these roads, we move to intervene on this issue. § 6086(a)(5).

**III. Conclusion**

While this project purports to advance the public good, it also raises significant concerns over the public interest. Therefore, in order to protect ourselves, our child, our neighbors on Rocky Ridge, and our neighbors throughout the State, we should be allowed upon the evidence presented herein to intervene in this proceeding.

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

By:



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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.

By:



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