

**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 16 11 17 AM 2017
VT PUBLIC SERVICE BOARD

**MOTION TO INTERVENE OF
LUC DESLANDES AND MICHELLE DESLANDES**

Luc Deslandes and Michelle Deslandes (the “Deslandes”) 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.

The Deslandes as non-adjointing neighboring 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 Deslandes can protect their interests, and these interests will not be adequately protected by other parties to this proceeding. The Deslandes’ 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 Deslandes’ intervention will not unduly delay proceedings or prejudice the interests of existing parties or of the public.

Memorandum

The Deslandes 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 Deslandes' 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 ruled that, "individual intervenors may bring a perspective sufficiently distinct from those of existing parties to warrant their participation on specific issues."¹

For example, the Board has found particularized interest based on the following:

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

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

II. Potential Impact of the Project on the Deslandes' Interests

The Deslandes since 1992, have owned and resided in their home on Sheldon Road in Swanton, 3500 feet from the site of the proposed Project which would be visible and audible from their home. The Deslandes decided to purchase and someday retire in their home based substantially on the scenic views of the ridge behind their home including Rocky Ridge and Lake Champlain; the surrounding wildlife and peaceful country setting; and ready access to natural

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

² *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.

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

⁴ *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.

⁵ *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.")

acreage behind their home for hiking, hunting, and outdoor activity. Another significant factor influencing the Deslandes' decision to purchase their home was the potential income from a rental apartment located in their home.

* * *

The Deslandes assert that the Project would materially diminish their use and enjoyment of their home, their property, and nearby public areas. The Project as proposed purports to advance the public good, however the Deslandes assert that any potential good may be outweighed by the likely harm. Accordingly, they move to intervene by right or permission on the following seven issues.

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

The Deslandes as longstanding Swanton-area homeowners, landlords, and outdoorsmen, have unique experience and particular interest in the orderly development of the region which other parties to this proceeding may not necessarily represent. The Deslandes' use and enjoyment of their property and nearby public land for hiking, hunting, and appreciation of nature, may be adversely affected by the construction and operation of the Project. The Deslandes' 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. Therefore the Deslandes' 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 Deslandes acknowledge that their interest in private property has 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. The Deslandes' assertion is based on information that they received from homeowners living near industrial wind turbines in other towns in Vermont, specifically that the construction and operation of the turbines have caused a depreciation in the value of their homes. 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 go elsewhere.

Additionally with respect to economics, the Deslandes have earned rental income from the same tenant for eleven years. Part of this income was spent on maintaining and remodeling the Deslandes' home (an old farm house) and drilling a well, which projects improved the condition of their home and made it more comfortable for themselves and their tenant; increased the value of their property; and contributed to the regional economy through purchases of material and labor. The Project, however, would undermine that work and regional benefit.

Furthermore, the Deslandes' tenant by virtue of living in the region contributes to the economy through purchases of, for example, food, clothing, gas, etc. Yet 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. Furthermore 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.

Finally, Mrs. Deslandes during the day works from home as a Stampin' Up

Demonstrator, which requires concentration in an environment free from distraction.

Construction and operation of the Project would interfere with her ability to perform her work and thus have an adverse effect on her livelihood.

Accordingly, as the Deslandes have a unique perspective and particular interest in the regional economy that is not necessarily represented by other parties, the Deslandes should be allowed to intervene on this issue.

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

The Project would be located 3500 feet from the Deslandes' home. The turbines would interfere with light from the sun and moon rising over Rocky Ridge on the northeast side of their home. This proximity subjects the Deslandes and their pet cat, and the Deslandes' tenant, to potential health and safety risks caused by undue levels of sound, shadow flickers, and blasting associated with the Project.

Particularly, the Deslandes are sound sleepers; when awoken during their nighttime sleep cycle – in this case, by fluctuating sound or shadow flickers caused by the Project -- they have difficulty returning to sleep. Accordingly, the Project may significantly disrupt their ability, or their tenant's ability, to obtain necessary, restorative sleep.

Furthermore, the Deslandes' home is located on Route 105 which on a daily basis is traveled by more than 1,000 vehicles including regular use by a school bus, commuters, commercial vehicles, police, ambulance, and emergency vehicles. Due to the proximity of the Project to Route 105, shadow flickers cast by the Project may distract drivers and cause accidents resulting in injury or death to drivers, passengers, or pedestrians including the Deslandes and their tenant; or damage to the Deslandes' property.

Additionally with respect to shadow flickers, the Deslandes care for, and intimately value as a member of their family, a cat which may suffer from stress, anxiety, and adverse health effects due to excessively chasing shadow flickers caused by the Project.

Furthermore, blasting and drilling associated with the Project may cause damage to the the Deslandes' drilled well, septic system, or foundation or walls of their house.

Therefore, as this Project raises numerous concerns over public health and safety on the Deslandes' property and nearby Route 105, and no other party has their perspective, or would adequately represent their perspective or interests, the Deslandes 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)**

As municipal water service is not available at the Deslandes' property, potable water to their home is provided by a drilled well on the southeast side of their house. The 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 Deslandes' 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. As water is vital to the health of the Deslandes and their tenant, and the Project would be constructed on their source of water, the Deslandes should be granted

intervention on this issue.

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

The Deslandes selected the site for their home and retirement based substantially on the rural, tranquil, scenic environs. The Deslandes particularly appreciate the surrounding wildlife and habitat, and the ready access to natural acreage including the ridge behind their home which borders Rocky Ridge and Fairfield Pond for hiking, hunting, and outdoor activity. From their deck they enjoy viewing the sun and moon rising over Rocky Ridge.

However according to the proposed Project, that scenic ridge would be studded with seven turbines casting shadow flickers across their deck and into their home, disrupting their own and their tenant's sleep, daily routines, and leisure. And the pervasive peace they now enjoy would be unsettled by persistent noise. The aesthetic harmony of sight and sound would be destroyed.

Additionally, Route 105 is known as the gateway between Interstate 89 and the border between the United States and Canada. The Project may affect travelers' and tourists' experience of this otherwise scenic area. The Deslandes unique experience as nearby homeowners may be helpful to the Board in assessing this impact.

The Deslandes assert that the Project would adversely affect the natural beauty, and rural and scenic quality of the surrounding area. The Deslandes' particular experience, interest, and perspective as longstanding landowners, landlords, hikers, hunters, and outdoorsmen, may be useful to the Board in determining the potential nature and extent of the impact of the Project on aesthetics. Therefore the Deslandes should be allowed to intervene in this issue.

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

The Deslandes appreciate the wildlife that lives on and visits their land and surrounding areas. Over the years the Deslandes have observed bobcats, coyotes, deer, bald and golden eagles, geese, hawks, owls, rabbits, turkeys, and other varieties of birds and wildlife. The Deslandes cherish watching the thousands of migrating geese that routinely fly along Rocky Ridge and land in a farm field across from their house. These geese cross the ridgeline at an altitude that would place them at risk of being killed by the proposed turbines.

As previously noted, the Deslandes have an interest in the Ridge and Fairfield Pond, where bald eagles, a state-endangered species in Vermont, have in recent years been observed, as reported by the North Branch Nature Center in Montpelier, VT.⁶ Fairfield Pond has been determined by Vermont Fish & Wildlife Department as potentially suitable habitat for breeding bald eagles.⁷

The significant area, height, and scope of the Project in this natural setting may adversely affect necessary wildlife habitat or endangered species. The Deslandes acknowledge that in this proceeding the Agency of Natural Resources may be best situated to intervene on this issue, however they assert that their perspective as a longstanding landowners, hikers, hunters, and outdoorsmen, may differ from that of other parties, and 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 Deslandes should be allowed to intervene on this issue.

⁶ 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.

⁷ Vermont Fish & Wildlife Department. "Vermont Bald Eagle Recovery Plan." October 2010. Web 27 January 2017.
<<http://www.vtfishandwildlife.com/common/pages/DisplayFile.aspx?itemId=111337>>.

7. **Transportation: § 6086(a)(5)**

As previously stated, the Deslandes' home is located on Route 105 which on a daily basis is traveled by more than 1,000 vehicles daily including regular use by a school bus, commuters, commercial vehicles, police, ambulance, and emergency vehicles; and tourist travel between the United States and Canada. Construction vehicles and shadow flicker associated with the Project may disrupt or endanger regular use of Route 105 by the Deslandes, their tenant, or the public.

Due to their unique experience as longstanding homeowners on Route 105, the Deslandes' perspective may be useful to the Board in determining the impact of the Project on transportation. Therefore the Deslandes should be allowed to intervene on this issue.

III. Conclusion

The Deslandes 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 tenant, and their neighbors throughout the State, the Deslandes upon on the evidence presented herein should be allowed to intervene in this proceeding.

Respectfully submitted this 16th day of February, 2017.

By:



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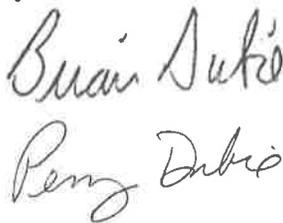
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VT PUBLIC SERVICE BOARD

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 16th day of February, 2017.

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