

STATE OF VERMONT  
PUBLIC SERVICE BOARD

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VT PUBLIC SERVICE BRO

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 )

**MOTION TO INTERVENE OF  
EDWARD FERGUSON AND SARAH FERGUSON**

We, Edward Ferguson III, and Sarah Ferguson, 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 landowners 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) 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); and
- (vi) 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 is not required to consider interests in private property.<sup>5</sup>

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

We and our two young sons reside at 19 Rocky Ridge Road, Swanton, Vermont (mailing address: St. Albans). Our property adjoins the site of the proposed Project. Our home would be approximately 2,000 feet from the nearest turbine. The Project would be visible and audible from our home which is at a lower elevation.

We have lived at this address since July, 2011. We moved here because of the scenic and peaceful surroundings. The large wooded lot and the quiet setting were big factors in deciding to build our home here. Construction and operation of the Project may: (1) diminish the quality of the surroundings; (2) negatively affect the value of our home and homes in the region; (3) endanger the health and safety of our family; (4) pollute or reduce the supply of our drinking water; (5) intrude upon the visual and auditory harmony of our home and surroundings; and (6)

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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.”)

restrict our use of public roads.

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

Our family enjoys being outside with neighbors who are also our friends. Our son has made friends too that he enjoys playing with. It is a connection that we want our boys to have always. We love driving into our neighborhood, seeing friends, and opening the doors of the cars to let the children play together. We would not be able to do this with the same enjoyment if seven tall, loud, flickering turbines stood above us. And, if the Project causes our friends to move (or we move), we will lose our wonderful neighbors. Why should we have to move for this 'greater good' project?

We as homeowners and parents of two young boys have a particular experience and interest in the orderly development of the region which other parties to this proceeding may not represent. Our perspective may be useful to the Board in determining the potential nature and extent of the impact of the Project on regional development. Therefore our motion to intervene on this issue should be allowed.

**2. Economic Benefit: § 248(b)(4)**

Our home – it is so much more to us. It is the biggest investment next to our boys. But our home is our investment for our boys. We work hard to improve and invest in our home. We worry that we may have done it all for nothing. We worry that because home values near other turbines in Vermont have decreased, that we will never get back the money we invested. The Project would take away our investment. Also, as explained in the next section, the Project would interfere with Edward's ability to sleep and therefore it would impact his ability to provide for our family.

We understand that our interest in private property is not considered in this case, but we believe that the Project – an industrial complex in a rural setting -- would negatively affect property values locally and regionally, and therefore harm the economic interests of the State and its residents. This negative effect seems obvious: a potential homebuyer given the choice of living near noisy, flickering, ice-throwing turbines, or elsewhere, likely would go elsewhere.

As adjoining landowners and parents, we have a unique perspective and particular interest in the local and regional economy that is not represented by other parties, therefore we should be allowed to intervene on this issue.

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

Edward drives trains for a living. He works very odd and ever-changing work schedules. So, when Ed gets a moment to finally sleep and rest, it needs to be quiet and dark. Our bedroom faces Rocky Ridge. We have room-darkening curtains that help, but still the sun shines through during the day. Flicker and noise from the turbines would make sleeping very hard. Ed must be on the top of his game for his own safety and for the public's safety.

Also, with our property line being less than 2,000 feet from the nearest turbine, we are concerned about ice throw damaging our land, vehicles, and home, and/or injuring family members. Turbines have been known to throw ice more than 2,000 feet. Construction of this project would have us very concerned for our welfare on damp, cold, snowy days.

No one can tell us if the Project will hurt us. Our biggest investment next to our home is our family – our boys who are 4 years old and 2 months and were born here. Sleep is the core of what allows our boys to grow and thrive. They grow while they sleep – no sleep, no growing. Sleep deprivation in a child can cause so many issues: behavior outbursts, emotional issues, and

physical problems. As parents, it is our job to protect our children. We don't want to risk putting them in harm's way. It's like letting your child play in the road – they may be just fine or they may get hit. It is not worth the risk.

Finally, our drinking well and foundation are core parts of our home. With all of the blasting and cement being poured for the construction of the Project, we are very concerned about our well and foundation being compromised and not being the same. Water is the basis of life, and our foundation holds together all that we have.

Everyone is so concerned about wildlife and environment due to this project. We are worried about them also, but our boys and our home are our biggest concern. First they must be protected. This project would put them too much in harm's way. Therefore, because this Project raises concerns over public health and safety on and around our land, and no other party would adequately protect those interests, our motion to intervene on this issue should be allowed.

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

As previously stated, water service to our home is provided by a drilled well on our property. The well is recharged at an adequate rate and it is assumed that the water flows from the area underlying the proposed Project. The Project would require blasting due to the surrounding rock/ledge/bedrock, and pouring concrete in the ground, either or both of which may affect the quality and volume of nearby surface- and ground-water. For example, these activities may: cause ground vibrations that crack our 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 stated above, as water is the basis of life, and the Project would be built on our source of water, we should be allowed to intervene on this issue.

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

We moved here in July, 2011, because of the scenic and peaceful surroundings. The large wooded lot and the quiet setting were big factors in deciding to build our home here. We have two young boys that we want to be outside as much as they can as well as ourselves. It is the kind of lifestyle that we want for our family. To be able to be outside to create and learn.

Construction and operation of the Project would diminish the quality of the surroundings and intrude upon the visual and auditory harmony of our home. Based on these likely negative effects, we should be allowed to intervene on this issue.

**6. Transportation: § 6086(a)(5)**

We do our best to get outside and move to keep ourselves healthy as a family. We enjoy walking on our quiet dead-end road, allowing our boys to play as we go. We walk to the common land field to allow our boys to run and burn off energy. We chose to live on a dead-end road for these reasons. We want to be able to let our boys go outside by themselves without us hanging over them. Construction and operation of this Project, with large construction vehicles traveling back and forth, would not allow us to do that freely.

Because this Project would restrict our ability to use our private road, our motion to intervene on this issue should be granted.

**III. Conclusion**

While this Project is proposed to advance the public good, it also raises concerns over the public interest. Therefore, in order to protect ourselves, our boys, and our neighbors throughout

the State, we should be allowed to intervene in this proceeding.

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

By:

A handwritten signature in cursive script, appearing to read "Sarah A. Ferguson".

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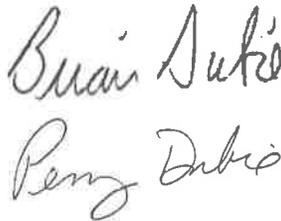
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VT PUBLIC SERVICE BOARD

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.

By:



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