

Lead—10/10 wind  
By Paul Lefebvre

SHEFFIELD — An old and familiar debate may put the skids on a project here to build the first wind farm on Northeast Kingdom ridge lines.

Hurdles are being mounted on two fronts following approval for a project to build a 16-turbine wind farm on ridge lines here.

Only two months ago UPC Wind appeared to be in the driver's seat follow a decision by the Public Service Board (PSB) to grant the company's project a certificate of public good (CPG).

But new challenges to the company are clouding the horizon.

Opponents of the project loosely organized under an umbrella organization called the Ridgeline Protectors will take their opposition to the Supreme Court.

Paul Brouha of Sutton said in an interview last week that the PSB decision will be appealed on a number of issues before the state's high court.

At the same time UPC is facing a stiffer review than it likely anticipated from the federal government over wetland and wildlife issues.

The Corps of Engineers put the company on notice in August that it must clear a higher hurdle or modify its project before going forward with construction.

In a letter to UPC's vice president of environmental affairs, the Corps sternly asserted its jurisdiction by

telling the company "you may not proceed with any proposed work within our jurisdiction until you have received written authorization from this office."

At issue is whether UPC will have to go through an "Individual Permit" review, which requires issuing a public notice to abutters along with other state and local agencies. The difference between the individual permit and a general one is somewhat analogous to the Act 250 distinction between a minor and a major application.

The company appears to be taking the federal intervention in stride. UPC operating manager for the Sheffield project said in an interview last month that the Corps letter contained no surprises.

"It was not really a shock for us at all," said Matt Kearns, adding that he saw nothing that would affect the company's planned start-up date for construction.

Although negotiations already are underway between the Corps and UPC, it is still not clear whether the company will have to perform more environmental studies or modify the project in the event it fails to satisfy concerns raised in the Corps August 23 letter. As of Tuesday the company had not formally responded to requests contained in the letter.

The Corps went into the negotiations with the expectation that UPC will be required to obtain an Individual Permit, according to Michael Adams at the Corps Vermont Project Office in Essex Junction. He said it generally takes a

120 days for a decision on the permit after a complete application is received. While he noted that a general permit still might be issued if the U.S. Fish and Wildlife Services gives it approval, Mr. Adams said in a subsequent interview this week he didn't think that was likely.

Essentially, the main issue for federal regulators is a one that has surfaced repeatedly. The impact of towering industrial wind turbines on birds and bats was at the very heart in the controversy over putting four of them on East Mountain roughly three years ago. The Montpelier company EMDC lost its bid in 2006 to be the first to bring wind to the ridgelines of the Northeast Kingdom because it failed to do a study on how the massive turbines would affect birds and bats.

To that end, the three members of the Public Service Board followed the lead of the state Agency of Natural Resources that opposed the project because of EMDC's refusal to conduct such a study. ANR told the Board it could not support a company who refused to play by the rules of the game.

The impact of the Board's ruling was not lost on the next company to submit a project to harness wind off Northeast Kingdom ridge lines. By all accounts, UPC and ANR worked closely to ensure that studies would be done to measure the project's impact on birds and bats. The two parties signed a Memorandum of Understanding that was accepted by the Board and alluded to in its granting of a CPG late this summer in August.

"With the benefit of the solid groundwork provided by the applicant and the protective measures set forth in agreement with ANR, we have been able to conclude that the Project, as conditioned in this order, will not have an undue adverse impact on wildlife or on necessary wildlife habitat," wrote the Board in its August 8 decision.

Earlier in an interview this summer, Mr. Kearns said that UPC was "in the business to make the project work." And last month in light of the concerns raised by federal biologists — "that inadequate preconstruction data has been collected to evaluate risk to birds and bats" — he suggested that the U.S. Fish and Wildlife Service may not have had an opportunity to fully review the memorandum of understanding between his company and ANR.

That memorandum, he went on to say, was a "watershed agreement" between the wind industry and the state. "We did everything and then some of what was recommended to us," he said.

Based in Newton, Massachusetts, UPC is a "family run business" which makes it, according to Mr. Kearns, "an anomaly in the wind business." With no international backing and with no financial arrangements with utility companies, Mr. Kearns noted that UPC "defies the paradigm" for wind companies.

It is, however, no Mom and Pop operation.

According to a company website, UPC is heavily invested in wind. It has 13 projects at different stages

spread throughout the country and extending as far west as Hawaii and as far north as New Brunswick, Canada. To date it has wind farms up and running in Maui, Hawaii; Mars Hill, Maine; and Lackawana, New York. Along with the project in Sheffield, there are five more projects that are characterized by the company as under development. These include projects in Danforth, Maine; Genesee and Wyoming counties in New York; along with one in Glassville, New Brunswick.

Those designated by the website as pre-construction projects include three in New York and a massive 200MW wind farm in Milford, Utah. The company says it has plans for future wind developments in the states of California, Maine, New Hampshire, Pennsylvania, and Texas.

The 50MW Sheffield project may be the first one in which UPC might have to go the extra mile to satisfy federal regulators. The Corp of Engineers participation in the project was triggered mainly by concerns from the U.S. Fish and Wildlife Service that were aired as early as January in a letter to UPC.

Written several weeks before the company's hearing got underway before PSB in Montpelier, the five-page letter raised doubts over the validity of radar tests conducted on bird and bat activity around Hardscrabble Mountain. Because of state and local opposition to the site, UPC eventually scaled back its project from 26 to 16 turbines and shelved plans to put any on Hardscrabble, which lies within the town of Sutton.

But US biologists contend that the test results from Hardscrabble cannot be extended five miles or so and grafted onto ridge lines in Sheffield where the project has been approved.

"None of the radar data collected in 2004 and 2005 covers any of the wind turbines proposed for Granby, Libby, Barrett, and Norris Mountains in the current configuration," says the letter. Information collected at Hardscrabble, it notes, "is not sufficient to demonstrate, at appropriate scale, the spatial and temporal uses of airspace," by bird and bats over the sites where the turbines would go.

Why the concerns raised by USFWS did not surface during the lengthy hearings before the PSB may be simply a jurisdictional issue. David Englander, the ANR attorney who represented the agency at the hearings said in an interview last month that state and federal agencies have different agendas that cause each to go their separate ways.

"We have a different mandate," he said, speaking of his own agency. He refrained, however, from commenting on whether the reservations raised by federal biologists took odds with the agreement reached between ANR and UPC.

Certainly fears that ANR was not toeing the mark were circulating among opponents to the project as the PSB hearings were unfolding. And as the former associate deputy chief of the U.S. Forest Service, and more recently the former executive director of the American Fisheries

Society, Paul Brouha of Sutton was one opponent who had the clout to do something about it. It's a role he doesn't deny.

The January 3 letter from USFWS to UPC came as a collegial response to his attempts to get the federal agency to play "a more active role in the hearings," he said in a recent interview.

He characterized the letter as a "very specific critique" of the project, while noting that jurisdictional issues kept the Service from sticking its nose into the PSB hearings that got underway in March.

Mr. Brouha further noted that this was not the first time that USFWS has weighed in on the questionable impact a Vermont wind project could have on bats and birds. Similar concerns, he said, were conveyed like a shot across the developer's bow when the Montpelier wind company, EMDC, failed to offer any evidence that its East Mountain project would have no adverse impact on bats and birds.

Both UPC and USFWS shrugged off suggestions that the recent call for a stiffer review of the project was prompted by a citizen's prodding.

"I can't say we ever received a letter that convinced us to do something different than what we were going to do by law," said Vern Lang, the assistant supervisor at the USFWS regional office in New Hampshire.

Unlike the project at East Mountain, wetlands surrounding the Sheffield project required UPC to apply for a federal permit, he said.

While the federal request for more information may be just another case of business as usual, Mr. Kearns said UPC had only limited communications with federal regulators since the project got underway. He added he thought the scope of the work UPC did on bats and birds would satisfy federal biologists.

"I think we met and exceeded the bar in terms of environmental studies," he said.

UPC intended to get construction underway by late fall or early winter. But it appears certain that its schedule will be pushed back. As far as state law goes, opponents of the project have until the end of October to file an appeal with the Supreme Court. An appeal that Mr. Brouha promised was coming.

And while the federal government's last minute appearance in the case may not be

With no international backing and with no financial arrangement with utility company, Mr. Kearns noted that UPC "defies the paradigm"

And last month in light of the concerns raised by federal biologists — "that inadequate preconstruction data has been collected to evaluate risk to birds and bats" — he suggested that the U.S. Fish and Wildlife Service may not have had an opportunity to fully review the

memorandum of understanding  
between his company and ANR.