

October 30, 2013

To: Interested Public

From: Catherine Gjessing, General Counsel, Vermont Fish and Wildlife Department

Re: Response to comments submitted regarding Georgia Mountain Community Wind, LLC's Threatened & Endangered Species Takings application and draft permit (EH-2013-12).

Thank you for taking the time to review and provide comments on the application and draft Threatened & Endangered Species Takings permit (T&E permit) for the Georgia Mountain Community Wind, LLC's windpower facility in Georgia/Milton. Your comments and others submitted have been reviewed by staff of the Agency of Natural Resources (ANR) and were considered by the ANR Secretary. The Secretary decided to issue a permit to the applicant. The final permit was improved thanks in part to the comments we received. A copy of that permit can be found at ANR's Endangered and Threatened Species Takings Permits [webpage](http://www.anr.state.vt.us/site/cfm/etstp/) (<http://www.anr.state.vt.us/site/cfm/etstp/>).

A total of twelve comments were submitted. The following is a summary of those comments and the Agency's response.

**1. Clarify the permit period length.**

The Threatened & Endangered Species Takings permit became effective on October 30, 2013 and expires on December 31, 2015.

**2. Clarify the language regarding the curtailment period in condition 11.A. Is curtailment consistent with T&E permits issued to Sheffield and Lowell?**

Condition 11.A. requires that turbines be curtailed (stopped) for a period starting 30-minutes before sunset until sunrise the next day from July 1 through September 30 of each year of the permit period. The T&E permit issued to Green Mountain Power for operation of its Kingdom Wind facility in Lowell similarly requires the same curtailment for the period June 1 to September 30. The same is true for the Vermont Wind, LLC Sheffield wind facility for the period June 1 through October 30. The shorter curtailment period for this permit is based on the fact that the project has fewer turbines.

**3. Fully address comments and concerns expressed by the Endangered Species Committee in its April 29, 2013 letter providing advice to the ANR Secretary.**

The advice of the Endangered Species Committee (ESC) provided in its April 29, 2013 letter to the ANR Secretary was considered and fully incorporated into the permit. In addition, the Applicant, ESC representatives and ANR staff met on July 3, 2013 and discussed and resolved the concerns expressed by the ESC.



- 4. Which office and/or agency is responsible for investigating alleged violations of the permit, and ensuring compliance? Does the office have the staff and authority necessary? Has it been clearly identified to neighbors and other interested parties? Who is responsible for assuring the required curtailment is occurring, and who should neighbors contact if they see the curtailment schedule is not being complied with? What penalties will be assessed if the curtailment schedule is not followed?**

ANR's Fish & Wildlife Department is responsible for investigating allegations of violations of the T&E permit. Staff will then report to the ANR Secretary.

The following permit condition address permit compliance and penalties:

- 10.A. ...“Continued validity or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.”
- 10.B. “The validity of this permit is expressly conditioned upon compliance with all applicable federal and state laws, regulations and permits.”
- 10.G. “The permit...may be revoked by the Secretary at any time for cause, or for violations of any terms or conditions of this permit or state wildlife law.”

Neighbors and other interested parties can report alleged violations to the VFWD at 802-828-1000.

- 5. Clarify the portions of the permit regarding the take of birds.**

The prevailing bird mortality evidence from similar wind power facilities in the Northeast indicates that the taking of a listed bird species is unlikely. However, one dead Eastern Whip-poor-will was recovered at the Project site in 2013 (on May 31), and the evidence from other facilities is inconclusive as each facility has unique characteristics. Because the project area is within the Champlain Valley proximal to Lake Champlain, which is used during migration by birds, including Common nighthawk, Grasshopper sparrow, Black tern, Common tern and Upland sandpiper, the potential for taking warrants attention. The level of take of each species will vary based on both abundance and possible species-specific characteristics and habits that influence their vulnerability to collisions with wind turbines. Therefore a take limit of three specimens of any bird species is specified in the permit and a structured, systematic post-construction mortality study for birds is required.

- 6. The claims of economic hardship by the applicant are unsubstantiated. Require that the applicant provide greater financial analysis consistent with common and accepted standards in the business sector before a permit is considered.**

The Applicant provided an explanation of economic hardship that was consistent with the evidence and findings in the Public Service Board proceedings for a certificate of public good for this project. The explanation is also consistent with evidence provided for other wind facility projects heard by the Public Service Board. Our analysis indicates that the turbines would need to be turned off approximately 25% of the time in order to assure zero take of listed bird and bat species. Ceasing energy production for approximately one-quarter of each year was determined to be sufficient evidence of economic hardship.

**7. Require study payments to run for twice the permit period in order to establish better baseline periods.**

The post-construction monitoring period required under this permit mirrors the period that the wind facility is authorized to operation under its T&E permit (through December 31, 2015). If the Permittee applies to renew/extend the T&E permit period, the Agency has the right to require additional monitoring and payments.

**8. The monitoring consultant should be independent of the Permittee and selected through a stakeholder engagement process.**

Condition 11.C. of the permit requires the Permittee to hire a qualified consultant to conduct fatality monitoring. It is the Agency's role to determine if the consultant is qualified. The Agency has reviewed the consultant's qualifications, experience and work-products and believes that consultant can perform the required monitoring in a professional and unbiased manner.

The protocol for monitoring specified in the Bird and Bat Post-Construction Monitoring Plan for this facility, and others in the state, was developed in partnership with the Fish & Wildlife Department. The consultant has been in regular contact with ANR biologists and has submitted all interim reports on time. The Permit requires the Permittee to hire consultants, contract and pay for the monitoring. Given the level of risk associated with this permit to threatened and endangered species and the Agency's experience with the Permittee's consultant, the Agency has determined that it is not necessary to select the contractor through a stakeholder process.

**9. Condition 11.H. states that if the take of listed species exceeds the annual limits established in the permit, that the Secretary has the discretion to make additional requirements of the Permittee. Additional requirements should be mandatory not discretionary.**

The permit was issued with language that provides the Secretary with discretion in establishing additional requirements because take limits could be exceeded at the site for reasons that were out of the Permittee's control.

**10. Hold a public hearing.**

After considering the comments provided on this permit the Secretary has elected to not hold a hearing on this permit application.