

West Va., Liberty Gap debate wind application

BY ANNE ADAMS • STAFF WRITER

CHARLESTON, W.Va. — The utility regulatory powers of Virginia and West Virginia appear to be on parallel tracks. In Pendleton and Highland counties, the decision-making process related to applications for industrial wind energy facilities is similar. And in both these cases, it appears public disapproval of the projects has contributed to greater scrutiny by the agencies.

Liberty Gap Wind Force LLC applied for a West Virginia state permit for a 50-turbine project on Jack Mountain in southern Pendleton County in early December, only a few weeks after Highland New Wind Development applied for a Virginia permit. The review of both applications follows roughly the same process in the adjoining states, and Liberty Gap officials have said they are watching Virginia's process closely, as they are interested in extending their West Virginia utility into Virginia in the Doe Hill area.

The proposed site for the almost \$200 million project lies northward along the ridge of Jack Mountain from its border with Highland. Plans include a roughly 17-mile transmission line to carry that project's power to a substation in Franklin.

Since its application to the West Virginia Public Service Commission, Liberty Gap's plans have received numerous letters of protest from Pendleton County citizens making arguments similar to those objecting to such a utility in Highland.

At this point, there is still much wrangling between Liberty Gap attorneys and PSC staff members as to how much information should be required before the PSC can render a decision on the proposal, especially in terms of financial detail.

Just like HNWD, Liberty Gap pursued an expedited review of its application, saying it needed to get its turbines spinning in time to qualify for federal production tax credits which expire Dec. 31, 2007. That request was denied in January by PSC officials, who said the schedule of review was reasonable.

Liberty Gap had requested waivers from state requirements on 10 points, five of which PSC staff recommended be granted. Those included information on things like fuel quantity usage, air and water emissions, a newer aerial photo of the site, and water and sewage supply. PSC staff had no objections to waiving those because most did not apply to the utility.

Some waiver requests were modified. One

of those was the state's condition that Liberty Gap supply a clear, simulated photo that shows the height of a turbine compared to the height of a six-foot man at a certain distance. The PSC recommended the developer be able to provide such a diagram at a distance of one mile.

Liberty Gap also requested a waiver to providing a map of aquifers, saying it didn't believe its project would have any effect on bodies of water or underground water. But PSC staff said since so many citizens had raised concerns that construction would disturb water resources, the waiver should be denied. Staff agreed to modify the requirement in such a way that Liberty Gap must explain whether construction would impact water, and why or why not.

"Staff believes Liberty Gap should be required to directly verify that the construction and installation will not impact surface water bodies or sub-surface water sources and that Liberty Gap will fix any problems which occur as a result of the project relating to this issue," PSC officials said.

Liberty Gap's desire to avoid providing more financial information, however, was met with flat recommendations for denial. In its report, PSC staffers said the commission has a "duty" to examine the financial viability of the company's project.

Additionally, PSC staff recommended denying the requirement to provide noise impact studies. Liberty Gap contended existing noise regulations are "too burdensome in that they attempt to address a problem that does not exist with wind projects."

PSC staffers disagreed, especially because since other wind utilities had been approved in the state, "the public has made noise more of an issue, including noting that existing wind turbines on Backbone Mountain can be heard."

After correspondence with the agency, Liberty Gap finally agreed to meet this requirement.

PSC added to its list of requests for information March 10. The agency wanted to know, for example, why Liberty Gap did not consider a loan agreement with the West Virginia Housing Development Fund as public funding. And, it asked for the PJM regional transmission grid facilities study; plus surveys Liberty Gap cited to show wind projects could increase tourism and have little or no effect on property values.

In the same statement, PSC again asked for financial details, including income statements

for each year through five years of operation.

Last week, Liberty Gap replied to the PSC's request (see related story), but reiterated its objection to providing financial information, and said it would withhold those documents until agency officials ruled on whether it would be forced to submit them.

Since then, the PSC has asked Liberty Gap for more information on other issues, including:

- The reason Liberty Gap's map of its transmission line appears to show alternate routes.
- Public health and safety considerations like the likelihood the turbines would have "blade throw," tower failure, falling ice, or cause an "attractive nuisance," and how the company plans to mitigate such problems.
- Any correspondence between the developer and officials at the U.S. Fish and Wildlife Service.

Liberty Gap has until April 21 to provide this information.

The review will continue through the end of the summer. Public hearings similar to those conducted in Highland three weeks ago have not yet been scheduled, but are expected to be held before the end of May.

Testimony involving "intervenors" in the case, similar to the formal "respondents" in Virginia, will continue, culminating in an evidentiary hearing June 28. There are five intervenors — the West Virginia Highlands Conservancy; Friends of Beautiful Pendleton County and Larry and Rebecca Thomas; Garnett R. Gregory, Chestnut Woods Association; and the West Virginia Building and Construction Trades Council. After the evidentiary hearing, there will be opportunities among those involved to file briefs and replies.

By law, the PSC must issue its final order on the application in early October.