

Jack Mtn. wind project nixed by state

West Virginia agency dismisses Liberty Gap project application

BY ANNE ADAMS • STAFF WRITER

CHARLESTON, W.Va. — A plan to erect industrial wind turbines in Pendleton County was dealt a serious setback by West Virginia's Public Service Authority Monday.

Liberty Gap LLC's application with the PSC to construct a 50-megawatt wind generating electric utility was dismissed by the agency just three weeks before it was due to hold evidentiary hearings on the case.

Disagreement between Liberty Gap, a U.S. Wind Force subsidiary, and Friends of Beautiful Pendleton County, an opposition group and intervenor, set things in motion. Over the course of several weeks, FOBPC had trouble with the developer over gaining access to the proposed site on Jack Mountain. FOBPC's consultants could not be scheduled to complete their task. The group had enlisted geology and hydrology consultants to make a site inspection before the hearings in order to testify to the location's potential water impacts. The delays in gaining access made it impossible for FOBPC to get its testimony solidified in time. It therefore requested the PSC not allow Liberty Gap any cross-examination of its testimony, and the PSC concluded that would not give the case proper review.

"This most recent conduct, combined with Liberty Gap's earlier filing delays, leads the commission to believe that Liberty Gap is under the impression that the commission will tolerate its repeated unreasonable behavior," the agency said in its dismissal order. "FOBPC has requested that the commission impose administrative sanctions limiting Liberty Gap's right to cross-examination ... We conclude, however, that such a limitation would only serve

to hinder this commission's ability to analyze all of the relevant evidence and would not remedy the harm caused by Liberty Gap's conduct."

FOBPC spokesman Robbie Sites said the group was elated by the news, and hopes the dismissal will inspire similar groups to continue their fight to prevent these utilities from peppering the ridges of the sensitive Allegheny Mountains.

"Friends of Beautiful Pendleton County are excited about this victory and hope this David and Goliath story will encourage other groups opposing wind turbines on the ridges of Appalachia," said Eve Firor on behalf of the organization. "We hope that, in the future, elected officials will realize that there is a lot of information to be considered before rushing to jump on the industry bandwagon.

"We feel that our faith in the process created by the PSC of ensuring that ordinary citizens be heard has been justified. Liberty Gap's application for a siting certificate of wind turbines on Jack Mountain was woefully inadequate and their attitude has been one of total arrogance and disrespect for the WVPSA and the citizens of Pendleton County."

She and Sites emphasized it was the "adroit handling" of their case by attorney Jim McNeely that made the difference. "He repeatedly brought to the attention of the PSC Liberty Gap's hostile attitude, failure to comply with PSC siting regulations and unreasonable tactics," Firor said.

McNeely was reluctant to take much credit, however. "I was just functioning as their attorney, making certain motions," he told *The Recorder* this week. "The PSC was obviously influenced by something more ... I appreciate folks trying to give me credit, but Liberty Gap had built up a record

of being uncooperative."

He said the PSC's dismissal being given "without prejudice" was typical for the agency. Unlike of court of law, where "with prejudice" means a party to a suit cannot return, anyone can file over and over again with the PSC. "But it occurred to me with the order's sanction language, they probably had to include those words," he said. "I admit as an attorney, that language certainly got my attention."

Liberty Gap can refile its application for the project, the PSC noted. At the end of 2004, when the PSC requested more information on the project than the company had submitted, Liberty Gap had been forced to withdraw its application and it took several months before it refiled last year. If it refiles again, it will be the third application for the project before the commission.

McNeely says he reminds his group not to worry about what Liberty Gap does. "Jack Mountain is under as intense scrutiny as any mountain in West Virginia now," he said. "And this has emboldened the opposition with high morale. I don't think we'll be hearing anymore about this being a done deal. (The opposition) just keeps getting more sophisticated." He said he feels very proud of the folks in Pendleton County, and wouldn't doubt that Liberty Gap will reapply but felt confident the PSC was being more assertive and the opposition "may be stronger than ever" by then.

"Should Liberty Gap elect to re-file their application, Friends of Beautiful Pendleton County has 19 months of experience in reviewing the application," Firor said on behalf of FOBPC. "We have retained attorney Justin St. Clair and Jim McNeely continues as our consultant. We have amassed evidence that we believe

will cause the commissioners to deny another application.

"Friends, consisting of numerous residents and landowners of Pendleton County, have spent countless hours and tens of thousands of dollars to demonstrate how the proposed project will adversely affect Pendleton County and the state of West Virginia," she said.

The PSC, under state law, could have pursued financial sanctions in circuit court for certain utility conduct, but concluded that "in view of the statutory clock for final decision in this matter, circuit court action would not remedy the situation."

Further, the agency noted, it cannot fulfill its obligation to "appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant" if parties involved are denied the ability to prepare their cases. "Denying a party reasonable access to a project site amounts to denying that party the ability to prepare its case. The commission has no legal authority to toll the statutory deadline on its own motion to allow sufficient time for FOBPC's consultants to return to the area, conduct the intended site visits and prepare testimony and reports," the PSC stated. "The commission simply has no other remedy available to it other than dismissal. Liberty Gap may re-file its application, and will be expected to reasonably cooperate with the parties ... on property access and other discovery matters."

Larry Thomas, a FOBPC member and intervenor in the case, also expressed great relief over the decision. "I believe the PSC tried to accommodate everybody," he said Wednesday. After several attempts to get Liberty Gap to cooperate, "they got to the

point where they just decided they could not (keep waiting). They represent the people.”

Thomas said the group didn't expect the decision. “Just about everybody I've talked to was surprised (the PSC) took this action. The strong language, plus the idea of pursuing financial sanctions, was a message to Liberty Gap,” he said, adding he believed the company had enough money invested it would probably reapply. “And this time they'll have our full testimony, but we'd be even stronger next time ... They could ask the PSC to reconsider its decision but I don't think that's going to happen. Liberty Gap's a pretty arrogant bunch. They've always shown they didn't care about Pendleton County.”

Representatives of Liberty Gap could not be reached by The Recorder by press time this week.

Thomas speculated that with the mandatory 300-day limit on the PSC to consider an application, Liberty Gap may have trouble meeting its proposed construction timeline for 2007.