

# States have ultimate say in wind development

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• STAFF WRITER

FRANKLIN, W.Va. and MONTEREY, Va. — Now that a right of way contract between U.S. Wind Force and Pendleton county commissioners has been terminated, citizens in Pendleton and here in Highland County are waiting to see how West Virginia's Public Service Commission handles the application for an industrial wind facility from U.S. Wind Force.

The company's subsidiary, Liberty Gap, LLC, plans a \$100 million, 100-megawatt utility along the ridge of Jack Mountain, right up to the border between the two states near Doe Hill. The developer needs a 139-kilovolt transmission line to carry power from the project to a substation north of Franklin.

While wind utilities are planned across the state of West Virginia, this is the first one selected for Pendleton, Highland County's neighbor to the north. Plans call for 50 turbines stretched over several miles, and at 400 feet in height, they will likely be seen by Highland residents in the area closest to the project as well as from high ground throughout the county.

U.S. Wind Force applied to the West Virginia Public Service Commission for a certificate to construct and operate the plant. The developer reminded PSC that it has built more than 25 wind projects around the world, including its subsidiary Mt. Storm Wind Force LLC project in Grant and Tucker counties that had been approved by the commission, plus two plants under U.S. Wind Force in West Virginia and Maryland totaling 190 megawatts.

U.S. Wind Force asked West Virginia's PSC for an expedited review of its application in order to take advantage of federal production tax credits. The PSC denied the company's request to speed things up, saying it needs more information (see sidebar).

At Monday's meeting of Pendleton citizens concerned about the Liberty Gap project, speaker Dan Boone, an expert on wind energy development, said opponents need to get their testimony on the record with the PSC. In his experience with a similar project in Maryland, he said, "most state agencies then didn't have a clue" about what impact turbines have on their environment and property values. "The staff at these agencies were swamped, and this was not flagged as an important issue. I think they regret it now. Let your opinion be known (to West Virginia's PSC)," he told them.

Boone said a PSC representative had assured him the Liberty Gap project would be thoroughly reviewed according to the agency's proposed regulations on wind energy development. "They are well aware of the problems of these things now."

The way West Virginia's PSC approves utilities is similar to a process Highland New Wind Development LLC will need to undergo in Virginia to construct its 39-megawatt wind plant on Allegheny Mountain, also near the border between these two states. HNWD will apply to Virginia's State Corporation Commission for project approval. The SCC coordinates a review of the application and ultimately determines whether HNWD's project will be built. It solicits public input through a hearing examiner, who then makes a recommendation to the three appointed commissioners. The commissioners, elected by the General Assembly for six-year terms, can then approve, deny or modify a request.

Andy Farmer, education resources manager at the SCC, says the agency is a mix of legal and public involvement. "We take evidence just like courts. The proceedings have a legal flavor, they are very formal." Evidentiary hearings are part of the process, and they include testimony and cross examination, Farmer says.

The SCC has no applications from wind developers in Virginia yet, Farmer says, explaining he cannot estimate how long it would take the SCC to review the state's first request from a wind-generating utility, which could come from Highland New Wind Development. By comparison, one very small wind plant for a landfill in Chesterfield County (16 megawatts) took about one year to approve; some larger utilities' requests have taken up to three years. "Bigger facilities take longer," he said. "A lot depends on the size and location, and local opposition." The Chesterfield plant did not require a public hearing. But a 1,400-megawatt gas facility proposed in Loudoun County had so much opposition the applicant eventually withdrew its request, Farmer said.

SCC is not establishing any guidelines ahead of time for wind projects like the PSC, though Farmer said some SCC staff might be boning up on the technology in general, knowing there's a possibility an application might be submitted. "We know wind energy has been promoted in Virginia by the Department of Mines, Minerals and Energy," he said. "And the Department of Environmental Quality has been involved in some groups promoting wind energy." Farmer pointed to the Virginia Wind Energy Collaborative out of James Madison University in Harrisonburg. "They're the ones that have been really pushing it, that group and the DMME are involved." But SCC does not have a role until an application is actually submitted for a utility.

At SCC, Farmer says, DEQ usually steps up to coordinate many other state and federal agencies to review environmental issues in particular on any power facility. Though DEQ is involved with VWEC, Farmer says its materials are usually focused on much smaller wind turbines, like for homeowners, than

multi-turbine power plants, and it's unclear whether that constitutes a conflict of interest for the agency. "There may be a conflict," he said. "I don't know."

SCC determines whether a developer is meeting state requirements for public necessity. "One of the things the commission looks at is whether (the plant) is in the public interest, and whether there are economic benefits to the localities where it's located," Farmer said. As to whether HNWD's planned project would meet SCC's criteria, Farmer said it's too early to say. "Until we get an application submitted," he said, "it's premature to evaluate ... Each one has different circumstances."

Farmer stressed there are opportunities for the public to comment on applications. In some cases, he said, the SCC has held public hearings in local communities, since not everyone can drive to Richmond. At an evidentiary hearing, he said, SCC allows anyone who shows up to speak to the issue. "It gives the average consumer the opportunity to come and have their comments be part of the official record," he said.

"SCC is an independent agency. Decisions it makes can only be appealed to Virginia's Supreme Court," Farmer added.

Farmer says he knows there has been some discussion at the federal level about putting decisions about power plants and transmission lines under federal control. At least one draft of the still-stalled energy bill contained language about "regional transmission corridors" that could be created to improve the nation's grid reliability in response to last year's northeastern power outages. The idea is to make it easier for utilities to build new lines or upgrade older ones, under the oversight of the Federal Energy Regulatory Commission.

"It was an issue," Farmer said. "There was talk about making the decisions on the local level a federal process instead of a state process in order to do it faster, like natural gas lines." There are some who believe getting rights of way from property owners takes too long, and utilities cannot improve their transmission capacity at a rate that keeps up with the demand for power. "That's not my personal opinion," Farmer said, but this country does not have a true "interstate highway system" for transmitting power from one part of the country to other areas — it's more of a patchwork of private and public utilities.

Some states, like Pennsylvania and Maryland, have added "renewable portfolio standards." These require any utility selling power there to purchase a certain percentage of it from renewable sources like wind, solar, and biomass. Boone says that pressure is driving developers to take advantage of the chance to create wind facilities and sell that power at a premium to utilities under such mandates.

Farmer says there are no such standards in Virginia now, but there have been some preliminary discussions about them at the state level.

Boone told Pendleton County citizens this week to be aware of the mounting pressure on wind energy developers and the legislators who support them.

The company's application for a certificate to operate the Pendleton plant refers to the nation's need for power in supporting its claim the project is needed. "The demand for electricity in the PJM region (which includes Highland County) is projected to increase by 10,699 megawatts from 2004 to 2014, which represents a 1.7 percent annual growth rate over the same period," the company says in PSC documentation.

U.S. Wind Force intends to sell electricity generated in Pendleton to the wholesale market in West Virginia and other locations in the East Central Area Reliability (ECAR) region and the PJM interconnection markets. The company says the ECAR's power capacity is expected to decline from 19 percent now to 5 percent in 2013 if more capacity is not installed. Furthermore, it says, 68 percent of the ECAR capacity will be 30 years old or more by 2013, and 40 percent will be 40 years old or more, and that aging capacity "could lead to lower generating capacity due to normal deterioration and obsolescence."

U.S. Wind Force "asserted that approximately 91 percent of the existing generating capacity in the ECAR region is fired by fossil fuels and the bulk of this capacity is in older coal-fired units."

In order to meet the Dec. 31, 2005, deadline for production tax credits, the developer told the PSC it would need to begin construction by May 1, 2005. "The applicant further asserted that wind power projects are not economically feasible without the production tax credits. Thus, the applicant requested that its application be reviewed on an expedited basis," and that PSC issue its final order no later than March 1, 2005.

The legal division of the PSC, however, "believes there are several issues which must be addressed," according to its case documents. "First and foremost, the legal division notes that this application did not contain the detailed information needed before staff can fully conduct its investigation."

The PSC told U.S. Wind Force that if it cannot provide the details by Dec. 27, it may need to re-file an application later. "The commission has a short time clock to conduct what will be an intensive review. Thus, the commission should not be short-changed simply because the applicant was not fully prepared when making its initial filing."

The PSC notes it must "appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant." The PSC can approve the project only if it determines that the project will result in "substantial positive

impact on the local economy and local employment." In addition, "Liberty Gap should provide certain financial information to assure the commission that the project will not just be constructed and then left unoperational on the mountain tops of West Virginia."

In Virginia, the SCC also has standards for review, which would be applied to Highland New Wind Development when the company requests a certificate to operate in Highland. According to Virginia Code, the commission will permit electric facilities if it finds such a plant will have "no material adverse effect" on the reliability of other public utilities and if it is "not otherwise contrary to the public interest."

The SCC will consider the effects of the project on the environment, and whether those effects can be mitigated. It will also consider the effect of the facility on economic development in the state, any improvements in service reliability that may result from a project, and the goals of advancing competition and economic development in Virginia.

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## A quick look

- ***U.S. Wind Force has built more than 25 wind projects around the world.***
- ***The company has asked West Virginia's public service commission to speed up a review of its application for the Liberty Gap project.***
- ***PSC has declined to accelerate the review, saying it needs more information about the project, like site maps, financial statements, and environmental reviews.***
- ***In Virginia, the State Corporation Commission will need to review a similar application from Highland New Wind Development to issue a certificate.***
- ***The SCC's principal concerns are whether a project is in the general public interest, and whether economic benefits flow to the localities where they're located.***