

# Pendleton decision outrages citizens

## Commissioners to consider terminating contract with U.S. Wind Force

BY ANNE ADAMS • STAFF WRITER

FRANKLIN, W.Va. — While the issue of whether or not to approve Virginia's first industrial scale wind utility has been grinding its way through Highland County the last couple of years, a similar situation downright exploded in neighboring Pendleton County, W.Va. this week.

Delaware-based U.S. Wind Force plans to construct a facility of 50 or more, 400-foot turbines along the ridge of Jack Mountain ending right at the border between West Virginia and Highland in Virginia. But a group of Pendleton County landowners caught completely by surprise are crying foul. They are furious at the way their county leaders have handled the process, and they came before Pendleton's commissioners Tuesday to demand answers in a meeting that resembled a courtroom drama with county officials squarely on trial.

Pendleton's counterpart to Highland's board of supervisors is a three-member commission — Robert "Bob" Grimm, Kelly Hartman, and Joe Bodkin. They were pummeled with questions about what some called a back-room deal between the county and U.S. Wind Force that was made without public knowledge or input.

In a contract signed Nov. 16, the county agreed to be responsible for securing 100-foot-wide easements for a 139 kilovolt transmission line to serve the project, using its powers of eminent domain if necessary. The "T-line" will carry power from the proposed "Liberty Gap" wind plant to a substation behind Thompson's Motel north of Franklin. The contract includes an offer of \$450,000 from U.S. Wind Force earmarked for a new water line for residents in the area, and \$100,000 annually for the life of the project.

"Liberty Gap and the commission will work together to acquire the easements," the contract states. "The commission will not begin acquiring any easements ... without written approval of Liberty Gap. If necessary the commission will exercise its right of eminent domain to acquire the easements; provided that, Liberty Gap agrees that such condemnation rights will not be exercised by the commission until Liberty Gap has used commercially reasonable efforts to acquire the easements without condemnation."

The contract explains the county would turn over the easements to Liberty Gap in an "irre-

vocable" sub-lease agreement, and that Liberty Gap has the right to assign that agreement in the future to any other company which might purchase the project. "U.S. Wind, its subsidiary or affiliate companies may construct additional wind projects that will also use the T-line and/or easements," the contract states. U.S. Wind Force assumes all responsibility and all expenses incurred by the county associated with the agreement.

During the course of the day-long meeting Tuesday, commissioners explained two meetings with U.S. Wind Force had been held to negotiate the contract, and admitted they wanted to keep it "low key" because they felt there would be a lot of opposition. "This was done quietly so there wouldn't be an outcry," Bodkin said. "If you publicize the meetings you have everyone in here complaining. We felt (the project) was nothing but a plus because everybody's going to benefit. It'll be money brought into the county." He cited numerous Pendleton projects that had been approved over the years. "I've seen what happens. Everything fell through because everybody's opposed to everything," he said.

Several landowners had no idea a transmission line might cross their property until after the contract was signed. One of those was Robbie Sites, a man with family ties in Highland who is nearing completion of a house on five acres where he plans to relocate his wife and three small children. Before the meeting Tuesday, Sites was visibly exhausted from having spent the last seven days learning everything he could about what was happening. Sites says a transmission line that large would be either directly over his roof, or directly in his view from the porch. And that view, he says, is the only thing of real value about his parcel of land.

Franklin attorney Zelene Harman was another whose family farm could be affected. She made it clear there was no way she would grant an easement for a line. She fired questions at commissioners to determine the series of events that led to the contract. Other landowners described negotiations as "clandestine," saying officials had not explained the deal on their agenda, had not made meeting notices widely available, and had nothing in their minutes to reflect such discussions with U.S. Wind Force.

During the course of the day, Pendleton residents learned a number of other things:

- No maps were on hand to show where the line might go, and U.S. Wind Force said it would not make drafts of possible routes available until it had a chance to contact all possible affected residents.

- Commissioners had talked to as many landowners as possible during a two-week period before the contract was signed, and felt none had expressed resolute opposition, only concerns about the line's placement. Therefore, they said, they felt comfortable there wouldn't be a problem finding a route for the line.

- The county attorney had reviewed the contract, but didn't really know whether the county had the right of eminent domain or not because he found no legal research to make it clear whether Pendleton could use that process for a private company.

- U.S. Wind Force said it may have the right of eminent domain itself, but chose instead to enlist the county's support for getting easements because it would be easier. "This project rises to the level of being for the public good," said USWF president Tom Matthews. He listed Pendleton's potential revenue — \$90,000 in business taxes, \$165,000 in property taxes, \$100,000 for the use of the rights of way, plus \$450,000 for a "badly needed" water line. "It rises to the level of significant benefits to this county and gives this commission the right to use eminent domain."

- Commissioners had done little, if any, independent research on the project. They had not contacted any experts on ecology, endangered species, or property values. They had not asked the town of Franklin about whether it had the capacity to add the power. They did not contact the military, whose planes fly low in the area. "I believe our county should have at least made a couple of phone calls," Sites told commissioners. Sites asked them whether they had even contacted Highland County officials, who had been researching wind energy for months. "Why didn't you?" he asked.

All three commissioners sit on the economic development authority, and yet the project had not been a topic at those meetings either. "I think for whatever reason, this Delaware company eyed Pendleton, with its eye on extending right on down the ridge into Highland County. I believe you all were talked to as a small group, surrounded by a few local business owners," he said. Sites handed each commissioner a form from the West Virginia

ethics commission and told them they could be found personally culpable for the situation. "I'll make you a deal," he said. He offered to help commissioners get out of the contract if they would agree to resign afterward and be replaced in office.

Another speaker, a former legislator, told commissioners the way they entered into the contract was "absolutely prohibited" by the state's open government laws. "I can look at you as victims," he said. "You have a way out of this contract ... It's a broad umbrella but it's called 'impossibility of performance.' You say (to U.S. Wind Force), 'We're pretty sure we don't have the right of eminent domain, to condemn another person's property.' Then you're out."

U.S. Wind Force officials defended their project, telling residents wind energy helps to eliminate the country's dependence on foreign oil. "Is there a profit motive? Certainly, but the real reason (to support wind energy) is, we continue to use more and more electricity every day," said Matthews. "You happen to have a resource that's very limited in this country." He said while it's true wind energy only supplies about 1 percent of the nation's power, overseas countries are using it effectively to supply close to 20 percent. "Clearly part of the problem in the U.S., quite frankly, is that some people don't like the looks of them. These are view shed issues."

He said big utility companies look to developers like U.S. Wind Force to deal with these issues on the local levels. "We're not going to own this project. It'll be some large utility (like Florida Light and Power), a Fortune 500 company. They will acquire it and you will have the full benefit of a large corporation behind the contract."

When one landowner asked why the turbines weren't located on mountain tops already ruined by coal companies, Matthews said Pendleton was ideal because of its wind. "I'm going to give you a little tough love here," he said. "If this community takes the position that we want electricity but we don't want it generated in my back yard, well that's not my definition of looking at the greater good. It's your turn. It's time for Pendleton County to step up."

One resident took strong exception to his comments, saying West Virginia has a long history of providing power to the nation. "And look where it got us. People got poor in West Virginia and people in Pennsylvania sucked every bit of money out of this state." She said she considered this the latest in a series of "gang rapes" in her state. "Aren't we like the 47th poorest state in the country? We've been sold out. The only other state polluted worse is Louisiana. And you're trying to tell us about

the morality of wind power."

During the day, several speakers implied Pendleton Times owner and publisher John McCoy had somehow conspired with the county and the developer to keep information about the project and the contract out of the press. McCoy had spoken to U.S. Wind Force representatives and a local lawmaker who supports wind energy when USWF spoke to him about granting an easement over his own property for the transmission line. Residents repeatedly noted their distress at having seen only one article on the contract, in last week's issue, and little over the months about the project in general.

McCoy told The Recorder there was absolutely no attempt to suppress information to the public, though he does support the project and is willing to allow the line through his land. "As I see it, this is a relatively clean, alternative energy source and the benefits would serve the people of this county," he said. "I'm not in favor of eminent domain. I've never supported that idea. But there's been no conspiracy. I did know about it, but we are not a super-aggressive newspaper and never have been. We never cover those commissioners' meetings."

At the end of the day, Pendleton commissioners told residents they would have their attorney review the contract again with U.S. Wind Force. By late Wednesday afternoon, Pendleton County attorney Jerry Moore told The Recorder a commissioners' meeting has been scheduled for today (Friday) "to consider an agreement to terminate the original contract."

The way Pendleton County officials are proceeding with U.S. Wind Force worries more than a few Highlanders who sense the company is eager to extend its project into the Virginia side of Jack Mountain. The contract and application for U.S. Wind Force indicate the need for a transmission line large enough to expand capacity. But Highland officials say the way Pendleton is addressing the process won't happen here. "I will tell you point blank range," said Highland supervisor Jerry Rexrode Monday. "As long as I'm a supervisor I'm not going to use eminent domain for anything like that. That's a broad power, and I don't think you should take people's land like that."

Supervisor Robin Sullenberger said, "It's just absolutely unbelievable," he said. "And the way they do business ultimately puts pressure on us if there is a continuation of that project ... I can assure you we have no intentions of doing that here." The idea of using eminent domain, he said, is a last resort for Pendleton, and the agreement clearly indicates U.S. Wind Force would prefer the county not use that particular power. "I don't think they

would resort to that unless they had to. It would be a PR nightmare for the company." But that Pendleton officials would sign such a contract without public notice, he says, "is so surprising to me from the lack of public discussion. That's just not the way we do things here." Among Highland supervisors, Sullenberger says, there has been no discussion about wind proposals outside of public meetings.

It's unclear whether U.S. Wind Force, or any private developer, has the right to use eminent domain, Rexrode said, but power companies do have that right.

Sullenberger says he's spoken with Jim Cookman of U.S. Wind Force on occasion when Cookman has attended meetings in Highland, but no serious discussions have taken place between that developer and county officials since a phone call two years ago. "I spoke with them then and they said they had an interest in the region," Sullenberger said, "but beyond knowing they do have an interest in the Jack Mountain area" there has not been any further advancement in the relationship.

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