

THIRD FURTHER INITIAL JOINT STAFF MEMORANDUM

TO: SANDRA SQUIRE
Executive Secretary

DATE: February 15, 2006

FROM: LESLIE J. ANDERSON *lja*
Staff Attorney

RE: CASE NO. 05-1740-E-CS-CN
LIBERTY GAP WIND FORCE, LLC

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On January 31, 2006, the Friends of Beautiful Pendleton County (FOBPC) filed a motion to dismiss the application. In support of its motion, FOBPC asserted that Liberty Gap failed to file an application complying with the minimal requirements for information to be disclosed by the Commission's *Siting Rules* (this argument is tied to Liberty Gap's request for a waiver of filing certain information) and that Liberty Gap has failed to properly notice the application. Please read the well written motion for further details.

On February 9, 2006, Liberty Gap filed a response to the Friends of Beautiful Pendleton County, Inc.'s (FOBPC's) motion to dismiss. In summary, Liberty Gap asserted that it has cured any alleged notice problem since it republished the notice of filing with a larger map. Liberty Gap also asserted that it had good reasons for its waiver request and that it would be premature for the Commission to dismiss the case. Please read this document for more details.

At the outset, Staff notes that Liberty Gap's republication of the notice of filing with a large map satisfies Staff's concern about the notice. Staff also agrees with Liberty Gap that it is premature to rule on FOBPC's motion to dismiss given Liberty Gap's waiver request. Staff had indicated in an earlier memorandum that it would address Liberty Gap's request for a waiver of certain filing requirements in a future filing. Staff is still reviewing the filing and needs more time before making a recommendation on this issue. Staff will file a recommendation on this issue on or before March 17, 2006.

However, Staff puts Liberty Gap on notice that Staff may not agree with Liberty Gap's waiver request and may request that certain information be provided. One example is related to noise. Since previous cases involving wind turbines were decided, the public has made noise more of an issue, including noting that existing wind turbines on Backbone Mountain can be heard. Staff may conclude that the public and Commission need more information about this issue based on the new facts and public comments filed in this case.

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Thus, Liberty Gap is taking a chance in not providing all of the information. Staff may very well in the future after issuing a data request, if a response is not forthcoming, also make a motion to dismiss.

LJA/skg

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