

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

**MOUNTAIN COMMUNITIES
FOR RESPONSIBLE ENERGY,
Appellant,**

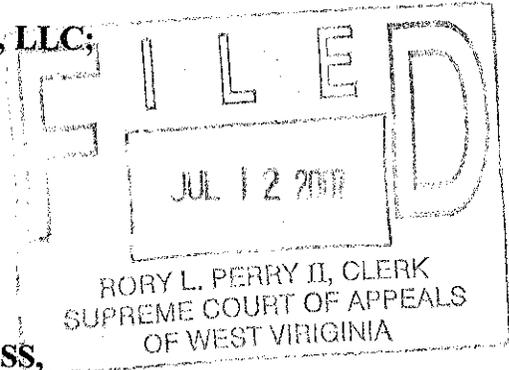
Vs.

APPEAL NO. 33375

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA; BEECH RIDGE ENERGY, LLC;
and WEST VIRGINIA STATE BUILDING
AND CONSTRUCTION TRADES COUNCIL,
AFL-CIO,
Appellees,**

and

**ALICIA A. EISENBEISS and JEFFREY C. EISENBEISS,
Appellants,**



Vs.

APPEAL NO. 33376

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA; BEECH RIDGE ENERGY, LLC;
and WEST VIRGINIA STATE BUILDING
AND CONSTRUCTION TRADES COUNCIL,
AFL-CIO,
Appellees.**

**MOUNTIAN COMMUNITIES FOR RESPONSIBLE ENERGY'S
CONSOLIDATED REPLY TO THE BRIEFS FILED BY THE
APPELLEES**

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**MOUNTAIN COMMUNITIES FOR RESPONSIBLE ENERGY'S
CONSOLIDATED REPLY TO THE BRIEFS SUBMITTED BY THE APPELLEES**

NOW COMES the Appellant, Mountain Communities for Responsible Energy (“MCRE”), by its counsel, Justin R. St. Clair, and, pursuant to Rule 10 of the *West Virginia Rules of Appellate Procedure*, does state its Reply to the briefs filed by the Appellees as follows:

I. DESPITE THE APPELLEE’S ARGUMENTS TO THE CONTRARY, THE ASSIGNMENTS OF ERROR RAISED BY MCRE ARE BOTH PROCEDURAL AND SUBSTANTIVE

In its brief, appellee Beech Ridge Energy, LLC (“Beech Ridge”), states, “[u]nable to find a single substantive reason that this project should not be built, the Appellants wish to inundate this Court with procedural minutiae, which, taken together, amounts to nothing.” Beech Ridge further notes, “[r]ather than address this evidence, Appellants largely focus on alleged procedural irregularities that, in the end, have no impact on the determination of this case.” *Beech Ridge Brief*, p. 1. Taken together, these statements illustrate that the Appellee has completely missed the point of MCRE’s assignments of error.

MCRE has asserted that the procedural errors committed by the Public Service Commission of West Virginia (“Commission”) in the manner in which it interpreted and implemented the *Rules Governing Siting Certificates for Exempt Wholesale Generators*, 150 C.S.R. § 30-1-1, *et seq.* (“EWG Siting Rules”) has resulted in a final decision which contains substantive errors. That is, the Commission’s Orders of August 28, 2006 and January 11, 2007 both reflect that the Commission failed to adequately consider the project’s impact on areas within the local vicinity of the proposed project site as part of the statutory balancing test.

The record reflects that Beech Ridge did not comply with the EWG Siting Rules, specifically Rules 150 C.S.R. §§ 30-3-3.1.h.1 and 30-3-3.1.o. However, in its brief, Beech Ridge contends that the Commission properly concluded that it “substantially complied” with the rules.

Beech Ridge further argues that the appropriate standard of review is not *de novo*, but rather a more deferential standard because the Commission's determination that Beech Ridge had "substantially complied" with the rules concerns a question of fact, rather than an interpretation of a statute or question of law. *Beech Ridge Brief*, p. 11. However even assuming, arguendo, that the appropriate standard is a more deferential "abuse of discretion" standard, the Commission's Orders remain flawed because the record reflects that Beech Ridge failed to comply with the requirements of EWG Siting Rule 150 C.S.R. § 30-3-3.1.o. As a result of this failure, the Commission's decision lacks evidentiary support to a "factual" conclusion that Beech Ridge "substantially complied" with EWG Siting Rule C.S.R. § 30-3-3.1.o.

EWG Siting Rule 150 C.S.R. § 30-3-3.1.o provides,

Cultural Impact.

1. Landmarks.

A. The applicant **shall** estimate the impact of the proposed 24-2-1(c) generating facility on the preservation and continued meaningfulness of any historic, scenic, religious or archaeological areas or places; or places otherwise of cultural significance depicted on the map required by Rule 3.1.h.1.

B. Describe any plans to mitigate adverse impacts on these landmarks.

2. Recreation Areas. The applicant shall estimate the impact of the proposed 24-2-1(c) generating facility on recreational areas identified on the map required by Rule 3.1.h.1. and describe any plans to mitigate.

EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1.A-B (emphasis added). A plain reading of this rule indicates that the rule requires an application to include three things. First, an applicant must locate "any historic, scenic, religious or archaeological areas or places; or places otherwise of cultural significance," as well as any public or private recreation areas within the five-mile radius

of the proposed project site. The rule requires these locations to be included in the applicant's five-mile radius map required by EWG Siting Rule 150 C.S.R. §§ 30-3-3.1.h.1. Second, the rule requires an applicant to estimate the impact the proposed facility will have on these locations. Finally, the rule requires an applicant to describe its plans to mitigate any impacts it has identified. The record clearly reflects that Beech Ridge failed to accomplish even one of these tasks.

In its application, Beech Ridge responded to EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1 by noting that it was completing a Phase Ia cultural resources study in coordination with the West Virginia State Historic Preservation Office ("SHPO"). Moreover, Beech Ridge indicated that "[a]n assessment of potential impacts to archaeological and/or historic architectural resources has not yet been concluded." Beech Ridge further noted that a description of any impacts and mitigation plans will be developed in coordination with SHPO and its response will be supplemented at that time. *Appendix to Application*, p. 64 (Nov. 1, 2005). Thus it is clear that, at the time the application was filed Beech Ridge had failed to identify all resources required by the rule and had completely failed to identify potential impacts to those resources and discuss potential mitigation plans, all of which are require by EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1.

On April 28, 2006, a mere three weeks prior to the evidentiary hearing, Beech Ridge filed a supplemental response to Staff's data requests regarding the cultural resource study. In its response, Beech Ridge merely indicated that it had consulted with the SHPO and described the studies it intended to conduct. Here again, Beech Ridge's response discussed what it intended to do and therefore implies that Beech Ridge had not identified all potential resources required by the rule and, as a result, had failed to identify potential impacts to those resources and discuss

potential mitigation plans, all of which are require by EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1. *Beech Ridge Supplemental Response to Staff Data Request No. 1*, p. 1 (April 28, 2006).

On April 25, 2006, Beech Ridge pre-filed the Rebuttal Testimony of Dr. Robert B. Patton, RPA. Dr. Patton's testimony was intended to address the requirements of EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1. Dr. Patton's testimony again merely discusses what Beech Ridge intends to do to comply with EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1 and the SHPO. Dr. Patton's testimony does not address potential impacts to specific resources, nor does he describe any mitigation plans. *See Generally Patton Rebuttal*, pp. 1-7 (April 25, 2006).

During the evidentiary hearing, Dr. Patton acknowledged that Beech Ridge Energy had "only entered into the process of scoping the project," [*Evd. Hrg. Tr. Day 3*, 131:24-25 (May 12, 2006)] and that there was a lot more work to be done. *Evd. Hrg. Tr. Day 3*, 132:4 (May 12, 2006). Moreover, Dr. Patton conceded that there were several properties within the five mile radius that had not yet been evaluated. *Evd. Hrg. Tr. Day 3*, 134:1-4 (May 12, 2006). Additionally, although several specific properties were discussed, Dr. Patton's testimony reflects that he could only speculate about potential impacts to those properties and, throughout his testimony, he made no mention of mitigation plans. Thus, at the conclusion of the evidentiary hearing, the evidence before the Commission reflected that Beech Ridge had failed to map all potential sites and consequently failed to discuss potential adverse impacts and mitigation plans. The Commission recognized this failure on three separate occasions. *Evd. Hrg. Tr. Day 3*, 138:10-15, 146:5-8 and 147:8-11 (May 12, 2006).

Based upon the facts discussed above, it is abundantly clear that, even under a deferential "abuse of discretion" standard, the Commission's conclusion that Beech Ridge had "substantially complied" with the EWG Siting Rules lacks "factual" evidentiary support. As stated above,

EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1 requires an applicant to do three things. The record reflects that Beech Ridge failed to accomplish even one of the three requirements under the rule.

Interestingly, in *Liberty Gap Wind Force, LLC*, Case No. 05-1740-E-CS, a case decided by the Commission subsequent to the case a bar, the Commission declined to issue a siting certificate based, in part, on the applicant's failure to comply with the requirements of EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1. The facts of that case are strikingly similar to those of the present case. In *Liberty Gap*, the Commission noted, "CRAI has still not completed the work of identifying historic properties and/or archeological sites that may be impacted by the project." *Liberty Gap Wind Force, LLC*, Case No. 05-1740-E-CS, p. 29, (*Comm'n Order* June 22, 2007)¹. Moreover, in *Liberty Gap*, the Commission found that, "Mr. Smith conceded at hearing that when he filed his rebuttal testimony he had not identified all culturally significant sites within a 5-mile radius of the project." *Id.* Additionally, the Commission noted, "[h]owever, he had not assessed the impacts of the project at those sites and had not transmitted the results of that review to SHPO. Thus, he could not discuss potential impacts to cultural resources or any proposed mitigation plans." *Id.* at 29-30.

As a result of these deficiencies in the *Liberty Gap* case, the Commission stated,

Liberty Gap suggests that the deficiency in the application may be cured by its promise to file the archaeological survey and by compliance with subsequent recommendation made by the West Virginia Division of Culture and History. Unfortunately, Liberty Gap's suggested cure manifests the patent absence of information in its Application and ignores the fact that the information was not included in pre-filed testimony or otherwise developed at the hearing. Liberty Gap failed to provide minimal information on an issue that should have been addressed at the outset of this case and has not provided the public with sufficient information to review and understand the nature of the Project and its potential impact on the community around Jack Mountain.

¹ Available at http://www.psc.state.wv.us/imaged_files/Orders/2007_06/ord20070622161148.pdf

Liberty Gap Wind Force, LLC, Case No. 05-1740-E-CS, p. 29, (*Comm'n Order* June 22, 2007).

In its Order, the Commission's attempted to distinguish the *Liberty Gap* case from the case at bar. However, it is clear that the facts of the two cases, that is the deficiencies of the applicant's compliance with EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1, are strikingly similar. Thus, there is absolutely no plausible explanation for the different outcomes.

The clear and indisputable deficiencies regarding Beech Ridge's compliance with the requirements of EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1 described above, form the basis of MCRE's argument regarding the procedural errors concerning the manner in which the Commission has interpreted and implemented the EWG Siting Rules. Specifically, MCRE contends that the Commission's granting of the siting certificate conditioned on Beech Ridge's compliance with the SHPO has, in effect, arbitrarily rewritten, revised or ignored the requirement of EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1 that impacts to cultural and/or historic resources must be addressed in an application.

MCRE has consistently maintained that EWG Siting Rule 150 C.S.R. § 30-3-3.1.o requires an applicant to identify, map, estimate the impact of the proposed facility, and describe any plans to mitigate any adverse impacts on "historic, scenic, religious or archaeological areas or places; or places otherwise of cultural significance" depicted on the 5-mile map. The plain language of the EWG Siting Rules mandates that an applicant submit all required information with its application. The Commission's "interpretation" or "application" of EWG Siting Rule 150 C.S.R. § 30-3-3.1.o does not require an applicant to submit the information required by the rule until after its application has been granted!

The Appellees contend that the condition imposed by the Commission were proper. In their briefs, the Appellees cite statutes and Commission regulations as supporting the

Commission's action. In doing so, the Appellees attempt to distort the purpose and process established by the Commission in promulgating the EWG Siting Rules.

In its brief, the Commission indicates that W.Va. Code § 24-2-11c(c) supports the Commission's conditional grant of Beech Ridge's application. The Commission notes that the statute states that "[a]ll material terms, conditions and limitations applicable to the construction and operation of the proposed facility...shall be set forth in the Commission Order." *W.Va. Code § 24-2-11c(c). Commission Brief*, p. 40. Additionally, the Commission notes that all previous EWG Siting Certificate cases have contained similar conditions.² *Id.* at 37-39. Beech Ridge contends that EWG Siting Rule 150 C.S.R. § 30-5-5.1 supports the Commission's decision to grant the siting certificate conditioned on consultation with SHPO and compliance with SHPO regulations. *Beech Ridge Brief*, p. 16. MCRE asserts that the Appellees' reliance on these provisions do not provide support for the Commission's condition.

Beech Ridge contends that the EWG Siting Rules provide a starting point of the Commission's inquiry, not the end. Beech Ridge apparently believes that an applicant can file a minimal amount of material with its application and then require the Commission and/or intervenors to develop the record through discovery. *Beech Ridge Brief*, pp. 13-14. Moreover, Beech Ridge appears to argue that, if certain requirements of the EWG Siting Rules are not met by the date of the evidentiary hearing, the Commission can properly grant a siting certificate conditioned on future compliance pursuant to EWG Siting Rule 150 C.S.R. § 30-5-5.1. In its brief, the Commission likewise contends that W.Va. Code § 24-2-11c(c) provides support for a

² It is important to note that all of the cases cited in the Commission's brief were decided prior to the effective date of the EWG Siting Rules and are therefore inapplicable to the issue at hand, that is the Commission's conditional grant of the siting certificate despite Beech Ridge's failure to comply with the mandatory provisions of the EWG Siting Rules.

similar conclusion. Both positions completely ignore the plain language and purpose of the EWG Siting Rules.

EWG Siting Rule 150 C.S.R. § 30-3-1 requires that certain information be included in the application for the application to be deemed complete. The rule provides, “[i]n addition to Form No. 1, a completed application shall include the following[.]” *150 C.S.R. § 30-3-3.1*. Moreover, according to the plain language of the EWG Siting Rules, the only way an applicant may be relieved of the disclosure requirements of certain EWG Siting Rules is by requesting a waiver pursuant to EWG Siting Rule 150 CSR § 30-1-1.6.³ The Appellees contend that the Commission may essentially relieve an applicant of the burden of complying with the mandatory disclosure requirements of certain EWG Siting Rules by issuing siting certificates conditioned on an applicant’s future compliance with the rules.

Moreover, EWG Siting Rule 150 CSR § 30-5-5.1 authorizes the Commission to issue a siting certificate contingent upon the receipt of approvals or permits from other governmental agencies in the event the applicant has not obtained the required permits, or met the requirements of other governmental agencies within 100 days of the filing of the application. The language of EWG Siting Rule 150 C.S.R. § 30-3-3.1.o.1 makes no mention of the SHPO or any required permits. The plain language of the rule requires information, not evidence of receipt of permits, to be submitted with the application.

The regulatory scheme established by the EWG Siting Rules is consistent with one of the purposes behind the rules; namely, to give the Commission an overview of the potential impacts that the project may have on communities within the local vicinity of the project. The EWG

³ EWG Siting Rule 150 CSR § 30-1-1.6 provides, “[a]n applicant for a Siting certificate may request a waiver of any of the information requirements of Rules 3.1.a. through 3.1.p. of these Rules that is inapplicable to the proposed Siting certificate. The Commission will consider requests for waiver of Siting certificate requirements as to distributed energy generation facilities that are not net metered, on a case by case basis.”

Siting Rules require applicant such as Beech Ridge to provide information regarding potential impacts to various resources in the vicinity of the project. The Commission is not "treading on the turf" of other agencies just because some of the information required by the EWG Siting Rules happens to concern matters regulated by other agencies. A plain reading of the EWG Siting Rules clearly reveals that the purpose of the rules is not an attempt by the Commission to regulate matters exclusively in the jurisdiction of other agencies, but rather to gather information about potential adverse impacts that may result from construction and operation of the project in order to carry out its statutory mandate to appraise and balance, among other things, the interests of the public.

Accordingly, just because the SHPO has exclusive jurisdiction over cultural and/or historic resources does not mean that the Commission cannot require an applicant to provide information regarding potential impacts to these resources. Nor does the fact that the SHPO has jurisdiction over cultural and/or historic matters preclude the Commission from receiving testimony regarding impacts to these resources. The SHPO is charged with the task of protecting the State's cultural and historic resources. In the present case, the legislature has charged the Commission with the task of appraising and balancing the public interest which necessarily includes potential impacts to cultural and historic resources. Thus the Appellees argument that the Commission cannot, or should not, consider matters regulated by the SHPO is meritless.⁴

Additionally, not only does the position urged by the Appellees conflict with the plain language of the EWG Siting Rules, it is in complete discord with the purpose behind the rules.

⁴ Moreover, EWG Siting Rule 150 C.S.R. § 30-3-3.1.o is not the only EWG Siting Rule to require an applicant to submit information on topics regulated by other state agencies. For instance, EWG Siting Rule 150 CSR § 30-3.1.m requires an applicant to submit data regarding a proposed project's impact on wildlife species, a matter clearly within the jurisdiction of the West Virginia Division of Natural Resources. The record reflects that Beech Ridge complied with the requirements of EWG Siting Rule 150 CSR § 30-3.1.m, thus the argument that the Commission should leave cultural and historic matters to the SHPO because they are in the SHPO's jurisdiction is meritless. An applicant should not be permitted to pick and choose which EWG Siting Regulations it wishes to comply with.

MCRE asserts that the EWG Siting Rules were promulgated to ensure that the Commission, and the public, had access to all relevant data necessary to evaluate the project's impact on various resources. Thus, the Commission's granting of a siting certificate conditioned on an applicant's future compliance with the requirements of certain EWG Siting Rules is clearly at odds with the purpose of the rules.

In its recent decision in the *Liberty Gap* case, the Commission addressed this very issue.

The Commission noted,

The Commission has put a great deal of effort into developing the *Siting Rules* and is concerned about the apparent inability (or unwillingness) of Applicants to comply with provisions of those *Siting Rules*. Applicants need to understand that the *Siting Rules* are in place to give the Commission, the public and other stakeholders a fair assessment of the Project in order to determine whether to oppose or support those projects.

...

While subsequent testimony can certainly amplify and shape the process, the Application is extremely important, and the Application, and accompanying testimony, should comply with the requirements of the *Siting Rules*. Although some matters (NPDES permits and other post construction certification processes and permits) cannot be provided at the time of filing (or for that matter at the time of the Commission's decision)...other requirements under the *Siting Rules* must be met to the extent the applicant is reasonably able to do so. ***It is not sufficient to avoid compliance by saying that there will be no impact or that these matters will be addressed later.***

Liberty Gap Wind Force, LLC, Case No. 05-1740-E-CS, pp. 40-41, (Comm'n Order June 22, 2007) (emphasis added).⁵ Thus according to the Commission's subsequent ruling in the *Liberty*

⁵ Additionally, in discussing the 5-mile map requirement of EWG Siting Rule 150 CSR § 30-3-3.1.h.1, the Commission noted, "[t]he 5-mile map is not a minor part of the filing; it is central to any understanding of the scope of the Project at the outset of the review of the Application. The Commission adopted Rule 3.1.h.1 and requires pre-filed testimony in order to minimize discovery disputes and to facilitate the development of a record consistent with the procedural rights of other parties." *Liberty Gap Wind Force, LLC*, Case No. 05-1740-E-CS, pp. 18-19, (Comm'n Order June 22, 2006). Thus, given the statutory 300-day deadline in which the Commission is required to decide EWG Siting Certificate cases; and given the Commission apparent concession above that the EWG Siting Rules

Gap case, the very position being advocated by the Appellees in this case is inconsistent with the purpose behind the EWG Siting Rules, which requires compliance at the outset of the case rather than addressing required matters after the certificate has already been granted in order that the public may be adequately informed as to the potential impacts of the project.

Finally, in its brief Beech Ridge asserts that MCRE has attempted to “inundate this Court with procedural minutiae” rather than address any substantive errors. *Beech Ridge Brief*, p. 1. As mentioned above, MCRE asserts that the procedural errors committed by the Public Service Commission of West Virginia (“Commission”) in the manner in which it interpreted and implemented the *Rules Governing Siting Certificates for Exempt Wholesale Generators*, 150 C.S.R. § 30-1-1, *et seq.* (“EWG Siting Rules”) have resulted in a final decision which contains substantive errors.

The Appellees repeatedly assert that the Commission fulfilled its legislative mandate under W.Va. Code § 24-2-11c. The Appellees assert that MCRE’s reliance on the Commission’s decision in *Longview Power, LLC*, Case No. 03-1860-E-CS, (*Commn. Order* Aug. 27, 2004) is misplaced because it is the statute, not the *Longview* case that controls the analysis before the Commission. MCRE agrees that the balancing test set forth by the legislature in W.Va. Code § 24-2-11c controls the Commission’s decision in the present case. However, the statute, as drafted, provides a very broad analysis for the Commission to conduct and is not specific with regard to what factors the Commission is to consider when appraising and balancing the interest of the public. Understandably, the Appellee’s wish to distance themselves from the Commission’s decision in *Longview* because it is that decision which effectively defines the analysis the Commission undertakes to evaluate the various interest of the public.

were promulgated to require certain disclosures at the outset of the case to avoid discovery disputes, Beech Ridge’s argument that Compliance with the EWG Siting Rules can be established by subsequent discovery efforts by the Commission or other parties is without merit.

As part of the balancing test called for in W.Va. Code § 24-2-11c, the Commission is required to “appraise and balance the interests of the public[.]” In performing this analysis, the Commission must consider the interests of, and impacts to, the citizens and communities located within the immediate vicinity of the project. The Commission’s two-part analysis adopted in *Longview Power, LLC*, reflects that, as part of the balancing test conducted pursuant to W.Va. Code § 24-2-11c(c), the Commission will consider: (i) community residents’ interest in living separate and apart from such a facility; (ii) a community’s interest that a facility’s negative impacts be as minimally disruptive to existing property uses as is reasonably possible; and (iii) the social and environmental impacts of the proposed facility on the local vicinity, the surrounding region, and the State.

MCRE asserts that the Commission’s Orders are substantively flawed because, as a result of the manner in which the Commission has interpreted or implemented its EWG Siting Rules, the Commission has permitted an applicant to file an inadequate and confusing map of the area within the 5-mile radius of the project and to permit an applicant to completely disregard its obligation to present any evidence regarding historical or culturally significant locations within the 5-mile radius of the project until after the Commission has conducted the balancing test and issued a siting certificate. MCRE asserts that as a result of the Commission’s “interpretations,” both Orders issued by the Commission were nearly devoid of findings of fact or conclusion of law regarding the impact of the proposed project on communities within the five-mile radius of the project. As such, the Orders do not reflect that the Commission properly considered the interest of the local communities as part of its “appraisal” of the public interest.

In sum, given the Commission's refusal to dismiss Beech Ridge Energy's application for failure to comply with EWG Siting Rules 150 C.S.R. §30-3-3.1.h.1⁶ and 150 C.S.R. § 30-3-3.1.o.1.A-B, and given the fact that very few of the Commission's findings of fact or conclusions of law addresses the impact of the project on locations required to be mapped by EWG Siting Rules 150 C.S.R. §30-3-3.1.h.1 and 150 C.S.R. § 30-3-3.1.o.1.A-B, MCRE can only conclude that the Commission failed to properly consider the impact of the project on communities within the local vicinity. As such, MCRE believes that residents of communities within the local vicinity, including intervenors, have suffered substantially as a result of the Commission's failure to require adherence to its rules and precedent. The Commission's failure to adequately consider the interest of the local communities as part of its statutorily mandated appraisal of the public interest is a clear substantive error.

Respectfully submitted this 12th day of July, 2007.



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**MOUNTAIN COMMUNITIES FOR
RESPONSIBLE ENERGY,
By Counsel**

⁶ MCRE's has chosen not to address in this brief the flaws in Beech Ridge's 5-mile map, but will do so during oral argument as these errors are more readily apparent when addressed using visual aids.

CERTIFICATE OF SERVICE

I, Justin R. St. Clair, Counsel for Mountain Communities for Responsible Energy, do hereby certify that service of the attached **MOUNTAIN COMMUNITIES FOR RESPONSIBLE ENERGY'S CONSOLIDATED REPLY TO THE BRIEFS FILED BY THE APPELLEES** was made upon the following designated parties by depositing true copies thereof in the United States Mail, postage pre-paid, on this the 12th day of July, 2007:

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