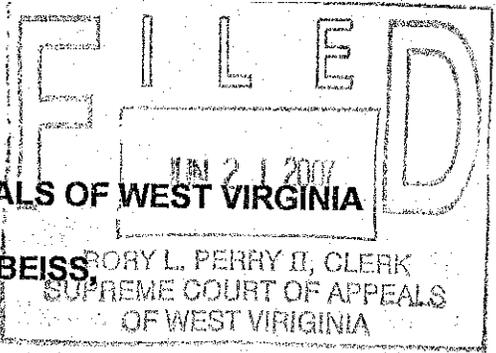


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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ALICIA A. EISENBEISS and JEFFREY C. EISENBEISS,

Appellants,

v.

APPEAL NO. 33376

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

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Appellees.

and

MOUNTAIN COMMUNITIES FOR RESPONSIBLE ENERGY,

Appellant,

v.

APPEAL NO. 33375

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

Appellees.

BRIEF AMICUS CURIAE ON BEHALF OF THOMAS VANCE

I. INTRODUCTION

COMES NOW *amicus curiae*, Thomas Vance (hereinafter "*Amicus*"), by counsel, pursuant to West Virginia Rule of Appellate Procedure 19, and requests that this Honorable Court deny the appeals filed by Appellant, Mountain Communities for Responsible Energy (hereinafter "*MCRE*"), and Appellants, Alicia A. Eisenbeiss and Jeffrey C. Eisenbeiss (sometimes collectively referred to herein as the "*Appellants*"), and affirm the orders of the Public Service Commission of West Virginia (hereinafter

the "Commission") entered on August 28, 2006, and January 11, 2007, respectively (together the "Commission Orders").

Put simply, in their zeal to prevent Beech Ridge Energy LLC (hereinafter "Beech Ridge") from building a wholesale renewable wind energy generating facility (hereinafter the "Project"), Appellants have focused narrowly on what they perceive to be the "public" interest. But Appellants do not wholly represent the public of Greenbrier County, West Virginia. At best, Appellants represent a narrow cross-section of individuals that oppose the Project for their own reasons. As a result, Appellants ignore the positive impacts of the Project in their haste to condemn it. However, *Amicus* submits this Brief in support of the Project to demonstrate to this Honorable Court that overturning the Commission's Orders jeopardizes not only the substantial economic benefits to Greenbrier County, West Virginia as a whole, but also to individual landowners, such as *Amicus*. For these reasons, and those reasons discussed further below, this Court should uphold the rulings of the Commission.

II. STATEMENT OF THE ISSUES ADDRESSED HEREIN

This brief will not address each issue raised by Appellants, on the one hand, or the Appellees on the other. Instead, *Amicus* would like to draw attention to the issues that directly affect him, and others like him. Thus, this brief will consider the following issue: the Project will provide substantial revenue to similarly situated landowners, and will provide an overall boon to the economy of Greenbrier County, West Virginia.

III. STATEMENT OF THE INTEREST OF THE AMICUS CURIAE

Amicus is a resident, business owner, and landowner in Greenbrier County, West Virginia. In all likelihood, two of the proposed wind turbines will be built on property owned by *Amicus*, which is used as a location for his second home, among other things. Moreover, *Amicus* owns other lands on which a portion of the transmission line that will service the Project will be built. Accordingly, *Amicus* has an interest in the Project from a direct financial perspective. Moreover, *Amicus* is a small business owner in Greenbrier County, West Virginia, and, as such, he has an interest in ensuring the financial stability and well-being of Greenbrier County, West Virginia. As such, *Amicus* has a vested interest in the success of the Project.

IV. ARGUMENT

Amicus was born and raised in Greenbrier County, West Virginia; indeed, he is a life-long resident of the county. Over the years, *Amicus* has established several businesses in Greenbrier County, including two Dairy Queen franchises, a storage business, and agricultural concerns. In short, *Amicus* is a small business owner who believes strongly in the economic development and viability of Greenbrier County, West Virginia. Some years ago, *Amicus* purchased property in the vicinity of the Project. On that property, *Amicus* built a second home that he uses for hunting and recreation. He also uses the acreage that surrounds his second home to cut hay, among other things. If this Court allows the Project to go forward, *Amicus'* second home will be among the closest residences—if not the closest—to any of the wind turbines proposed as part of the Project, and he will be able to see at least two of the turbines clearly and directly as they will be located on his property.

Much has been made by Appellants of the damage to the view in Greenbrier County, West Virginia, that they contend will result from the construction of these turbines. However, when *Amicus* looks at the projections of how the turbines will appear in the landscape, he sees a future of clean, renewable energy, and financial stability for landowners like himself. Rather than seeing a blight, *Amicus* sees an economic opportunity that will stimulate the economy of Greenbrier County, West Virginia. In the end, the royalties that *Amicus* will receive from the use of his land for the construction of the turbines and the transmission line, represents a beneficial use of his property both in terms of income and the fact that these turbines will contribute to the reduction of the impact of our constant need for energy on the environment.

It is true that many of the turbines and much of the transmission line will be built on lands owned by MeadWestvaco and Plum Creek Timber Company. The opponents of the Project forget, however, that others stand to benefit, including landowners like *Amicus*. In addition, the influx of temporary construction workers and new permanent jobs provides local businesses with new and fresh financial opportunities. Thus, the Project is not simply a benefit to a handful of land companies, it is a benefit to many other individual citizens of Greenbrier County, West Virginia.

Appellants purport to represent the public, but they clearly do not represent the entirety of the citizens of Greenbrier County, West Virginia. Many people in this county are in favor of the Project. *Amicus* acknowledges that there are those who would prefer that the Project be built elsewhere. However, *Amicus* does not believe that Appellants should have the right to tell *Amicus* what he can do with his property, and what economic benefit he can derive therefrom. In this country, a

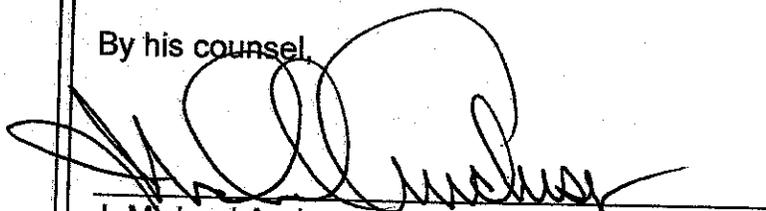
landowner should be able to do with their property whatever he or she chooses, so long as the use is not illegal and the use conforms with applicable laws. See, e.g., Ex parte Frazer, 582 So.2d 330, 332 (Ala. 1991) ("where a property owner complies with all applicable ordinances and regulations, he may not be denied a legal use of his land merely because adjoining landowners object to that use."). Wind turbines are not illegal; they are the future of clean energy in the United States. This Court should not permit Appellants to undo this Project due to their speculative fears and biased suppositions. This is particularly true when their opposition will cost landowners, businesses and the government of Greenbrier County, West Virginia hundreds of thousands of dollars annually, at a minimum, and merely result in other counties, or, worse yet, other states from reaping the benefits of similar projects.

V. CONCLUSION

For the reasons set forth above, this Court should affirm the Commissions Orders, deny the Appeal of the Appellants and allow Beech Ridge to build the Project so that Greenbrier County, West Virginia can stand as a beacon for economic development and the advancement of clean energy.

THOMAS VANCE

By his counsel,



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CERTIFICATE OF SERVICE

I, J. Michael Anderson, Counsel for Amicus Curiae, Thomas Vance, do hereby certify that a true and complete copy of the Brief Amicus Curiae on Behalf of Thomas Vance and Motion to File a Brief Amicus Curiae on Behalf of Thomas Vance have this day been served upon all parties, at their respective addresses listed below, by depositing the same in the regular course of the United States Mail, this the 20th day of June, 2007.

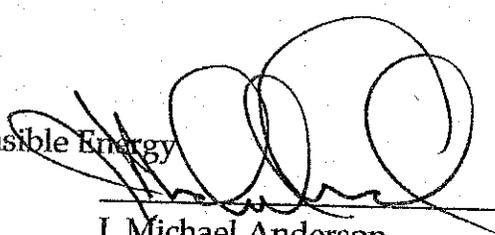
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