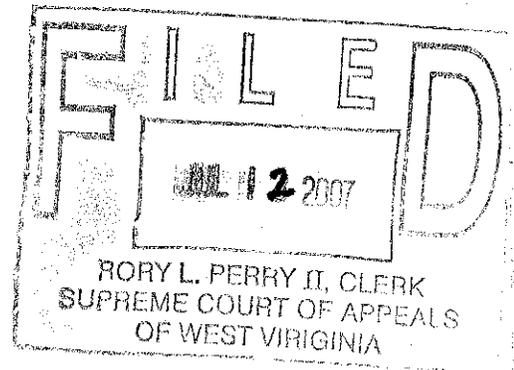


**IN THE WEST VIRGINIA  
SUPREME COURT OF APPEALS**



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

**Appellants**

**On Appeal from the  
Public Service Commission  
Of West Virginia**

**Case No. 05-1590-E-CS**

**v.**

**DOCKET NO. 33376**

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

**Appellees**

**Appellants Reply Brief**

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**TO THE WEST VIRGINIA SUPREME COURT OF APPEALS AND THE  
HONORABLE JUSTICES THEREOF:**

**Appellants Reply Brief**

Come Now, Appellants, Alicia A. and Jeffrey C. Eisenbeiss, pro se, hereby respectfully submit a consolidated reply brief, in response to Appellees.

**Appellees Admissions**

Appellee, the Public Service Commission of West Virginia, has the affirmative and mandatory duty to protect the public by enforcing compliance of the Siting Rules bound and defined by the siting requirements of an application for a wind powered

generating facility, *W. Va Code 24-2-1(c)*, and *W. Va Code 24-2-11c*. This case now before the Honorable Court as set forth the basis where the applicant has failed to meet the criteria of a siting certificate and the Commission's authority and discretion in granting a siting certificate has failed to enforce the laws at hand. The record demonstrated a procedure based on "Commission- established conditions," rather than being bound by its Rules and statute.

The Public Service Commission of West Virginia states on page 48 of their response brief, the Commission expects its staff to conduct a through, independent evaluation of everyone's position in the case (Conclusion of Law 6, May 5, 2006.) The Commission concluded it would be inappropriate for the Commission to require its Staff to evaluate Beech Ridge's evidence from another parties' perspective (Conclusion of Law 5, May 5, 2006). Staff claims to fulfill what the Commission expected by "conducting a review of the evidence, including the studies provided, and gave independent analysis of the filing (Page 48 PSC Response Brief). Staff's engineer, Wayne Perdue, gave the following response his Supplemental testimony (May 4, 2006 Page 9 Line 150) "Staff could not reproduce reliable line of sight information which might confirm the accuracy of the applicant's view shed study." Mr. Perdue's response, "I had computer problems and couldn't make the assessment in time for the first testimony. When I got my information back, I did check some of the line of sight areas for each of the people that were concerned. And after looking at those, I decided my software wasn't what it needed to be to make certain judgments." Staff's role is to analyze all the evidence presented and provide the Commission with an unbiased position failed. The Beech Ridge application failed to meet the Siting requirements and Staff failed to conduct a

through, independent evaluation of everyone's position. Staff acknowledged in testimony that they were unable to complete what the Commission by law expected.

Although, the Public Service Commission of West Virginia states the Appellants in this case were not deprived of their right to submit their own studies. The Public Service Commission of West Virginia, failed to obtain any independent experts in order to verify the data in the submitted application or to provide the staff technical assessment for that which is outside their Scope of Work. These appellants requested that Public Service Commission of West Virginia protect the public through independent analysis and studies, and thoroughly analysis the concerns and issues due to the potential adverse effects of 124 industrial size wind turbines, **along twenty three miles of ridge tops**. As Pro Se intervenors, we were financially unable to initiate independent studies to prove our issues and concerns, and subjected to the sole reliance on the Public Service Commission of West Virginia Staff. The data and information provided through the submission of eighty documents by these appellants and Dr. Pierpont's conclusions and recommendations clearly refute the basis of the Beech Ridge application and staff's conclusion of thoroughly assessing the impacts. These analysis submitted by these appellants were independent analysis and were simply demoted to public comment.

Furthermore, in Beech Ridge's Response Brief, counsel states, "Mr. Eisenbeiss-on the other hand is a lay person with no particular experience in noise or acoustical issues. Thus, while the location might have "appeared" noisy to him, that does not make it so. Additionally, Mr. Eisenbeiss testimony only related to one of six locations on which the ambient acoustic study was based (Page 41 Beech Ridge Response Brief). As mentioned in our previous briefs, Eddie Fletcher stated at the Lewisburg Public Hearing, April 25,

2006, "I am deeply concerned about the noise of the turbines. In my area, their studies were done close beside a creek in a very noisy part of the stream. I know this stream, I fished this stream all my life and it would have been hard to have found a noisier spot. I do not believe the study to be any indication of reality. It disturbs me. I find it fraudulent." It is overwhelmingly apparent the application failed to meet the siting requirements and the Public Service Commission failed to verify data through independent analysis.

The Public Service Commission of West Virginia Liberty Gap Order, June 22, 2007, refused to issue a siting certificate in part due to "Issues for which Evidence is lacking or otherwise troubling." (Page 29 Liberty Gap Order). The same noise expert, Jim Barnes, that Beech Ridge employed, is being sited in the Liberty Gap Order for conflicting noise evidence, as well as insufficient evidence about the levels of ambient noise. Furthermore, FOBPC witness on noise, Mr. Bolten, raised this appellant's same concerns, about where and how Mr. Barnes conducted the ambient noise measurements. In response to Mr. Bolten's criticism, Mr. Barnes stated, "his field experience and education, dictated the use of the measuring locations." It overwhelmingly apparent, Mr. Barnes chose locations in order to accommodate his studies and mislead the projected noise levels in relation to the ambient noise level.

The same issues and concerns raised in the Liberty Gap case, were raised in the Beech Ridge case. Who is protecting the public when the PSC staff cannot concur or reject technical assessments? When the Commission concurs with the applicants' experts with no independent analysis, who assumes the burden of proof to verify issues and concerns such as noise and related health risks? The lack of expertise by the Public Service Commission Staff to evaluate impacts, review studies, and adequately address the

concerns of intervenors is astonishing! The Commission in this case has used its authority and discretion to interpret the Siting Rules, by deeming the Applicant's application as adequate and in compliance without any thorough, independent evaluation of all respective positions presented in this case. The Siting Rules and the Federal Laws cited in the Siting Rules have been disregarded and the mechanism of "The Commission shall appraise and balance the interest of the public, the general interest of the state and local economy and the interest of the applicant," has been proven a fatally flawed procedure. Thus, The Commission in issuing a siting a certificate to the Applicant, contingent on extensive conditions, literally grants the Applicant the right to perform actions and activities that severely affect the adjoining landowner's rights, the ecology, and local communities. The public, the public interest, private landowner's bundle of rights and the general interest of our local and state economies have been grossly overlooked.

Many Amices briefs were filed in recent weeks, with no less than eleven lawyers currently working on issues to support the Commission's conditional siting certificate to Beech Ridge. MeadWestvaco has had every opportunity to become part of this case since the onset, as the lessor of the property, chose not to do so. But, now, at their last opportunity, they believe their perspective is desirable. Counsel for MeadWestvaco asserts their lands will be the most affected by the proposed project. MeadWestvaco counsel reiterates testimony of Paul Miller, a minerals manager for the company, who testified on real estate values. Mr. Miller has no background in real estate valuation, and speculated as a layman after reading wind industry sponsored studies. MeadWestvaco Counsel fails to address that the actions performed on their property will not stay on

their property and how these actions negatively and severely affect adjoining landowners, the environment and our communities.

**Prayer for Relief**

Wherefore, these Pro Se appellants earnestly pray that after full presentation and comprehensive hearing, that the Honorable Court denies the Public Service Commission of West Virginia order granting a siting certificate, dismiss the application and ultimately write an appropriate guiding opinion.

Respectfully submitted this 12th day of July 2007.



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Appellees

CERTIFICATE OF SERVICE

We, Alicia A. and Jeffrey C. Eisenbeiss, do hereby certify that on this 12th day of July, 2007, our reply brief was served by placing one true and exact copy thereof in the regular United States Mail, postage prepaid, addressed as follows:

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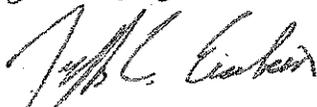
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Respectfully Submitted this 12<sup>th</sup> day of  
July 2007.



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Jeffrey Eisenbeiss