

News Release

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CITIZENS APPEAL LONGVIEW POWER PLANT SITING CERTIFICATE TO THE WEST VIRGINIA SUPREME COURT

The Longview power plant ran into yet another roadblock Monday when a coalition of approximately sixty individuals and groups based in Monongalia County, West Virginia filed a court appeal regarding the decision by the West Virginia Public Service Commission (PSC) to grant Longview Power, LLC a siting certificate for its proposed 600 MW coal-fired power plant in Monongalia County. "The PSC committed several fundamental errors in granting conditional approval of Longview Power's application," said Bill Wonderlin, a spokesperson for Citizens for Alternatives to Longview Power. "We are confident the Supreme Court will agree that the PSC did not fulfill its statutory responsibilities in reviewing Longview's application. The PSC went too far in accommodating an incompetent developer at the expense of protecting the public interest."

The appeal claims that the PSC erred in June 2004 when it dismissed Longview's transmission-line certificate application and considered the siting certificate separately. This ruling reversed the PSC's March 2004 decision in which it refused to separate the applications for the siting certificate and the transmission-line certificate, citing state law, which stipulates that these applications must be evaluated simultaneously. "The PSC essentially admitted its error when it stated in its final Order that it would not permit a similar, separate consideration of siting and transmission line applications submitted by other applicants in the future," said Wonderlin.

The appeal contends that the PSC erred in issuing its final Order without having received essential information necessary for the evaluation of Longview's application. "Longview failed to provide adequate details regarding the plan for the power plant, its financial viability, the noise impact on the Fort Martin community, and whether the large tax break it is receiving is in the public interest. By extending the time available for Longview to submit the additional information beyond the 300-day period stipulated by state statute, the PSC is acknowledging the deficiencies in the application. The PSC has given Longview preferential treatment at the expense of the public interest," said Wonderlin. "For example, Longview still has no buyer for the plant, and it does not have any long-term agreements from potential customers to purchase power. Financial assurances are essential to

prove that Longview won't be abandoned before it is completed or won't become a burden to local rate payers, yet the PSC issued its certificate without the required financial assurances."

The appeal also states that the PSC did not provide any standard for the additional information required from Longview, and the PSC is allowing Longview to supply this additional information outside of public view without any mechanism for the public to challenge or even review it.

The appeal notes that the PSC did not properly determining findings of fact in the Longview case. Several witnesses provided conflicting testimony to the PSC, yet the PSC states in the Order that "...the Findings of Fact, contains summarized recitations of assertions made by witnesses that the Commission deems relevant to our decision making process. The PSC's recitation of such assertions should not be interpreted as a Commission determination that the statements are true."

"This is a startling admission by the PSC — that its decision was not supported by facts they determined to be true," said Wonderlin. "It is the PSC's duty to determine the truth of the evidence on which it bases its decisions. The failure to make these determinations implies that the PSC's decision was influenced more by factors not entered into the public record during the public hearing process than by testimony received during the public process."

In addition to these fundamental procedural errors, the appeal states that the PSC also committed discretionary errors in considering Longview's application. Examples include the failure of Longview to establish its credibility as a developer of coal-fired power plants, poor documentation of economic benefit to the local economy, and a complete failure to consider any impact on the local environment, other than noise. "The PSC was given the task of determining whether or not this power plant is in the public interest. The PSC has clearly failed in that task," said Wonderlin.

In addition to this appeal in the West Virginia Supreme Court, the citizens' group also has a lawsuit pending in Monongalia County Circuit Court regarding the constitutionality of the "Payment in Lieu of Taxes" agreement between Longview Power and Monongalia County.

More information can be found at the WV Public Service Commission's web site:

<http://www.psc.state.wv.us/> and at the web site for CALP: <http://www.nolongview.org/>.

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