

No. 29989 - The Affiliated Construction Trades Foundation, a division of the West Virginia State Building and Construction Trades Council, AFL-CIO v. The Public Service Commission of West Virginia and Big Sandy Plant, LLC

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OF WEST VIRGINIA

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Starcher, J., concurring:

The Chief Justice's separate opinion in the instant case characterizes the majority opinion as holding that “. . . ACT had standing *because ACT was not seeking to revoke* the [Big Sandy] certificate of convenience and necessity . . .” (Separate opinion, emphasis added.)

This characterization is simply wrong. In fact, the majority opinion clearly holds that ACT had standing because ACT -- *in addition to* a request for revocation of Big Sandy's certificate -- asked the PSC to make Big Sandy comply with the representations that Big Sandy had made to the PSC. The majority opinion clearly holds that it was this separate request for compelled compliance -- *not* the absence of a request for revocation -- that conferred standing on ACT. The majority clearly stated that “[t]he clear language of the statute grants standing to ACT.” The discussion of standing in the Chief Justice's separate opinion is, therefore, simply irrelevant to the majority opinion.

To compound the error, the separate opinion implies that the standing holding in the majority opinion is motivated by a desire to favor union workers -- regardless of the law. Wrong again.

In fact, the “motive” of the majority opinion (and the clear language of the statute) is to assure that unions, employers, and everyone else can be held accountable by members of the public for their promises to public regulators.

Accordingly, I concur.