

No. 33375 – *Mountain Communities for Responsible Energy v. Public Service Commission of West Virginia and Beech Ridge Energy, LLC; West Virginia State Building and Construction Trades Council, AFL-CIO*

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**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

Starcher, J., dissenting:

History shows that the ownership of land is a powerful right, worthy of exceptional legal protection. Land is “the art of democracy” which every man “can shape in his own image.”¹ For centuries, courts and legislatures have adopted a vast penumbra of rules designed to protect each person’s right to freely use his or her property without interference from others.

The Public Service Commission has followed this historical tradition and adopted regulations dedicated to ensuring that public utilities fairly use their land without unduly imposing upon the rights of neighboring landowners.

I dissent because the Public Service Commission, and now the majority opinion, have decided that the formally adopted regulations of the Commission are more like “guidelines” than “actual rules.” For instance, even though the Commission’s regulations require a utility to provide certain information (such as information about historical sites affected by a utility project) to the Commission *before* a permit is issued, the majority’s opinion now allows that information to be provided *after* the permit is issued – ostensibly because that information is not important to the permit application process. My response to

¹G.K. Chesterton, *What’s Wrong With the World* (1910).

this position is, if the information is not critical to the permit application process, then why do the Commission's regulations require that the information be produced?

When the Public Service Commission authorizes the construction of gigantic industrial wind turbines in some of the most beautiful countryside of our State, I think that the Commission has a duty to fully take into account the effect of the turbines on the property values of adjoining and nearby landowners and communities. To do this, before issuing any permits, the Commission must require a utility seeking to build wind turbines to produce all of the information that is required by law or by regulation. It is not enough to say, as the majority implies, that those landowners can file a nuisance suit in the future. Before the State sanctions injuring both private property values and the aesthetic value of beautiful landscapes, the public utility must publicly demonstrate the scope of the injury as part of the record before the Commission grants any permits.

I would have remanded this case to the Commission for further study, and required Beech Ridge Energy to produce all of the legally required information about the impact of the wind turbines on neighboring property and aesthetic values.

I therefore dissent.