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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY,

Petitioners,

v.

THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA,

Respondent.

BRIEF OF *AMICUS CURIAE* ON BEHALF OF
THE WEST VIRGINIA COAL ASSOCIATION, INC.

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**STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE, ITS
INTEREST IN THE CASE, AND THE SOURCE OF ITS AUTHORITY TO FILE**

The West Virginia Coal Association, Inc., (hereinafter the “WVCA”) is an association comprised of twenty-nine (29) general members involved in the coal production industry in West Virginia. Many of its members sell their coal to the Petitioners for use at their various coal-fired power plants. The WVCA was an intervening party in this matter before the Public Service Commission of West Virginia (hereinafter “PSCWV”). The WVCA supports and advocates for its members and their thousands of employees in an effort to foster growth and prosperity for the coal production industry. By extension, the WVCA also works to promote and advocate for the maximization of reliable, baseload coal-fired electricity production across the State of West Virginia and nationwide, including the Petitioners’ power plants subject of this action.¹

ARGUMENT

A. The impact of the continued and maximized operation of Petitioners’ subject plants is significant for the economic health of the State of West Virginia and its residents.

The Petitioners herein operate three (3) coal-fired power plants subject of this matter; (1) the John Amos Power Plant (located in Putnam County, West Virginia); (2) the Mountaineer Power Plant (located in Mason County, West Virginia); and (3) the Mitchell Power Plant (located in Marshall County, West Virginia). The economic benefits of coal-fired power generation, including the Petitioners’ aforementioned plants, for the State of West Virginia and its residents cannot be understated. The coal production industry, the coal-fired power generation industry and the myriad of secondary parties involved with both, employ thousands of West Virginians and contribute billions of dollars in economic activity in the State of West

¹ In accordance with Rules App. Proc., Rule 30(e)(5), no counsel for or party to this action authored this brief in whole or in part and no counsel for or party to this action made a monetary contribution specifically intended to fund the preparation or submission of the brief. No person other than the WVCA, its members or its counsel made such a monetary contribution.

Virginia. Dr. John Deskins, Ph.D., in his role as Director of the West Virginia University Bureau of Business and Economic Research, has thoroughly studied the economic impact of coal mining and coal-fired power generation in West Virginia. The results of his research, as detailed in the report entitled “The Economic Impact of Coal and Coal-Fired Power Generation in West Virginia”, published by the West Virginia University College of Business and Economics’ Bureau of Business & Economic Research², are summarized as follows:

1. Coal Mining and Coal-Fired Power Generation in West Virginia:

- Coal mining and coal-fired power generation, combined, generated approximately thirteen billion, nine hundred million dollars (\$13,900,000,000.00) in total economic activity in the state of West Virginia in 2019.
- Coal mining and coal-fired power generation, combined, supported nearly thirty-three thousand, three hundred (33,300) jobs in West Virginia in 2019.
- Coal mining and coal-fired power generation, combined, provided around two billion eight hundred million dollars (\$2,800,000,000.00) in employee compensation in West Virginia in 2019.
- Coal mining and coal-fired power generation combined supported more than six hundred eleven million dollars (\$611,000,000.00) in severance tax and select state and local tax revenue for West Virginia and its local governments.

2. Mitchell Power Plant & Marshall County, West Virginia:

- The Mitchell plant generated more than five million (5,000,000) MWh of electricity in 2019.

² https://researchrepository.wvu.edu/bureau_be/327/

- Dr. Deskins estimates that the plant’s direct economic output in 2019 was around two hundred seventy-five million dollars (\$275,000,000.00).
- Excluding the impact of the plant’s purchase of West Virginia coal, Dr. Deskins estimates that the plant generated around one hundred forty-three million dollars (\$143,000,000.00) in secondary output economic impact, resulting in a total economic impact of more than four hundred eighteen million dollars (\$418,000,000.00) upon the West Virginia economy in 2019.
- Dr. Deskins estimates that the plant directly employed one hundred eighty-five (185) workers and an additional four hundred seventy-six (476) secondarily employed workers, resulting in a total employment impact of more than six hundred sixty (660) jobs in the West Virginia economy in 2019.
- Those employees earned nearly sixty-five million dollars (\$65,000,000.00) in employee compensation in 2019.
- Dr. Deskins estimates that the plant generates nearly nine million dollars (\$9,000,000.00) in state and local tax revenue annually.

3. Mountaineer Power Plant & Mason County, West Virginia:

- The Mountaineer plant generated around eight million three hundred thousand (8,300,000) MWh of electricity in 2019.
- Dr. Deskins estimates that the plant’s direct economic output in 2019 was around four hundred ten million dollars (\$410,000,000.00).
- Excluding the impact of the plant’s purchase of West Virginia coal, Dr. Deskins estimates that the plant generated around two hundred nine million dollars (\$209,000,000.00) in secondary output economic impact, resulting in a total

economic impact of more than six hundred nineteen million dollars (\$619,000,000.00) in the West Virginia economy in 2019.

- Dr. Deskins estimates that the plant directly employed three hundred (300) workers and an additional six hundred seventy-seven (677) secondarily-employed workers, resulting in a total employment impact of more than nine hundred seventy-six (976) jobs in the West Virginia economy in 2019.
- Those employees earned nearly eighty-three million dollars (\$83,000,000.00) in employee compensation in 2019.
- Dr. Deskins estimates that the plant generates more than eleven million dollars (\$11,000,000.00) in state and local tax revenue annually.

4. John E. Amos Power Plant & Putnam County, West Virginia:

- The Amos plant generated nearly ten million (10,000,000) MWh of electricity in 2019.
- Dr. Deskins estimates that the plant's direct economic output in 2019 was around five hundred twenty-five million dollars (\$525,000,000.00).
- Excluding the impact of the plant's purchase of West Virginia coal, Dr. Deskins estimates that the plant generated around two hundred forty-two million dollars (\$242,000,000.00) in secondary-output economic impact, resulting in a total economic impact of more than seven hundred sixty-eight million dollars (\$768,000,000.00) in the West Virginia economy in 2019.
- Dr. Deskins estimates that the plant directly employed three hundred sixty-five (365) workers and an additional six hundred sixty-eight (668) secondarily-

employed workers, resulting in a total employment impact of more than one thousand thirty-three (1,033) jobs in the West Virginia economy in 2019.

- Those employees earned nearly one hundred twenty-four million dollars (\$124,000,000.00) in employee compensation in 2019.
- Dr. Deskins estimates that the plant generates more than sixteen million dollars (\$16,000,000.00) in state and local tax revenue annually.

As detailed in Dr. Deskins' report, there is no other industry in West Virginia that provides better wages to its workers and more direct and indirect economic impact upon the state and local communities than coal mining and coal-fired power generation. Accordingly, the continued and maximized operation of the Petitioner's plants must be considered by the Court when ruling in this case.

B. The West Virginia Legislature mandates encouraging the maximized operation of the Petitioners' coal-fired plants on a continuous cycle to ensure grid stability.

The West Virginia Code charges the PSCWV with the legislative responsibility to encourage "the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal."³ Further, the PSCWV is legislatively charged with "appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions."⁴

In 2021, the West Virginia Legislature went even further in clarifying the significant consideration the PSCWV must give to the impact of its decisions on the state's coal mining industry:

³ W. Va. Code Ann. § 24-1-1(a)(3).

⁴ W. Va. Code Ann. § 24-1-1(b).

§24-1-1c. Additional Legislative findings related to the coal industry.

The Legislature finds that:

- (1) Over 600 coal-fired electric units nationally have been forced to close;
- (2) Eighteen coal-fired electric units within West Virginia's borders have been forced to close;
- (3) Markets for West Virginia coal have been severely diminished due to the closure of regional coal plants to the point that West Virginia coal shipments have been reduced from 162 coal plants a decade ago to only 43 plants today;
- (4) West Virginia coal mines are forced to close, resulting in West Virginia coal miners being out of work, compromising homeland security and defense measures, and threatening grid stability and resiliency;
- (5) It is imperative the State of West Virginia take immediate steps to reverse these undesirable trends to ensure that no more coal-fired plants close, no additional jobs are lost, and long-term state prosperity is maintained;
- (6) Throughout the past decade, no group has been hit harder by the decline of coal than West Virginia's coal miners and their families. Many coal miners are struggling to make ends meet and provide for their families;
- (7) In addition to working toward sustaining coal employment levels and coal-based, electric generation, the State of West Virginia should take immediate steps to provide education, training, and retraining opportunities for displaced coal miners and their families;
- (8) West Virginia coal-fired power plants should continue to provide base load generation critical for maintaining slow, steady generation that produces power on a continuous cycle, ensures grid stability, and protects against overloads and power shortages;***
- (9) West Virginia coal and electricity generated in West Virginia are relied upon throughout a multi-state region, thus playing a vital role in regional homeland security;
- (10) West Virginia's coal fleet, comprised of nine individual plants and 25 units, is fueled on average by a total of 25 million tons annually; accounts for over \$2 billion of economic activity; and sustains approximately 3,500 mining jobs, 2,000 plant worker jobs, thousands of downstream and indirect local and surrounding county jobs, and hundreds of millions of dollars of payroll and tax dollars;
- (11) The role of West Virginia and West Virginia coal in regional homeland

security is of paramount importance; thus, it is incumbent for our state to continue to provide leadership in this increasingly critical area in order to sustain and protect our regional electric supplies; and

(12) Public electric utilities in West Virginia should be encouraged to operate their coal-fired plants at maximum reasonable output and for the duration of the life of the plants.

[Emphasis added].

As discussed by the Respondent in its Statement of Reasons, the PSCWV has established a 69% operational capacity factor as a target for the Petitioners at the subject coal-fired plants in order to maximize the benefits of the plants for the West Virginia ratepayers and economy. As the PSCWV made clear in their February 3, 2023, Order in Case No. 22-0393-E-ENEC, achieving the 69% capacity target might necessitate operating their plants at times when it is uneconomical on certain days in order to take advantage of other periods when it is economical and is a benefit to ratepayers. *Petitioner's Brief*, A-071⁵. By extension, rate recovery for operation of Petitioner's plants during uneconomic periods should be available to Petitioners if the purpose was to ensure their plants are available and operating during when it would be economical to do so and in satisfaction of prudently entered coal contracts.

When paired with the foregoing legislative findings and the PSCWV's previous Order(s), this Court must prioritize the operation of the Petitioners' plants on a continuous cycle "at maximum reasonable output and for the duration of the life of the plants".

CONCLUSION

The economic benefit to West Virginia residents, ratepayers and the State itself that results from maximized coal-fired power generation from the Petitioner's plants cannot be

⁵ "We recognized that a baseload plant cannot ramp from zero to maximum output in minutes. At times it may be necessary to run a baseload plant at a cost that exceeds the purchased power alternative for a few hours in order to take advantage of the ensuing hours when purchased power would be the more expensive option." *Id.*

overstated. Acknowledging that fact, the West Virginia Legislature has made clear that the continued operation of Petitioners' plants at the maximum reasonable output on a continuous cycle should be encouraged by the PSCWV and this Court to ensure grid stability. Accordingly, the WVCA respectfully requests that this Court consider and prioritize the maximal operation of Petitioners' plants on a continuous cycle in rendering its decision in this case.

Dated: April 15, 2024.

Respectfully submitted,

**WEST VIRGINIA COAL
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CERTIFICATE OF SERVICE

I, undersigned counsel for the West Virginia Coal Association, Inc., hereby certify that a copy of the foregoing **BRIEF OF AMICUS CURIAE ON BEHALF OF THE WEST VIRGINIA COAL ASSOCIATION, INC.**, was served upon all parties on April 15, 2024, by mailing a true and accurate copy thereof to their counsel of record, by first-class United States mail, postage prepaid, and electronic mail, addressed as follows:

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