

Energy 'dream team' celebrates role in Brooke Co. natural gas plant

by John Dahlia
Business Editor

CHARLESTON — The last thing Spilman Thomas and Battle member and attorney Susan Riggs expected was a phone call from the clerk of the West Virginia Supreme Court of Appeals.

"It was about a-quarter-til-three, and she said the court has issued their order and they affirmed the public service commission's decision and it will be on the website at three o'clock," she said with a grin.

Riggs, who along with fellow member and attorney Grant Shuman and counsel and co-chair of Spilman's Utility Law Group, Lee Feinberg, spent the last four years working with Energy Solutions Consortium to get site and project approval for natural gas-fired power plants in Marshall, Harrison and Brooke Counties.

"Because of all the delays that have occurred at Moundsville," Feinberg said referring to several appeals to the state's Public Service Commission and the West Virginia Division of Environmental Protection on the Marshall County project. "It dropped into third place in terms of timing."

The project in Harrison County received some push-back, but it was the Brooke County project that ended up in the West Virginia Supreme Court.

According to the ESC Brooke County Power's website, during the construction period, the project will yield indirect economic benefits to the local community including more than \$1.25 billion in impact. When operational, the annual economic benefit of the facility will total \$440.5 million each year and provide \$1 million to Brooke County on the commencement of construction with yearly contributions during operation of \$433,000 to the Brooke County Commission and \$167,000 the Brooke County Board of Education.

On Nov. 1, the more than 3,000 hours of work the three attorneys' put in, reached its climax; the state Supreme Court issued a unanimous memorandum decision in favor of Energy Solutions Consortium, affirming the siting certificate for ESC Brooke County Power issued by the West Virginia Public Service Commission last February.

"It was a lot of jumping up and



Staff photo by Conor Griffith

Drew Dorn, president of Energy Solutions Consortium, addresses the fall 2018 meeting of the West Virginia Oil and Natural Gas Association.

down," Riggs added. "One of the lawyers in the back office has this big bell and it sits out and people come along and get to ring it when they win a big case. And by golly, when we won that case, we rang it 10 times."

The celebration Riggs and the rest of the team enjoyed, however, came after a long and arduous legal process.

"There was probably not a day beginning in February and January 2017 moving toward April of 2017 where one, and sometimes two or three of us, were working on this case," Feinberg added.

The many filings and responses, Shuman explained, came mainly from what he called were, "interveners," or more specifically the Ohio Valley Jobs Alliance; a "grassroots" organization involved in several actions and lawsuits against natural gas power plant projects in West Virginia and Ohio.

"We were probably writing or filing a document every other day of the week," Shuman said referring to the appeal the Ohio Valley Jobs Alliance filed in March 2018, less than 30 days after the Public Service Commission first approved Brooke County's site and project plan. That appeal automatically sent the case to the Supreme Court.

"Because it goes directly to the court that causes the Supreme Court



Staff photo by John Dahlia

Spilman Thomas & Battle's Counsel Lee F. Feinberg, left, Attorney's Susan J. Riggs and Grant P.H. Shuman take another look at their work in support of the ESC Brooke Power for the construction of an \$884 million natural gas fired generating plant located near Colliers in Brooke County.

to issue a scheduling order," Grant said.

Typically, cases brought before the Supreme Court are scheduled several months in advance. But, as Riggs pointed out, the last six months have been anything but ordinary for the state's highest court.

"There's been a lot of chaos at the court," she said. "Our hearing originally was scheduled for early September and then it got post ponded to Oct. 9."

The justices at the Supreme Court, according to the three attorneys of what could easily be called West Virginia's "energy dream team," give both sides in the case only 10 minutes to present arguments. The Ohio Valley Jobs Alliance was on one side and on the other, representatives from ESC Brooke County Power, the Public Service Commission, the West Virginia Oil and Natural Gas Association and the West Virginia State Building and Construction Trades Council.

"We had to determine how we were going to split up that 10 minutes of arguing," Riggs said. "But, the real beauty of doing that is you have these different personalities being able to present."

In the end, the Supreme Court's affirmation also included one final paragraph in support of the potential economic impact a natural gas-fired power plant could have on both the



Staff photo by John Dahlia

When she first got word from the West Virginia Supreme Court of appeals ruled in favor of their client, ESC Brooke Power, Attorney Susan Riggs rang her offices "good job" bell 10 times.

state and the Northern Panhandle. "I fully believe when the people up there (Brooke County) have the plant up and operating they're going to say this isn't bad at all," Feinberg said.

"We so strongly believe in this project," Riggs added. "The economic impact is immense."

"Not only is West Virginia going to be able to compete in this market but we know we're going to be putting people to work," Grant concluded.

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