

**ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

- 09-19-EQB Monongahela Power Company v. WVDEP**
09-20-EQB Monongahela Power Company v. WVDEP
11-21-EQB Allegheny Energy Supply Company, LLC v. WVDEP
11-22-EQB Allegheny Energy Supply Company, LLC v. WVDEP
11-27-EQB Monongahela Power Company v. WVDEP
14-10-EQB Monongahela Power Company v. WVDEP
16-04-EQB Monongahela Power Company v. WVDEP

STATUS CONFERENCE HEARING

**THURSDAY, JANUARY 26, 2023
10:27 A.M. - 10:33 A.M.**

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
601 57th STREET, SE
CHARLESTON, WEST VIRGINIA**

**Wendy M. Thomas
Certified Court Reporter**

GARRETT REPORTING SERVICE

**POST OFFICE BOX 20200
CHARLESTON WEST VIRGINIA 25362
(304)346-0460**

EQB 1-26-23 Status Conference
January 26, 2023

<p style="text-align: right;">2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>Board Members: Dr. Edward M. Snyder, Ph.D. - Chairman (Zoom) Dr. Charles C. Somerville, Ph.D. - Vice Chair (Zoom) Marybeth Winters (Zoom) Stephen G. Capelli, Sr. (Zoom)</p> <p>Kenna M. DeRaimo, Board Clerk (In person) kenna.m.deraimo@wv.gov</p> <p>Board Attorney:</p> <p>Mark S. Weiler, Esquire (Zoom) OFFICE OF THE ATTORNEY GENERAL 812 Quarrier Street Charleston, West Virginia 25301 mark.s.weiler@wvago.gov</p> <p>Counsel for Appellant:</p> <p>David L. Yaussy, Esquire Joseph C. Unger, Esquire (Zoom) SPILMAN THOMAS & BATTLE, PLLC Post Office Box 273 Charleston, West Virginia 25321-0273 dyaussy@spilmanlaw.com junger@spilmanlaw.com</p> <p>Counsel for the Appellee:</p> <p>Jonathan C. Frame, Esquire (In person) WV DEPARTMENT OF ENVIRONMENTAL PROTECTION 601 57th Street, S.E. Charleston, West Virginia 25304 jonathan.c.frame@wv.gov</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1 2 CHAIRMAN SNYDER: Kenna, how about the next one? 3 MS. DeRAIMO: All right. Now we are going to 4 continue with some status conferences for some outstanding 5 and pending EQB appeals that were filed, some back in 2009, 6 2011, 2014, 1016. I will start in order. Some of these I'm 7 not sure if they overlap. I don't know if they -- I'll let 8 the attorneys speak up.</p> <p>9 The first one is Appeal No. 09-19-EQB, Monongahela 10 Power Company versus West Virginia DEP. I have a file here 11 that also lists 09-20-EQB, Monongahela Power Company versus 12 West Virginia DEP, so I don't know if those were 13 consolidated. Do we have someone from Dave Yaussy's office 14 on the --</p> <p>15 MR. FRAME: I believe Mr. Yaussy is. 16 CHAIRMAN SNYDER: Yes.</p> <p>17 MS DeRAIMO: Okay. He's going to appear by Zoom, 18 and we have Jon Frame here in the room, so I'll let them take 19 over for those two to start with.</p> <p>20 MR. YAUSSY: I'll start. Jon and I talked about 21 this. We've been talking about this. We talked about it 22 right before this hearing. We have -- I believe we can 23 resolve 09-19 and 09-20 and 11-27 because new permits have 24 been issued in those appeals. New permits have been issued</p>
<p style="text-align: right;">3</p> <p style="text-align: center;">T A B L E O F C O N T E N T S</p> <p>Introduction/Opening by Chairman Snyder Pg 4 Overview by Kenna DeRaimo, Clerk Pg 4</p> <p>WITNESS EXAMINATION BY (No witnesses were called.)</p> <p>EXHIBIT ADMITTED (No exhibits were marked.)</p> <p>REPORTER'S CERTIFICATE Pg 8</p>	<p style="text-align: right;">5</p> <p>1 since those appeals were taken, and those permits were not 2 appealed to this Board. They're final, and I think 3 everybody's fine with how we're proceeding, so we have 4 drafted joint motions to dismiss those three. And we will -- 5 I had trouble getting a hold of and confirming with the 6 client or I'd have already provided those to the Board. We 7 will have them to you probably by the end of today or 8 tomorrow, motions and orders to sign.</p> <p>9 MS. DeRAIMO: Okay. And that third case was 11-27- 10 EQB, again Monongahela Power Company versus DEP.</p> <p>11 MR. YAUSSY: Yes, exactly.</p> <p>12 MS. DeRAIMO: Okay.</p> <p>13 MR. FRAME: And I agree with those representations. 14 We should have motions to dismiss to the Board in short 15 order.</p> <p>16 CHAIRMAN SNYDER: Thank you.</p> <p>17 MR. YAUSSY: The remaining appeals, Dr. Snyder, are 18 appeals that were taken and generally the agreement was of 19 the parties that there would be new permits issued. And it 20 is my understanding and I believe Mr. Frame's understanding, 21 too, that there are ongoing permit negotiations between our 22 relative clients, but that there is nothing that resolves the 23 appeals and that further time would be appropriate. Since 24 the permits of themselves are likely to address the issues</p>

EQB 1-26-23 Status Conference
January 26, 2023

<p style="text-align: right;">6</p> <p>1 raised on appeal, that it would be worth waiting until those 2 permits are finalized to dismiss the remaining cases. 3 MR. WEILER: Are those the remaining Mon Power 4 cases that are on this list of mine? 5 MS. DeRAIMO: Actually, there's 11-21-EQB which is 6 Allegheny Energy Supply Company versus DEP. 11-22-EQB, 7 Allegheny Energy Supply Company versus DEP. 14-10-EQB, which 8 is Monongahela Power Company versus West Virginia DEP. And 9 16-04-EQB, which is Monongahela Power Company versus West 10 Virginia DEP. 11 MR. YAussy: That's correct, yes. 12 MR. FRAME: Yes. They all relate -- are appeals of 13 the same permit. Actually, 16-04 is a landfill permit, so 14 it's a different permit number, but it's still tied to the 15 Harrison Power Station. For all intents and purposes, these 16 all encompass the same facility. 17 MR. WEILER: Okay. So what are we going to do? 18 What does the Board need to do? Wait? 19 MS. DeRAIMO: Yes. Do I need to schedule an 20 evidentiary hearing months from now? What do you want to do, 21 Chairman Snyder? 22 MR. WEILER: Mr. Yaussy, what do you think we 23 should do? 24 MR. YAussy: I'd suggest we set up for another</p>	<p style="text-align: right;">8</p> <p style="text-align: center;">REPORTER'S CERTIFICATE STATE OF WEST VIRGINIA, COUNTY OF KANAWHA, to-wit: I, Wendy M. Thomas, Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing hearing (multiple cases) was transcribed by me, and that the said transcript is a true record of the proceedings. I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy. I certify that the attached transcript meets the requirements set forth within article twenty-seven, chapter forty-seven of the West Virginia Code. Given under my hand this 20th day of February, 2023. My commission expires March 15, 2025.</p> <hr/> <p style="text-align: right;">Wendy M. Thomas Certified Court Reporter and Notary Public</p>
<p style="text-align: right;">7</p> <p>1 status conference in three months. Really, our clients are 2 talking to one another, and I believe -- Mr. Frame can speak 3 for itself, but I believe they are satisfied with the 4 environmental protections being provided in the meantime. 5 We're just waiting to see when a final resolution is worked 6 out by the technical people. 7 MR. FRAME: I agree with those representations. 8 MS. DeRAIMO: So we're talking a status conference 9 in, say, maybe April to May? 10 MR. FRAME: Sure. Yeah, I would be fine with that. 11 MR. YAussy: That would be fine. Thank you. 12 MS. DeRAIMO: I will work on getting something 13 scheduled and an order out scheduling that. Chairman Snyder, 14 anything else for the parties? 15 CHAIRMAN SNYDER: I don't believe. It sounds like 16 that's taken care of. Mr. Weiler, anything else? 17 MR. WEILER: Just to confirm, what month are we 18 going to put this status conference? 19 MS. DeRAIMO: In either April or May. I will 20 double-check the schedule and see how full it is in one of 21 those two months. 22 CHAIRMAN SNYDER: Very good. Thank you, guys. 23 Much appreciated. 24 (Hearing Concluded.)</p>	

<p>A</p> <p>A.M 1:13,13 action 8:10,13 address 5:24 ADMITTED 3:10 agree 5:13 7:7 agreement 5:18 Allegheny 1:5 1:6 6:6,7 appeal 4:9 6:1 appealed 5:2 appeals 4:5 4:24 5:1,17 5:18,23 6:12 appear 4:17 Appellant 2:12 Appellee 2:17 appreciated 7:23 appropriate 5:23 April 7:9,19 article 8:17 attached 8:16 attorney 2:8 2:10 8:11 8:12 attorneys 4:8</p> <hr/> <p>B</p> <p>B 3:1 back 4:5 BATTLE 2:14 believe 4:15 4:22 5:20 7:2,3,15 blood 8:9 Board 1:1 2:3 2:6,8 5:2,6 5:14 6:18 Box 1:22 2:15</p> <hr/> <p>C</p> <p>C 2:1,4,14,18 3:1 4:1 called 3:7 Capelli 2:5 care 7:16 case 5:9</p>	<p>cases 6:2,4 8:6 CERTIFIC... 3:13 8:1 Certified 1:18 8:23 certify 8:6,9 8:16 Chair 2:4 Chairman 2:4 3:3 4:2,16 5:16 6:21 7:13,15,22 chapter 8:17 Charles 2:4 Charleston 1:1,16,23 2:11,15,20 Clerk 2:6 3:4 client 5:6 clients 5:22 7:1 Code 8:18 commission 8:20 commission... 8:5 Company 1:3 1:4,5,6,7,8 1:9 4:10,11 5:10 6:6,7,8 6:9 Concluded 7:24 conference 1:11 7:1,8 7:18 conferences 4:4 confirm 7:17 confirming 5:5 connected 8:9 consolidated 4:13 continue 4:4 controversy 8:15 correct 6:11 counsel 2:12 2:17 8:11 8:13 COUNTY 8:3 Court 1:18</p>	<p>8:23</p> <hr/> <p>D</p> <p>D 4:1 Dave 4:13 David 2:13 day 8:19 DEP 4:10,12 5:10 6:6,7,8 6:10 DEPARTM... 1:15 2:19 DeRaimo 2:6 3:4 4:3,17 5:9,12 6:5 6:19 7:8,12 7:19 different 6:14 directly 8:14 dismiss 5:4,14 6:2 double-check 7:20 Dr 2:4,4 5:17 drafted 5:4 duly 8:5 dyaussy@s... 2:16</p> <hr/> <p>E</p> <p>E 2:1,1 3:1,1 4:1,1 Edward 2:4 either 7:19 employee 8:11,12 encompass 6:16 Energy 1:5,6 6:6,7 environmen... 1:1,15 2:19 7:4 EQB 4:5 5:10 Esquire 2:9 2:13,14,18 everybody's 5:3 evidentiary 6:20 exactly 5:11 EXAMINA... 3:6 EXHIBIT</p>	<p>3:10 exhibits 3:11 expires 8:20</p> <hr/> <p>F</p> <p>F 3:1 facility 6:16 February 8:19 file 4:10 filed 4:5 final 5:2 7:5 finalized 6:2 financially 8:13 fine 5:3 7:10 7:11 first 4:9 foregoing 8:6 forth 8:17 forty-seven 8:18 Frame 2:18 4:15,18 5:13 6:12 7:2,7,10 Frame's 5:20 full 7:20 further 5:23 8:9</p> <hr/> <p>G</p> <p>G 2:5 4:1 GARRETT 1:20 GENERAL 2:10 generally 5:18 getting 5:5 7:12 Given 8:19 going 4:3,17 6:17 7:18 good 7:22 guys 7:22</p> <hr/> <p>H</p> <p>hand 8:19 Harrison 6:15 hearing 1:11 4:22 6:20 7:24 8:6 hold 5:5</p>	<p>I</p> <p>indirectly 8:14 intents 6:15 interested 8:13,14 Introductio... 3:3 issued 4:24,24 5:19 issues 5:24</p> <hr/> <p>J</p> <p>JANUARY 1:12 joint 5:4 Jon 4:18,20 Jonathan 2:18 jonathan.c.f... 2:20 Joseph 2:14 junger@spi... 2:16</p> <hr/> <p>K</p> <p>KANAWHA 8:3 Kenna 2:6 3:4 4:2 kenna.m.de... 2:7 know 4:7,12</p> <hr/> <p>L</p> <p>L 2:13 3:1 landfill 6:13 list 6:4 lists 4:11 LLC 1:5,6</p> <hr/> <p>M</p> <p>M 1:18 2:4,6 8:4,22 March 8:20 Mark 2:9 mark.s.weil... 2:11 marked 3:11 marriage 8:10 Marybeth 2:5 matter 8:14 meets 8:16</p>	<p>Members 2:3 mine 6:4 Mon 6:3 Monongahela 1:3,4,7,8,9 4:9,11 5:10 6:8,9 month 7:17 months 6:20 7:1,21 motions 5:4,8 5:14 multiple 8:6</p> <hr/> <p>N</p> <p>N 2:1 3:1,1 4:1 need 6:18,19 negotiations 5:21 new 4:23,24 5:19 Notary 8:4,23 number 6:14</p> <hr/> <p>O</p> <p>O 3:1,1 4:1 office 1:22 2:10,15 4:13 Okay 4:17 5:9 5:12 6:17 ongoing 5:21 order 4:6 5:15 7:13 orders 5:8 outstanding 4:4 overlap 4:7 Overview 3:4</p> <hr/> <p>P</p> <p>P 2:1,1 4:1 parties 5:19 7:14 8:10 8:12 pending 4:5 people 7:6 permit 5:21 6:13,13,14 permits 4:23 4:24 5:1,19 5:24 6:2 person 2:6,18</p>	<p>Pg 3:3,4,13 Ph.D 2:4,4 PLLC 2:14 Post 1:22 2:15 Power 1:3,4,7 1:8,9 4:10 4:11 5:10 6:3,8,9,15 probably 5:7 proceeding 5:3 proceedings 8:8 PROTECT... 1:15 2:19 protections 7:4 provided 5:6 7:4 Public 8:4,23 purposes 6:15 put 7:18</p> <hr/> <p>Q</p> <p>qualified 8:5 QUALITY 1:1 Quarrier 2:10</p> <hr/> <p>R</p> <p>R 2:1 4:1 raised 6:1 Really 7:1 record 8:8 relate 6:12 relative 5:22 8:11,12 remaining 5:17 6:2,3 Reporter 1:18 8:23 REPORTE... 3:13 8:1 REPORTL... 1:20 representat... 5:13 7:7 requirements 8:17 resolution 7:5 resolve 4:23 resolves 5:22 right 4:3,22 room 4:18</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>S</p> <p>S 2:1,9 3:1 4:1 S.E 2:19 satisfied 7:3 schedule 6:19 7:20 scheduled 7:13 scheduling 7:13 SE 1:15 see 7:5,20 SERVICE 1:20 set 6:24 8:17 short 5:14 sign 5:8 Snyder 2:4 3:3 4:2,16 5:16,17 6:21 7:13 7:15,22 Somerville 2:4 sounds 7:15 speak 4:8 7:2 SPILMAN 2:14 Sr 2:5 start 4:6,19 4:20 State 8:2,5 Station 6:15 status 1:11 4:4 7:1,8,18 Stephen 2:5 Street 1:15 2:10,19 suggest 6:24 Supply 1:5,6 6:6,7 sure 4:7 7:10</p> <hr/> <p>T</p> <p>T 3:1,1,1 take 4:18 taken 5:1,18 7:16 talked 4:20 4:21 talking 4:21 7:2,8 technical 7:6 Thank 5:16</p>	<p>7:11,22 think 5:2 6:22 third 5:9 Thomas 1:18 2:14 8:4,22 three 5:4 7:1 THURSDAY 1:12 tied 6:14 time 5:23 to-wit 8:3 today 5:7 tomorrow 5:8 transcribed 8:7 transcript 8:7 8:16 trouble 5:5 true 8:7 twenty-seven 8:17 two 4:19 7:21</p> <hr/> <p>U</p> <p>understand... 5:20,20 Unger 2:14</p> <hr/> <p>V</p> <p>v 1:3,4,5,6,7,8 1:9 versus 4:10 4:11 5:10 6:6,7,8,9 Vice 2:4 Virginia 1:1 1:15,16,23 2:11,15,20 4:10,12 6:8 6:10 8:2,5 8:18</p> <hr/> <p>W</p> <p>Wait 6:18 waiting 6:1 7:5 want 6:20 we're 5:3 7:5 7:8 We've 4:21 Weiler 2:9 6:3,17,22 7:16,17 Wendy 1:18</p>	<p>8:4,22 West 1:1,15 1:16,23 2:11,15,20 4:10,12 6:8 6:9 8:2,5,18 Winters 2:5 WITNESS 3:6 witnesses 3:7 work 7:12 worked 7:5 worth 6:1 WV 2:19 WVDEP 1:3 1:4,5,6,7,8 1:9</p> <hr/> <p>X</p> <hr/> <p>Y</p> <p>Yaussy 2:13 4:15,20 5:11,17 6:11,22,24 7:11 Yaussy's 4:13 Yeah 7:10</p> <hr/> <p>Z</p> <p>Zoom 2:4,4,5 2:5,9,14 4:17</p> <hr/> <p>0</p> <p>09-19 4:23 09-19-EQB 1:3 4:9 09-20 4:23 09-20-EQB 1:4 4:11</p> <hr/> <p>1</p> <p>10:27 1:13 10:33 1:13 1016 4:6 11-21-EQB 1:5 6:5 11-22-EQB 1:6 6:6 11-27 4:23 11-27- 5:9 11-27-EQB 1:7</p>	<p>14-10-EQB 1:8 6:7 15 8:20 16-04 6:13 16-04-EQB 1:9 6:9</p> <hr/> <p>2</p> <p>2009 4:5 2011 4:6 2014 4:6 20200 1:22 2023 1:12 8:19 2025 8:20 20th 8:19 25301 2:11 25304 2:20 25321-0273 2:15 25362 1:23 26 1:12 273 2:15</p> <hr/> <p>3</p> <p>304)346-0460 1:23</p> <hr/> <p>4</p> <p>4 3:3,4</p> <hr/> <p>5</p> <p>57th 1:15 2:19</p> <hr/> <p>6</p> <p>601 1:15 2:19</p> <hr/> <p>7</p> <hr/> <p>8</p> <p>8 3:13 812 2:10</p>			
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--