

IN THE SUPREME COURT OF OHIO

LORRI TURNER, ADMINISTRATRIX,)
etc.,)
)
Appellee,)
)
vs.)
)
OHIO BELL TELEPHONE)
COMPANY, et al.,)
)
Appellants.)

Case Nos. 2007-0035; 2007-0112

On Appeal from the Cuyahoga County
Court of Appeals, Eighth Appellate
District

Court of Appeals
Case No. CA-05-087541

MOTION OF *AMICI CURIAE* THE OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, THE TOLEDO EDISON COMPANY AND FIRSTENERGY CORP. FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Sean P. Allan, Esq. (#0043522)
(*Counsel of Record*)
ALLAN & GALLAGHER LLP
1300 The Rockefeller Building
614 W. Superior Avenue
Cleveland, Ohio 44113

John J. Spellacy, Esq. (#0065700)
1540 Leader Building
526 Superior Avenue
Cleveland, Ohio 44114

Attorneys for Plaintiff-Appellee Lorri Turner

Thomas L. Michals, Esq. (#0040822)
(*Counsel of Record*)
Anthony F. Stringer, Esq. (#0071691)
CALFEE HALTER & GRISWOLD LLP
800 Superior Avenue, Suite 1400
Cleveland, Ohio 44114-2688

*Attorneys for Defendants-Appellants SBC Ohio
& Ohio Bell Telephone Company*

Richik Sarkar, Esq. (#006993)
ULMER & BERNE LLP
Skylight Office Tower
1660 West 2nd Street, Suite 1600
Cleveland, Ohio 44113-1448
Tel: (216) 583-7000/Fax: (216) 583-7001
rsarkar@ulmer.com

*Attorney for Amici Curiae The Ohio Edison
Company, The Cleveland Electric Illuminating
Company, The Toledo Edison Company, and
FirstEnergy Corp.*

William R. Case, Esq. (#0031832)
(*Counsel of Record*)
Scott A. Campbell, Esq. (#0064974)
Jennifer E. Short, Esq. (#0070054)
THOMPSON HINE LLP
10 W. Broad Street, Suite 700
Columbus, Ohio 43215-3435

*Attorneys for Defendant-Appellant South
Central Power Company*

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SUPREME COURT OF OHIO

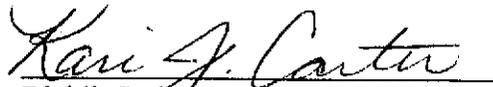
Amici Curiae, the Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, and their parent FirstEnergy Corp. (hereinafter referred to as “FirstEnergy Companies”), hereby move this Court, pursuant to Rule IX, Section 6 of the Rules of Practice of the Supreme Court of Ohio, for leave to participate in the oral argument in the above referenced case. Appellants’ counsel have not consented to sharing its allotted time for oral argument with FirstEnergy Companies. However, the FirstEnergy Companies believe that extraordinary circumstances warrant leave from the Court to participate in oral argument.

“[T]he function of an *amicus curiae* is to call the court’s attention to law or facts or circumstances in a matter then before it that may otherwise escape its consideration.” *Matthews v. Ingleside Hospital, Inc.* (1969), 21 Ohio Misc. 116, 119 (quoting 4 American Jurisprudence 2d (2006), *Amicus Curiae*, Section 6). S.Ct.Prac.R. IX(6)(A) provides that when counsel for the side whose position an *amicus curiae* supports declines consent to the *amicus curiae*’s participation in oral argument, “the *amicus curiae* may seek leave from the Supreme Court to participate...but such leave will be granted only in the most extraordinary circumstances.” Granting precious oral argument time to an *amici* is favored when *amici* can provide “information to the court on some matter of law in respect to which the court is doubtful or to call the court’s attention to a legal matter which has escaped or might escape the court’s consideration.” *Matthews*, 21 Ohio Misc. at 119 (quoting *Columbus v. Tullos* (1964), 1 Ohio App. 2d 107, first paragraph of the syllabus). Such circumstances exist here.

As demonstrated by their Briefs, the Appellants’ oral argument will likely be focused upon the facts of their individual cases and not upon the far-reaching implications for Ohio property owners and utility consumers if the *Turner* Decision is allowed to stand.

Moreover, the FirstEnergy Companies are concerned that this Court will not be fully made aware of the fact that the *Turner* Court's decision directly contradicts the provisions of Ohio Revised Code §§ 5515.01 & 5547.03. Under Ohio's comprehensive regulatory scheme, the placement and maintenance of poles in public rights-of-way are regulated by the State of Ohio through various governmental entities, including the Ohio Department of Transportation and county commissioner boards. If the Court does not overturn the *Turner* Decision, Ohio's comprehensive statutory framework will be ignored and improperly rewritten. Because the FirstEnergy Companies believe that this Court should be given the opportunity to fully consider Ohio's existing statutory scheme, pursuant to Rule IX, Section 6 of the Rules of Practice of the Supreme Court of Ohio, the FirstEnergy Companies request the opportunity to participate in oral argument.

Respectfully submitted,



Richik Sarkar, Esq. (#0069993)

(Counsel of Record)

Kari J. Carter, Esq. (#0081442)

ULMER & BERNE LLP

Skylight Office Tower

1660 West 2nd Street

Suite 1100

Cleveland, Ohio 44113-1448

Tel: (216) 583-7000/Fax: (216) 583-7001

rsarkar@ulmer.com

kcarter@ulmer.com

Attorneys for Amici Curiae The Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, and FirstEnergy Corp.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing, *Motion of Amicus Curiae The Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company and FirstEnergy Corp. for Leave to Participate in Oral Argument*, was served upon the following by regular U.S. mail, postage pre-paid, on August 22, 2007:

Sean P. Allan, Esq. (0043522)
Counsel of Record
Allan & Gallagher LLP
1300 The Rockefeller Building
614 W. Superior Avenue
Cleveland, Ohio 44113

John J. Spellacy, Esq. (0065700)
1540 Leader Building
526 Superior Avenue
Cleveland, Ohio 44114

Attorneys for Plaintiff-Appellee Lorri Turner

Thomas L. Michals, Esq. (0040822)
Counsel of Record
Anthony F. Stringer, Esq. (0071691)
Calfee Halter & Griswold LLP
800 Superior Avenue, Suite 1400
Cleveland, Ohio 44114-2688

Attorneys for Defendant-Appellants SBC Ohio & Ohio Bell Telephone Company

Kurt P. Helfrich (0068017)
Counsel of Record
Thompson Hine LLP
10 W. Broad Street, Suite 700
Columbus, Ohio 43215-3435

Attorney for Amicus Curiae Ohio Rural Electric Cooperatives, Inc.

William R. Case, Esq. (0031832)
Counsel of Record
Scott A. Campbell, Esq. (0064974)
Jennifer E. Short, Esq. (0070054)
Thompson Hine LLP
10 W. Broad Street, Suite 700
Columbus, Ohio 43215-3435

Attorneys for Defendant-Appellant South Central Power Company

Thomas E. Lodge (0015741)
Counsel of Record
Carolyn Flahive (0072404)
Thompson Hine LLP
One Columbus
10 West Broad Street
Columbus, Ohio 43215-3435

Attorneys for Amicus Curiae The Ohio Telecom Association

Andrew H. Cox (0071459)
William J. Hubbard (0077033)
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114-1216

Attorneys for Amicus Curiae Verizon North Inc.

Douglas E. Hart (0005600)
Counsel of Record
441 Vine Street, Suite 1722
Cincinnati, Ohio 45202

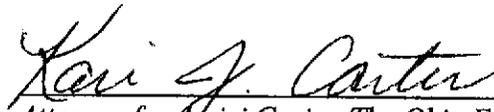
*Attorney for Amicus Curiae Cincinnati Bell
Telephone Company LLC*

Joseph R. Stewart (028763)
Counsel of Record
**United Telephone Company of Ohio, dba
Embarq**
50 W. Broad Street, Suite 3600
Columbus, Ohio 43215

Attorney for Amicus Curiae Embarq

William A. Adams (0029501)
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215-3422

*Attorneys for Amicus Curiae Windstream Ohio,
Inc. and Windstream Western Reserve, Inc.*



*Attorney for Amici Curiae The Ohio Edison Company,
The Cleveland Electric Illuminating Company, The
Toledo Edison Company, and FirstEnergy Corp.*

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