

ORIGINAL

IN THE SUPREME COURT OF OHIO

The Ohio Environmental Council,)
)
)
Appellant,)
)
v.)
)
The Public Utilities Commission)
Of Ohio,)
)
Appellee.)

Case No. 10-1977

Appeal from the Public
Utilities Commission of Ohio
Case No. 09-1940-EL-REN

**MEMORANDUM IN OPPOSITION TO FIRSTENERGY SOLUTIONS CORP.'S
APPLICATION FOR LEAVE TO INTERVENE AS AN APPELLEE
BY
THE OHIO ENVIRONMENTAL COUNCIL**

William T. Reisinger
(Reg. No. 0084327)
Nolan M. Moser
(Reg. No. 0082999)
Trent A. Dougherty
(Reg. No. 0079817)

The Ohio Environmental Council
1207 Grandview Avenue
Suite 201
Columbus, Ohio 43212
Phone: (614) 487-7506
Fax: (614) 487-7510
will@theoec.org
nolan@theoec.org
trent@theoec.org

*Attorneys for Appellant,
the Ohio Environmental Council*

Michael DeWine
(Reg. No. 0009181)
Attorney General of Ohio

William L. Wright
(Reg. No. 0018010)
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Phone: (614) 644-4396
Fax: (614) 644-8764
william.wright@puc.state.oh.us

*Attorneys for Appellee, Public Utilities
Commission of Ohio*

FILED
JAN 21 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Mark A. Hayden
(Reg. No. 0081077)
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44208
Phone: (330) 761-7735
Fax: (330) 384-3875
haydenm@firstenergycorp.com

James F. Lang
(Reg. No. 0059668)
N. Trevor Alexander
(Reg. No. 0080713)
Kevin P. Shannon
(Reg. No. 0084095)
Calfee, Halter & Griswold, LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, Ohio 44114
Phone: (216) 622-8200
Fax: (216) 241-0816
jlang@calfee.com
talexander@calfee.com
kshannon@calfee.com

*Attorneys for Intervening Appellee,
FirstEnergy Solutions Corp.*

I. INTRODUCTION

On November 15, 2010, the Ohio Environmental Council (“OEC”) filed the present appeal of a final order issued by the Public Utilities Commission of Ohio (“PUCO” or “Commission”). On January 18, 2011, FirstEnergy Solutions Corporation (“FES”) filed both a Motion for Leave to Intervene as an Appellee in this proceeding and a Motion to Dismiss the OEC’s appeal. The OEC responds to FES’s Motion to Dismiss in a separate filing on this docket. For the following reasons, FES is not authorized to intervene in this proceeding, either as an appellee or as an interested party. FES has made no attempt to show that it has a stake in the outcome of this proceeding. This court should therefore deny FES’s request for leave to intervene or, in the alternative, require FES to state with particularity its grounds for requesting leave to intervene as an appellee.

II. ARGUMENT

A. FES Has Not Stated Grounds to Support Its Request for Leave to Intervene.

FES has not attempted to demonstrate that it is a real party in interest in the proceeding or that its interests could be harmed by a decision by this court. S.Ct. R. of Practice 14.4(A) provides that all motions and applications “shall state with particularity the grounds on which [they are] based.” FES’s Motion does not state any such grounds. The OEC’s appeal contains four assignments of error, two of which challenge the lawfulness of the procedure the Commission uses when certifying biomass energy facilities as “renewable.” The OEC’s final two assignments of error challenge the lawfulness of R.C. 4928.65. The certification of the FES facility is being appealed because it presents statutory violations in the Commission’s procedural mechanisms and serves to highlight the unconstitutionality of R.C. 4928.65 as employed by the

PUCO. FES does not explain why it has an interest in the disposition of any of those four questions.

B. FES is Not an Appellee in this Proceeding.

FES has not demonstrated that it is an appellee in this proceeding. An appellee is commonly defined as “a party against whom an appeal is taken and whose role is to respond to that appeal, [usually] seeking affirmance of the lower court’s decision.”¹ In this case, FES has not demonstrated a reason to defend its application or seek an “affirmance of the lower court’s decision.”

III. CONCLUSION

FES makes no showing that it could potentially be affected by this court’s disposition of any one of the OEC’s four assignments of error. Without making such a demonstration, FES may not intervene in this proceeding. Accordingly, this court should deny FES’s Motion for Leave to Intervene as an Appellee or, in the alternative, require FES to demonstrate why it is a real party in interest in the subject matter of this appeal and entitled to intervene in this proceeding.

Respectfully Submitted,



William T. Reisinger, Counsel of Record
Nolan Moser
Trent A. Dougherty

Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
Phone: (614) 487-7506
Fax: (614) 487-7510
will@theoec.org

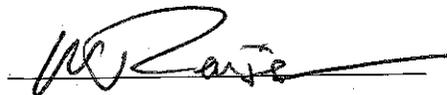
¹ Black’s Law Dictionary.

nolan@theoec.org
trent@theoec.org

Attorneys for the OEC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail this 21st day of January, 2011.



Henry W. Eckhart
Eckhart Law Office
50 West Broad Street
Suite 2117
Columbus, Ohio 43215

Terrence O'Donnell
Sally W. Bloomfield
Matthew Warnock
Bricker & Eckler, LLP
100 South Third Street
Columbus, Ohio 43215

Joseph P. Serio
Christopher J. Allwein
Ohio Consumers' Counsel
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

Tara C. Santarelli
Staff Attorney
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43204

Thomas W. McNamee
William Wright
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

James F. Lang
Trevor N. Alexander
Kevin P. Shannon
Calfee, Halter & Griswold, LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, Ohio 44114
Phone: (216) 622-8200
Fax: (216) 241-0816