

ORIGINAL

IN THE SUPREME COURT OF OHIO

Buckeye Energy Brokers, Inc.,

Appellant,

v.

The Public Utilities Commission of Ohio,

Appellee.

: Ohio Supreme Court
: Case No. 2012-0668
:
: On Appeal from the Public Utilities
: Commission of Ohio
:
: Public Utilities Commission of Ohio
: Case No. 10-693-GE-CSS
:

AMENDED MOTION OF PALMER ENERGY COMPANY
FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPELLEE

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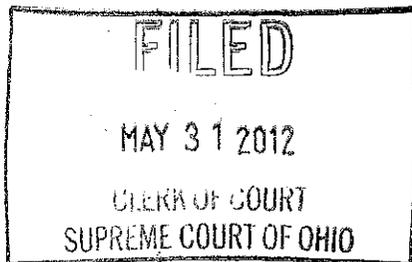
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**AMENDED MOTION OF PALMER ENERGY COMPANY
FOR LEAVE TO INTERVENE IN SUPPORT OF THE APPELLEE**

Palmer Energy Company (“Palmer”) hereby respectfully moves this Court for leave to intervene in this proceeding in support of the Appellee. This amended motion supersedes the motion that was filed on May 30, 2012. As discussed below, Palmer has a real and substantial interest in the matters that are the subject of this appeal; the disposition of this appeal may impair or impede Palmer’s ability to protect that interest; and Palmer’s interests are not adequately represented by existing parties.

Palmer Energy Company has been providing energy and utility consulting services for more than twenty years. Mark Frye, Palmer’s long term president, has advised numerous governmental bodies, industrial and commercial customers on energy markets and energy purchasing strategies. Mr. Frye has appeared as an expert witness in major rate cases before the Public Utilities Commission of Ohio (“the Commission”) because of his specialized knowledge of energy costs and rates. When Senate Bill 3 passed, Mr. Frye and Palmer Energy did not seek to avoid Commission detection; rather they filed comments concerning whether consultants should be regulated. The Commission responded in its Finding and Order to Palmer Energy’s comments and stated that it was not the intent of the Commission to regulate consultants, but if consultants performed aggregation or supplier duties, they would not be exempt just because

they were consultants. See the March 30, 2000 Finding and Order in PUCO Case No. 99-1609-AU-ORD, at page 3.

On May 21, 2010, Buckeye Energy Brokers, Inc. ("Buckeye" or "the Appellant") filed a complaint with the Commission alleging that Palmer Energy Company ("Palmer") violated Section 4928.08 and 4928.16, Revised Code by providing competitive retail electric service in Ohio without first being certified. The Appellant also alleged that Palmer violated Section 4929.20, Revised Code by providing competitive retail natural gas service without being certified by the Commission as a competitive retail natural gas supplier. Buckeye sought as its relief (a) rescission of all contracts entered into by Palmer for either the providing of competitive retail electric service and/or the providing of retail natural gas service within Ohio; (b) restitution to all customers affected by the illegal contracts including awarding damages; (c) forfeiture to the State of a fine for each failure; and (d) such other relief including attorney's fees, expert and consulting fee and other relief.

On June 9, 2010, Palmer filed an answer denying the allegations that it violated Ohio Law, claiming that as a consultant, it was not required to obtain certification. Palmer stated that it had and has acted as a consultant when working with local Ohio governments, not as an aggregator, marketer or broker. Finally, Palmer also stated that where it provided consulting services, it had done so in conjunction with a certified aggregator and a certified competitive retail service provider, so rather than having no certified aggregator or supplier, the effect of Palmer not having a certificate just clarified who had aggregation and supply responsibilities.

A hearing was held at which time four witnesses testified and over seventy-five exhibits were introduced into evidence. Initial briefs and reply briefs were filed.

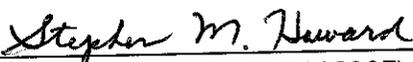
On November 1, 2011, the Commission issued its Opinion and Order concluding that Buckeye had failed to sustain its burden of proof that during the time period at issue in this

complaint, Palmer engaged in activities as a provider of competitive retail electric service and competitive retail natural gas service without obtaining a certificate from the Commission in violation of Sections 4928.08(B) and 4929.20(A), Revised Code. On December 1, Buckeye filed an application for rehearing setting forth thirteen alleged assignments of error. On December 14, 2011, the Commission issued an Entry on Rehearing granting rehearing for the purpose of giving itself more time to consider the issues raised. On February 23, 2012, the Commission issued an Entry ordering that the application for rehearing be denied.

In its appeal, Buckeye contends that the Public Utilities Commission of Ohio erred in issuing its November 1, 2011 Opinion and Order and its February 23, 2012 Entry on Rehearing. If the Appellants were to prevail in this case, Palmer Energy, along with other consultants, could be subject to Commission imposed civil forfeitures. Thus, Palmer Energy has a real and substantial interest in this proceeding that is not adequately represented by any other party and, therefore, request that its Motion to Intervene in support of the Appellee be granted.

WHEREFORE, Palmer Energy Company respectfully moves this Court for leave to intervene in this proceeding in support of the Appellee, the Public Utilities Commission of Ohio.

Respectfully submitted on behalf of,
PALMER ENERGY COMPANY

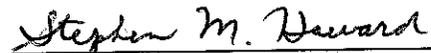


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CERTIFICATE OF SERVICE

I certify that the foregoing Amended Motion for Leave to Intervene was served upon the following persons via electronic mail and via U.S. first class mail, postage prepaid, this 31st day of May, 2012:



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