

**IN THE SUPREME COURT OF OHIO**

Industrial Energy Users-Ohio, Inc.,

Appellant,

v.

The Public Utilities Commission of Ohio,

Appellee.

**CASE NO. 13-0228**

On Appeal from the Public Utilities  
Commission of Ohio, Case No. 10-2929-EL-  
UNC, *In the Matter of the Commission  
Review of the Capacity Charges of Ohio  
Power Company and Columbus Southern  
Power Company.*

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**FIRSTENERGY SOLUTIONS CORP.'S RESPONSE TO  
PROPOSED INTERVENOR OHIO POWER COMPANY'S MOTION TO DISMISS**

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On February 21, 2013, Ohio Power Company (“AEP Ohio”) moved to intervene in this proceeding and filed a Motion to Dismiss. AEP Ohio argues that the appeal filed by Industrial Energy Users-Ohio (“IEU”) in this case should be dismissed. AEP Ohio principally argues that IEU’s appeal of the Public Utilities Commission of Ohio’s (the “Commission”) orders and entries in *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC (the “Capacity Case”) is defective because IEU (and apparently any other party) could not appeal the Commission’s entry on rehearing, dated January 30, 2013, because the application for rehearing upon which that entry was based was improper. Thus, AEP Ohio argues, IEU’s appeal in this case, based in part on the Commission’s January 30, 2013 order is improper.

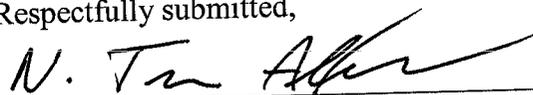
However, the Motion to Dismiss IEU’s appeal here, even if granted, has no bearing on the Notice of Cross-Appeal filed by FirstEnergy Solutions Corp. (“FES”), which FES timely filed. Because FES seeks to appeal the Commission’s orders prior to the January 30, 2013 Entry, FES’s appeal of those orders is properly before the Court in this case.

FES, as a party to the underlying Capacity Case, has the independent right to appeal the Commission’s final order in the Capacity Case. R.C. § 4909.13. In order to perfect that appeal, FES was required to comply with the relevant statutory provisions to invoke the Court’s jurisdiction. *See Craftsman Type, Inc. v. Lindley*, 6 Ohio St.3d 82, 85 451 N.E.2d 768 (1983). Thus, FES was required to file a notice of appeal with this Court setting forth the errors FES complains of within 60 days after the “date of [the Commission’s] denial of the application for rehearing.” R.C. § 4909.11. FES also was required to file the notice of appeal with the Commission and serve the notice of appeal on the Commission chairman. R.C. § 4909.13.

FES' Notice of Cross-Appeal met all of the requirements for an appeal from a Commission proceeding. Whether the Commission's final order was reflected in its December 12, 2012 Entry on Rehearing (attached as Exhibit A to the Motion to Dismiss) – as AEP Ohio argues – or its January 30, 2013 Entry on Rehearing (attached as Exhibit B to the Motion to Dismiss), FES' Notice of Appeal was timely filed on February 11, 2013 – 60 days after the earlier December 12, 2012 Entry on Rehearing. *See* FirstEnergy Solutions Corp.'s Notice of Cross-Appeal, Feb. 11, 2013 ("FES' Notice"). FES' Notice identified three specific errors in the Commission's final order. Further, FES properly served and filed its Notice of Cross-Appeal with the Commission. *See* FES' Notice. AEP Ohio's Motion to Dismiss raises no challenges or objections to the substance or form of FES' Notice of Cross-Appeal. Indeed, nothing in the statutory provisions providing FES and all other parties to the proceeding with the right to appeal make a party's appeal contingent on any other party's appeal. While there is admittedly confusion regarding the two appeal dockets instituted by IEU, the existence of two dockets does not render FES' appeal invalid or untimely.

Accordingly, regardless of whether AEP Ohio's Motion to Dismiss is granted, FES' Notice of Cross-Appeal is properly before the Court. At a minimum, if the Court grants AEP Ohio's Motion to Dismiss in this docket, FES' cross-appeal should be consolidated with the appeals perfected by other interested parties in Case No. 12-2098.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

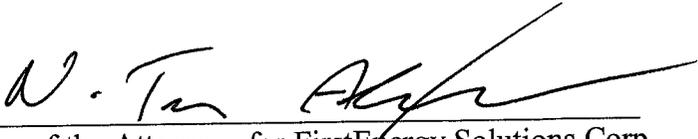
A copy of the foregoing *FirstEnergy Solutions Corp.'s Response to Proposed Intervenor Ohio Power Company's Motion to Dismiss* has been served, pursuant to Civil Rule 5(B)(2)(c), by regular U.S. mail, postage prepaid, this 4th day of March, 2013, upon the following:

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