Supreme Court of Ohio Clerk of Court - Filed November 17, 2015 - Case No. 2014-0423

IN THE SUPREME COURT OF OHIO

CLYDE A. HUPP, *et al.*,

Plaintiffs/Appellants,

vs.

BECK ENERGY CORPORATION,

Defendant/Appellee,

and

STATE OF OHIO EX REL. CLAUGUS FAMILY FARM, L.P.,

Relator,

vs.

SEVENTH DISTRICT COURT OF APPEALS, *et al.*,

Respondents.

CASE NO. 2014-1933

On Appeal from the Monroe County Court of Common Pleas, Seventh Appellate District

Court of Appeals Case Nos. 12 MO 6
13 MO 2
13 MO 3
13 MO 11

and

Original Action in Prohibition and Mandamus

CASE NO. 2014-423

APPELLEE/INTERVENING RESPONDENT BECK ENERGY CORPORATION'S MOTION FOR ADJUSTMENT OF THE ORAL-ARGUMENT SCHEDULE

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APPELLEE/INTERVENING RESPONDENT BECK ENERGY CORPORATION'S MOTION FOR ADJUSTMENT OF THE ORAL-ARGUMENT SCHEDULE

MOTION

Counsel for Appellee/Intervening Respondent, Beck Energy Corporation, moves this Court for a small adjustment in the oral-argument schedule announced by the Court on November 9, 2015. The basis for this motion is set forth in the attached memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Appellee/Intervening Respondent Beck Energy Corporation ("Beck Energy") moves the Court for a small adjustment in the oral-argument schedule in these consolidated cases so that all respondents (and XTO Energy Inc. as amicus in support of respondents) argue *after* the petitioner.

On November 9, 2015, the Court ordered oral argument to proceed as follows:

- Clyde A. Hupp, and Larry A. and Lori Hustack, et al., shall argue first and are permitted nine minutes of oral argument and may reserve time for first rebuttal;
- Beck Energy Corporation shall argue second and is permitted nine minutes of oral argument;
- XTO Energy, Inc., shall proceed as an amicus curiae in support of appellee and argue third and is permitted four minutes of oral argument;
- Claugus Family Farm, L.P., shall argue fourth and is permitted nine minutes of oral argument and may reserve time for second rebuttal; and
- The Seventh District Court of Appeals, et al., shall argue fifth and is permitted nine minutes of oral argument.

This sequence places Relator Claugus Family Farm, L.P.'s ("Claugus") argument *after* Beck Energy's and XTO's arguments, meaning Beck Energy (an intervening respondent in

that action) and XTO (an amicus in support of Beck's position in that action) would have to respond to Claugus's argument before that argument actually occurs.[1]

Beck Energy respectfully suggests that the argument will proceed more smoothly if the Court orders Claugus to proceed second rather than fourth (and leaves all other aspects of sequence and timing intact). The order would therefore be as follows:

- Clyde A. Hupp, and Larry A. and Lori Hustack, et al., shall argue first and are permitted nine minutes of oral argument and may reserve time for first rebuttal;
- Claugus Family Farm, L.P., shall argue second and is permitted nine minutes of oral argument and may reserve time for second rebuttal;
- Beck Energy Corporation shall argue third and is permitted nine minutes of oral argument;
- XTO Energy, Inc., shall proceed as an amicus curiae in support of appellee and argue fourth and is permitted four minutes of oral argument;
- The Seventh District Court of Appeals, et al., shall argue fifth and is permitted nine minutes of oral argument.

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[1] Both Beck and XTO have an interest not only in upholding the Seventh District's decision on the merits (the subject of Plaintiffs' appeal in Case No. 2014-1933), but also in defending the Seventh District Court of Appeals' decision (challenged by Claugus Family Farm, L.P. in Case No. 2014-423) to toll the class members' oil and gas leases while this litigation has been pending. Thus, Beck Energy and XTO should both be permitted to argue *after* Claugus Family Farm, L.P., and not merely after Clyde A. Hupp, et al.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that copies of *Appellee/Intervening Respondent Beck Energy Corporation's Motion for Adjustment of the Oral-Argument Schedule* was served by United States mail, pursuant to S.Ct.Prac.R. 3.11(B), this 17th day of November, 2015 upon:

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