

Latest challenge raises question of reopening FirstEnergy Solutions' bankruptcy ruling

Questions about the transparency of FirstEnergy, Energy Harbor and others are central to proceedings in multiple cases.

By Kathiann M. Kowalski

This article is provided by Eye on Ohio, the nonprofit, nonpartisan Ohio Center for Journalism in partnership with the nonprofit Energy News Network. Please join our free mailing list or the mailing list for the Energy New Network as this helps us provide more public service reporting.

Environmental groups have filed a motion asking a federal appeals court to tell FirstEnergy Solutions' bankruptcy court judge to take action in light of the alleged corruption cases in federal and state court.

The Environmental Law & Policy Center, Environmental Defense Fund, Ohio Citizen Action, and the Ohio Environmental Council want the judge to consider suspending execution of the reorganization plan that was confirmed earlier this year. The groups also hope the bankruptcy court will consider if it should revise that confirmation order and conduct additional hearings. The groups filed the motion on Oct. 5.

"We're asking the 6th Circuit to deal with these truly extraordinary circumstances," in which federal and state corruption charges relate directly to assets involved in the bankruptcy case, said Howard Learner, executive director at the Environmental Law & Policy Center. Among other things, Ohio House Bill 6 authorizes roughly \$1 billion in subsidies over the next six years for two nuclear plants owned by Energy Harbor, formerly known as FirstEnergy Solutions.

The federal and state cases allege that an unlawful conspiracy used dark money organizations to hide the source of spending from FirstEnergy (known as "Company A" in some documents), its current and former affiliates, and others in order to secure passage of HB 6 and to prevent a referendum on the law.

"The remedy that we're asking in the 6th Circuit complements what the Ohio attorney general has already asked for in its lawsuit," Learner said. As he sees it, that case effectively asks the state court to "rescramble the eggs" and undo the reorganization.

Among other things, the state's complaint asks that "each Defendant business entity and nonprofit [in the case] be dissolved or reorganized such that no agent, officer or representative found to have engaged in acts in furtherance of [the alleged wrongful conduct] retains a position within the defendant business or nonprofit entity." The state case also seeks to prevent FirstEnergy Solutions, Energy Harbor, FirstEnergy or other defendants "from receiving any monetary benefit, supplement, credit or offset created by or through" HB 6.

Energy Harbor, FirstEnergy and certain current and former subsidiaries have denied any illegal activity. They were not named as parties in the federal case but are defendants in the state case.

Likewise, former House Speaker Larry Householder and other defendants have pled not guilty, and no allegations in either case have yet been proven. Nonetheless, the environmental groups say the requested relief is within the court's authority.

"We have framed it very carefully within the 6th Circuit's equitable power to ask the bankruptcy court to consider whether it should reassess its confirmation order approving the reorganization, in light of the extraordinary revelations that have occurred since the court approved the order," Learner said.

The bankruptcy court has already delayed payment of final fees in the case, and a hearing is scheduled for Nov. 17. If the appeals court grants the groups' motion, it could open the door to a complete reexamination of the case by the bankruptcy court.

The timing on the appeals court's response is unclear. Energy Harbor, the successor to FirstEnergy Solutions, did not respond to requests for comment.

"I think transparency is always good, and I think more information about what their actual financial situation is would be helpful," said Gov. Mike DeWine during an Oct. 1 press conference, noting that questions had been raised from the beginning about the nuclear plants' need for subsidies.

But, DeWine quickly added, HB 6 "needs to be repealed because the process was so flawed that it has cast a light on this bill that it can never recover from. We've got to repeal it and figure out where we're going from there."

Bills to repeal HB 6 remain pending in the Ohio House, although further hearings have not been scheduled. Additional charges are currently slated to kick in starting in January.

"We opposed HB 6 last year and are seeking its repeal this year," said Ohio Consumers' Counsel Bruce Weston. "Ohioans should not have to pay a penny to subsidize coal and nuclear power plants. But the problem of undue influence from FirstEnergy and other utilities runs much deeper against the public interest than just HB 6. What consumers need is an overhaul of utility regulation in Ohio."

FirstEnergy CEO Chuck Jones said in the company's second quarter earnings call that a repeal of HB 6 would not affect obligations in the

settlement agreement between the company and its former subsidiary in the bankruptcy case. Energy Harbor is now considered to be separate from FirstEnergy.

"The plan of reorganization was not contingent on House Bill 6 or any other support for the nuclear plants," Jones said.

Questions of transparency

The environmental groups' motion before the federal appeals court goes beyond a possible HB 6 repeal, said Environmental Law & Policy Center attorney Margrethe Kearney. Instead, the focus is on the alleged "improper expenditures of these ... companies in bankruptcy to lobby for this bill."

A reorganization in bankruptcy lets a company restructure its debts so it can move forward as a viable business with a mostly clean slate. But full disclosure is generally a condition for the bankruptcy court's confirmation of any reorganization plan.

"The question really is what kinds of expenditures were being made here and not being disclosed to the court and not disclosed to parties that reached settlement agreements," Kearney said. "This is something that really goes to the essence of bankruptcy."

There have been numerous cases of companies using bankruptcy "as a tool for polluters to escape their liability," Kearney added. As she sees it, the bankruptcy court should care whether companies might have engaged in illegal activity, and not just focus on whether a company can come out of the proceedings and keep operating.

"That can't be what our bankruptcy system was designed to do," Kearney said.

Full disclosure is also at the heart of the Ohio Consumers' Counsel recent move to appeal a September decision from the Public Utilities Commission of Ohio that fell short of the consumer advocate's earlier request for a full independent audit.

That decision told FirstEnergy's utilities to file information, and commission spokesperson Matt Schilling said stakeholders would have "an opportunity to be involved and weigh in on the case through a formal comment period. ... It is a first step."

Nonetheless, the Ohio Consumers' Counsel filed a motion for an early appeal on Sept. 21. The

consumer advocate said regulators erred "by not ordering the hiring of an independent auditor."

FirstEnergy's Sept. 30 filing basically just told the utilities commission that any costs for political or charitable spending for HB 6 "would not have been recorded in accounts that are used to calculate the Companies' riders and charges. Therefore, the Companies' ratepayers have not paid riders or charges that include HB 6 costs."

FirstEnergy also opposed the Environmental Law & Policy Center's motion to intervene in that case, claiming that the utilities commission review "involves only the filing of initial and reply comments by interested parties."

Commission Chair Sam Randazzo had suggested to lawmakers on Sept. 16 that other parties could well intervene in the proceedings and implied that those parties might conduct discovery. He declined to answer a lawmaker's question about possible remedies because "discussions like this can have implications for publicly traded companies."

However, a detailed and independent investigation into whether utilities used ratepayer money improperly is "exactly the PUCO's domain," said former commission member Ashley Brown, who now heads the Harvard Electricity Policy Group. Arguably, not doing that could hurt a company's stock price, he added.

Basically, if an independent audit investigation confirmed that a company caught up in a scandal did nothing wrong, that should help prevent a further fall in stock prices. Alternatively, if an investigation did reveal wrongdoing, the company could then strengthen its internal governance — thus theoretically shoring up the value of its shares.

'A lot more yet to go'

Meanwhile, an investigation by the U.S. Securities and Exchange Commission of FirstEnergy's actions has reportedly begun. Several shareholder lawsuits or investigations are also underway.

And although Franklin County Judge Chris Brown ruled against the Ohio attorney general's opening move to stop Energy Harbor, FirstEnergy and others from lobbying against the repeal of HB 6, Yost's statement afterward said that was just the start.

"There's a lot more yet to go," Yost said. He also advised policymakers to use caution.

"It would be foolish for anyone to accept campaign contributions from these defendants — or, I might add, to engage in private discussions with these defendants or their lobbyists," his statement said. "Anything they have to say — and there is much for them to say — should be said in public, where the people's business ought to be conducted."



俄亥俄州东北部租房资助计划

如果你因受COVID-19经济影响而在支付租金上有困难，我们可能帮到你

833-377-RENT(7368)
NEORENTHelp.ORG

如果有任何疑问
请联络亚洲民众服务协会
电话:216-881-0330
分机号码: 8819

Funded by:

The Census is Ending its Count This Week

Respond Today!

- Clevelanders have until 5:59 a.m. EST on Oct. 16 to complete via Census website at 2020Census.gov
- Mail-in Census forms have to be postmarked by Oct. 15
- The call center's last date is Oct. 15 from 7 a.m. to 2 a.m. To begin call 844-330-2020

#CountCLE2020

Dear Residents,

The Census Bureau will be ending its online count at 5:59 a.m. EST on Friday, Oct. 16, 2020. Phone and mail responses will be available through Thursday, Oct. 15, 2020. Click here to learn more.

Getting a complete and accurate count of Cleveland is crucial to the future of our city. The 2020 Census is used to allocate funding to many programs including those that support our communities during public health emergencies like the coronavirus pandemic. I urge you and your family to complete the census today to ensure that all Clevelanders have access to essential resources like food assistance, unemployment benefits and more.

Respond to the 2020 Census today by visiting 2020census.gov. You can also respond via phone at 844-330-2020 by Thursday, Oct. 15, 2020 between 7 a.m. and 2 a.m. or by mail.

Thank you and stay safe,

Frank G. Jackson, Mayor
City of Cleveland

克里夫蘭傷痛診所

Dr. Wenning Zhao, Acupuncturist from China, Chiropractic Physician

中/西醫並用。輔以天然藥、營養藥、中藥、手法、理療、調理。治療各種痛症、傷痛。(但不用化學藥、不動手術,因此不會有化學藥的副作用或手術並發症)。接受大多數醫療保險、車保、工保。也可為車禍、工傷者出具有關路賠必要的診療報告。可以為您找當地好的律師。

趙文寧 醫生
中醫針灸師
西醫骨柱神經科
傷痛症專科

治療車禍工傷
病痛, 提供法
律索賠報告!

電話:216-581-0321
地址:Able Chiropractic Clinic
(Maple Town Shopping Center)
15751 Broadway Ave., Maple Hts, OH 44137

张涛注册会计师 CPA,MSA,MTAX

報稅服務 公司成立 公司變更 酒牌申請
各類牌照 合法省稅 改稅補稅 查稅辯護
會計簿記 商業諮詢 文件公證 生意買賣
網站設計 國際稅務 經驗豐富 準確價優

2999 Payne Ave, Suite 114, Cleveland, OH 44114
克里夫蘭亞洲商場內(麗華酒樓和百佳超市之間)
(330)776-8068 (330) 819-3067
E-mail:tzhcpa@gmail.com
www.tzhcpa.com
Global Capital Management LLC