

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION

AEP Ohio, et al., :
 :
 Plaintiffs and Intervening :
 Plaintiffs, : Case No. 09-CV-14494
 :
 vs. : Judge Pat Sheeran
 :
 State of Ohio, et al., :
 :
 Defendants. :

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2009 OCT -9 PM 12:10
CLERK OF COURTS

JUDGMENT ENTRY

Entered this 9th day of October, 2009

Plaintiffs and Intervening Plaintiffs have brought this action for declaratory and injunctive relief, alleging that Defendant Ohio Environmental Review Appeals Commission (“the Commission”) has acted contrary to law in scheduling and conducting hearings *de novo* in appeals before the Commission that limit the parties to a total of one hour for the presentation of evidence.

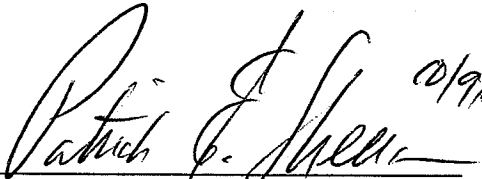
The Court finds that the Commission limited the hearings *de novo* in that fashion as to comply with deadlines for the issuance of final orders in appeals that are imposed upon the Commission by amendments to R.C. 3745.05(F) contained in Am.Sub.H.B.No.1, signed into law on July 17, 2009. The Court being advised in the premises, and based upon the pleadings, arguments and submittals of the parties, enters final judgment as follows:

1. The Commission is hereby enjoined to vacate all pending notices that schedule hearings *de novo* that limit the parties before the Commission to one hour for the presentation of evidence.

2. The provisions of R.C. 3745.05(A-E) regarding hearings *de novo* and the time limits set forth in R.C. 3745.05(F) provide conflicting statutory instructions. The Commission cannot issue final orders in appeals within those time limits while providing the parties a full opportunity to present evidence in hearings *de novo*. Since there is no language in R.C. 3745.05(F) providing that the Commission loses jurisdiction over appeals if a final order is issued after the passage of a time limit, the time limits should be construed as directory rather than mandatory, so that the statutory conflict is resolved in favor of holding full and fair hearings *de novo*;
3. The Court therefore declares that the deadlines contained in R.C. 3745.05 (F) (1), (2) and (3) are directory rather than mandatory, and do not prevent the Commission from providing to the parties that may appear before it hearings *de novo* that comport with principles of due process of law. The Court further declares that R.C. 3745.05(F) does not divest the Commission of jurisdiction to hear and issue final orders in any appeal filed with the Commission in the event that a final order is not issued within the prescribed time limits;
4. The Commission is therefore enjoined to provide in all pending appeals not decided by dispositive motion, including ERAC Case No. 785239, hearings *de novo* at which the parties are afforded a full opportunity to present admissible evidence relevant to the Commission's review of the appeals in accordance with R.C. 3745.03, 3745.04, 3745.05, 3745.06, 3745.07, and any rules promulgated thereunder;
5. All parties shall bear their own attorney fees; and

6. Defendants shall pay the court costs.

It is so ordered.

 01/19/09

Patrick E. Sheeran, Judge

Copies to: All parties