

Winston Turns the Lights On for Utilities and Puts AGs in the Dark

FEBRUARY 6, 2014

Maneuvering through nine years of litigation, three trial judges, and one month of trial, Winston & Strawn scored a huge victory for our client Allegheny Energy and the entire electric utility industry. Pennsylvania and the Attorneys General from New York, New Jersey, Connecticut, and Maryland sought more than \$1 billion in penalties and costs alleging Clean Air Act and other environmental violations. However, on February 6, 2014, the federal court in Pittsburgh completely exonerated Allegheny Energy.

Plaintiffs filed suit against Allegheny Energy (now a unit of FirstEnergy Corporation) in 2005, alleging that boiler repair and replacement projects at three Allegheny coal-fired power plants in the 1990's (and at virtually every other electric utility) violated federal and Pennsylvania air quality statutes and regulations. Plaintiffs claimed Allegheny must install prohibitively expensive new emissions-control equipment and pay penalties.

The case was originally assigned to Judge Terrence F. McVerry, but after four years of litigation, he recused himself on a motion to disqualify filed by the plaintiffs. The court then assigned the case to Chief Judge Gary Lancaster. The parties tried the case before Judge Lancaster during September 2010, and post-trial briefing continued through early 2011. Given the complexity of the case, the heavy reliance on expert witnesses, and the more than 3,000 exhibits, the court had not decided the case two and a half years later. Unfortunately, before reaching a decision and rendering a judgment, Judge Lancaster passed away in April 2013. Chief Judge Joy Flowers Conti took over the case in May 2013, and the parties agreed that she could decide the case on the trial record. On February 6, 2014, the court entered its long-awaited judgment and found for Allegheny on all counts.

Allegheny Energy's trial team consisted of attorneys Stacie Knight and Alan Stevens, along with local counsel Kevin Lucas of Buchanan Ingersoll & Rooney PC. Allegheny in-house lawyers also provided daily support in Pittsburgh along with an in-house FirstEnergy attorney during the last days of the trial.

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