

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
ENVIRONMENTAL DIVISION, COURT NO. 12
CAUSE NOS. 49F12-0307-MI-002024 and
49F12-0307-PL-002327

INDIANA-KENTUCKY ELECTRIC)
CORPORATION,)
Petitioner-Plaintiff,)
)
and)
)
INDIANA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT,)
Petitioner,)
)
v.)
)
SAVE THE VALLEY, INC.; HOOSIER)
ENVIRONMENTAL COUNCIL, INC.; and)
CITIZENS ACTION COALITION OF)
INDIANA, INC.,)
Respondents.)

FILED

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Doris Ann Sneller
CLERK OF THE
MARION CIRCUIT COURT

ORDER

Respondents, Save the Valley, Inc., Hoosier Environmental Council, Inc., and Citizens Action Coalition of Indiana, Inc., by counsel, have filed a Joint Motion to Dismiss.

The Court, being duly advised, now FINDS:

1. On July 23, 2003, Petitioner, Indiana Department of Environmental Management (“IDEM”) filed its Verified Petition for Judicial Review petitioning for judicial review of an Order of the Office of Environmental Adjudication (“OEA”) issued on June 23, 2003.
2. On August 13, 2003 Respondents filed a Joint Motion to Dismiss IDEM’s petition pursuant to Indiana Rule of Trial Procedure 12 (B)(1) for lack of subject matter jurisdiction.
3. IDEM is a proper party to this action because the OEA’s June 23, 2003 Order directly effects IDEM and IDEM was a proper party in the underlying administrative action.

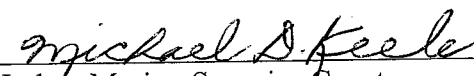
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4. Based upon Indiana case law, there are circumstances when judicial review of a non-final agency action is appropriate. See *Wilson v. Review Board of Indiana Employment Sec. Div.*, 385 N.E.2d 438 (Ind. 1979), *cert. den.*, 444 U.S. 874. IDEM has sufficiently met this burden. Therefore, IDEM is entitled to judicial review of OEA's June 23, 2003 Order.

5. Furthermore, to proceed with the administrative process without addressing the issue of OEA's jurisdiction would be futile. See *Bellamy v. Gillis*, 722 N.E.2d 905, 909 (Ind. Ct. App. 2000) [quoting *Martin v. Monroe County Plan Comm.*, 660 N.E.2d 1073, 1075 (Ind. Ct. App. 1996)]. The Indiana Court of Appeals has held that "the requirement of exhaustion of administrative remedies 'will be relaxed where there is grave doubt as to the availability of the administrative remedy.'" *Indiana Michigan Power Company v. Runge*, 717 N.E.2d 216, 226 (Ind. Ct. App. 1999) [citing *Smith v. State Lottery Com'n of Ind.*, 701 N.E.2d 926, 931 (Ind. Ct. App. 1998) (quoting *Indiana High School Athletic Ass'n v. Raikes*, 329 N.E.2d 66, 82 (Ind. 1975))]. There is no available administrative remedy in this matter. The OEA's June 23, 2003 Order denied the motion to dismiss filed by Petitioner-Plaintiff, Indiana-Kentucky Electric Corporation ("IKEC"), which sought to dismiss the matter based on a lack of standing by the Respondents. In the administrative arena there is no further recourse either IDEM or IKEC can take to argue the issue of standing and that the OEA lacks jurisdiction to hear this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondents' August 13, 2003 Joint Motion to Dismiss, is hereby **DENIED**.

So Ordered this 27TH day of October, 2003.


Judge, Marion Superior Court
Civil Division, Room No. F12

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