

Court of Appeals, State of Michigan

ORDER

In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline; In
re Application of Encana Oil & Gas re Beaver Creek Pipeline

Docket Nos. 315058; 315064

LC Nos. 00-017195; 00-017196

Patrick M. Meter
Presiding Judge

Peter D. O'Connell

Donald S. Owens
Judges

The Court orders that the motion to dismiss is DENIED because petitioner-appellee (petitioner) has not established that this Court lacks jurisdiction over these appeals. Petitioner's argument that appellants are not parties in interest within the meaning of MCL 462.26 because they were not parties to the Michigan Public Service Commission (MPSC) proceedings must be rejected because, by equating the phrase "party in interest" used in that statutory provision with the term "party," petitioner would improperly render the words "in interest" nugatory or mere surplusage. See, e.g., *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 NW 323 (2013). Rather, by using the broader phrase "party in interest," the Legislature has necessarily allowed persons or entities who are not parties to the relevant MPSC case to file an appeal of right from the relevant types of MPSC orders. Further, contrary to petitioner's argument that one needs to be a party to a case to be an aggrieved party under MCR 7.203(A), there are situations where a non-party to a case is an aggrieved party with standing to appeal. See *Abel v Grossman Investments Co*, ___ Mich App ___, ___ NW2d ___ (Docket No. 308939, issued August 15, 2013). Also, *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286; 715 NW2d 846 (2006), is inapplicable. Contrary to petitioner's discussion of that case its holding was not based on the Attorney General not being a named party. See *id.*, 296 n 10. Rather, the Attorney General was manifestly not an aggrieved party in that case because he was not pursuing an appeal based on an interest in the outcome of the particular case but merely to dispute this Court's construction of a statute. See *id.*, 290. Thus, we need not consider whether *Federated Ins Co* has been undermined by *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). However, we note that review of the June 28, 2013 MPSC order is not in the scope of the present appeals from January 31, 2013 orders of the MPSC. Rather, appellants may only challenge the January 31, 2013 MPSC orders appealed from in the present appeals.

Owens, J., would grant the motion to dismiss.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

SEP 25 2013

Date


Chief Clerk