

**BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of FirstEnergy)	
Solutions Corp. for Certification/Renewal as a)	Case No. 00-1742-EL-CRS
Certified Retail Electric Service Provider)	

**FIRSTENERGY SOLUTIONS CORP.'S
MOTION FOR PROTECTIVE ORDER**

FirstEnergy Solutions Corp. (“FES”), pursuant to O.A.C. 4901-1-24(D) and O.A.C. 4901:1-24-08, moves for a protective order keeping confidential certain information included in FES’ compliance filing Updated Exhibit C-5 of the Application for renewal of its license as a certified retail electric service (“CRES”) provider filed in response to the October 21, 2019 Entry (“Entry”) of the Attorney Examiner. Updated Exhibit C-5 is being filed contemporaneously herewith under seal. As described further in the attached Memorandum in Support of this Motion, the information included in Updated Exhibit C-5 to FES’ Application contains highly proprietary and confidential information that constitutes FES’ trade secrets and, thus, warrants protection. Indeed, the Commission has recognized the confidentiality of this information in granting previous motions, and the Attorney Examiner anticipated that Updated Exhibit C-5 may be filed confidentially under seal in the Entry.

Accordingly, FES requests that the information included in Updated Exhibit C-5, which has been clearly marked as confidential and filed under seal, be protected from public disclosure.

Respectfully submitted,

/s/ N. Trevor Alexander

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**MEMORANDUM IN SUPPORT OF
FIRSTENERGY SOLUTIONS CORP.'S MOTION FOR PROTECTIVE ORDER**

Pursuant to O.A.C. 4901-1-24(D) and O.A.C. 4901:1-24-08, FirstEnergy Solutions Corp. (“FES”) moves for a protective order keeping confidential certain information included in FES’ compliance filing Updated Exhibit C-5 of the Application for renewal of its license as a certified retail electric service (“CRES”) provider. Updated Exhibit C-5 is being filed in response to the October 21, 2019 Entry (“Entry”) of the Attorney Examiner. FES’ Updated Exhibit C-5 information has been filed under seal and FES requests that the information be protected from public disclosure going forward because it contains proprietary trade secrets regarding FES’ business operations.

O.A.C. 4901:1-24-08 recognizes the longstanding Commission policy that “financial statements, financial arrangements, and forecasted financial statements” are trade secrets worthy of protection. O.A.C. 4901:1-24-08(A) states that such information will, if filed under seal, be afforded protective treatment for a period of six years from the date of the certificate for which the information is being provided. Accordingly, FES’ Updated Exhibit C-5 information should be accorded protective treatment for six years.

In addition to this rule, FES’ financial forecasts represent highly confidential and proprietary information that would harm its ability to compete in the competitive market and that

falls squarely within the definition of a “trade secret” under Ohio law. Ohio law defines a “trade secret” as:

[A]ny business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. [And]
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.¹

Ohio law grants special protections to such trade secrets, including statutory causes of action for an injunction precluding the misappropriation of trade secrets.² The Commission has recognized the statutory obligation to protect trade secrets.³ Indeed, the Commission’s rules provide that it may issue any order “necessary to protect a party or person,” including that a “trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.”⁴ Ohio law also reflects a recognition that information associated with Ohio’s competitive market calls for particular protection.⁵

The information contained in Updated Exhibit C-5 to FES’ Application constitutes trade secrets that warrant such protection. As recognized in the Entry, as a part of the renewal process

¹ R.C. § 1333.61(D).

² See R.C. § 1333.62.

³ See *In re: General Telephone Co.*, Case No. 81-383-TP-AIR (Entry, February 17, 1982) (recognizing necessity of protecting trade secrets); See, e.g., *Elyria Tel. Co.*, Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); *Columbia Gas of Ohio, Inc.*, Case No. 90-17-GA-GCR (Entry, August 17, 1990).

⁴ O.A.C. 4901-1-24(A)(7).

⁵ See R.C. § 4928.06(F) (“The commission shall take such measures as it considers necessary to protect the confidentiality of any such information” that the commission is provided with regard to competitive retail electric service.); see also *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 370 2009-Ohio-604, ¶ 31 (2009) (citing R.C. § 4928.06(F)).

an applicant seeking to continue operations as a CRES provider, specifically a retail electric generation provider and power marketer, must submit two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant's operation. This information is requested in Updated Section C-5 of the Commission's template renewal application. Such information is highly sensitive. If FES' forecasted financial information was made public, FES' competitors would be able to access it, and could gain valuable insight as to FES' future business operations and business strategies in the competitive market. The release of FES' financial information also would jeopardize FES' position in business negotiations and its ability to compete. Because of the significant potential harm that could arise from the release of such information, FES protects its financial projections, including the information contained in Updated Exhibit C-5, as highly confidential and seeks the Commission's continued protection here. Moreover, public disclosure of this financial information is not likely to assist the Commission in carrying out its duties, since the Commission and its Staff will already have access to this information. The Commission has recognized that the Updated Exhibit C-5 information warrants protection by granting FES' previous requests for protective orders.⁶ The Entry also recognized that FES may file Updated Exhibit C-5 under seal.

Accordingly, for the foregoing reasons, FES seeks a protective order preventing public disclosure of the information designated as confidential in Updated Exhibit C-5 to its Application, which information has been filed separately under seal.

⁶ See, e.g., Opinion and Order, Nov. 2, 2000; Entry, Oct. 10, 2002; Entry Oct. 7, 2004.

Respectfully submitted,

/s/ N. Trevor Alexander

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 31st day of October, 2019. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney
One of the Attorneys for FirstEnergy
Solutions Corp.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/31/2019 8:59:42 AM

in

Case No(s). 00-1742-EL-CRS

Summary: Motion Motion for Protective Order and Memorandum in Support electronically filed by Mr. Mark T Keaney on behalf of FirstEnergy Solutions Corp.