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FirstEnergy
Solutions

341 White Pond Drive, A-WAC-C2
Akron, Ohio 44320

October 1, 2012

The Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, OH 43215-3793

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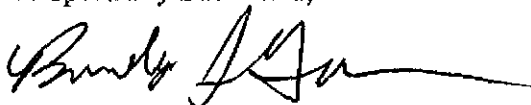
Re: **CONFIDENTIAL/FILED UNDER SEAL**
Renewal Application for FirstEnergy Solutions Corp.
Original Case No. 00-1742-EL-CRS
Exhibit C-5

Docketing Division:

Enclosed for filing is FirstEnergy Solutions Corp. **Motion for Protective Order and Exhibit C-5 of the Renewal Application.** Exhibit C-5 contains privileged and/or confidential information.

If the Commission has any questions regarding this submission, please feel free to contact me at (330) 315-6966 or via email at bgorman@fes.com and fesmarketpolicies@fes.com.

Respectfully Submitted,



Bradley J. Gorman
FirstEnergy Solutions

Enclosures

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**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), moves for a protective order keeping confidential certain information included in FES' Application for renewal of its license as a certified retail electric service ("CRES") provider, which information is being filed contemporaneously herewith under seal. As described further in the attached Memorandum in Support of this Motion, the information included in 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.

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

Respectfully submitted,

Mark A. Hayden / NTA (0080713)

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Attorney for FirstEnergy Solutions Corp.

**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)	

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

Pursuant to O.A.C. 4901-1-24(D), FirstEnergy Solutions Corp. ("FES") moves for a protective order keeping confidential information contained in Exhibit C-5 to FES' Application for renewal of its license as a competitive retail electric service ("CRES") provider. FES' 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.

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

¹ R.C. § 1333.61(D).

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 Exhibit C-5 to FES' Application constitutes trade secrets that warrant such protection. As a part of the renewal process, 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 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

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)).

the significant potential harm that could arise from the release of such information, FES protects its financial projections, including the information contained in 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 Exhibit C-5 information warrants protection by granting FES' previous requests for protective orders.⁶

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

Respectfully submitted,

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