

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

In the Matter of the Application of Energy Harbor    )  
LLC for Certification/Renewal as a Competitive        )       Case No. 00-1742-EL-CRS  
Retail Electric Service Provider.                        )

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**ENERGY HARBOR LLC’S  
MOTION FOR PROTECTIVE ORDER**

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Energy Harbor LLC (“Energy Harbor”) (f/k/a FirstEnergy Solutions Corp.), pursuant to O.A.C. 4901-1-24(D) and O.A.C. 4901:1-27-08, moves for a protective order keeping confidential certain information included in Energy Harbor’s renewal application for certification as a competitive retail electric service (“CRES”) provider (“Renewal Application”), 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 the Renewal Application contains highly proprietary and confidential information that constitutes Energy Harbor’s trade secrets and, thus, warrants protection. Indeed, the Commission has recognized the confidentiality of this information in granting previous motions.

Accordingly, Energy Harbor 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,

/s/ Trevor Alexander

N. Trevor Alexander (0080713)

Mark T. Keaney (0095318)

CALFEE, HALTER & GRISWORLD LLP

1200 Huntingon Center

41 South High Street

Columbus, OH 43215

(614) 621-1500

(614) 621-0010 (fax)

talexander@calfee.com

mkeaney@calfee.com

*Attorneys for Energy Harbor LLC*

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**MEMORANDUM IN SUPPORT OF  
ENERGY HARBOR LLC'S MOTION FOR PROTECTIVE ORDER**

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Pursuant to O.A.C. 4901-1-24(D) and O.A.C. 4901:1-27-08, Energy Harbor LLC (“Energy Harbor”) (f/k/a FirstEnergy Solutions Corp.) moves for a protective order keeping confidential information contained in Exhibit C-5 to Energy Harbor’s renewal application for certification as a competitive retail electric service (“CRES”) provider (“Renewal Application”). Energy Harbor’s Exhibit C-5 information has been filed under seal, and Energy Harbor requests that the information be protected from public disclosure going forward because it contains proprietary trade secrets regarding Energy Harbor’s business operations.

O.A.C. 4901:1-27-08 recognizes the longstanding Commission policy that “financial statements, financial arrangements, and forecasted financial statements” are trade secrets worthy of protection. O.A.C. 4901:1-27-08(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, Energy Harbor’s Exhibit C-5 information should be accorded protective treatment for six years.

In addition to this rule, Energy Harbor’s 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.<sup>1</sup>

Ohio law grants special protections to such trade secrets, including statutory causes of action for an injunction precluding the misappropriation of trade secrets.<sup>2</sup> The Commission has recognized the statutory obligation to protect trade secrets.<sup>3</sup> 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."<sup>4</sup> Ohio law also reflects a recognition that information associated with Ohio's competitive market calls for particular protection.<sup>5</sup>

The information contained in Exhibit C-5 to the Renewal Application constitutes trade secrets that warrant such protection. As a part of the renewal certification process, an applicant seeking certification renewal as a CRES provider must submit two years of forecasted financial statements (balance sheet, income statement, and cash flow statement) for the applicant's

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<sup>1</sup> R.C. § 1333.61(D).

<sup>2</sup> See R.C. § 1333.62.

<sup>3</sup> 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).

<sup>4</sup> O.A.C. 4901-1-24(A)(7).

<sup>5</sup> 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)).

operation. This information is requested in Section C-5 of the Commission's template certificate application. Such information is highly sensitive. If Energy Harbor's forecasted financial information was made public, Energy Harbor's competitors would be able to access it, and could gain valuable insight as to Energy Harbor's future business operations and business strategies in the competitive market. The release of Energy Harbor's financial information also would jeopardize Energy Harbor's position in business negotiations and its ability to compete. Because of the significant potential harm that could arise from the release of such information, Energy Harbor 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 Energy Harbor's (then operating as FirstEnergy Solutions Corp.) previous requests for protective orders.<sup>6</sup>

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

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

Respectfully submitted,

/s/ Trevor Alexander

N. Trevor Alexander (0080713)

Mark T. Keaney (0095318)

CALFEE, HALTER & GRISWORLD LLP

1200 Huntingon Center

41 South High Street

Columbus, OH 43215

(614) 621-1500

(614) 621-0010 (fax)

talexander@calfee.com

mkeaney@calfee.com

*Attorneys for Energy Harbor LLC*

**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 23rd day of March, 2020. 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 Energy Harbor  
LLC

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**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 Energy Harbor LLC