

IN THE SUPREME COURT OF OHIO

| | | |
|---------------------------------------------|---|-------------------------------------|
| In the Matter of Establishing the Clean Air |) | Case No. 2020-1488 |
| Fund Rider Pursuant to R.C. 3706.46. |) | |
| |) | Appeal from the Public Utilities |
| |) | Commission of Ohio |
| |) | |
| |) | Public Utilities Commission of Ohio |
| |) | Case No. 20-1143-EL-UNC |

**NOTICE OF FILING OF SUPPLEMENTAL AUTHORITY
BY
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

Kimberly W. Bojko (0069402)
(Counsel of Record)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4124
Facsimile: (614) 365-9145
bojko@carpenterlipps.com

COUNSEL FOR APPELLANT,
THE OHIO MANUFACTURERS'
ASSOCIATION ENERGY GROUP

David Yost (0056290)
Attorney General of Ohio

John Jones (0051913)
Section Chief, Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Telephone: (614) 466-4397
Facsimile: (614) 644-8767
john.jones@ohioattorneygeneral.gov

COUNSEL FOR APPELLEE,
PUBLIC UTILITIES COMMISSION OF
OHIO

IN THE SUPREME COURT OF OHIO

| | | |
|---------------------------------------------|---|-------------------------------------|
| In the Matter of Establishing the Clean Air |) | Case No. 2020-1488 |
| Fund Rider Pursuant to R.C. 3706.46. |) | |
| |) | Appeal from the Public Utilities |
| |) | Commission of Ohio |
| |) | |
| |) | Public Utilities Commission of Ohio |
| |) | Case No. 20-1143-EL-UNC |

**NOTICE OF FILING OF SUPPLEMENTAL AUTHORITY
BY
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

On December 17, 2020, the Ohio Manufacturers' Association Energy Group (OMAEG) filed a Motion to Stay in the above-captioned proceeding. OMAEG asked this Court to stay collection of any customer charges associated with the Clean Air Fund created by 2019 Am.Sub.H.B. No. 6. On December 21, 2020, Judge Christopher M. Brown, hearing several related and consolidated cases before the Franklin County Court of Common Pleas,¹ issued an Entry and Order, which, among other things, granted plaintiffs' motions for preliminary injunctions (Preliminary Injunction Order). The Preliminary Injunction Order enjoined the collection of the Clean Air Fund Rider charge from customers pending the final determination in those consolidated cases.²

¹ *State of Ohio ex rel. Dave Yost v. FirstEnergy Corp., et al.*, Franklin C.P. No. 20CV-06281; *City of Cincinnati, et al. v. FirstEnergy Corp., et al.*, Franklin C.P. No. 20CV-07005; and *State of Ohio ex rel. Dave Yost v. Energy Harbor Corp., et al.*, Franklin C.P. No. 20CV-07386.

² See *State of Ohio ex rel. Dave Yost v. FirstEnergy Corp., et al.*, Franklin C.P. No. 20CV-06281, Entry and Order at 3 (Dec. 21, 2020).

Pursuant to S.Ct.Prac.R. 7.04(A)(2), OMAEG hereby files the attached Preliminary Injunction Order as supplemental authority. The Preliminary Injunction Order provides further support for the need for a stay in this case. Given that the Preliminary Injunction Order may or may not be an appealable order,³ it is important for purposes of certainty of the issue that this Court moves forward in this proceeding to consider and grant a stay of the collection of the Clean Air Fund Rider charge from customers beginning on January 1, 2021.

Respectfully submitted,

/s/Kimberly W. Bojko

Kimberly W. Bojko (0069402)
(Counsel of Record)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4124
Facsimile: (614) 365-9145
bojko@carpenterlipps.com

COUNSEL FOR APPELLANT,
THE OHIO MANUFACTURERS' ASSOCIATION
ENERGY GROUP

³ OMAEG believes that an interlocutory appeal is not available for the Entry and Order, as it is a provisional remedy pursuant to R.C. 2502.02. However, a stay issued in this case will serve to preclude any unnecessary litigation as to that issue.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Filing of Supplemental Authority by the Ohio Manufacturers' Association Energy Group was served upon all parties of record via electronic transmission on December 22, 2020.

/s/ Kimberly W. Bojko

Kimberly W. Bojko

COUNSEL FOR APPELLANT
THE OHIO MANUFACTURERS' ASSOCIATION
ENERGY GROUP

COMMISSION REPRESENTATIVES AND PARTIES OF RECORD

M. Beth Trombold, Acting Chairman
Lawrence K. Friedeman, Commissioner
Dennis P. Deters, Commissioner
Daniel R. Conway, Commissioner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, Ohio 43215

David Yost
Attorney General of Ohio
John Jones
Section Chief, Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
john.jones@ohioattorneygeneral.gov

Rocco D'Ascenzo
Larisa M. Vaysman
Jeanne Kingery
Duke Energy Ohio, Inc.
139 East Fourth Street, ML 1301
Cincinnati, Ohio 45202
Rocco.DAscenzo@duke-energy.com
Larisa.Vaysman@duke-energy.com
Jeanne.Kingery@duke-energy.com

Robert Endris
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
rendris@firstenergycorp.com

Michael L. Kurtz
David F. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Michael J. Schuler
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432
michael.schuler@aes.com

Steven T. Nourse
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, Ohio 43215
Stnourse@aep.com

Michael Williams, Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, Ohio 43215
Michael.Williams@puco.ohio.gov

Matthew R. Pritchard
Rebekah J. Glover
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| STATE OF OHIO <i>ex rel.</i> Dave Yost, Ohio Attorney General, <i>Plaintiffs,</i> v. FIRSTENERGY CORP., et al,; <i>Defendants.</i> | Case No. 20CV-06281 Judge Christopher M. Brown |
| CITY OF CINCINNATI and CITY OF COLUMBUS, <i>Plaintiff,</i> v. FIRSTENERGY CORP., <i>et al.</i>, <i>Defendants</i> | Case No. 20CV-07005 Judge Christopher M. Brown |
| STATE OF OHIO <i>ex rel.</i> Dave Yost, Ohio Attorney General, <i>Plaintiff,</i> v. ENERGY HARBOR CORP., <i>et al.</i>, <i>Defendants</i> | Case No. 20CV-07386 Judge Christopher M. Brown |

**ENTRY AND ORDER GRANTING STAY OF DISCOVERY UNDER CIV.R. 26,
GRANTING RELATOR AND PLAINTIFFS' MOTIONS FOR PRELIMINARY
INJUNCTION UNDER CIV. R. 65, AND DENYING DEFENDANTS' MOTIONS TO
DISMISS UNDER CIV.R. 12(B)(6), FILED DECEMBER 21, 2020**

On December 21, 2020, this matter came for an electronic hearing via two-way video conference (Zoom) on several pending motions in the above-captioned actions. The Court heard arguments regarding the several requests to stay discovery filed by several defendants in these cases. The Court then considered Relator Dave Yost, Ohio Attorney General, and Plaintiffs City of Cincinnati and City of Columbus' Motions for Preliminary Injunction. Counsel and all interested parties were present for the hearing.

For the reasons stated on the record, the Court hereby made the following findings:

Motion to Stay Discovery

The several motions to stay discovery are hereby **GRANTED**. The Court will revisit this order at a status conference in March, 2021.

Preliminary Injunction

The Court finds Relator/Plaintiffs have shown by a preponderance of the evidence, under R.C. 2923.34, that they are likely to succeed on the merits of their claims, that they are in immediate danger of pecuniary harm, that they will suffer irreparable harm in the absence of a preliminary injunction, and that third-party interests and the public interest weigh in favor of a preliminary injunction.

The Court hereby enters the following orders:

- (1) The Public Utilities Commission of Ohio (PUCO) is ordered to REVOKE authorization for electric distribution utilities to collect the HB 6 Rider (a/k/a "the Clean Air Fund Rider" or "Rider CAF").
- (2) Defendant Energy Harbor is preliminarily enjoined from requesting redemption of Nuclear Generation Credits under R.C. 3706.41 *et seq.*;

- (3) Defendant Energy Harbor is preliminarily enjoined from accepting any distribution of remittances, redemptions, or distribution of funds from the Nuclear Generation Fund and/or Renewable Generation Fund;
- (4) Defendant Energy Harbor is preliminarily enjoined from transferring, selling, or otherwise conveying all Nuclear Generation Credits;
- (5) Defendant Air Quality Development Authority (“AQDA”) is hereby ordered to temporarily revoke and suspend the prior approval of Defendant Energy Harbor’s application;
- (6) Defendant AQDA is ordered to cease directing the Treasurer to make payments to Defendant Energy Harbor;
- (7) Defendant AQDA is preliminarily enjoined from directing the Office of Treasurer of Ohio (“Treasurer”) to make any disbursements from the Nuclear Generation fund to Energy Harbor, or any entity attempting to redeem Nuclear Generation Credits and Renewable Generation Fund previously issued to Energy Harbor;
- (8) Defendant AQDA is hereby ordered to inform PUCO that payments to Energy Harbor have temporarily ceased;
- (9) The Treasurer is ordered to refuse to receive any funds into the Nuclear Generation Funds from any retail electronic consumer or any electric distribution utility.

The Court waives any bond requirement of Rule 65(C).

The Clerk of Courts is directed to serve copies of this judgment on all counsel of record and on the Ohio Attorney General forthwith by ordinary mail.

Plaintiffs’ claims remain pending for final resolution on the merits.

Motions to Dismiss

For the reasons stated on the record, the Court finds that Case No. 20CV-7005, Count I must be dismissed as a matter of law. There are no factual circumstances within which Plaintiffs could prevail as to Count I. All remaining claims remain pending before this Court until such time as there is a final adjudication on the merits.

Final Order

The Court finds that none of the decisions contained in this order constitute final, appealable orders under R.C. 2505.02(B). Specifically, as to the preliminary injunction, the Court finds that under R.C. 2505.02(B)(4)(b), Defendants are still afforded meaningful and effective remedies if the injunction is later vacated. The Court finds the ability to extend payments under the Nuclear Generation Fund may be extended by PUCO and AQDA under R.C. 3706.46(C) and 3706.59.

The above orders are effective immediately, and will not be disturbed absent further order of this Court.

This matter shall be set for status conference on **March 5, 2021, at 9:00 a.m.** The hearing shall be conducted via two-way video conference (Zoom). All interested parties are to contact Attorney Shanda Behrens at Shanda_Behrens@fccourts.org for video access to the status conference.

IT IS SO ORDERED

Judge Christopher M. Brown

Franklin County Court of Common Pleas

Date: 12-21-2020

Case Title: STATE OF OHIO EX REL DAVE YOST -VS- FIRSTENERGY
CORP

Case Number: 20CV006281

Type: ENTRY

It Is So Ordered.

The image shows a handwritten signature in dark ink, which appears to be "Ch Brown", written over a circular official seal. The seal contains the text "COMMON PLEAS COURT", "FRANKLIN COUNTY OHIO", and "ALL THINGS ARE POSSIBLE".

/s/s Judge Christopher M. Brown

Court Disposition

Case Number: 20CV006281

Case Style: STATE OF OHIO EX REL DAVE YOST -VS-
FIRSTENERGY CORP

Final Appealable Order: No

Motion Tie Off Information:

1. Motion CMS Document Id: 20CV0062812020-10-1699950000
Document Title: 10-16-2020-MOTION TO DISMISS -
DEFENDANT: FIRSTENERGY CORP
Disposition: MOTION DENIED
2. Motion CMS Document Id: 20CV0062812020-12-1799980000
Document Title: 12-17-2020-MOTION - DEFENDANT:
FIRSTENERGY CORP - REPLY OF DEFENDANTS IN SUPPORT
OF THEIR
Disposition: MOTION RELEASED TO CLEAR DOCKET
3. Motion CMS Document Id: 20CV0062812020-11-1699980000
Document Title: 11-16-2020-MOTION TO DISMISS -
DEFENDANT: MATT BORGES
Disposition: MOTION DENIED
4. Motion CMS Document Id: 20CV0062812020-11-1799980000
Document Title: 11-17-2020-MOTION - NON-PARTY: CITY OF
COLUMBUS - FOR PRELIMINARY INJUNCTION
Disposition: MOTION GRANTED
5. Motion CMS Document Id: 20CV0062812020-12-1599950000
Document Title: 12-15-2020-MOTION TO STAY - DEFENDANT:
JEFF LONGSTRETH
Disposition: MOTION GRANTED

6. Motion CMS Document Id: 20CV0062812020-12-1199980000
Document Title: 12-11-2020-MOTION TO STAY - DEFENDANT:
LARRY HOUSEHOLDER
Disposition: MOTION GRANTED
7. Motion CMS Document Id: 20CV0062812020-09-3099830000
Document Title: 09-30-2020-MOTION FOR PROTECTIVE ORDER
- DEFENDANT: ENERGY HARBOR CORP
Disposition: MOTION RELEASED TO CLEAR DOCKET
8. Motion CMS Document Id: 20CV0062812020-12-0299980000
Document Title: 12-02-2020-MOTION TO STAY - DEFENDANT:
FIRSTENERGY CORP
Disposition: MOTION GRANTED
9. Motion CMS Document Id: 20CV0062812020-12-1699960000
Document Title: 12-16-2020-MOTION TO STAY - DEFENDANT:
JUAN CESPEDES
Disposition: MOTION GRANTED
10. Motion CMS Document Id: 20CV0062812020-11-1099960000
Document Title: 11-10-2020-MOTION FOR PRO HAC VICE -
NON-PARTY: CITY OF COLUMBUS
Disposition: MOTION RELEASED TO CLEAR DOCKET

11. Motion CMS Document Id: 20CV0062812020-11-1099970000

Document Title: 11-10-2020-MOTION FOR PRO HAC VICE -
NON-PARTY: CITY OF COLUMBUS

Disposition: MOTION RELEASED TO CLEAR DOCKET

12. Motion CMS Document Id: 20CV0062812020-12-1599940000

Document Title: 12-15-2020-MOTION TO DISMISS -
DEFENDANT: ENERGY HARBOR CORP

Disposition: MOTION DENIED

13. Motion CMS Document Id: 20CV0062812020-11-1899880000

Document Title: 11-18-2020-MOTION TO DISMISS -
DEFENDANT: LARRY HOUSEHOLDER

Disposition: MOTION DENIED

14. Motion CMS Document Id: 20CV0062812020-11-1899940000

Document Title: 11-18-2020-MOTION TO DISMISS -
DEFENDANT: JEFF LONGSTRETH

Disposition: MOTION DENIED

15. Motion CMS Document Id: 20CV0062812020-11-1899890000

Document Title: 11-18-2020-MOTION TO DISMISS -
DEFENDANT: FIRSTENERGY SOLUTIONS CORP

Disposition: MOTION DENIED

16. Motion CMS Document Id: 20CV0062812020-11-1899970000

Document Title: 11-18-2020-MOTION TO DISMISS -
DEFENDANT: JUAN CESPEDES

Disposition: MOTION DENIED

17. Motion CMS Document Id: 20CV0062812020-11-1899980000

Document Title: 11-18-2020-MOTION TO DISMISS -
DEFENDANT: NEIL CLARK

Disposition: MOTION DENIED

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/22/2020 4:54:43 PM

in

Case No(s). 20-1143-EL-UNC

Summary: Notice of Filing of Supplemental Authority by the Ohio Manufacturers' Association Energy Group in Ohio Supreme Court Case No. 2020-1488 electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group