

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 17-0974-EL-UNC
Edison Company's Compliance with)	
R.C. 4928.17 and Ohio Adm. Code)	
Chapter 4901:1-37.)	

FIRSTENERGY CORP.'S MOTION FOR A PROTECTIVE ORDER

Pursuant to Ohio Administrative Code 4901-1-24(A), FirstEnergy Corp. ("FirstEnergy") moves for a protective order finding that certain documents produced by FirstEnergy to the Office of the Ohio Consumers' Counsel ("OCC") in response to OCC's September 24, 2021 subpoena are protected from disclosure. Despite the protections afforded to certain documents under a protective agreement between OCC and FirstEnergy, OCC notified FirstEnergy that it now seeks to disclose publicly 97 documents, most of which are designated "Confidential" or "Attorneys' Eyes Only," without any showing of why these documents are relevant to this corporate separation matter. Accordingly, as discussed more fully in the accompanying memorandum, FirstEnergy respectfully requests that the Commission rule that the following documents are protected from disclosure because they (1) contain commercially sensitive information and/or (2) are non-public documents produced to the DOJ or SEC as part of ongoing federal investigations:

0002211, 0002212, 0002213, 0004318, 0004320, 0005187, 0005204, 0005205, 0005206, 0005207, 0005208, 0005209, 0005211, 0005212, 0005216, 0005218, 0005233, 0005234, 0005235, 0005236, 0005237, 0005238, 0005239, 0005240, 0005241, 0005242, 0005243, 0005244, 0005245, 0005246, 0005247, 0005248, 0005249, 0005250, 0005251, 0005252, 0005253, 0005254, 0005255, 0005423, 0005424, 0005426, 0005427, 0005431, 0005508, 0005850, 0005852, 0005853, 0006441, 0006467, 0006480, 0006863, 0006864, 0006890, 0006891, 0006892, 0006893, 0007266, 0007414, 0007416, 0007420, 0007422, 0007424, 0007426,

0007429, 0007430, 0007433, 0007435, 0007437, 0007439, 0007441, 0007443,
0007445, 0007448, 0007451, 0010256, 0298790, 0298792, 0298794, 0298796.¹

Dated: March 10, 2022

Respectfully submitted,

/s/ Corey A. Lee

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On behalf of FirstEnergy Corp.

¹ Number references throughout this motion and accompanying memorandum are to the first Bates stamps of each document, produced as "FE_CIV_SEC_#####" OCC, in its notice, lists the documents at issue by specific page ranges. To avoid any confusion, Exhibit A lists the page ranges for each document on which FirstEnergy is moving for protective treatment.

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

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I. Introduction

In response to OCC's September 24, 2021 subpoena, non-party FirstEnergy has produced and continues to produce on a rolling basis to OCC all productions to the plaintiffs in *In re FirstEnergy Corp. Securities Litigation*,² which include all documents produced by FirstEnergy to the United States District Attorney for the Southern District of Ohio (the "DOJ") and the Securities and Exchange Commission ("SEC") as part of ongoing federal investigations. Given the sensitive nature of the document productions, FirstEnergy has provided these documents to OCC pursuant to a negotiated protective agreement in order to facilitate the exchange of information (the "Protective Agreement").³ The documents within the productions are not wholesale marked confidential—rather, while some documents are designated "Confidential" or "Attorneys' Eyes Only," others are not treated as confidential and have no corresponding designation.⁴

Under the Protective Agreement, OCC must notify FirstEnergy of any intent to disclose publicly any documents with a confidential designation, after which FirstEnergy has the opportunity to seek a motion for protective order.⁵ On March 3, OCC notified FirstEnergy that it seeks to disclose 97 documents from the securities productions, claiming it "believes that many, if not all, of these" documents "contain information that is not confidential in nature."⁶ However, pursuant to the Protective Agreement and supported by governing authority, many of these 97 documents should continue to be afforded protective treatment.

² Case No. 2:20-cv-3785 (S.D. Ohio).

³ FirstEnergy Corp. and OCC Protective Agreement, attached as Exhibit B.

⁴ OCC in its March 3 notice, attached as Exhibit C, claims that "FirstEnergy has marked as confidential from the public the entirety of FirstEnergy responses to OCC subpoenas," which is not true.

⁵ Exhibit B, ¶ 9.

⁶ Exhibit C, OCC Letter, at 1.

Specifically, for the reasons explained more fully below, FirstEnergy moves to protect the following documents:

0002211, 0002212, 0002213, 0004318, 0004320, 0005187, 0005204, 0005205, 0005206, 0005207, 0005208, 0005209, 0005211, 0005212, 0005216, 0005218, 0005233, 0005234, 0005235, 0005236, 0005237, 0005238, 0005239, 0005240, 0005241, 0005242, 0005243, 0005244, 0005245, 0005246, 0005247, 0005248, 0005249, 0005250, 0005251, 0005252, 0005253, 0005254, 0005255, 0005423, 0005424, 0005426, 0005427, 0005431, 0005508, 0005850, 0005852, 0005853, 0006441, 0006467, 0006480, 0006863, 0006864, 0006890, 0006891, 0006892, 0006893, 0007266, 0007414, 0007416, 0007420, 0007422, 0007424, 0007426, 0007429, 0007430, 0007433, 0007435, 0007437, 0007439, 0007441, 0007443, 0007445, 0007448, 0007451, 0010256, 0298790, 0298792, 0298794, 0298796.

II. Argument.

Protective Agreements or analogous protective orders are routinely upheld. Ohio courts have “broad authority to fashion a protective order that protects the security of any sensitive information.” *Esparza v. Klocker*, 2015-Ohio-110, ¶ 29, 27 N.E.3d 23, 30 (Ohio Ct. App. 2015). And the Commission, under O.A.C. 4901-1-24, has the authority to fashion appropriate protective remedies, including enforcing protective agreements where necessary.⁷ Attorney Examiners can issue orders that may provide that “a trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way,” or “[i]nformation acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.” O.A.C. 4901-1-24(A)(7), (8).

⁷ O.A.C. 4901-1-24(A); *In the Matter of the Commissions Investigation into the Pass Through of Access Charge Reductions by Certain Regulated Entities.*, No. 98-842-TP-COI, 1998 WL 35466890 (P.U.C.O. Dec. 2, 1998); *In Re Telecommunications Act of 1996*, No. 96-1310-TP-COI, 2003 WL 22683338 (P.U.C.O. Aug. 25, 2003) (granting motion for protective order where movant argued that disclosure of information would violate its protective agreement and finding that the information at issue was of the kind typically accorded protective treatment in Commission proceedings); *In the Matter of the Application of First-Energy Corp. on Behalf of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Approval of Their Transition Plans & for Authorization to Collect Transition Revenues.*, No. 99-1212-EL-ETP, 2002 WL 34923883, at *1 (P.U.C.O. June 19, 2002) (granting extension of continued protective treatment over confidential materials provided to intervening parties under a protective agreement).

The Protective Agreement sets forth the governing standard for this motion. Under the Protective Agreement, “Protected Materials” are defined to include “documents, deposition testimony, or any other information designated . . . as ‘CONFIDENTIAL’ that are treated by the Producing Parties or third parties as commercially sensitive, personally sensitive, or proprietary.” These Protected Materials include, *but are not limited to*, materials meeting the definition of “trade secret” under Ohio law and material nonpublic information under Regulation FD, 17 C.F.R. 243.⁸ On the other hand, “Protected Materials” do not include any information that has entered the public domain.⁹

In the event OCC seeks to disclose any Protected Materials in the public domain, like it is doing here, Paragraph 9 of the Protective Agreement affords FirstEnergy the right to seek continued protective treatment over the disputed materials through a motion for a protective order. Under Paragraph 9, FirstEnergy need only show “that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information.”¹⁰

Accordingly, pursuant to the Protective Agreement and 4901-1-24, O.A.C., certain documents OCC now seeks to disclose publicly should remain confidential because those documents (1) contain commercially sensitive information that could harm FirstEnergy if disclosed or (2) contain non-public information that is the subject of ongoing federal investigations that has no relevance to this proceeding.

⁸ Exhibit B, ¶ 3(A).

⁹ *Id.* at ¶ 3(B).

¹⁰ *Id.* at ¶ 9.

A. Commercially Sensitive Information Is Protected From Disclosure.

By its plain terms, the Protective Agreement shields from disclosure any information that is “commercially sensitive” or “proprietary,” which “include[s], *but [is] not limited to*, materials meeting the definition of ‘trade secret’ under Ohio law and material nonpublic information under Regulation FD, 17 C.F.R. 243.”¹¹ Protective agreements and orders, such as the one at issue here, are routinely upheld in Ohio and federal proceedings.¹² And under 4901-1-24, the Commission has the authority to enforce the terms of a protective agreement to protect sensitive information.¹³

Certain documents OCC now seeks to disclose contain highly commercially sensitive and proprietary information; specifically, for this reason, FirstEnergy moves to protect the following documents, first Bates-stamped:

0004318, 0004320, 0005233, 0005234, 0005235, 0005236, 0005237, 0005238, 0005239, 0005240, 0005241, 0005242, 0005243, 0005244, 0005245, 0005246, 0005247, 0005248, 0005249, 0005250, 0005251, 0005252, 0005253, 0005254, 0005423, 0005508, 0005852, 0006441, 0006467, 0006480, 0006864, 0006890, 0006891, 0006892, 0006893, 0007266, 0010256, 0298773, 0298784.

These documents (hereinafter collectively referred to as the “Commercially Sensitive Documents”) include financial analytics, forecasting, and financial modeling extending out to 2024;¹⁴ communications among FirstEnergy personnel discussing those financials;¹⁵ earnings

¹¹ Exhibit B, ¶ 3(A).

¹² *Qashqesh v. Monster Beverage Corp.*, No. 2:20-CV-3776, 2020 WL 7028499, at *1-2 (S.D. Ohio Nov. 30, 2020); *Carpenter v. Liberty Ins. Corp.*, No. 3:17-CV-228, 2018 WL 5115791, at *3 (S.D. Ohio June 8, 2018) (finding good cause to enter similar protective order); *E3 Biofuels, LLC v. Biothane Corp.*, 2013 WL 3778804, at *3 (S.D. Ohio July 18, 2013); *Northeast Prof'l Home Care, Inc. v. Advantage Home Health Servs.*, 188 Ohio App. 3d 704, 706, 2010-Ohio-1640, P3, 936 N.E.2d 964, 966 (Ohio Ct. App. 2010).

¹³ *In Re Telecommunications Act of 1996*, No. 96-1310-TP-COI, 2003 WL 22683338 (P.U.C.O. Aug. 25, 2003) (granting motion for protective order where movant argued that disclosure of information would violate its protective agreement and finding that the information at issue was of the kind typically accorded protective treatment in Commission proceedings).

¹⁴ Documents Bates-stamped 0005234, 0005235, 0005236, 0005237, 0005238, 0005239, 0005240, 0005241, 0005242, 0005243, 0005245, 0005246, 0005247, 0005248, 0005249, 0005250, 0005251, 0005252, 0005253, 0005254).

¹⁵ Documents Bates-stamped 0005233, 0005244.

forecasts¹⁶ and communications discussing those forecasts;¹⁷ communications discussing forecasted O&M, including, in some instances, out to the year 2023;¹⁸ detailed and sensitive financials for the FirstEnergy Utilities, not limited to the Ohio utilities;¹⁹ FirstEnergy Corp. Board materials containing commercially sensitive and proprietary information and comments on and discussions surrounding draft Board materials;²⁰ and other proprietary information, including draft policies, procedures, and analyses.²¹ This commercially sensitive and proprietary information warrants protection from disclosure.

First, the Commercially Sensitive Documents are protected by the plain terms of the Protective Agreement, which safeguards “commercially sensitive” and “proprietary” information *not limited to* trade secrets. Even so, the majority of the information within these documents contain trade secrets. Ohio law defines a trade secret as information that “(1) . . . 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) . . . the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D). As for O.A.C. 4901-1-24, it allows the Attorney Examiners to issue an order to protect “[a] trade secret or other confidential research, development, commercial, or other information.”²² The Commission has long recognized its statutory duty and obligation to protect trade secrets. *See In re General Telephone Co.*, Case No. 81-383-TP-AIR,

¹⁶ Documents Bates-stamped 0005852, 0006890, 0006892.

¹⁷ Documents Bates-stamped 0006891, 0006893.

¹⁸ Documents Bates-stamped 0006441, 0006467, 0006480, 0010256,

¹⁹ Document Bates-stamped 0005423.

²⁰ Document Bates-stamped 0005508, 0006864, 0298773, 0298784.

²¹ Document Bates-stamped 0004318, 0004320, 0007266; *see also* Exhibit D, T. Ashton Affidavit.

²² O.A.C. 4901-1-24(A)(7).

Entry (Feb. 17, 1982); *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604, ¶ 30. The Commission has carried out that obligation on numerous occasions to protect trade secrets such as forecasts and growth projections.²³ Further, apart from trade secrets, the Commission can safeguard other commercially sensitive and proprietary information, especially where the parties have agreed to those protections.²⁴ The Commission should grant these same protections here.

Second, the designated information is also subject to efforts to maintain its secrecy, as is evident from FirstEnergy's treatment of this information in this proceeding and civil proceedings resulting from House Bill 6 ("HB 6") allegations, including state and federal civil RICO, derivatives, and securities suits. The majority of the Commercially Sensitive Documents are designated "Attorneys' Eyes Only" here and in other civil proceedings and thus afforded maximum protection. To FirstEnergy counsel's knowledge, the Commercially Sensitive Documents have not been disclosed publicly by any other civil litigant in the HB 6-related proceedings.²⁵ Further, even within FirstEnergy, the internal distribution of the information is restricted.²⁶ In short, this information is not disclosed outside FirstEnergy absent agreement to protect its confidentiality or

²³ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review*, Case No. 10-2326-GE-RDR, 2012 Ohio PUC LEXIS 89 at *2-7 (Jan. 25, 2012) (granting protection to growth projections and other forecasting information pursuant to Section 1333.61); *Elyria Tel. Co.*, Case No. 89-965-TP-AEC, 1989 WL 1733698, at *1 (Sept. 21, 1989) (granting protective status to competitively sensitive cost information); *Ohio Bell Tel. Co.*, Case No. 89-718-TP-ATA, 1989 WL 1732376 at *1 (May 31, 1989) (same); *In the Matter of the Joint Application of Sprint Nextel Corporation and LTD Holding Company for Consent and Approval of a Transfer of Control*, Case No. 05-1040-TP-ACO, Entry (April 27, 2007) (granting extension of protective order for detailed financial projections that included net income and projected capital expenditures).

²⁴ O.A.C. 4901-1-24(A)(7) ("[A] protective order may provide that . . . [a] trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.") (emphasis added).

²⁵ Exhibit E, C. Lee Affidavit, at ¶ 6.

²⁶ Exhibit D, T. Ashton Affidavit, at ¶ 6.

where requested in an ongoing investigation, litigation, or regulatory proceeding, and it is not otherwise ascertainable by the public through proper means.²⁷

Third, disclosure of this information could result in economic harm. This information derives actual, independent value as a result of it not being generally known or readily ascertainable or is otherwise commercially sensitive such that disclosure could provide competitors with a window into FirstEnergy's internal business operations.²⁸

Finally, FirstEnergy seeks a protective order that balances its interests in protecting its commercially sensitive and proprietary information (and preventing undue harm to a non-party) with the interests of OCC in accessing and utilizing the materials in conjunction with this proceeding.²⁹ OCC has access to the Commercially Sensitive Materials and may file them under seal if it so chooses. Additionally, any intervenors may have access to the Commercially Sensitive Materials upon execution of an appropriate protective agreement with FirstEnergy—as some intervenors already have.

Thus, FirstEnergy respectfully requests that its Commercially Sensitive Documents be accorded continuing protective treatment.

B. Non-Public Documents Produced In Ongoing Federal Investigations Should Be Protected From Disclosure.

Through the September 24, 2021 subpoena, OCC sought from non-party FirstEnergy all documents produced to the DOJ and SEC. Given the particular sensitivities surrounding the ongoing federal investigations, FirstEnergy agreed to provide OCC with all the securities

²⁷ Exhibit D, T. Ashton Affidavit, at ¶ 5.

²⁸ Exhibit D, T. Ashton Affidavit, at ¶ 7.

²⁹ Exhibit B, ¶ 1 (“The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants . . .”).

productions (which include the documents produced to the DOJ or SEC) but only pursuant to a protective agreement so that current confidentiality designations on the documents could be maintained. The Protective Agreement permits OCC “prompt access to and review of” the DOJ and SEC materials but in a “controlled manner that will allow their use for the purposes of this [p]roceeding while protecting such data from disclosure.”³⁰ Documents designated confidential that were produced to the DOJ or SEC and that have not otherwise been made public should remain confidential; these documents include:

0002211, 0002212, 0002213, 0004318, 0004320, 0005187, 0005204, 0005205, 0005206, 0005207, 0005208, 0005209, 0005211, 0005212, 0005216, 0005218, 0005233, 0005234, 0005235, 0005236, 0005237, 0005238, 0005239, 0005240, 0005241, 0005242, 0005243, 0005244, 0005245, 0005246, 0005247, 0005248, 0005249, 0005250, 0005251, 0005252, 0005253, 0005254, 0005255, 0005423, 0005424, 0005426, 0005427, 0005431, 0005508, 0005850, 0005852, 0005853, 0006441, 0006467, 0006480, 0006863, 0006864, 0006890, 0006891, 0006892, 0006893, 0007266, 0007414, 0007416, 0007420, 0007422, 0007424, 0007426, 0007429, 0007430, 0007433, 0007435, 0007437, 0007439, 0007441, 0007443, 0007445, 0007448, 0007451, 0010256, 0298773, 0298784, 0298790, 0298792, 0298794, 0298796.

For two reasons, a protective order is warranted to shield these documents from public disclosure.

First, the Protective Agreement safeguards various types of sensitive information, and its purpose is to protect non-public DOJ or SEC productions in these PUCO proceedings from wholesale disclosure. While “Protected Materials” under the Protective Agreement do not include any information or documents that exist in the public domain³¹—the documents listed above, *see supra* Section II.B., are currently afforded confidential treatment in *all* House Bill-6 related civil proceedings.³²

³⁰ Exhibit B, ¶ 1.

³¹ Exhibit B, ¶ 3(B).

³² Exhibit E, C. Lee Affidavit, ¶ 6.

Public disclosure risks compromising or interfering with ongoing federal investigations—a concern the Commission has expressly recognized when staying discovery into facts that have the potential to “interfere with the criminal investigation.”³³ The Commission has held that “it is of the utmost importance that [its] actions do not interfere with the criminal investigation by the U.S. Attorney.”³⁴ And the Commission is not alone in its stated concerns. Courts across the country likewise protect information that is the subject of ongoing criminal investigations.³⁵ To allow public disclosure of these documents now runs afoul of the purpose of the Protective Agreement, the Commission’s express concerns, and the general rule that materials should remain confidential “if their dissemination might adversely affect law enforcement interests.”³⁶ Further, counsel for FirstEnergy contacted the Assistant United States Attorneys prosecuting the criminal case to clarify the government’s position, if any, on the confidentiality of records produced during the investigation, and the government supports maintaining the confidential nature of those records to preserve the integrity of the ongoing investigation. Accordingly, the Commission should exercise its authority under O.A.C. 4901-1-24(A) to protect confidential documents produced to federal authorities as part of their ongoing investigations.

Second, an independent reason under the Protective Agreement exists warranting continued protection of these materials. The Protective Agreement prohibits the use of the

³³ Case No. 20-1629-EL-RDR, Entry, at ¶ 20 (Feb. 9, 2022).

³⁴ *Id.*

³⁵ *Flagg ex rel. Bond v. City of Detroit*, 268 F.R.D. 279, 294 (E.D. Mich. 2010) (“[T]o date, the Court’s first and foremost concern in restricting public access to certain discovery materials and processes has been to ensure that the parties’ discovery efforts do not interfere with the active and ongoing investigation”); *Shelley v. Cty. of San Joaquin*, No. 2:13-CV-0266 MCE DAD, 2015 WL 2082370, at *3 (E.D. Cal. May 4, 2015); *United States v. Smith*, 985 F. Supp. 2d 506, 531 (S.D.N.Y. 2013) (“As a general proposition, courts have repeatedly recognized that materials, including even judicial documents which are presumptively accessible, can be kept from the public if their dissemination might ‘adversely affect law enforcement interests.’”) (collecting cases).

³⁶ *Smith*, 985 F. Supp. 2d at 531.

documents beyond this proceeding. Specifically, it allows for “prompt access to and review of” the materials “in a controlled manner that will allow *their use for the purposes of this Proceeding*”; and, it reiterates that OCC is only to “use” the Protected Materials “*in conjunction with this Proceeding*.”³⁷ What OCC seeks to do here is make a large batch of documents publicly available that are related to the ongoing federal investigations and are in no way relevant to this corporate separation proceeding. For instance, OCC seeks to disclose text messages involving two former FirstEnergy executives discussing matters wholly irrelevant to this proceeding.³⁸ OCC also seeks to disclose a large batch of communications and other documents concerning payments to Partners for Progress.³⁹ Costs of payments by FirstEnergy to Partners for Progress were not allocated or otherwise charged to the FirstEnergy Ohio utilities.⁴⁰ So OCC cannot show, as it must, that it intends to use the documents “in conjunction with this” corporate separation proceeding.⁴¹ Instead, OCC’s public disclosure of these confidential documents for no relevant purpose would result in unwarranted injury—an injury the Commission has already expressly recognized.⁴² Further, OCC’s disclosure is unduly burdensome in that it forces a non-party to contend with the public disclosure of confidential information that is irrelevant to this proceeding and that has otherwise been safeguarded as confidential in all other HB 6-related proceedings.⁴³

³⁷ Exhibit B, ¶ 1, 4.

³⁸ Documents Bates-stamped 0298790, 0298792, 0298794, 0298796.

³⁹ Documents Bates-stamped 0005204, 0005205, 0005206, 0005207, 0005208, 0005209, 0005211, 0005212, 0005216, 0005218, 0005424, 0005427, 0005431, 0005850, 0005853, 0007414, 0007416, 0007420, 0007422, 0007424, 0007426, 0007429, 0007430, 0007433, 0007435, 0007437, 0007439, 0007441, 0007443, 0007445, 0007448, 0007451.

⁴⁰ Responses of Ohio Edison Company, Cleveland Electric Illuminating Company, and The Toledo Edison Company to OCC’s Eighth Set of Discovery Responses, INT-008-007, and OMAEG’s Second Set of Discovery Responses, INT-02-009.

⁴¹ Exhibit B, ¶ 4.

⁴² Case No. 20-1629-EL-RDR, Entry, at ¶ 20 (Feb. 9, 2022).

⁴³ Exhibit E, C. Lee Affidavit, ¶ 6.

III. Conclusion

For these reasons, the Companies request that the documents specifically listed in this motion and accompanying memorandum be protected from public disclosure.

Dated: March 10, 2022

Respectfully submitted,

/s/ Corey A. Lee

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On behalf of FirstEnergy Corp.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on March 10, 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Corey A. Lee
Attorney for the Companies

EXHIBIT A

Case No. 17-974-EL-UNC
FirstEnergy Corp. Motion for Protective Order

FirstBates_FE_CIV_SEC	LastBates_FE_CIV_SEC
FE CIV SEC 0002211	FE CIV SEC 0002211
FE CIV SEC 0002212	FE CIV SEC 0002212
FE CIV SEC 0002213	FE CIV SEC 0002213
FE CIV SEC 0004318	FE CIV SEC 0004318
FE CIV SEC 0004320	FE CIV SEC 0004330
FE CIV SEC 0005187	FE CIV SEC 0005188
FE CIV SEC 0005204	FE CIV SEC 0005204
FE CIV SEC 0005205	FE CIV SEC 0005205
FE CIV SEC 0005206	FE CIV SEC 0005206
FE CIV SEC 0005207	FE CIV SEC 0005207
FE CIV SEC 0005208	FE CIV SEC 0005208
FE CIV SEC 0005209	FE CIV SEC 0005210
FE CIV SEC 0005211	FE CIV SEC 0005211
FE CIV SEC 0005212	FE CIV SEC 0005215
FE CIV SEC 0005216	FE CIV SEC 0005217
FE CIV SEC 0005218	FE CIV SEC 0005221
FE CIV SEC 0005233	FE CIV SEC 0005233
FE CIV SEC 0005234	FE CIV SEC 0005234
FE CIV SEC 0005235	FE CIV SEC 0005235
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FE CIV SEC 0005245	FE CIV SEC 0005245
FE CIV SEC 0005246	FE CIV SEC 0005246
FE CIV SEC 0005247	FE CIV SEC 0005247
FE CIV SEC 0005248	FE CIV SEC 0005248
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FE CIV SEC 0005250	FE CIV SEC 0005250
FE CIV SEC 0005251	FE CIV SEC 0005251
FE CIV SEC 0005252	FE CIV SEC 0005252
FE CIV SEC 0005253	FE CIV SEC 0005253
FE CIV SEC 0005254	FE CIV SEC 0005254
FE CIV SEC 0005255	FE CIV SEC 0005255
FE CIV SEC 0005423	FE CIV SEC 0005423
FE CIV SEC 0005424	FE CIV SEC 0005425
FE CIV SEC 0005426	FE CIV SEC 0005426
FE CIV SEC 0005427	FE CIV SEC 0005430

FirstBates_FE_CIV_SEC	LastBates_FE_CIV_SEC
FE CIV SEC 0005431	FE CIV SEC 0005433
FE CIV SEC 0005508	FE CIV SEC 0005510
FE CIV SEC 0005850	FE CIV SEC 0005850
FE CIV SEC 0005852	FE CIV SEC 0005852
FE CIV SEC 0005853	FE CIV SEC 0005853
FE CIV SEC 0006441	FE CIV SEC 0006442
FE CIV SEC 0006467	FE CIV SEC 0006469
FE CIV SEC 0006480	FE CIV SEC 0006483
FE CIV SEC 0006863	FE CIV SEC 0006863
FE CIV SEC 0006864	FE CIV SEC 0006888
FE CIV SEC 0006890	FE CIV SEC 0006890
FE CIV SEC 0006891	FE CIV SEC 0006891
FE CIV SEC 0006892	FE CIV SEC 0006892
FE CIV SEC 0006893	FE CIV SEC 0006893
FE CIV SEC 0007266	FE CIV SEC 0007272
FE CIV SEC 0007414	FE CIV SEC 0007415
FE CIV SEC 0007416	FE CIV SEC 0007419
FE CIV SEC 0007420	FE CIV SEC 0007421
FE CIV SEC 0007422	FE CIV SEC 0007423
FE CIV SEC 0007424	FE CIV SEC 0007425
FE CIV SEC 0007426	FE CIV SEC 0007428
FE CIV SEC 0007429	FE CIV SEC 0007429
FE CIV SEC 0007430	FE CIV SEC 0007432
FE CIV SEC 0007433	FE CIV SEC 0007434
FE CIV SEC 0007435	FE CIV SEC 0007436
FE CIV SEC 0007437	FE CIV SEC 0007438
FE CIV SEC 0007439	FE CIV SEC 0007440
FE CIV SEC 0007441	FE CIV SEC 0007442
FE CIV SEC 0007443	FE CIV SEC 0007444
FE CIV SEC 0007445	FE CIV SEC 0007447
FE CIV SEC 0007448	FE CIV SEC 0007450
FE CIV SEC 0007451	FE CIV SEC 0007453
FE CIV SEC 0010256	FE CIV SEC 0010256
FE CIV SEC 0298773	FE CIV SEC 0298782
FE CIV SEC 0298784	FE CIV SEC 0298787
FE CIV SEC 0298790	FE CIV SEC 0298791
FE CIV SEC 0298792	FE CIV SEC 0298793
FE CIV SEC 0298794	FE CIV SEC 0298795
FE CIV SEC 0298796	FE CIV SEC 0298797

EXHIBIT B

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 17-974-EL-UNC
Edison Company's Compliance with R.C.)
4928.17 and Ohio Adm. Code Chapter)
4901:1-37.)**

)
)
**In the Matter of the 2020 Review of the) Case No. 20-1629-EL-RDR
Delivery Capital Recovery Rider of)
Ohio Edison Company, The Cleveland)
Electric Illuminating Company, and)
The Toledo Edison Company)**

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between FirstEnergy Corp. and FirstEnergy Service Co. ("Producing Parties") and the Office of the Ohio Consumers' Counsel ("Receiving Party" or "OCC") (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with Receiving Party of information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Producing Parties and Receiving Party as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Producing Parties's obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling

by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. “Proceeding” as used throughout this document means the above-captioned case, including any appeals, remands and other cases related thereto.

3. A. “Protected Materials” means documents, deposition testimony, or any other information designated under this Agreement as “CONFIDENTIAL” that are treated by the Producing Parties or third parties as commercially sensitive, personally sensitive, or proprietary. “Protected Materials” include, but are not limited to, materials meeting the definition of “trade secret” under Ohio law and material nonpublic information under Regulation FD, 17 C.F.R. 243.

B. “Protected Materials” do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Producing Parties and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

C. “Protected Materials” that are in writing shall be conspicuously marked with the appropriate designation, or counsel for the Producing Parties may orally state on the deposition record that a response to a question posed at a deposition is considered Protected Materials.

D. “Protected Materials” include documents or information that are stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, discs, networks, or tapes) (“Computerized Material”). The Producing Parties at their discretion may produce

Computerized Material in such form. To the extent that OCC reduces Computerized Material to hard copy, OCC shall conspicuously mark such hard copy as confidential.

4. Protected Materials provided in the context of this Proceeding will be provided to OCC for use by OCC in conjunction with this Proceeding. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain. Nothing in this Agreement precludes OCC from filing Protected Materials under seal or otherwise using Protected Material in ways, such as *in camera* proceedings, that do not disclose Protected Materials.

5. As used in this Agreement, the term “Authorized Representative” includes OCC’s counsel of record in this Proceeding and other attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by OCC and engaged in this Proceeding.

6. Access to Protected Materials is permitted to OCC’s Authorized Representatives who are either a signatory to this Agreement or who have executed a Non-Disclosure Certificate in the form attached hereto as Exhibit A prior to any access. OCC must treat all Protected Materials, copies thereof, information contained therein, and writings made therefrom as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings made therefrom so as to prevent voluntary disclosure to any persons other than OCC’s Authorized Representatives.

7. If any OCC Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to another Authorized Representative of OCC and if there is no such Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding

herein had been concluded. Any person who has signed the foregoing Non-Disclosure Certificate will continue to be bound by the provisions of this Agreement even if no longer so engaged.

8. In this Proceeding, OCC may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials. OCC may also disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding.

9. OCC may file Protected Materials under seal in this Proceeding whether or not OCC seeks a ruling that the Protected Materials should be in the public domain. If OCC desires to include, utilize, refer, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then OCC must first give notice (as provided in Paragraph 15) to the Producing Parties, specifically identifying each of the Protected Materials that could be disclosed in the public domain. The Producing Parties will have five (5) business days after service of OCC's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Producing Parties do not file such a motion within five (5) business days of OCC's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

10. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel, other OCC Authorized Representatives, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

11. Any portion of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

12. It is expressly understood that upon a filing made in accordance with Paragraph 9 or Paragraph 13 of this Agreement, the burden will be upon the Producing Parties to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

13. OCC will give the Producing Parties notice (as provided in Paragraph 15) if OCC receives a public records request for Protected Materials. The Producing Parties will have five (5) business days after service of OCC's notice to file a pleading before a court of competent jurisdiction to prevent disclosure of the Protected Materials in question. If the Producing Parties file such a pleading, OCC will continue to protect the Protected Materials as required by this Agreement pending an order of the court. If the Producing Parties do not file at a court of competent jurisdiction within five (5) business days of service of OCC's notice, then such Protected Materials can be deemed by OCC to be non-confidential, not a trade secret, and not subject to this Agreement. Alternatively, the Producing Parties may provide notice to OCC that the Protected Materials may be disclosed in response to a public records request.

Notwithstanding the foregoing, nothing contained herein shall alter or limit OCC's obligations under Ohio's Public Records Act (Ohio Revised Code § 149.43), to respond to a lawfully issued subpoena, or to otherwise comply with the law with respect to the Protected Materials.

14. If, under Ohio's public records law, a court awards a relator or person or party attorney's fees or statutory damages or court costs in connection with OCC's non-disclosure or delayed disclosure of Protected Materials, then the Producing Parties will pay such awarded fees, statutory damages, and/or court costs to the relator or person or party so that the State of Ohio, OCC, and OCC's employees and officials are held harmless.

15. All notices referenced in Paragraphs 9 and 13 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once OCC has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and OCC determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, OCC must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. OCC may keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs, and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, OCC does not waive any right that it may have to dispute the Producing Parties' determination regarding any material identified as confidential by the Producing Parties and to pursue those remedies that may be available to OCC

before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes OCC from filing a motion to compel.

18. By entering into this Protective Agreement, the Producing Parties do not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Producing Parties before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. This Agreement represents the entire understanding of the Parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties. Nothing in this Agreement should be construed as a waiver of sovereign immunity by OCC.

20. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

FirstEnergy Corp. and FirstEnergy Service Co.

The Office of the Ohio Consumers' Counsel

BY:

BY:

/s/ Corey A. Lee
Counsel

/s/ John Finnigan
Counsel

9/24/2021
Date

9/23/2021
Date

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	Case No. 17-974-EL-UNC
Edison Company's Compliance with R.C.)	
4928.17 and Ohio Adm. Code Chapter)	
4901:1-37.)	

In the Matter of the 2020 Review of the)	
Delivery Capital Recovery Rider of Ohio)	Case No. 20-1629-EL-RDR
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company)	

**NON-DISCLOSURE CERTIFICATE FOR
CONFIDENTIAL PROTECTED MATERIALS**

I certify my understanding that Protected Materials may be provided to me pursuant to the terms and restrictions of the Protective Agreement, last executed _____ 2021, and certify that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Materials, and any writings, memoranda, or any other form of information regarding or derived from Protected Materials will not be disclosed to anyone other than in accordance with the Protective Agreement and will be used only for the purposes of this Proceeding as defined in Paragraph 2 of the Protective Agreement.

Name: _____

Company: _____

Address: _____

Telephone: _____

Date: _____

EXHIBIT C



Office of the Ohio Consumers' Counsel

March 3, 2022

VIA EMAIL

Mr. Corey A. Lee
Partner
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114

Re: FirstEnergy Utilities Consumers, PUCO Cases 17-974-EL-UNC

Dear Mr. Lee:

Recently FirstEnergy Corp. and FirstEnergy Service Company (FirstEnergy) were ordered to provide certain documents to the Consumers' Counsel after the Attorney Examiner upheld OCC's Motion for Subpoenas over FirstEnergy's opposition. We received FirstEnergy's response to OCC's subpoenas. In this regard, FirstEnergy has marked as confidential from the public the entirety of FirstEnergy responses to OCC subpoenas. OCC believes that many, if not all, of these discovery requests, marked "CONFIDENTIAL" by FirstEnergy, contain information that is not confidential in nature.

OCC and FirstEnergy signed a protective agreement on September 24, 2021, in Case No. 17-974-EL-UNC so that FirstEnergy could share with OCC information and documents that FirstEnergy deemed confidential as "Protected Materials." A copy of the Protective Agreement is attached to this letter. Under paragraph 9 of the Protective Agreement signed in these cases, this email is notice that OCC intends to include, utilize, refer to, or copy the following materials (that FirstEnergy claims to be confidential) in the public domain:

Documents containing Bates numbers 0298780-0298799

Documents containing Bates numbers 0002211-0002213, 0004317-004319, 0004324-0004329, 0005187-0005188, 0005204-0005255, 0005423-0005431, 0005508-0005509, 0005850-0005253, 0006441-0006468, 0006480-0006481, 0006851-0006893, 0007267-0007268, 0007414-0007453, 0007481-0007487, 0009798-0009819 and 0010256.

This OCC email message will result in the documents becoming unprotected (non-confidential) unless FirstEnergy files within the five-business-day timeline of the Protective Agreement (paragraph 9) to seek a ruling that the documents are confidential.

Letter to Mr. Corey A. Lee
March 3, 2022
Page 2 of 2

By sending this email, OCC does not waive the right to identify additional discovery responses marked "CONFIDENTIAL" and to seek disclosure of any such documents in the public domain.

Best regards,

/s/ Maureen R. Willis

Maureen R. Willis (0020847)
Senior Counsel

EXHIBIT D

**No. 17-974 - FE Affidavit Re Commercially Sensitive Materials 1527738044.3
3.10.22.docx**

DocVerify ID: 551A5A36-7125-449E-A268-61DBF51D7B5E
Created: March 10, 2022 08:13:34 -8:00
Pages: 4
Remote Notary: Yes / State: OH

This document is a DocVerify VeriVaulted protected version of the document named above. It was created by a notary or on the behalf of a notary, and it is also a DocVerify E-Sign document, which means this document was created for the purposes of Electronic Signatures and/or Electronic Notary. Tampered or altered documents can be easily verified and validated with the DocVerify veriCheck system. This remote online notarization involved the use of communication technology.

Go to www.docverify.com at any time to verify or validate the authenticity and integrity of this or any other DocVerify VeriVaulted document.

E-Signature Summary**E-Signature 1: Tracy M. Ashton (TMA)**

March 10, 2022 08:29:08 -8:00 [C3650BF53646] [71.73.103.183]
tashton@firstenergycorp.com (Principal) (Personally Known)

E-Signature Notary: Matthew J. Albright (MJA)

March 10, 2022 08:29:08 -8:00 [9EA441BDD917] [98.27.177.133]
malbright@firstenergycorp.com
I, Matthew J. Albright, did witness the participants named above
electronically sign this document.



**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 17-974-EL-UNC
Edison Company's Compliance with)
R.C. 4928.17 and Ohio Adm. Code)
Chapter 4901:1-37.)**

AFFIDAVIT OF TRACY M. ASHTON

I, Tracy M. Ashton, being first duly sworn in accordance with the law, attest and state as follows:

1. I am over 18 years of age and have personal knowledge of the matters set forth in this Affidavit.
2. I am employed by FirstEnergy Service Company as Assistant Controller - Corporate. In this capacity, I am responsible for: ensuring the financial and accounting records of FirstEnergy and its subsidiaries are maintained in conformity with generally accepted accounting principles ("GAAP") and regulatory requirements; disbursements to vendors; external financial reporting; and accounting research in connection with proposed accounting standards and proposed business transactions.
3. I have reviewed and am familiar with the documents produced by FirstEnergy Corp. ("FirstEnergy") to the Office of the Ohio Consumers' Counsel that are Bates-stamped FE_CIV_SEC_0004318, 0004320, 0005233, 0005234, 0005235, 0005236, 0005237, 0005238, 0005239, 0005240, 0005241, 0005242, 0005243, 0005244, 0005245, 0005246, 0005247, 0005248, 0005249, 0005250, 0005251, 0005252, 0005253, 0005254, 0005423, 0005508, 0005852, 0006441, 0006467,



0006480, 0006864, 0006890, 0006891, 0006892, 0006893, 0007266, 0010256, 0298773, 0298784, hereinafter referred to as the “Commercially Sensitive Documents.”

4. The Commercially Sensitive Documents listed in Paragraph 3 contain the following commercially sensitive and proprietary information, including:
 - a. financial analytics, forecasting, and financial modeling extending out to 2024 (0005234, 0005235, 0005236, 0005237, 0005238, 0005239, 0005240, 0005241, 0005242, 0005243, 0005245, 0005246, 0005247, 0005248, 0005249, 0005250, 0005251, 0005252, 0005253, 0005254);
 - b. communications among FirstEnergy personnel discussing those financials listed in Paragraph 4(a) (0005233, 0005244);
 - c. earnings forecasts and communications discussing those forecasts (0005852, 0006890, 0006891, 0006892, 0006893);
 - d. communications discussing forecasted O&M, including, in some instances, extending out to the year 2023 (0006441, 0006467, 0006480, 0010256);
 - e. detailed and sensitive financials for the FirstEnergy utilities, not limited to the Ohio utilities (0005423);
 - f. FirstEnergy Corp. Board materials containing commercially sensitive and proprietary information and comments on and discussions surrounding draft Board materials (0005508, 0006864, 0298773, 0298784); and
 - g. other commercially sensitive and proprietary information, including draft policies, procedures, and analyses (0004318, 0004320, 0007266).



5. The information contained in the Commercially Sensitive Documents is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. FirstEnergy has treated the information in the Commercially Sensitive Documents as proprietary, confidential business information and/or as a trade secret. The information in the Commercially Sensitive Documents is not known to the public; where it has been disclosed outside FirstEnergy, it has only been provided confidentially subject to an appropriate protective agreement or where requested in an ongoing investigation, litigation, or regulatory proceeding.
6. Further, the information contained in the Commercially Sensitive Documents is treated as proprietary and confidential by FirstEnergy and its affiliates in the ordinary course of business. Within FirstEnergy, the financial information in the Commercially Sensitive Documents is not generally accessible by all employees, except for those employees who helped create it or need to rely on it to carry out their responsibilities. All employees are subject to FirstEnergy's policies prohibiting the disclosure of this type of financial information, except as otherwise authorized.
7. The information in the Commercially Sensitive Documents also (i) derives actual, independent value as a result of it not being generally known or readily ascertainable or (ii) is otherwise confidential business information such that disclosure could provide competitors with a window into FirstEnergy's internal business operations.

FURTHER AFFIANT SAYETH NAUGHT.



STATE OF OHIO)
) SS:
COUNTY OF ~~STARK~~)
SUMMIT

I, Tracy M. Ashton, declare under penalty of perjury that this affidavit is true and correct to the best of my knowledge, information, and belief.

Tracy M. Ashton

Tracy M. Ashton

Subscribed, sworn, and witnessed by me this 10th day of March, 2022.

Notary Public



Notarial act performed by audio-visual communication

EXHIBIT E

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 17-974-EL-UNC
Edison Company's Compliance with R.C.)
4928.17 and Ohio Adm. Code Chapter)
4901:1-37.)**

**AFFIDAVIT OF COREY A. LEE IN SUPPORT OF
FIRSTENERGY CORP.'S MOTION FOR A PROTECTIVE ORDER**

I, Corey A. Lee, counsel for FirstEnergy Corp. ("FirstEnergy"), submit this affidavit in support of FirstEnergy Corp.'s Motion for a Protective Order.


1. On September 24, 2021, the Office of the Ohio Consumers' Counsel ("OCC") filed a motion for subpoena for FirstEnergy to produce all productions in *In re FirstEnergy Corp. Securities Litigation*, No. 2:20-cv-03785 (S.D. Ohio).
2. FirstEnergy and OCC reached a negotiated resolution of OCC's subpoena, agreeing that FirstEnergy would produce on a rolling basis all documents produced to the securities plaintiffs in *In re FirstEnergy Corp. Securities Litigation*, No. 2:20-cv-03785 (S.D. Ohio).
3. FirstEnergy agreed to provide the productions to OCC pursuant to a protective agreement, attached as Exhibit B to FirstEnergy's Motion for a Protective Order.
4. Within the productions provided to OCC, some documents are designated "Confidential," some documents are designated "Attorneys' Eyes Only," and others have no confidential designation. Under FirstEnergy and OCC's agreement, documents designated "Confidential" or "Attorneys' Eyes Only" are treated as "Protected Materials" under the Protective Agreement.

5. OCC is receiving the same productions as received by the securities plaintiffs, so the confidential designations on the documents provided to OCC are the same as those provided to the securities plaintiffs.
6. To date, and to the best of my knowledge, no documents from the securities productions provided to OCC with a confidential designation have been made public by any civil litigant (including, but not limited to, the securities litigants), in federal or state court, in any civil proceeding resulting from the House Bill 6 matters.
7. Pursuant to Paragraph 9 of FirstEnergy and OCC's Protective Agreement, OCC must notify FirstEnergy prior to disclosing any Protected Materials in the public domain, after which FirstEnergy has five (5) business days to file a motion for protective order.
8. On March 3, 2022, OCC's counsel sent notice via email that it "intends to include, utilize, refer to, or copy" certain materials "in the public domain." *See* Exhibit C to FirstEnergy's Motion for a Protective Order.
9. Pursuant to Paragraph 9 of the Protective Agreement, this Motion for a Protective Order follows.

STATE OF OHIO
COUNTY OF CUYAHOGA

)
) SS:

I, Corey A. Lee, declare under penalty of perjury that this affidavit is true and correct to the best of my knowledge, information, and belief.




Corey A. Lee

Subscribed, sworn, and witnessed by me this 10th day of March, 2022.



ANTONIETTA BOCCARDI
NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
June 7, 2023



Notary Public

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/10/2022 4:24:55 PM

in

Case No(s). 17-0974-EL-UNC

Summary: Motion for Protective Order electronically filed by Mr. Corey Lee on
behalf of FirstEnergy Corp.