

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

**STATE OF OHIO** *ex rel.* Dave Yost,  
Ohio Attorney General,

Plaintiff,

v.

**FIRSTENERGY CORP., et al.,**

Defendants,

:  
:  
: Case No. 20 CV 006281  
:  
:  
: JUDGE CHRIS BROWN  
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**CITY OF CINCINNATI** and  
**CITY OF COLUMBUS,**

Plaintiffs,

v.

**FIRSTENERGY CORP., et al.,**

Defendants,

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:  
: Case No. 20 CV 007005<sup>1</sup>  
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:  
: JUDGE CHRIS BROWN  
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**STATE OF OHIO** *ex rel.*  
Dave Yost, Ohio Attorney General,

Plaintiff,

v.

**ENERGY HARBOR CORP., et al.,**

Defendants.

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:  
: Case No. 20 CV 007386<sup>2</sup>  
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:  
: JUDGE CHRIS BROWN  
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<sup>1</sup> *City of Cincinnati, et al. v. FirstEnergy Corp., et al.*, consolidated by order filed Dec. 14, 2020. This matter subsequently dismissed with prejudice on Dec. 2, 2021.

<sup>2</sup> *State of Ohio ex rel. Dave Yost v. Energy Harbor Corp., et al.*, consolidated by order filed Dec. 14, 2020.

**RENEWED<sup>3</sup> MOTION OF PLAINTIFF STATE OF OHIO *ex rel.* DAVE YOST, OHIO  
ATTORNEY GENERAL’S TO LIFT THE STAY IN PROCEEDINGS**

Plaintiff, the State of Ohio, by and through its Attorney General Dave Yost, respectfully renews its prior motion for an order lifting the current stay of proceedings.

This case was stayed “pending final resolution of all criminal proceedings in *USA v. Householder et al.*, Case No. 1:20-cr-00077-TSB (S.D. Ohio).” (Agreed Order, Feb. 8, 2021.) In that federal criminal case there were six defendants. With the guilty verdicts on March 9, 2023, the trial proceedings in that matter are concluded.

In addition to the two guilty verdicts, three of the defendants plead guilty, and one was dismissed on suggestion of death. Therefore, criminal proceedings against all defendants have been resolved, and therefore, this Court should lift the stay in this civil matter. The State will be harmed by further delay.

Additional events outside the federal criminal case also justify lifting the stay, including lead defendant FirstEnergy’s deferred prosecution agreement, FirstEnergy’s settlement of numerous civil matters, and the sale of defendant Energy Harbor assets to a Texas-based energy company, potentially complicating claims against that entity.

Criminal justice has been had. Civil justice for the State of Ohio should commence. A memorandum in support of this motion is attached hereto.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General (0056290)

DATED: March 9, 2023

/s/ Charles M. Miller  
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Deputy Attorney General  
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<sup>3</sup> The State’s initial motion was filed Nov. 9, 2021, with supplemental memos of Feb. 1, 2022, and Mar. 8, 2022, and remains decisional.

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## MEMORANDUM IN SUPPORT

### A. CASE STATUS

The Attorney General has obtained a preliminary injunction against Energy Harbor's bailout, agreed action from FirstEnergy to end its H.B. 6 income benefits, and pursued the attachment of Randazzo's assets. Yost has also defeated motions to dismiss. Yet, two and a half years after this case was filed, Answers have yet to be filed and initial discovery requests are left without response. It is time for the case to advance.

### B. THE ORIGINAL AGREED STAY

The current stay was entered as an agreed order between the State, the Cities of Columbus and Cincinnati, the FirstEnergy defendants, and the PUCO. (Agreed Order, Feb. 8, 2021.) That stay was expressly conditional: "pending final resolution of all criminal proceedings in *USA v. Householder et al.*, Case No. 1:20-cr-00077-TSB (S.D. Ohio)." (*Id.*) The condition has lapsed, and the stay should expire.

### B. THE RESOLUTION OF USA v. HOUSEHOLDER

The federal criminal case which was stalling the state civil case herein is now resolved. Criminal defendant Jeffery Longstreth entered a guilty plea on October 29, 2020; criminal defendant Juan Cespedes entered a guilty plea on October 29, 2020; criminal defendant Generation Now entered a guilty plea on February 5, 2021; criminal defendant Neil Clark is deceased and this

charges against him were dismissed on June 10, 2021; criminal defendant Matt Borges was found guilty on March 9, 2023; and criminal defendant Larry Householder was found guilty on March 9, 2023. See, various docket entries, *USA v. Householder et al.*, Case No. 1:20-cr-00077-TSB (S.D. Ohio)

Because all federal criminal defendants have had their respective charges resolved, the underlying terms of the original stay in this case are satisfied and the stay is no longer warranted.

### **C. FIRSTENERGY'S DEFERRED PROSECUTION AGREEMENT**

It is certainly obvious that the prosecution in *USA v. Householder* featured the downstream view of bribery with the named defendants being those that benefited from the flow of cash to them and/or their interests. It is logical then that at some point the view changes to be upstream, namely, where did the money come from. The source of the money was FirstEnergy and its subsidiaries. However, any concern that a potential criminal action against FirstEnergy would interrupt this civil action is no longer a worry as FirstEnergy entered into a Deferred Prosecution Agreement over a year ago. See, DPA, July 22, 2021, *USA v. FirstEnergy Corp.*, Case No. 1:21-cr-00086-TSB (S.D. Ohio).

Any concerns of a federal criminal action hanging over the lead state civil defendant herein do not justify keeping the stay in place.

### **D. FIRSTENERGY SETTLEMENTS OF NUMEROUS OTHER CIVIL MATTERS**

As a result of its conduct, FirstEnergy has been sued quite a bit. However, the delay in this case has allowed FirstEnergy it to focus on, and settle, numerous other civil matters. The case here then should idle no more.

The shareholder derivative lawsuits filed in the Northern District of Ohio, the consolidation of nine cases in Southern District of Ohio, and two consolidated Summit County Court of Common

Pleas cases have settled for \$180 million plus certain non-monetary relief, including the departures of six legacy directors who oversaw the misconduct from FirstEnergy's board of directors. (Final Judgment Approving Settlement and Order of Dismissal, Aug. 23, 2022, *Emps. Ret. Sys. of St. Louis v. Jones*, No. 2:20-cv-4813-ALM-KAJ (S.D. Ohio))

FirstEnergy has also recently settled three federal and one state ratepayer RICO class action lawsuits for the sum of \$49 million. (Opinion and Order, Dec. 5, 2022, *Smith v. FirstEnergy Corp.*, No. 2:20-cv-3987-EAS-KAJ (S.D. Ohio))

Critically, those cases only settled after discovery of hundreds of thousands of pages of documents had been turned over. Unopposed Motion for Preliminary Settlement Approval, Mar. 11, 2022, *Emps. Ret. Sys. of St. Louis v. Jones*, No. 2:20-cv-4813-ALM-KAJ (S.D. Ohio.) (plaintiffs' counsel "ultimately obtained and reviewed over 500,000 pages of documents produced by Defendants and third parties..."); Unopposed Motion for Preliminary Settlement Approval, May 2, 2022, *Smith v. FirstEnergy Corp.*, No. 2:20-cv-3987-EAS-KAJ (S.D. Ohio), Ex. A, Tab 2, pg. 13 ("...FirstEnergy Settling Parties have already provided... multiple productions of documents, totaling over 300,000 pages...")

Here, not one page has been produced because the stay from two years ago operates as a weaponized shield for all the defendants' benefit. The State's request is not burdensome, but rather would initially seek to be given production of all those documents already produced by FirstEnergy to the Dept. of Justice, the Securities and Exchange Commission, the shareholder derivative plaintiffs, and the ratepayer plaintiffs. In other words, the State asks that the stay be lifted so that FirstEnergy can begin turning over that which it has *already produced* to other litigants elsewhere. Moreover, because some of the settlements includes the departure of legacy directors, the State potentially needs to preserve testimony from those who no longer are connected to FirstEnergy.

## **E. FIRSTENERGY'S NON-SETTLED CASES CONTINUE WITHOUT DELAY**

While FirstEnergy and related defendants have been successful in settling some cases after turning over discovery, they nevertheless have continued to produce discovery in the unsettled fraud class action cases. Status Reports, Jan, 30, 2023 and Feb. 17, 2023, *In re FirstEnergy Corp. Securities Litigation (Owens v. FirstEnergy)*, 2:20-cv-3785-ALM-KAJ (S.D. Ohio). The unabated, considerable, and sustained discovery that is occurring in the federal fraud securities class actions is largely similar to that discovery that would occur in the case before this Court. Yet, while those plaintiffs have been engaged in discovery for months between each other and third parties, the plaintiffs here have yet to be given the keys to start this litigation.

The State would note that there are several pending PUCO investigations related to FirstEnergy. And the State is not unmindful of the recent letter by the US Attorney to request a stay of PUCO investigations until mid-August, 2023.

<https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A23B23B03327I03817>.

However, there is no indication that any stay in the PUCO should continue to stall the cases here against FirstEnergy, Energy Harbor, and numerous defendants related to H.B. 6. At best, any continued stay as a result of the USA's concerns should limit only a portion of the pending action herein and not continue to hold up the entire case.

## **F. ENERGY HARBOR HAS BEEN SOLD**

One of the ingredients of the new for passage of H.B. 6 was to save two Ohio nuclear power plants. Indeed, defendant FirstEnergy Solutions, the (then) owner of those power plants was placed into bankruptcy because the power plants were extreme liabilities. After emerging from bankruptcy as Energy Harbor, it appeared to have found its footing. Despite the pleas of needing billions of dollars of taxpayer-funded bailout in 2019, (defendant) Energy Harbor has been

reportedly sold for \$3 billion plus ownership interest in Vistra Corp<sup>4</sup>. The State should be permitted to move forward with its action herein to preserve documents and ensure that liabilities are not shed by corporate restructuring.

## **G. CONCLUSION**

In sum, the reason for staying these proceedings, i.e., criminal trial of Householder and others, has now concluded. Moreover, FirstEnergy has resolved any potential criminal exposure. Additionally, FirstEnergy, and other defendants, have already turned over hundreds of thousands of documents in other civil litigation to which the State has been prevented from accessing. Saliently, FirstEnergy and other defendants, continue to actively engage in discovery in cases which have not settled or been resolved. Lastly, Energy Harbor has been sold and should not be allowed additional time to create corporate layers to hide the underlying conduct at issue here. For these reasons, this Court should lift the stay in this case and allow this matter to move forward.

Respectfully submitted,

DATED: March 9, 2023

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## **CERTIFICATE OF SERVICE**

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<sup>4</sup> <https://www.prnewswire.com/news-releases/vistra-to-create-vistra-vision-a-leading-zero-carbon-generation-and-retail-platform-through-the-acquisition-of-energy-harbor-301763264.html>

I hereby certify that a true copy of the foregoing was submitted to the Clerk's electronic filing system for distribution to all parties registered as users with that system and served by electronic mail or US Mail, postage prepaid, this 9<sup>th</sup> day of March, 2023, to:

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