

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

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

**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: CITY OF CINCINNATI ET AL -VS- FIRSTENERGY CORP ET AL

Case Number: 20CV007005

Type: ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink over a circular official seal. The seal features a landscape with a sun, trees, and water, surrounded by the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" at the bottom, and "WITH GOD ALL THINGS ARE POSSIBLE" on a banner at the very bottom.

/s/s Judge Christopher M. Brown