

UNITED STATES DISTRICT COURT

for the Southern District of Ohio

In re FirstEnergy Corp. Sec. Litig.

Plaintiff

v.

Defendant

Civil Action No. 2:20-cv-03785-ALM-KAJ

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Governor Mike DeWine Riffe Center, 30th Floor, 77 South High Street, Columbus, OH 43215

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Schedule A.

Table with 2 columns: Place (Murray Murphy Moul + Basil LLP, 1114 Dublin Road, Columbus, OH 43215) and Date and Time (12/08/2023 10:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/17/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of Kevin S. Sciarani

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs Los Angeles County Employees Retirement Association and Amalgamated Bank, City of Irving Supplemental Benefit Plan, and Wisconsin Laborers' Pension Fund, who issues or requests this subpoena, are:

Kevin S. Sciarani, ksciarani@rgrdlaw.com, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, (619) 231-1058

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**SCHEDULE A**  
**(Governor Mike DeWine)**

**I. DEFINITIONS**

Unless otherwise stated, the terms set forth below are defined as follows:

1. “You” or “your” means Governor Mike DeWine, in his individual capacity and in his capacity of Governor of the State of Ohio.

2. “Action” refers to this lawsuit captioned *In re FirstEnergy Corp. Sec. Litig.*, No. 2:20-cv-03785-ALM-KAJ (S.D. Ohio).

3. “All,” “any,” and “each” shall each be construed as encompassing any and all.

4. “Communication” or “communications” means any transmittal of information (in the form of facts, ideas, inquiries, or otherwise) whether orally or by document, telephone, telecopier, mail, fax, email, voicemail, cellular phone text message, instant message, personal delivery, or by any other means, be they analog, electronic or otherwise.

5. “Concerning” means reflecting, relating to, referring to, describing, discussing, evidencing, addressing, or constituting in any way.

6. “Criminal Defendants” means, collectively or individually, Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, and Generation Now, Inc.

7. “Defendants” refers to FirstEnergy, the Individual Defendants, and the Underwriter Defendants (as each of those terms are defined below).

8. “Document” or “documents” is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A) and encompasses communications. A draft or non-identical copy is a separate document within the meaning of this term.

9. “Electronic data” refers to any original and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission

notations or highlighting of any kind), mechanical, facsimile, electronic, magnetic, digital or other programs (whether private, commercial or work-in-progress), programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail or “email,” electronic messaging services, electronic forums or discussion services, operating systems, source code of all types, programming languages, linkers and compilers, peripheral drives, PDF files, PRF files, batch files, ASCII files, crosswalks, code keys, pull down tables, logs, file layouts or any miscellaneous files or file fragments, regardless of the media on which they reside and regardless of whether said electronic data consists of an active file, backup file, deleted file, or file fragment. “Electronic data” also includes, without limitation, any items stored on computer, smartphone or tablet memory or memories, hard drives, zip drives, CD-ROM discs, or in any other vehicle for electronic or digital data storage or transmittal, files, folder tabs or containers and labels appended to or associated with any physical storage device associated with each original and each copy.

10. “Electronically stored information” or “ESI” refers to any original and non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations or highlighting of any kind), mechanical, facsimile, electronic, magnetic, digital or other programs, programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail or “email,” operating systems, source code of all types, programming languages, linkers and compilers, peripheral drives, PDF files, PRF files, batch files, ASCII files, crosswalks, code keys, pull-down tables, logs, file layouts or any miscellaneous files or file fragments, regardless of the media on which they reside and regardless of whether said electronic data consists

of an active file, backup file, deleted file, or file fragment. “ESI” also includes, without limitation, any items stored on computer memory or memories, hard drives, zip drives, CD-ROM discs or in any other vehicle for electronic or digital data storage or transmittal, files, folder tabs, or containers and labels appended to or associated with any physical storage device associated with each original and each copy. “ESI” also includes, without limitation, any MMS or SMS text messages and any electronic instant messages, including, but not limited to, messages in an internal messaging system or external personal account on desktop, laptop, mobile phone, tablet, or other mobile device, concerning the topics in the following requests.

11. “FirstEnergy” or the “Company” refers to FirstEnergy Corp., any of its direct or indirect subsidiaries, including FirstEnergy Solutions Corp. (“FES”), FirstEnergy Nuclear Operating Company (“FENOC”), FirstEnergy Service Corporation (“FESC”), and Energy Harbor LLC, Energy Harbor Corp. and Energy Harbor Nuclear Corp. (collectively, “Energy Harbor”), divisions or affiliates (foreign and domestic), predecessors, successors, present and former officers, directors, employees, agents, and all other persons acting or purporting to act on its behalf.

12. “Government Entity” refers to any agency or instrumentality of any domestic, foreign or international state, country, municipality or other government, including multijurisdictional agencies and instrumentalities, including, but not limited to, the Ohio legislature and any of its committees or subcommittees, the Office of the Ohio Consumers’ Counsel, the DOJ, the SEC, the Federal Election Commission, the Ohio Elections Commission, PUCO, the U.S. Department of Energy, the Federal Energy Regulatory Commission, the Federal Bureau of Investigation, the investigative or enforcement arm of any country, state, municipality, any United States Attorney, any Attorney General and any District Attorney.

13. “HB6” refers to Ohio House Bill 6, which was a purported “clean energy” bill designed to incentivize low carbon dioxide emitting power production, in particular nuclear power

generation, and included a ratepayer-funded \$1.3 billion bailout of the Nuclear Plants (defined below), as well as a ratepayer-funded decoupling provision worth some \$700 million in subsidized revenues for FirstEnergy.

14. “Identify,” with respect to documents, means to give, to the extent known, the: (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s).

15. “Identify,” with respect to persons, means to give, to the extent known, the person’s full name, present or last known address, present or last known email address and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

16. “Individual Defendants” refers to Charles E. Jones, James F. Pearson, Steven E. Strah, K. Jon Taylor, Michael J. Dowling, Dennis M. Chack, Robert Reffner, Leila L. Vespoli, John Judge, Donald R. Schneider, George M. Smart, Paul T. Addison, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O’Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Jerry Sue Thornton, Leslie Turner, and Jason J. Lisowski.

17. “Industrial Energy Users-Ohio” or “IEU-Ohio” refers to Industrial Energy Users-Ohio and any of their direct or indirect subsidiaries, divisions or affiliates (foreign and domestic), predecessors, successors, present and former officers, directors, employees, agents, and all other persons acting or purporting to act on its behalf.

18. “Nuclear Plants” refers to the Perry Nuclear Generating Station and the Davis-Besse Nuclear Power Station.

19. “Person” or “persons” means any natural person or any legal entity, including, without limitation, any business or government entity or association.

20. “PUCO” means the Public Utilities Commission of Ohio.

21. “Randazzo” means the individual named Samuel C. Randazzo, an attorney licensed in Ohio, who is a former chairman of the Public Utilities Commission of Ohio.

22. “SEC” refers to the U.S. Securities and Exchange Commission.

23. “Underwriter Defendants,” collectively and each individually an “Underwriter Defendant,” refers to Barclays Capital Inc., BofA Securities, Inc., Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Mizuho Securities USA LLC, PNC Capital Markets LLC, RBC Capital Markets, LLC, Santander Investment Securities Inc., Scotia Capital (USA) Inc., SMBC Nikko Securities America, Inc., CIBC World Markets Corp., KeyBanc Capital Markets Inc., TD Securities (USA) LLC, U.S. Bancorp Investments, Inc., and MUFG Securities Americas Inc. and any of their direct or indirect subsidiaries, divisions or affiliates (foreign and domestic), predecessors, successors, present and former officers, directors, employees, agents, and all other persons acting or purporting to act on their behalf.

24. “ZEN” means the Zero Emission Nuclear Resource Program energy proposals outlined in Ohio House Bill 178, Ohio Senate Bill 128, and Ohio House Bill 381 in 2017.

25. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

## **II. INSTRUCTIONS**

1. In responding to these requests, you shall produce all responsive documents which are in your possession, custody, or control, or in the possession, custody, or control of your predecessors, successors, parents, subsidiaries, divisions or affiliates, or any of your respective

directors, executives, officers, partners, managing agents, agents, employees, attorneys, accountants, or any other representative. A document shall be deemed to be within your control if you have the ability or right to secure the document or a copy of the document from another person having possession or custody of the document.

2. Pursuant to the Federal Rules of Civil Procedure, you are to produce for inspection and copying by Plaintiffs, original documents as they are kept in the usual course of business and you shall organize and label them to correspond with the categories in these requests.

3. In responding to these requests, you shall produce all responsive documents available at the time of production and you shall supplement your responses as required by Federal Rule of Civil Procedure 26(e).

4. If any responsive document was, but no longer is, in your possession or subject to your control, state whether the document is: (a) missing or lost; (b) destroyed; (c) transferred voluntarily or involuntarily to others; or (d) otherwise disposed of, and in each instance identify the name and address of its current or last known custodian, and the circumstances surrounding such disposition.

5. If you claim any form of privilege or any other objection, whether based on statute, common law, or otherwise, as a ground for not producing any requested document or portion of a document, please furnish a list identifying each document for which the privilege or other objection is claimed together with the following information:

- (a) the privilege being asserted;
- (b) the person on whose behalf the privilege is asserted;
- (c) a precise statement of the facts upon which the claim of privilege is based;

and

- (d) identify the purported privileged document, including:

- (e) its nature, *e.g.*, letter, memorandum, tape, etc.;
- (f) the date it was prepared;
- (g) the date the document bears;
- (h) the date the document was sent;
- (i) the date it was received;
- (j) the name(s) of the person(s) who prepared the document;
- (k) the name(s) of the person(s) who received the document;
- (l) the name of each person to whom it was sent or was intended to be sent,

including all addresses and all recipients of copies; and

(m) a statement of whom each identified person represented or purported to represent at all relevant times.

6. If a portion of any document responsive to these requests is withheld under a claim of privilege pursuant to Instruction No. 5, any non-privileged portion of such document must be produced with the portion claimed to be privileged redacted.

7. You are to produce each document requested herein in its entirety, without deletion or excision (except as qualified by Instruction Nos. 5 and 6 above) regardless of whether you consider the entire document to be relevant or responsive to the requests.

8. Provide a source list that clearly identifies who maintained the document and identifies the person or location it was collected from.

### **III. PRODUCTION OF HARD COPY DOCUMENTS AND ESI – FORMAT**

Hard copy documents and ESI shall be produced according to the Joint Protocol For Production of Documents and Electronically Stored Information (ECF 204) (“Protocol”), filed on October 5, 2021 in this Action. A copy of the Protocol is attached hereto as Exhibit A.

#### **IV. RELEVANT TIME PERIOD**

All requests herein refer to the period from January 1, 2018 through December 31, 2020 (“Relevant Time Period”), unless otherwise specifically indicated, and shall include all documents and information that relate to such period, even though prepared or published outside of the Relevant Time Period. If a document prepared before this period is necessary for a correct or complete understanding of any document covered by a request, you must produce the earlier or subsequent document as well. If any document is updated and the date of its preparation cannot be determined, the document shall be produced if otherwise responsive to the production request.

#### **V. DOCUMENTS REQUESTED**

##### REQUEST NO. 1:

Communications between you and the following entities/individuals: (1) FirstEnergy (including any committee or member of the Board of Directors thereof), FES, or FENOC; (2) any Individual Defendants (including anyone acting on their behalf); and/or (3) Randazzo concerning:

- (a) Larry Householder’s campaign to be elected to the Ohio House of Representatives, and/or elected to be Speaker of the House;
- (b) political contributions for the 2018 election cycle;
- (c) HB6, efforts to repeal HB6 (including by referendum or otherwise), or the decoupling provisions of HB6 as described by FirstEnergy in its SEC filings and public statements; any other proposed legislation or solutions concerning subsidies for Nuclear Plants (including ZEN);
- (d) term limits (communications occurring between January 1, 2020 and March 31, 2020);
- (e) Alice DeWine’s campaign for Greene County Prosecutor;
- (f) contributions to Protecting Ohio, Inc.;

(g) Randazzo, including any entity created in whole or in part for the benefit of Randazzo, owned in whole or in part by Randazzo, or for which Randazzo had signature authority, including Sustainability Funding Alliance of Ohio, Inc. and IEU-Ohio Administration Company, LLC;

(h) Jason Rafeld;

(i) any potential or actual applicant, nominee, or appointee for PUCO commissioner;

(j) any potential or actual appointee for the Chair of PUCO;

(k) Daniel McCarthy;

(l) the Defendants in this Action; or

(m) the Criminal Defendants.

REQUEST NO. 2:

Documents produced or provided by you (voluntarily or involuntarily) to any party or government entity concerning:

(a) FirstEnergy;

(b) IEU-Ohio;

(c) HB6, efforts to repeal HB6 (including by referendum or otherwise), the decoupling provisions of HB6, or any “legislative or regulatory solutions” as described by FirstEnergy in its SEC filings and public statements;

(d) term limits (communications occurring between January 1, 2020 and March 31, 2020);

(e) Alice DeWine’s campaign for Greene County Prosecutor;

(f) contributions to Protecting Ohio, Inc.;

(g) Randazzo, including any entity created in whole or in part for the benefit of Randazzo, owned in whole or in part by Randazzo, or for which Randazzo had signature authority, including Sustainability Funding Alliance of Ohio, Inc. and IEU-Ohio Administration Company, LLC;

(h) Jason Rafeld;

(i) any potential or actual applicant, nominee, or appointee for PUCO commissioner;

(j) any potential or actual appointee for the Chair of PUCO;

(k) Daniel McCarthy;

(l) the Defendants in this Action; or

(m) the Criminal Defendants.

**TABLE 1: METADATA FIELDS<sup>1</sup>**

Field Name	Example / Format	Description
BEGNO	ABC0000001 (Unique ID)	The Document ID number associated with the first page of a document.
ENDNO	ABC0000003 (Unique ID)	The Document ID number associated with the last page of a document.
BEGATTACH	ABC0000001 (Unique ID Parent-Child Relationships)	The Document ID number associated with the first page of the parent document.
ENDATTACH	ABC0000008 (Unique ID Parent-Child Relationships)	The Document ID number associated with the last page of the last attachment.
VOLUME	VOL001	The name of CD, DVD, or Hard Drive.
RECORDTYPE	Options: eMail, Attachment, Scanned Doc., eFile	The record type of a document.
SENTDATE	MM/DD/YYYY	The date the email or calendar entry was sent.
SENTTIME	HH:MM	The time the email or calendar entry was sent.
RECEIVEDDATE	MM/DD/YYYY	The date the document was received.
RECEIVEDTIME	HH:MM	The time the document was received.
CREATEDATE	MM/DD/YYYY	The date the document was created.
CREATETIME	HH:MM	The time the document was created.
LASTMODDATE	MM/DD/YYYY	The date the document was last modified.
LASTMODTIME	HH:MM	The time the document was last modified.
MEETING START DATE	MM/DD/YYYY	Start date of calendar entry.
MEETING START TIME	HH:MM	Start time of calendar entry.
MEETING END DATE	MM/DD/YYYY	End date of calendar entry.
MEETING END TIME	HH:MM	End time of calendar entry.
FILEPATH	i.e. /JsmithPC/Users/Jsmith/Desktop	The file path from the location in which the document was stored in the usual course of business. This field should be populated for both email and e-files.
FILEPATH-DUP	i.e. /JSmith.pst/Inbox /Network Share/Accounting/... /TJohnsonPC/Users/TJohnson/My Documents/...	The file paths from the locations in which the duplicate documents were stored in the usual course of business. This field should be populated for both email and e-files and separated by semicolons.
AUTHOR	jsmith	The author of a document from extracted metadata.
LASTEDITEDBY	jsmith	The name of the last person to edit the document from extracted metadata.
FROM	Joe Smith <jsmith@email.com>	The display name and email address of the author of an email/calendar item. An email address should always be provided.
TO	Joe Smith <jsmith@email.com>; tjones@email.com	The display name and email address of the recipient(s) of an email/calendar item. An email address should always be provided for every email if a recipient existed.
CC	Joe Smith <jsmith@email.com>; tjones@email.com	The display name and email of the copyee(s) of an email/calendar item. An email address should always be provided for every email if a copyee existed.
BCC	Joe Smith <jsmith@email.com>; tjones@email.com	The display name and email of the blind copyee(s) of an email or calendar item. An email address should always be provided for every email if a blind copyee existed.
SUBJECT		The subject line of the email/calendar item.
MESSAGE TYPE	Appointment, Contact, Task, Distribution List, Message, etc.	An indication of the email system message type.
IMPORTANCE	Normal, Low, High	Email Importance Flag
TITLE		The extracted document title of a document.
CUSTODIAN-ALL	Smith, Joe; Doe, Jane	All of the custodians of a document from which the document originated, separated by semicolons.
SOURCE	Computer, Mobile Phone, Email, Network Share, Database Name, etc.	The source from which the document was collected.
ATTACH COUNT	Numeric	The number of attachments to a document.
FILEEXT	XLS	The file extension of a document.
FILENAME	Document Name.xls	The file name of a document.
FILESIZE	Numeric	The file size of a document (including embedded attachments).
IS EMBEDDED	Yes or No	The yes/no indicator of whether a file is embedded in another document.
HASH		The MD5 or SHA-1 Hash value or "de-duplication key" assigned to a document. The same hash method (MD5 or SHA-1) should be used throughout production.
CONVERSATION INDEX		ID used to tie together email threads.
REDACTED	Yes or Blank	If a document contains a redaction, this field will display 'Yes'.
TIMEZONE PROCESSED	PST, CST, EST, etc	The time zone the document was processed in. <b>NOTE:</b> This should be the time zone where the documents were located at time of collection.
NATIVELINK	D:\NATIVES\ABC000001.xls	The full path to a native copy of a document.
FULLTEXT	D:\TEXT\ABC000001.txt	The path to the full extracted text of the document. There should be a folder on the deliverable, containing a separate text file per document. These text files should be named with their corresponding Bates numbers. <b>Note:</b> Emails should include header information: author, recipient, cc, bcc, date, subject, etc. If the attachment or e-file does not extract any text, then OCR for the document should be provided.

<sup>1</sup>For ESI other than email and e-docs that do not conform to the metadata listed here, such as text messages, Instant Bloomberg, iMessage, Google Chat, Yammer, Slack, etc., the parties will meet and confer as to the appropriate metadata fields to be produced.

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE FIRSTENERGY CORP. SECURITIES  
LITIGATION,

This document relates to:  
  
ALL ACTIONS.

Case No. 2:20-cv-03785-ALM-KAJ

Chief Judge Algenon L. Marbley

Magistrate Judge Kimberly A. Jolson

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**JOINT PROTOCOL FOR PRODUCTION OF DOCUMENTS AND  
ELECTRONICALLY STORED INFORMATION**

This Protocol will govern how the parties manage electronic discovery in the above-captioned Action. The production specifications in this Protocol apply to documents that are produced in the first instance in this Action, by a party to this Action, unless otherwise specified below.

**I. GENERAL PROVISIONS**

A. The agreements set forth herein are without prejudice to the right of a party to request additional information about, or production of, additional ESI or object to such requests for information or production on grounds related to the particular request. The parties shall confer in good faith with regard to whether such additional efforts are reasonably required and may seek assistance from the Court to resolve such disputes if agreement cannot be reached.

B. Each party shall identify an E-Discovery Coordinator(s) through whom all e-discovery requests and responses are coordinated. Regardless of whether the E-Discovery Coordinator(s) is an attorney (in-house or outside counsel), a third-party consultant, or an employee of the party, that individual must be (a) familiar with the party's past and present electronic systems and capabilities to explain these systems and to answer relevant questions;

(b) knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and formatting issues; and (c) prepared to participate in e-discovery dispute resolutions. If a party's E-Discovery Coordinator(s) is not outside counsel to the party, all communications to that E-Discovery Coordinator(s) must also include the party's outside counsel.

C. The parties shall make reasonable efforts to resolve any differences concerning compliance with this Protocol. If a responding party cannot comply with any aspect of this Protocol, such party shall promptly and fully explain to the requesting party why compliance with the Protocol is unreasonable or not possible. The parties shall meet and confer to the extent reasonably necessary to resolve any issues regarding production format and to facilitate the import and use of the produced materials with commercially available document management or litigation support software.

D. No party may seek relief from the Court concerning compliance with this Protocol until it has conferred with the other party or parties relevant to the dispute.

## **II. PRODUCTION OF PREVIOUSLY PRODUCED DOCUMENTS AND ESI**

A. To the extent any party or third party is required or agrees to re-produce documents in this Action that originally were produced in other cases or government investigations, such documents may initially be produced in the same format that they originally were produced or prepared for production, including the same metadata, and the producing party shall provide information sufficient to identify the Bates numbers of the document from prior productions. Should the receiving party believe there is a good faith basis for previously produced documents to be produced in a format consistent with this Protocol, the producing party shall promptly explain whether, and to what extent, previously produced documents can be produced in a format consistent with this Protocol.

### III. IDENTIFICATION OF RESPONSIVE ESI

A. **Search for Discoverable ESI.** In response to a requesting party's discovery request for which documents will be produced either by agreement that the request is properly within the scope of discovery in the Action or as a result of intervention by the Court ("Document Request"), the producing party shall conduct a reasonable and good faith search for responsive ESI.

B. **Reasonably Accessible ESI.** To the extent a producing party becomes aware of sources of ESI that contain unique data that is potentially responsive to a Document Request but that the producing party in good faith considers to be not reasonably accessible because of undue burden or cost, the producing party must promptly and fully disclose such ESI and meet and confer with the receiving party.

C. **Custodians.** Unless otherwise agreed to by the requesting and producing parties, within the later of fourteen (14) days of a party serving its responses and/or objections agreeing to produce documents in response to a party's Requests for Production of Documents served in accordance with Federal Rule of Civil Procedure 34 ("RFPs") or entry of this Protocol, the producing party will disclose the individuals they believe in good faith to be the most likely to possess ESI and other documents potentially responsive to the requests. Within ten (10) days of the party's disclosure, the parties shall meet and confer to attempt to agree on a list of individuals whose custodial ESI will be searched. The list of individuals, either as a result of agreement by the parties or intervention by the Court, shall be considered the "Custodians," whose documents, email and other ESI will be searched in this matter in response to the RFPs. The list of Custodians can be amended at any time by agreement of the requesting and producing parties or by order of

the Court. This paragraph is not intended to limit the sources of ESI to be considered and/or searched to individual custodial ESI.

D. **Preservation.** Each party represents that it has taken the required steps to preserve hard copy documents and ESI related to this Action. These steps include, but are not limited to, providing written notice to the Custodians who are under each party's control. The parties will disclose categories or sources of responsive information that they have reason to believe have not been preserved or should not be preserved, after the duty preserve arose and will explain the reasons to support such a belief.

E. **Easily Segregable Documents.** Responsive documents or categories of documents that are easily identifiable and segregable (e.g., Board Minutes and Materials, prior productions to third parties) shall be collected without the use of search terms or other agreed-upon advanced search methodology and promptly produced. The producing party will indicate which categories of documents will be produced with and without the use of search terms or other agreed upon advanced search methodology.

F. **Search Terms.** Unless otherwise agreed to by the requesting and producing parties, within the later of fourteen (14) days of a party's serving its responses and/or objections agreeing to produce documents in response to another party's RFPs, or entry of this Protocol, the producing party will disclose the search terms and any other culling/search criteria it intends to apply ("Proposed Search Terms") to filter the sources of ESI. If the requesting party would like additional search terms used, it shall inform the responding party of the additional proposed search terms in writing within ten (10) days of the initial exchange of Proposed Search Terms. Within seven (7) days of receiving the proposed additional search terms, the producing party shall produce a hit count after global de-duplication (including the number of documents that hit on each term

for each Custodian, the number of unique documents that hit on each term, and the total number of documents that would be returned using the Proposed Search Terms, including families) (“Hit Report”) for any of the terms it objects to. Notwithstanding the foregoing, the producing party may also provide hit reports for all, or some additional subset of, the Proposed Search Terms if otherwise agreed to by the producing party and the requesting party. The parties will then confer in good faith to reach agreement on any alternative or additional search terms within ten (10) days. If the parties cannot reach an agreement within ten (10) days thereafter, the requesting party may seek relief from the Court. The list of agreed upon search terms can be amended at any time by agreement of the requesting and producing parties or by order of the Court.

G. **Technology-Assisted Review.** If a party intends to use predictive coding/technology-assisted review for the purpose of culling documents to be produced, the party shall notify the requesting party prior to use and with ample time to meet and confer regarding a protocol for use of such technology.

H. **Acknowledgment.** The parties acknowledge that each party must produce responsive documents, subject to their objections, that they know to exist, even if not captured by the search protocol contained in this Protocol. Except as expressly stated, nothing in this order affects the parties’ discovery obligations under the Federal or Local Rules.

#### IV. PRODUCTION OF ESI

A. **Format.** The parties will produce ESI in single-page TIFF format at 300 dpi in black-and-white, with the exception of spreadsheet type files and presentation type files, source code, audio, and video files, which shall be produced in native format. A receiving party may request that documents be re-produced with the coloration of the original document by providing a list of the Bates numbers of documents it requests to be produced in color format. Upon such a

request, should the producing party object to it, the parties shall promptly meet and confer as to the appropriateness of the request and shall attempt to come to an agreement regarding the number, types, and format of documents to be produced in color, if any. Parties are under no obligation to enhance an image beyond how it was kept in the usual course of business. TIFFs/JPGs will show any and all text and images which would be visible to the reader using the native software that created the document. For example, TIFFs/JPGs of email messages should include the BCC line, should a BCC be present on the email. Presentation and spreadsheet documents shall be processed with hidden slides and all speaker notes unhidden; presentation documents shall also be processed to show both the slide and the speaker's notes on the image.

B. **Natives.** If a document is produced in native, a single-page Bates stamped image slip sheet stating the document has been produced in native format will also be provided. Each native file should be named according to the Bates number it has been assigned and should be linked directly to its corresponding record in the load file using the LINK field. To the extent either party believes that specific documents or classes of documents not already identified within this Protocol should be produced in native format, the parties agree to meet and confer in good faith to resolve the request. The producing party shall not unreasonably deny such requests.

C. **Redaction of Native Documents.** If files required to be produced in native format contain both discoverable information and non-discoverable privileged information that would otherwise be redacted for production, the producing party shall apply the redactions directly on the native file itself or, for non-spreadsheet type files, the producing party may produce TIFF/JPG with burned-in redactions in lieu of a native file and TIFF placeholder image, as follows:

- i. If applying redactions to the native file itself, a party shall in no way remove or alter formatting and contextual information (e.g., headers, column headings, etc.)

in creating the modified file for production and must retain a copy of the original, unmodified file in its native format. Documents that are to be produced in a native format but that require redactions shall be produced along with a single-page Bates stamped image slip sheet stating the document has been produced in native format.

- ii. A party producing TIFF/JPG files that contain redacted text shall ensure that native files, prior to conversion to TIFF/JPG, reveal hidden data from redacted native files and will be formatted so as to be readable.

D. **Appearance.** Each document's electronic image shall convey the same information and image as the original native document except for the addition of Bates numbers, any confidentiality designation(s) consistent with the terms of the Protective Order entered in this Action, and redactions – labeled appropriately to identify the type of redaction – for any asserted privilege or other confidential or private and sensitive information agreed to by the producing and requesting parties or as ordered by the Court. If it is not practicable to include within the electronic files themselves the confidentiality designation, then the producing party shall designate in a transmittal letter or email to the party to whom the materials are produced any portions of the ESI that should be so designated. Documents shall appear with any such redactions, revisions, and/or comments visible and printed. Documents that present imaging or formatting problems shall be identified by the receiving party, and the parties shall meet and confer in an attempt to resolve the problems. Each party will use reasonable efforts to brand images for data from mobile devices with the Custodian's name, device type, and device serial number at the top of each page.

E. **Unitization.** If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as it existed in the original file of the producing party or shall be documented in a load file or otherwise electronically tracked.

F. **De-Duplication.** Each party shall remove exact duplicate documents based on MD5 or SHA-1 hash values, at the family level. Attachments should not be eliminated as duplicates for purposes of production, unless the parent email and all attachments are also duplicates. Parties agree that an email that includes content in the BCC or other blind copy field shall not be treated as a duplicate of an email that does not include content in those fields, even if all remaining content in the email is identical. No party shall remove near-duplicate documents or use email threading as a means to eliminate documents from production without the consent of the requesting party and allowing time for the parties to meet and confer in advance. De-duplication will be done across the entire collection (global de-duplication), the CUSTODIAN field will list the Custodian of a document after de-duplication, and the FILEPATH field will list a single filepath associated with the document. Each of the Custodians associated with the document (including those that are excluded due to de-duplication) shall be listed in the ALL\_CUSTODIAN field. Mobile data is not subject to de-duplication.

G. **Compressed File Types.** Compressed file types (i.e., .ZIP, .RAR, .CAB, .Z) should be decompressed so that the lowest level document or file is extracted.

H. **Metadata.** The parties will produce extracted metadata for each document in the form of an industry standard Concordance .DAT file and include the fields shown in the table below. If specific fields cannot be provided for a particular document because, e.g., the field is unavailable or contains privileged information or the document was scanned from a hard copy, the field(s) may be left blank. For date and time field types, the format shall be provided in the following format in separate fields as specified below: mm/dd/yyyy for dates and hh:mm for time. The parties will produce the following metadata fields to the extent available:

<b>Field Name</b>	<b>Description</b>
<b>Common Fields</b>	
FIRSTBATES	The beginning Bates number of the document.
LASTBATES	The last Bates number of the document.
ATTACHRANGE	The Bates range for the document family.
BEGATTACH	The beginning Bates number of the document family.
ENDATTACH	The last Bates number of the entire document family
PARENT_BATES	The beginning Bates number of the parent document of the document family.
CHILD_BATES	The beginning Bates number for each child document within the document family.
CUSTODIAN	Custodian of a document from which the document originated.
ALL_CUSTODIAN	All of the custodians of a document from which the document originated, separated by semicolons.
FILE_SIZE	The file size of a document in kilobytes.
PGCOUNT	The number of single page images associated with the document.
FILEPATH	The path which the document existed at its source.
MIME TYPE	The content type of an email or native file document as identified/extracted from the header.
HASH_VALUE	Unique identifier associated with the document or "de-duplication key" assigned to the document.
TEXT PATH	The path to the extracted text of the document. There should be a folder on the deliverable, containing a separate text file per document. There, text files should be named with their corresponding Bates numbers.
REDACTED	If a document contains a redaction the field will display YES.
<b>Non-Mobile Originated</b>	
FROM	The display name and email address of the author of an email/calendar item.
TO	The display name and email address of the recipient(s) of an email/calendar item.
CC	The display name and email address of the copyee(s) of an email/calendar item.
BCC	The display name and email address of the blind copyee(s) of an email/calendar item.
SUBJECT	The subject line of the email/calendar item.

<b>Field Name</b>	<b>Description</b>
FILE_NAME	The file name of a document.
TITLE	The extracted document title of the document.
DATE LAST MODIFIED	The date the document was last modified.
TIME LAST MODIFIED	The time the document was last modified.
LAST_MODIFIED BY	Name of the person who last modified or saved the document.
DATE_SENT	The date the email or calendar entry was sent.
TIME_SENT/TIME_ZONE	The time the email or calendar entry was sent.
TIME_ZONE	The time zone the document was processed in.
CREATE DATE	The date the document was created.
CREATE TIME	The time the document was created.
DATE_RECEIVED	The date the email or calendar entry was received.
TIME_RECEIVED/TIME_ZONE	The time the email or calendar entry was received.
CONFIDENTIALITY	The confidentiality designation of a document if it has been so designated under the Protective Order.
TRACK_CHANGES	A Yes/No indicator that identifies whether a document has tracked changes.
LINK	The relative path to a native copy of a document.
FILE_EXTEN	The file extension of the document.
AUTHOR	The author of the document from extracted metadata.
<b>Mobile Originated</b>	
CONVERSATION_GROUP	The participants within a mobile device chat.
CONVERSATION_START_DATE	The start date of a mobile device chat conversation.
CONVERSATION_START_TIME/TIME_ZONE	The start time of a mobile device chat conversation.
CONVERSATION_END_DATE	The end date of a mobile device chat conversation.
CONVERSATION_END_TIME/TIME_ZONE	The end time of a mobile device chat conversation.
MOBILE_SOURCE_APP	The mobile device application from which the document was derived.
MOBILE_SOURCE_APP_ACCOUNT	The mobile device application account from which the document was extracted.

I. **Attachments.** The parties agree that if any part of a parent document or its attachments is responsive, the entire document family will be produced, except any family member

that must be withheld or redacted on the basis of privilege. If a family member is withheld on the basis of privilege, a slip sheet stating it has been withheld will be produced. In instances where any family member is withheld under a claim of privilege, and where such family member is later produced, the entire family (except any family members that must continue to be withheld or redacted on the basis of privilege) will be produced with a new Bates number. The attachments will be produced sequentially after the parent email.

#### **V. PRODUCTION FROM DATABASES**

If responding to a discovery request requires production of ESI contained in a database, the producing party may comply with the discovery request by querying the database for discoverable information and generating a report in a reasonably usable and exportable electronic format (for example, in Excel or .csv format). The parties shall meet and confer as needed to agree upon the sets of data or fields to be included and to generate a report in a useable format. Upon review of the report(s), the requesting party may make reasonable requests for additional information to explain the database schema, codes, abbreviations, and different report formats or to request specific data from identified fields. The parties reserve all rights to object, including but not limited to objections for relevance, undue burden, and/or inaccessibility.

#### **VI. PRODUCTION OF HARD COPY DOCUMENTS**

Hard copy documents should be scanned as single-page, Group IV, 300 DPI TIFF images with an .opt image cross-reference file and a delimited database load file (i.e., .dat). The database load file should contain, at a minimum, the following fields: FIRSTBATES, LASTBATES, PGCOUNT, and CUSTODIAN. The documents should be logically unitized (i.e., distinct documents shall not be merged into a single record, and single documents shall not be split into multiple records) and be produced in the order in which they are kept in the usual course of business. A receiving party may request that documents be re-produced with the coloration of the

original document by providing a list of the Bates numbers of documents it requests to be produced in color format. Upon such a request, should the producing party object to it, the parties shall promptly meet and confer as to the appropriateness of the request and shall attempt to come to an agreement regarding the number, types, and format of documents to be produced in color, if any. The parties agree not to degrade the searchability of documents as part of the document production process, but have no affirmative obligation to OCR documents.

## **VII. SERVICE OF PRODUCTIONS**

A **Production Media.** The producing party shall produce documents on CD, DVD, external hard drive (with standard PC compatible interface), FTP site, or such other readily accessible computer or electronic media as the parties may hereafter agree upon (the “Production Media”). Each piece of Production Media shall be labeled with: (1) the party making the production; (2) the date of the production; (3) text referencing the case caption; (4) the Bates number range of the materials contained on the Production Media; and (5) any confidentiality designation(s) consistent with the terms of the Protective Order that may be entered in this matter. To maximize the security of information in transit, any Production Media may be encrypted by the producing party. In such cases, the producing party shall transmit the encryption key or password to the requesting party, under separate cover, contemporaneously with sending the encrypted media.

B **Parties to Receive Productions.** The producing party shall provide all other parties a copy of any production made in response to any discovery request or other production made in accordance with Federal Rule of Civil Procedure 26.

C. **Copies of Production Received by Third Parties.** Any party that receives a production of documents from a third party in response to a subpoena shall provide all other parties a copy of the third party production within 10 days of receipt of the production.

**VIII. PRIVILEGE LOGS**

A. A party withholding documents or producing documents that contain redactions based on one or more claims of privilege shall produce a privilege log no later than thirty days after the first document is withheld from production and shall produce rolling logs thereafter with the final privilege log being produced no later than thirty days after the producing party asserts that it has completed its document production, all subject to entry of an agreed-upon protocol for privilege logs to supplement this Protocol.

**IX. NO WAIVER**

Nothing in this Protocol shall be deemed a waiver of any objection made by a party in response to a discovery request.

**SO ORDERED.**

Date: October 5, 2021

/s/ Kimberly A. Jolson  
KIMBERLY A. JOLSON  
UNITED STATES MAGISTRATE JUDGE

*[signatures begin on next page]*

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